

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:

SBARRO LLC, *et al.*,<sup>1</sup>

Debtors.

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)  
) Chapter 11  
)  
) Case No. 14-10557 (MG)  
)  
) Jointly Administered  
)

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**NOTICE OF FILING OF PLAN SUPPLEMENT FOR  
THE JOINT PREPACKAGED CHAPTER 11 PLAN OF  
REORGANIZATION OF SBARRO LLC AND ITS DEBTOR AFFILIATES**

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**PLEASE TAKE NOTICE** that Sbarro LLC and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “*Debtors*”), hereby file the following documents that comprise the Plan Supplement in connection with confirmation of the *Joint Prepackaged Chapter 11 Plan of Reorganization of Sbarro LLC and Its Debtor Affiliates*, dated March 5, 2014 [Docket No. 13] (as modified from time to time, the “*Plan*”):<sup>2</sup>

- Exhibit A:** Exit Facility Documentation
- Exhibit B:** Assumed Executory Contract/Unexpired Lease List
- Exhibit C:** Rejected Executory Contracts and Unexpired Lease List
- Exhibit D:** Shareholders Agreement
- Exhibit E:** Certificate of Incorporation
- Exhibit F:** Bylaws
- Exhibit G:** Members of the New Board
- Exhibit H:** Transaction Steps to Establish New Franchising Entity

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Sbarro LLC (1939); Carmela’s, LLC (8088); Carmela’s of Kirkman LLC (7703); Carmela’s of Kirkman Operating, LLC (1182); Corest Management, Inc. (9134); Cucinova Easton LLC (4874); Cucinova Holdings LLC (2698); Cucinova Kenwood LLC (9558); Cucinova Olentangy LLC (8264); Demefac Leasing Corp. (2379); Larkfield Equipment Corp. (7947); Las Vegas Convention Center LLC (7645); New Sbarro Finance Inc. (6440); New Sbarro Intermediate Holdings, Inc. (9105); Sbarro America, Inc. (9130); Sbarro America Properties, Inc. (9540); Sbarro Blue Bell Express LLC (1419); Sbarro Commack, Inc. (4007); Sbarro Express LLC (0253); Sbarro Holdings, Inc. (7352); Sbarro New Hyde Park, Inc. (6185); Sbarro of Las Vegas, Inc. (2853); Sbarro of Longwood, LLC (0328); Sbarro of Virginia, Inc. (2309); Sbarro Pennsylvania, Inc. (3530); Sbarro Properties, Inc. (9541); Sbarro Venture, Inc. (3182); Sbarro’s of Texas, Inc. (5139); Umberto at the Source, LLC (8024); Umberto Deer Park, LLC (8728); Umberto Hauppauge, LLC (8245); Umberto Hicksville, LLC (0989); Umberto Huntington, LLC (8890); and Umberto White Plains, LLC (8159). The Debtors’ service address is: 401 Broadhollow Road, Melville, New York 11747.

<sup>2</sup> All capitalized terms used but not otherwise defined herein and in each of the Exhibits hereto shall have the meanings set forth in the Plan. To the extent a document is identified in the Plan as a document to be included in the Plan Supplement and has not yet been filed with the Court, the Debtors will file such document with the Court as soon as practicable.

**Exhibit I:** Form Indemnification Agreement

**PLEASE TAKE FURTHER NOTICE** that the Plan Supplement and any exhibits, appendices, supplements, or annexes to the Plan Supplement documents are incorporated into the Plan by reference and are a part of the Plan as if set forth therein. If the Plan is confirmed, the Plan Supplement will be approved as well. The Debtors reserve the right to alter, amend, modify, or supplement any document in the Plan Supplement in accordance with the Plan; provided that if any document in the Plan Supplement is altered, amended, modified, or supplemented in any material respect, the Debtors will file a revised version of such document with the Bankruptcy Court.

**PLEASE TAKE FURTHER NOTICE** that the hearing at which the Court will consider, among other things, the adequacy of the Disclosure Statement and confirmation of the Plan (the “***Confirmation Hearing***”) will commence at **10:00 a.m. prevailing Eastern Time on April 25, 2014**, before the Honorable Martin Glenn of the Bankruptcy Court for the Southern District of New York, One Bowling Green, Courtroom 501, New York, New York 10004-1408.

**PLEASE TAKE FURTHER NOTICE** that any objection to the Plan, including to the assumption of Executory Contracts and Unexpired Leases and the proposed Cure Amounts associated therewith, must: (a) be in writing; (b) conform to the Bankruptcy Rules, the Local Rules, and any orders of the Court; (c) state, with particularity, the legal and factual basis for the objection and, if practicable, a proposed modification to the Plan (or related materials) that would resolve such objection; and (d) be filed with the Court (contemporaneously with a proof of service) and served upon the following parties so as to be actually received on or before **April 17, 2014**: (i) the Debtors, 401 Broadhollow Road, Melville, New York, 11747, Attn: Stuart Steinberg; (ii) proposed counsel for the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Nicole L. Greenblatt and David S. Meyer; (iii) counsel to the agent for the Debtors’ prepetition and postpetition lenders, Milbank, Tweed, Hadley McCloy LLP, Attn: Evan R. Fleck and Brian Sturm, 1 Chase Manhattan Plaza, New York, NY 10005; (iv) proposed counsel for the Official Committee of Unsecured Creditors, 1114 Avenue of the Americas, New York, New York 10036, Attn: Jay R. Indyke and Cathy R. Hershcopf; (v) the Office of the United States Trustee for the Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York, 10014, Attn: Paul K. Schwartzberg; and (vi) those parties who have filed a notice of appearance in these chapter 11 cases.

**PLEASE TAKE FURTHER NOTICE** that if you would like to obtain a copy of the Plan or the Plan Supplement, you may contact Prime Clerk LLC, the notice and claims agent retained by the Debtors in these chapter 11 cases (the “***Notice and Claims Agent***”), by: (a) calling (855) 388-4575; (b) visiting the Notice and Claims Agent’s restructuring website at: [www.cases.primeclerk.com/sbarro](http://www.cases.primeclerk.com/sbarro); and/or (c) writing to Prime Clerk LLC Re: Sbarro LLC, 830 Third Avenue, 9th Floor, New York, New York 10022. You may also obtain copies of any pleadings filed in these chapter 11 cases for a fee via PACER at: <http://www.nysb.uscourts.gov>. Please be advised that the Notice and Claims Agent is not permitted to provide legal advice.

Dated: April 7, 2014  
New York, New York

*/s/ Nicole L. Greenblatt*

---

James H.M. Sprayregen, P.C.

Edward O. Sassower, P.C.

Nicole L. Greenblatt

David S. Meyer

**KIRKLAND & ELLIS LLP**

601 Lexington Avenue

New York, New York 10022-4611

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

*Proposed Counsel to the Debtors and  
Debtors in Possession*

**Exhibit A**

**Exit Facility Documentation**

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CREDIT AGREEMENT

dated as of [\_\_\_\_\_], 2014

among

NEW SBARRO FINANCE, INC.,  
as Holdings,

NEW SBARRO INTERMEDIATE HOLDINGS, INC.,  
as Borrower,

THE LENDERS FROM TIME TO TIME PARTY HERETO,

and

CANTOR FITZGERALD SECURITIES,  
as Administrative Agent and Collateral Agent

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#### **Schedules:**

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Schedule 1.01(B) -	Scheduled Stores
Schedule 2.01 -	Lenders



- Schedule 5.06 - Litigation
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- Schedule 7.01 - Indebtedness
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- Schedule 10.02 - Administrative Agent's Office, Certain Addresses for Notices

**Exhibits:**

- Exhibit A - Form of Notice of Extension/Conversion
- Exhibit B - Form of Term Note
- Exhibit C - Form of Assignment and Assumption
- Exhibit D - Form of Compliance Certificate
- Exhibit E - Form of Opinion of Counsel for the Borrower and the Other Loan Parties
- Exhibit F - Form of Guaranty
- Exhibit G-1 - Form of Security Agreement
- Exhibit G-2 - Form of Pledge Agreement
- Exhibit G-3 - Form of Perfection Certificate
- Exhibit H - Form of Intercompany Note
- Exhibit I - Form of Intercompany Note Subordination Provisions
- Exhibit J - Form of Loan Party Accession Agreement
- Exhibit K - Form of Solvency Certificate
- Exhibit L - Form of Officer's Certificate pursuant to Section 7.05(o)

## CREDIT AGREEMENT

This Credit Agreement (this “Agreement”) is entered into as of [\_\_\_\_], 2014 among NEW SBARRO FINANCE, INC., a Delaware corporation (“Holdings”), NEW SBARRO INTERMEDIATE HOLDINGS, INC., a Delaware corporation (the “Borrower”), each lender from time to time party hereto (collectively, the “Lenders” and individually, a “Lender”), and CANTOR FITZGERALD SECURITIES, as Administrative Agent and Collateral Agent.

WHEREAS, on March 10, 2014, Holdings, the Borrower and each of the Subsidiary Guarantors (collectively, the “Debtors” and each, a “Debtor”) filed voluntary petitions with the Bankruptcy Court initiating their respective cases under Chapter 11 of the Bankruptcy Code (each a “Case” and collectively, the “Cases”) and have continued in the possession of their assets and in the management of their business pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

WHEREAS, on March 10, 2014 (the “Petition Date”), the Debtors filed the Plan of Reorganization.

WHEREAS, (i) on [\_\_\_\_], 2014, the Bankruptcy Court entered the Confirmation Order and (ii) in connection with the confirmation and implementation of the Plan of Reorganization, in full satisfaction of the DIP Facility Loans, each of the holders of the DIP Facility Loans shall automatically (whether or not such holders have executed and delivered a signature page to this Agreement) become parties to this Agreement on the Closing Date as Lenders.

WHEREAS, it is a condition to the effectiveness of the Plan of Reorganization that Holdings and the Borrower enter into this Agreement and that the term loan contemplated herein becomes effective and that all DIP Facility Claims (other than the DIP Facility Loans) be paid in full in cash.

WHEREAS, pursuant to the Plan of Reorganization, the holders of the DIP Facility Loans shall be deemed to have made the Loans to the Borrower on the Closing Date in an aggregate principal amount of \$[20,618,556.70]<sup>1</sup>.

NOW, THEREFORE, the Loans shall have the terms set forth herein. Accordingly, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

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<sup>1</sup> NTD: This aggregate amount represents a conversion of the \$20m DIP loans (assuming these are fully drawn and not subject to repayments) as adjusted to reflect 3% OID.

## ARTICLE 1 DEFINITIONS AND ACCOUNTING TERMS

**Section 1.01 Defined Terms.** As used in this Agreement, the following terms have the meanings set forth below:

“Accession Agreement” means a Loan Party Accession Agreement, substantially in the form of Exhibit J hereto, executed and delivered by an Additional Subsidiary Guarantor after the Closing Date in accordance with Section 6.12(a) or (d).

“Additional Collateral Documents” has the meaning specified in Section 6.12(b).

“Additional PIK Interest Election” has the meaning specified in Section 2.05(d)(i).

“Additional Subsidiary Guarantor” means each Person that becomes a Subsidiary Guarantor after the Closing Date by execution of an Accession Agreement as provided in Section 6.12(a).

“Adjusted Eurodollar Rate” means, for the Interest Period for each Eurodollar Loan comprising part of the same Group, the quotient obtained (expressed as a decimal, carried out to five decimal places) by dividing (i) the applicable Eurodollar Rate for such Interest Period by (ii) 1.00 minus the Eurodollar Reserve Percentage.

“Administrative Agent” means CFS, in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

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

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

“Affiliate” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; provided that none of the parties to the Shareholders’ Agreement (nor their permitted transferees thereunder that agree to be bound thereby nor any Person appointed as a director pursuant thereto) shall solely by reason thereof be deemed an Affiliate of Holdings, the Borrower or any of its Subsidiaries.

“Agency Fee Letter” means the Agency Fee Letter dated as of the date hereof between the Borrower and CFS, as amended, modified or supplemented from time to time.

“Agent” means the Administrative Agent, the Collateral Agent and any successors and assigns in such capacity, and “Agents” means any two or more of them.

“Agreement” means this Credit Agreement, as amended, modified or supplemented from time to time.

“Applicable Margin” means:

(a) at any time an Additional PIK Interest Election is not in effect, 11.00% for Eurodollar Loans and 10.00% for Base Rate Loans; and

(b) at any time an Additional PIK Interest Election is in effect, 12.50% for Eurodollar Loans and 11.50% for Base Rate Loans.

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

“Asset Disposition” means any sale (including any Sale/Leaseback Transaction, whether or not involving a Capital Lease), lease (as lessor), transfer or other disposition (including any such transaction effected by way of merger or consolidation and including any sale or other disposition by any Group Company of Equity Interests of a Subsidiary, but excluding any sale or other disposition by way of Casualty or Condemnation) by any Group Company of any asset. For avoidance of doubt, an Equity Issuance or capital contribution by any Person shall not constitute an Asset Disposition by that Person.

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor or by Affiliated investment advisors; provided that the parties to the Shareholders’ Agreement (and their permitted transferees thereunder that agree to be bound thereby) shall not solely by reason thereof be deemed an Assignee Group.

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

“Attributable Indebtedness” means, at any date, (i) in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (ii) in respect of any Synthetic Lease Obligation of any Person, the capitalized or principal amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement were accounted for as a Capital Lease and (iii) in respect of any Sale/Leaseback Transaction, the lesser of (A) the present value, discounted in accordance with GAAP at the interest rate implicit in the related lease, of the obligations of the lessee for net rental payments over the remaining term of such lease (including any period for which such lease has been extended or may, at the option of the lessor, be extended) and (B) the fair market value of the assets subject to such transaction.

“Audited Financial Statements” means the audited consolidated balance sheet of New Sbarro Finance, Inc. and its subsidiaries for the fiscal year ended December 29, 2012, and the related audited consolidated statements of income, shareholders’ equity and cash flows for such fiscal year, including the notes thereto.

“Bank Secrecy Act” means the Financial Recordkeeping and Reporting of Currency and Foreign Transactions Act of 1970, 31 U.S.C. 1051 et seq., as the same may be amended, supplemented, modified, replaced or otherwise in effect from time to time.

“Bankruptcy Code” means title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor statute.

“Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of New York or any other court having jurisdiction over the Cases from time to time.

“Bankruptcy Law” means the Bankruptcy Code and all other liquidation, receivership, moratorium, conservatorship, assignment for the benefit of creditors, insolvency or similar federal, state or foreign law for the relief of debtors.

“Base Rate” means, for any day, a fluctuating rate per annum equal to the highest of (i) the Federal Funds Rate plus  $\frac{1}{2}$  of 1% and (ii) the Prime Rate in effect for such day and (iii) the Adjusted Eurodollar Rate for a one-month Interest Period plus 1.00%. For purposes hereof, “Prime Rate” means, for any day, a rate of interest equal to the highest rate published on the day of determination (or most recently prior thereto) in the “Money Rates” section of The Wall Street Journal (Eastern edition) as the Prime Rate in the United States for such day (or, if such source is not available, such alternate source as determined by the Administrative Agent). Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Rate or the Eurodollar Rate shall be effective as of the opening of business on the effective day of such change in the Prime Rate, the Federal Funds Rate or the Eurodollar Rate, respectively. Notwithstanding any provision to the contrary herein, the Base Rate shall not be less than 3.00% per annum.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate.

“Beneficial Owner” means the beneficial owner, for U.S. federal income tax purposes, of a payment to which any U.S. federal withholding tax relates.

“Borrower” has the meaning assigned to such term in the preamble hereto.

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

“Borrowing” has the meaning specified in Section 1.05.

“Business Acquisition” means the acquisition by the Borrower or one or more of its Subsidiaries of all (other than Nominal Shares) of the Equity Interests of, or all (or any division, line of business or any substantial part for which audited financial statements or other financial information reasonably satisfactory to the Administrative Agent is available) or substantially all of the assets or property of, another Person.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located, except that if such day relates to a borrowing of, a payment or prepayment of principal of or interest on, or the Interest Period for, a Eurodollar

Loan, or a notice by the Borrower with respect to any such borrowing, payment, prepayment or Interest Period, such day shall also be a day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Capital Lease” of any Person means any lease of (or other arrangement conveying the right to use) property (whether real, personal or mixed) by such Person as lessee which would, in accordance with GAAP, be required to be accounted for as a capital lease on the balance sheet of such Person.

“Capital Lease Obligations” means, with respect to any Person, all obligations of such Person as lessee under Capital Leases, in each case taken at the amount thereof accounted for as liabilities in accordance with GAAP.

“Case” or “Cases” has the meaning specified in the recitals.

“Cash Equivalents” means:

- (i) any evidence of debt, maturing not more than one year after such time, issued or guaranteed by the United States of America or any agency thereof;
- (ii) commercial paper, maturing not more than one year from the date of issue, or demand notes issued by any domestic corporation not an Affiliate of the Borrower, in each case (unless issued by a Lender of its holding company) rated at least A-2 by S&P or P-2 by Moody's;
- (iii) any certificate of deposit (or time deposits represented by such certificate of deposit), eurodollar time deposit or bankers' acceptance, maturing not more than one year after such time, or overnight Federal funds transactions with a member of the Federal Reserve System that are issued or sold by a commercial banking institution that is organized under the Laws of the United States, any State thereof or the District of Columbia, any foreign bank or its branches or agencies (fully protected against currency fluctuations) and has a combined capital and surplus and undivided profits of not less than \$500,000,000;
- (iv) any repurchase agreement entered into with any Lender (or other commercial banking institution of the stature referred to in clause (iii) above) which (A) is secured by a fully perfected security interest in any obligation of the type described in any of clauses (i) through (iii) above and (B) has a market value at the time such repurchase agreement is entered into of not less than 100% of the repurchase obligation of such Lender (or other commercial banking institution) thereunder;
- (v) investments in short-term asset management accounts offered by any Lender (or other commercial banking institution of the stature referred to in clause (iii) above) for the purpose of investing in loans to any corporation (other than the Borrower or an Affiliate of the Borrower), state or municipality, in each case organized under the laws of any state of the United States or of the District of Columbia;

(vi) investments in securities with maturities of six months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, and rated at least “A” by S&P or Moody’s; and

(vii) shares of any money market fund that (A) has substantially all of its assets invested continuously in the types of investments referred to in clauses (i) through (vi) above, (B) has net assets in excess of \$500,000,000 and (C) is rated at least “A-1” by S&P or “P-1” by Moody’s.

“Cash Interest” has the meaning specified in Section 2.05(d)(i).

“Casualty” means any casualty, damage, destruction or other similar loss with respect to real or personal property or improvements.

“Casualty Insurance Policy” means any insurance policy maintained by any Group Company covering losses with respect to Casualties.

“CFS” means Cantor Fitzgerald Securities.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (i) the adoption or taking effect of any law, rule, regulation or treaty; (ii) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority; or (iii) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority. Notwithstanding the foregoing, (A) the Dodd-Frank Wall Street Reform and Consumer Protection Act, and all requests, rules, guidelines and directives promulgated thereunder and (B) all requests, rules, guidelines and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or United States or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to have been introduced or adopted after the Closing Date, regardless of the date enacted or adopted.

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

(i) Holdings shall cease to beneficially own, directly or indirectly, 100% of the Equity Interests in (and any Equity Equivalents of) the Borrower; or

(ii) any “person” or “group” (within the meaning of Section 13(d) or 14(d) of the Exchange Act), other than a Permitted Holder, has become the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a Person shall be deemed to have “beneficial ownership” of all securities that any such Person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, by way of merger, consolidation or otherwise, of more than 50% of the Equity Interests of Holdings on a fully-diluted basis assuming the conversion and exercise of all outstanding Equity Equivalents (whether or not such securities are then currently convertible or exercisable); provided that the parties to the Shareholders’ Agreement (including their permitted transferees thereunder that agree to be bound

thereby) shall not be a “group” for purposes hereof solely as a result of being parties thereto or consummating the transactions contemplated thereby.

For purposes of this definition, a “beneficial owner” of a security includes any person who, directly or indirectly, whether by contract or otherwise, has the power to vote or direct the voting of, such security or the power to dispose, or direct the disposition of, such security, and “beneficially owned” shall have a correlative meaning; provided that the parties to the Shareholders’ Agreement (including their permitted transferees thereunder that agree to be bound thereby) shall not be “beneficial owners” of the securities or any other party thereto (or any of such permitted transferees) solely as a result of being parties thereto or consummating the transactions contemplated thereby.

“Closing Date” means the date on which the conditions precedent set forth in Section 4.01 shall have been satisfied or waived.

“Closing Date Loan Amount” has the meaning specified in Section 2.01.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Collateral” means all of the property that is subject or is purported to be subject to the Liens granted by the Collateral Documents.

“Collateral Agent” means CFS, in its capacity as collateral agent for the Senior Credit Parties under the Collateral Documents, and its successor or successors in such capacity.

“Collateral Documents” means, collectively, the Security Agreement, the Pledge Agreement, any Additional Collateral Documents, any additional pledges, security agreements, patent, trademark or copyright filings or mortgages or deeds of trust required to be delivered pursuant to the Loan Documents, the Pari Passu Intercreditor Agreement, if any, and any instruments of assignment, control agreements, lockbox letters or other similar instruments or agreements executed pursuant to the foregoing.

“Competitor” means a Person whose primary business competes directly with the Borrower and its Subsidiaries.

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

“Condemnation” means any taking by a Governmental Authority of property or assets, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, by reason of any public improvement or condemnation.

“Condemnation Award” means all proceeds of any Condemnation or transfer in lieu thereof.

“Confirmation Order” means the order of the Bankruptcy Court confirming the Plan of Reorganization pursuant to Section 1129 of the Bankruptcy Code, together with all schedules and exhibits thereto.



“Consolidated Capital Expenditures” means for any period the aggregate amount of all expenditures (whether paid in cash, through the incurrence of Indebtedness or Attributable Indebtedness or other consideration or accrued as a liability) that would, in accordance with GAAP, be included as additions to property, plant and equipment and other capital expenditures of Holdings and its Consolidated Subsidiaries for such period, excluding interest capitalized during construction, as the same are or would be set forth in a consolidated statement of cash flows of Holdings and its Consolidated Subsidiaries for such period, but excluding (to the extent that they would otherwise be included):

(i) any such expenditures made for the replacement or restoration of assets to the extent paid for by any Casualty Insurance Policy or Condemnation Award with respect to the asset or assets being replaced or restored to the extent such expenditures are permitted under the Loan Documents;

(ii) any such expenditures made with proceeds of an Equity Issuance of Qualified Capital Stock of Holdings after the Closing Date to the extent not required to prepay the Loans or used for any other purpose;

(iii) any such expenditures to the extent Holdings or any of its Consolidated Subsidiaries has received reimbursement in cash from a third party other than Holdings or one or more of its Consolidated Subsidiaries and for which none of Holdings or any of its Consolidated Subsidiaries has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such third party or any other Person;

(iv) the book value of any asset owned by Holdings or a Consolidated Subsidiary prior to or during such period which is included as an addition to property, plant and equipment or other capital expenditures of Holdings and its Consolidated Subsidiaries for such period as a result of one or more of them reusing or beginning to reuse such asset during such period without a corresponding expenditure actually having been made in such period except that, for purposes of this clause (iv), (A) any expenditure necessary in order to permit such asset to be reused shall be included as Consolidated Capital Expenditures during the period that such expenditure is actually made and (B) such book value shall have been included in consolidated Capital Expenditures when such asset was originally acquired;

(v) the purchase price of equipment purchased during such period to the extent the consideration therefor consists of any combination of (A) used or surplus equipment traded in at the time of such purchase and (B) the proceeds of a concurrent sale of used or surplus equipment, in each case in the ordinary course of business; and

(vi) the purchase price of assets (other than cash and Cash Equivalents) that are purchased substantially contemporaneously with the trade-in of existing assets (other than cash and Cash Equivalents) to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such assets (other than cash and Cash Equivalents) for the assets (other than cash and Cash Equivalents) being traded in at such time.

“Consolidated Subsidiary” means, with respect to any Person, at any date any Subsidiary of such Person or other entity the accounts of which would be consolidated with those of such Person in its consolidated financial statements if such statements were prepared as of such date in accordance with GAAP.

“Consummation of the Plan of Reorganization” shall mean the occurrence of the Effective Date (as defined in the Plan of Reorganization) and the substantial consummation of the Plan of Reorganization within the meaning of Section 1101(2) of the Bankruptcy Code.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Credit Bid” means to submit a bid at a public or private sale in connection with the purchase of all or any portion of the Collateral, in which any of the Senior Credit Obligations owing to the Lenders under any Loan Document are used and applied as a credit on account of the purchase price.

“Debt Equivalents” of any Person means (i) any Equity Interest of such Person which by its terms (or by the terms of any security for which it is convertible or for which it is exchangeable or exercisable), or upon the happening of any event or otherwise (including an event which would constitute a Change of Control), (A) matures or is mandatorily redeemable or subject to any mandatory repurchase requirement, pursuant to a sinking fund or otherwise (other than solely for Equity Interests of such person which do not themselves constitute Debt Equivalents) or (B) is convertible into or exchangeable for Indebtedness or Debt Equivalents, in each case in whole or in part, on or prior to the 91<sup>st</sup>-day following the Maturity Date and (ii) if such Person is a Subsidiary of the Borrower but not a Subsidiary Guarantor, any Preferred Stock of such Person; provided, however, that any Equity Interests that would not constitute Debt Equivalents but for provisions thereof giving holders thereof (or the holders of any security into or for which such Equity Interests are convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem such Equity Interests upon the occurrence of a Change of Control or an Asset Disposition occurring prior to the 180<sup>th</sup> day after the Maturity Date shall not constitute Debt Equivalents if such Equity Interests provide that the issuer thereof will not redeem any such Equity Interests pursuant to such provisions prior to the payment in full of the Senior Credit Obligations (other than contingent indemnity obligations).

“Debt Issuance” means the issuance by any Group Company of any Indebtedness.

“Debtor-in-Possession Credit Agreement” means that certain Debtor-in-Possession Credit Agreement, dated as of March 13, 2014, by and among New Sbarro Intermediate Holdings, Inc., as borrower, New Sbarro Finance, Inc., the lenders party thereto, CFS, as administrative agent

and collateral agent, and the other agents, arrangers and managers party thereto, as amended, supplemented or otherwise modified prior to the Closing Date.

“Debtors” has the meaning assigned to such term in the preamble hereto.

“Default” means any condition or event that constitutes an Event of Default or that, with the giving of notice, the passage of applicable grace periods, or both, would be an Event of Default.

“Default Rate” means, when used with respect to Senior Credit Obligations, an interest rate equal to (A) the Base Rate plus (B) the Applicable Margin applicable to Loans that are Base Rate Loans plus (C) 2.00% per annum; provided, however, that with respect to a Eurodollar Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Margin) otherwise applicable to such Loan plus 2.00% per annum.

“Defaulting Lender” means any Lender that (i) has failed to pay to the Administrative Agent or any Lender any amount required to be paid by it hereunder or any other Loan Document within one Business Day of the date when due, unless the subject of a good faith dispute or (ii) has been deemed insolvent or become the subject of a bankruptcy or insolvency proceeding.

“Deposit Account” has the meaning specified in the Security Agreement.

“Designated Swap Obligations” has the meaning specified in Section 8.03.

“DIP Facility Claims” has the meaning specified in the Plan of Reorganization.

“DIP Facility Loans” means, with respect to the DIP Facility Claims of each Lender, the outstanding principal loan amount of such Lender’s DIP Facility Claims immediately prior to the Closing Date.

“Discharge of Senior Credit Obligations” means (i) payment in full in cash of the principal of and interest (including interest accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not a claim for such interest is, or would be, allowed in such Insolvency or Liquidation Proceeding) and premium, if any, on all Indebtedness outstanding under the Loan Documents and termination of all commitments to lend or otherwise extend credit under the Loan Documents and (ii) payment in full in cash of all other Senior Credit Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (including legal fees and other expenses, costs or charges accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not a claim for such fees, expenses, costs or charges is, or would be, allowed in such Insolvency or Liquidation Proceeding).

“Disclosure Statement” means that certain Disclosure Statement in respect of the Plan of Reorganization, dated as of March 5, 2014.

“Discounted Purchase Price” means, with respect to each Loan deemed made on the Closing Date, a discounted purchase price (expressed as a percentage) of 97%.

“Dollars” and “\$” means lawful money of the United States of America.

“Domestic Subsidiary” means with respect to any Person each Subsidiary of such Person that is organized under the laws of the United States, the District of Columbia or any State, and “Domestic Subsidiaries” means any two or more of them.

“Eligible Assignee” means (i) a Lender, (ii) an Affiliate of a Lender, (iii) an Approved Fund and (iv) any other Person (other than (A) a Competitor, (B) Holdings, the Borrower or any of Holdings’ or the Borrower’s Subsidiaries or (C) any Affiliate of Holdings, the Borrower or any of the Borrower’s Subsidiaries, other than in the case of this clause (C) any such Person that is an Affiliate of Holdings, the Borrower or any of the Borrower’s Subsidiaries on the Closing Date as a result of the distribution to such Person on the Closing Date of the Equity Interests of Sbarro Parent and the entry or deemed entry by such Person into the Shareholders’ Agreement as contemplated by the Plan of Reorganization and any transferee of such Person under the Shareholders’ Agreement).

“Employee Benefit Arrangements” means in any jurisdiction the benefit schemes or arrangements in respect of any employees or past employees operated by any Group Company or in which any Group Company participates and which provide benefits on retirement, ill-health, injury, death or voluntary withdrawal from or termination of employment, including termination indemnity payments and life assurance and post-retirement medical benefits, other than Plans and Foreign Pension Plans.

“Environmental Laws” means any and all Federal, state, local, and foreign statutes, Laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of remediation, fines, penalties or indemnities), of any Group Company directly or indirectly resulting from or based on (i) violation of any Environmental Law, (ii) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Material, (iii) exposure to any Hazardous Material, (iv) the release or threatened release of any Hazardous Material into the environment or (v) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Equivalents” means with respect to any Person any rights, warrants, options, convertible securities, exchangeable securities, indebtedness or other rights, in each case exercisable for or convertible or exchangeable into, directly or indirectly, Equity Interests of such Person or securities exercisable for or convertible or exchangeable into Equity Interests of such Person, whether at the time of issuance or upon the passage of time or the occurrence of some future event.

“Equity Interests” means all shares of capital stock, partnership interests (whether general or limited), limited liability company membership interests, beneficial interests in a trust and any other interest or participation that confers on a Person the right to receive a share of profits or losses, or distributions of assets, of an issuing Person, but excluding any debt securities convertible into such Equity Interests.

“Equity Issuance” means (i) any sale or issuance by any Group Company to any Person other than Holdings or a Subsidiary of Holdings of any Equity Interests or any Equity Equivalents (other than any such Equity Equivalents that constitute Indebtedness) and (ii) the receipt by any Group Company of any cash capital contributions, whether or not paid in connection with any issuance of Equity Interests of any Group Company, from any Person other than Holdings or a Subsidiary of Holdings.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulation promulgated thereunder.

“ERISA Affiliate” means each entity that is a member of a “controlled group of corporations,” under “common control” or an “affiliated service group” with a Group Company within the meaning of Section 414(b), (c) or (m) of the Code, or required to be aggregated with a Group Company under Section 414(o) of the Code or is under “common control” with a Group Company, within the meaning of Section 4001(a)(14) of ERISA.

“ERISA Event” means:

(i) a reportable event as defined in Section 4043 of ERISA and the regulations issued under such Section with respect to a Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event;

(ii) the requirements of Section 4043(b) of ERISA apply with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, of any Plan, and an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such Plan within the following 30 days;

(iii) the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Plan (whether or not waived in accordance with Section 412(d) of the Code), the application for a minimum funding waiver under Section 303 of ERISA (or for years to which the Pension Protection Act of 2006 (the “PPA”) applies, Section 302(c) of ERISA) with respect to any Plan, the failure to make by its due date a required installment under Section 412(m) of the Code (or for years to which the PPA applies, Section 430(j) of the Code) with respect to any Plan or the failure to make any required contribution to a Multiemployer Plan;

(iv) (A) the incurrence of any material liability by a Group Company pursuant to Title I of ERISA or to the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in Section 3 of ERISA), or the occurrence or existence of any event, transaction or condition that could reasonably be expected to result in the incurrence of any such material liability by a Group Company pursuant to

Title I of ERISA or to such penalty or excise tax provisions of the Code; or (B) the incurrence of any material liability by a Group Company or an ERISA Affiliate pursuant to Title IV of ERISA or the occurrence or existence of any event, transaction or condition that could reasonably be expected to result in the incurrence of any such material liability or imposition of any Lien on any of the rights, properties or assets of a Group Company or any ERISA Affiliate pursuant to Title IV of ERISA or to Section 401(a)(29) or 412 of the Code (or for years to which the PPA applies, Section 430(k) of the Code);

(v) the provision by the administrator of any Plan of a notice pursuant to Section 4041(a)(2) of ERISA (or the reasonable expectation of such provision of notice) of intent to terminate such Plan in a distress termination described in Section 4041(c) of ERISA, the institution by the PBGC of proceedings to terminate any Plan or the occurrence of any event or condition which could reasonably be expected to constitute grounds under ERISA for the termination of a Plan by the PBGC, or the appointment of a trustee by the PBGC to administer any Plan;

(vi) the withdrawal of a Group Company or ERISA Affiliate in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential material liability therefor, or the receipt by a Group Company or ERISA Affiliate of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA;

(vii) the imposition of material liability (or the reasonable expectation thereof) on a Group Company or ERISA Affiliate pursuant to Section 4062, 4063, 4064 or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA;

(viii) the assertion of a material claim (other than routine claims for benefits) against any Plan other than a Multiemployer Plan or the assets thereof, or against a Group Company or, with respect to a Plan subject to Title IV of ERISA, an ERISA Affiliate, in connection with any Plan;

(ix) the receipt from the United States Internal Revenue Service of notice of the failure of any Plan (or any Employee Benefit Arrangement intended to be qualified under Section 401(a) of the Code) to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Plan to qualify for exemption from taxation under Section 501(a) of the Code and, with respect to Multiemployer Plans, notice thereof to any Group Company; and

(x) the establishment or amendment by a Group Company of any Welfare Plan that provides post-employment welfare benefits in a manner that would reasonably be expected to result in a Material Adverse Effect.

“Eurodollar Loan” means, at any date, a Loan which bears interest at a rate based on the Adjusted Eurodollar Rate.

“Eurodollar Rate” means, for any Interest Period with respect to any Eurodollar Loan, the rate per annum equal to the London interbank offered rate as administered by ICE Benchmark

Administration (or any other person which takes over the administration of such rate) for deposits of Dollars for the applicable Interest Period that appears on Reuters Screen LIBOR01 Page at approximately 11:00 A.M. (London time) two Business Days prior to the commencement of such Interest Period (for delivery on the first day of such Interest Period). If such rate is not available at such time for any reason, then the “Eurodollar Rate” for such Interest Period shall be the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurodollar Loan being made, continued or converted by CFS and with a term equivalent to such Interest Period would be offered by CFS’s principal London branch to major banks in the London interbank eurodollar market at their request at approximately 11:00 A.M. (London time) two Business Days prior to the commencement of such Interest Period. Notwithstanding any provision to the contrary herein, the Eurodollar Rate shall not be less than 2.00% per annum.

“Eurodollar Reserve Percentage” means for any day during any Interest Period, the reserve percentage (expressed as a decimal, carried out to five decimal places) in effect on such day, whether or not applicable to any Lender, under regulations issued from time to time by the Board of Governors of the Federal Reserve System (or any other entity succeeding to the functions currently performed thereby) for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to Eurocurrency funding (currently referred to as “Eurocurrency liabilities”). The Adjusted Eurodollar Rate for each outstanding Eurodollar Loan shall be adjusted automatically on and as of the effective date of any change in the Eurodollar Reserve Percentage.

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

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Excluded Swap Obligation” means, with respect to any Guarantor at any time, and after giving effect to Section 1.09 of the Guaranty, any Swap Obligation, if, and to the extent that, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any guarantee thereof) is illegal or unlawful at such time under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act at the time such guarantee or grant of a security interest would otherwise become effective with respect to such related Swap Obligation but for such Guarantor’s failure to constitute an “eligible contract participant” at such time.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (i) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes) by a jurisdiction (or any political subdivision thereof) as a result of such recipient being organized or having its principal office in such jurisdiction or, in the case of any Lender, in having its Lending Office in such jurisdiction, (ii) any branch profits taxes under Section 884 of the Code or similar taxes imposed by a

jurisdiction in which the Lender is located, (iii) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 10.13 or a participant under Section 2.12), any U.S. federal withholding tax (A) that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Section 3.01 or (B) is attributable to such Foreign Lender's failure to comply with Section 3.01(e) and (iv) any withholding tax to the extent imposed as a result of a failure by the recipient or Beneficial Owner of the payment (or any entity from or through which the Beneficial Owner directly or indirectly receives the payment) to satisfy the conditions for avoiding withholding under FATCA.

"Exempt Deposit Accounts" means (i) deposit accounts the balance of which consists exclusively of (A) withheld income taxes and federal, state or local employment taxes in such amounts as are required in the reasonable judgment of the Borrower to be paid to the Internal Revenue Service or state or local government agencies within the following two months with respect to employees of any of the Loan Parties and (B) amounts required to be paid over to an employee benefit plan pursuant to DOL Reg. Sec. 2510.3-102 on behalf of or for the benefit of employees of one or more Loan Parties, (ii) all segregated Deposit Accounts constituting (and the balance of which consists solely of funds set aside in connection with) taxes accounts, payroll accounts, fiduciary benefits and trust accounts, (iii) local depository accounts and (iv) other deposit accounts the aggregate balance of which is less than \$250,000.

"Existing Indebtedness" has the meaning specified in Section 7.01(a).

"FATCA" means Sections 1471 through 1474 of the Code, as in effect on the date hereof, and any applicable Treasury regulation promulgated thereunder or published administrative guidance implementing such Sections.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day.

"Finance Obligations" means, at any date, (i) all Senior Credit Obligations and (ii) all Secured Swap Obligations of a Loan Party permitted hereunder owed or owing to any Swap Creditor.

"Finance Party" means each Lender, each Swap Creditor holding Secured Swap Obligations, each Agent and each Indemnitee and their respective successors and assigns, and "Finance Parties" means any two or more of them, collectively.

"Foreign Cash Equivalents" means:



(i) securities issued or fully guaranteed by the United Kingdom or any instrumentality thereof (as long as that the full faith and credit of the United Kingdom is pledged in support of those securities);

(ii) certificates of deposit, eurodollar or UK Sterling time deposits, overnight bank deposits and bankers' acceptances of any foreign bank, or its branches or agencies (fully protected against currency fluctuations) that, at the time of acquisition, are rated at least "A-1" by S&P or "P-1" by Moody's, and (ii) certificates of deposit, eurodollar time deposits, banker's acceptances and overnight bank deposits, in each case of any non-U.S. commercial bank having capital and surplus in excess of \$500,000,000 and a Thomson BankWatch Rating of at least "B";

(iii) repurchase obligations with a term of not more than seven days with respect to securities of the types described in clause (i) or (ii) with a bank or trust company (including any of the Lenders) or recognized securities dealer having capital and surplus in excess of \$500,000,000 in which the Borrower or one or more of its Subsidiaries shall have a perfected first priority security interest (subject to no other Liens) and having, on the date of purchase thereof, a fair market value of at least 100% of the amount of the repurchase obligations; and

(iv) investments, classified in accordance with GAAP as current assets, in shares of any money market fund that has all or substantially all of its assets invested continuously in the types of investments referred to in clauses (i) through (iii) above which are administered by reputable financial institutions having capital of at least \$500,000,000; provided, however, that the maturities of all obligations of the type specified in clauses (i) through (iii) above shall not exceed the lesser of the time specified in such clauses.

"Foreign Lender" means any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is a resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Foreign Pension Plan" means any plan, fund (including, without limitation, any superannuation fund) or other similar program established or maintained outside the United States by any Group Company primarily for the benefit of employees of any Group Company residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code, not including plans, funds or other similar programs which require employee participation pursuant to applicable law.

"Foreign Subsidiary" means with respect to any Person any Subsidiary of such Person that is not a Domestic Subsidiary of such Person.

"Franchisee Purchaser" has the meaning specified in Section 7.05(o).

“Fresh Start Reporting” shall mean the preparation of consolidated financial statements of Holdings in accordance with American Institute of Certified Public Accountants Statement of Position (90-7), which reflects the consummation of the transactions contemplated by the Plan of Reorganization on a presumed effective date of [\_\_\_\_\_], 2014.

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

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Group” means at any time a group of Loans consisting of (i) all Loans which are Base Rate Loans at such time (and which bear interest at the same PIK Interest Rate) or (ii) all Loans which are Eurodollar Loans having the same Interest Period at such time (and which bear interest at the same PIK Interest Rate); provided that, if a Loan of any particular Lender is converted to or made as a Base Rate Loan pursuant to Article 3, such Loan shall be included in the same Group or Group of Loans from time to time as it would have been had it not been so converted or made.

“Group Company” means any of Holdings, the Borrower and the Borrower’s Subsidiaries (regardless of whether or not such Subsidiaries are consolidated with the Borrower for purposes of GAAP), and “Group Companies” means all of them, collectively.

“Guarantor” means each of Holdings and each Subsidiary Guarantor, and “Guarantors” means any combination of the foregoing.

“Guaranty” means the Guaranty, substantially in the form of Exhibit F hereto, by the Guarantors in favor of the Administrative Agent, as the same may be amended, modified or supplemented from time to time.

“Guaranty Obligation” means, with respect to any Person, without duplication, any obligation (other than endorsements in the ordinary course of business of negotiable instruments for deposit or collection) guarantying, intended to guaranty, or having the economic effect of guarantying, any Indebtedness of any other Person in any manner, whether direct or indirect, and including, without limitation, any obligation, whether or not contingent, (i) to purchase any such Indebtedness or any property constituting security therefor, (ii) to advance or provide funds or

other credit support for the payment or purchase of such Indebtedness or obligation or to maintain working capital, solvency or other balance sheet condition of such other Person (including, without limitation, maintenance agreements, support agreements, comfort letters, take or pay arrangements, put agreements, performance guaranties or similar agreements or arrangements) for the benefit of the holder of Indebtedness of such other Person, (iii) to lease or purchase property, securities or services primarily for the purpose of assuring the owner of such Indebtedness or (iv) to otherwise assure or hold harmless the owner of such Indebtedness against loss in respect thereof. The amount of any Guaranty Obligation hereunder shall (subject to any limitations set forth therein) be deemed to be an amount equal to the outstanding principal amount (or maximum principal amount, if larger) of the Indebtedness in respect of which such Guaranty Obligation is made.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants or environmental contaminants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas and all other substances or wastes regulated pursuant to any Environmental Law because of their hazardous or deleterious properties.

“Holdings” has the meaning assigned to such term in the preamble hereto.

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (i) all obligations of such Person for borrowed money;
- (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (iii) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person to the extent of the value of such property (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business);
- (iv) all obligations, other than intercompany items, of such Person to pay the deferred purchase price of property or services (other than trade accounts payable and accrued expenses arising in the ordinary course of business and due within six months of the incurrence thereof);
- (v) the Attributable Indebtedness of such Person in respect of Capital Lease Obligations, Sale/Leaseback Transactions and Synthetic Lease Obligations (regardless of whether accounted for as indebtedness under GAAP);
- (vi) all obligations, contingent or otherwise, of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, letter of guaranty, bankers' acceptance, surety bond, performance bond or similar instrument;
- (vii) all obligations of the types specified in clauses (i) through (vi) above of others secured by (or for which the holder of such obligations has an existing right,

contingent or otherwise, to be secured by) a Lien on, or payable out of the proceeds of production from, any property or asset of such Person, whether or not such obligation is assumed by such Person; *provided* that the amount of any Indebtedness of others that constitutes Indebtedness of such Person solely by reason of this clause (vii) shall not for purposes of this Agreement exceed the greater of the book value or the fair market value of the properties or assets subject to such Lien;

(viii) all Guaranty Obligations of such Person;

(ix) all Debt Equivalents of such Person; and

(x) the Indebtedness of any other Person (including any partnership in which such Person is a general partner and any unincorporated joint venture in which such Person is a joint venturer) to the extent such Person would be liable therefor under applicable Law or any agreement or instrument by virtue of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person shall not be liable therefor;

provided that (i) Indebtedness shall not include (A) deferred compensation arrangements, (B) earn-out obligations until matured or earned and not paid and reflected on the balance sheet as a liability, (C) non-compete or consulting obligations incurred in connection with Permitted Acquisitions and (D) deemed Indebtedness pursuant to FASB 133 or 150 and (ii) the amount of any Limited Recourse Indebtedness of any Person shall be equal to the lesser of (A) the aggregate principal amount of such Limited Recourse Indebtedness for which such Person provides credit support of any kind (including any undertaking agreement or instrument that would constitute Indebtedness), is directly or indirectly liable as a guarantor or otherwise or is the lender and (B) the fair market value of any assets securing such Indebtedness or to which such Indebtedness is otherwise recourse.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

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

"Information" has the meaning specified in Section 10.07.

"Insolvency or Liquidation Proceeding" means (i) any voluntary or involuntary case or proceeding under the Bankruptcy Code or any other Bankruptcy Law with respect to any Loan Party, (ii) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to any Loan Party or with respect to a material portion of their respective assets, (iii) any liquidation, dissolution, reorganization or winding up of any Loan Party whether voluntary or involuntary and whether or not involving insolvency or bankruptcy or (iv) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of any Loan Party.

"Insurance Proceeds" means all insurance proceeds (other than business interruption insurance proceeds), damages, awards, claims and rights of action with respect to any Casualty.

“Intercompany Note” means a promissory note contemplated by Section 7.06(a)(x) substantially in the form of Exhibit H hereto, and “Intercompany Notes” means any two or more of them.

“Interest Payment Date” means (i) as to Base Rate Loans, the last Business Day of each March, June, September and December, commencing June 30, 2014, and the Maturity Date and (ii) as to Eurodollar Loans, the last day of each applicable Interest Period and the Maturity Date, and in addition where the applicable Interest Period for a Eurodollar Loan is greater than three months, then also the respective dates that fall every three months after the beginning of such Interest Period.

“Interest Period” means with respect to each Eurodollar Loan, a period commencing on the Closing Date or on the date specified in the applicable Notice of Extension/Conversion and ending one, two, three or six months thereafter, as the Borrower may elect in the applicable notice; provided that:

(i) any Interest Period which would otherwise end on a day which is not a Business Day shall, subject to clause (v) below, be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period which begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month;

(iii) if so provided in a written notice to the Borrower by the Administrative Agent at the direction of the Required Lenders, no Interest Period in excess of one month may be selected at any time when an Event of Default is then in existence; and

(iv) no Interest Period may be selected which would end after the Maturity Date.

Solely for purposes of Section 2.05(d) and Section 2.05(e), the term “Interest Period” shall also mean, with respect to Base Rate Loans, each period commencing on the day following an Interest Payment Date with respect to such Loans (or, in the case of the first Interest Period, commencing on the Closing Date) and ending on the following Interest Payment Date with respect to such Loans.

“Investment” in any Person means (i) the acquisition (whether for cash, property, services, assumption of Indebtedness, securities or otherwise) of assets (other than inventory, machinery, equipment, capital expenditures and other assets in the ordinary course of business), Equity Interests, Equity Equivalents, Debt Equivalents, Indebtedness or other securities of such Person, (ii) any deposit with, or advance, loan or other extension of credit to or for the benefit of such Person (other than deposits made in connection with Operating Leases or the purchase of equipment or inventory, each in the ordinary course of business) or (iii) any other capital contribution to such Person, including by way of Guaranty Obligations of such Person, any support for a letter of credit issued on behalf of such Person incurred for the benefit of such

Person. For the purposes of Article 7, the outstanding amount of any Investment by any Person in another Person shall be calculated as the excess of (i) the initial amount of such Investment (including the fair market value of all property transferred by such Person as part of such Investment) over (ii) the sum of (A) all returns of principal or capital thereof received by the investing Person on or prior to such time (including returns of principal or capital in the form of cash dividends, cash distributions and cash repayments of Indebtedness) and (B) all liabilities of the investing Person constituting all or a part of the initial amount of such Investment expressly transferred prior to such time in connection with the sale or disposition of such Investment, but only to the extent the investing Person is fully released of such liabilities by such transfer.

“Judgment Currency” has the meaning specified in Section 10.18(a).

“Judgment Currency Conversion Date” has the meaning specified in Section 10.18(a).

“Laws” means, collectively, all applicable international, foreign, Federal (including, without limitation, the Bankruptcy Code), state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directives, licenses, authorizations and permits of any Governmental Authority.

“Lender” means each bank or other lending institution holding DIP Facility Loans listed on Schedule 2.01 and each Eligible Assignee that becomes a Lender pursuant to Section 10.06(b) and their respective successors.

“Lending Office” means, with respect to any Lender and for each Type of Loan, the “Lending Office” of such Lender (or of an Affiliate of such Lender) designated for such Type of Loan in such Lender’s Administrative Questionnaire or in any applicable Assignment and Assumption pursuant to which such Lender became a Lender hereunder or such other office of such Lender (or of an Affiliate of such Lender) as such Lender may from time to time specify to the Administrative Agent and the Borrower as the office by which its Loans of such Type are to be made and maintained.

“Lien” means any security interest, mortgage, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to Real Property, and any financing lease having substantially the same economic effect as any of the foregoing). Solely for the avoidance of doubt, the filing of a UCC financing statement that is a protective lease filing in respect of an operating lease that does not constitute a security interest in the leased property or otherwise give rise to a Lien does not constitute a Lien solely on account of being filed in a public office.

“Limited Recourse Indebtedness” means with respect to any Person, Indebtedness to the extent: (i) such Person (A) provides no credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness), (B) is not directly or indirectly

liable as a guarantor or otherwise or (C) does not constitute the lender; and (ii) no default with respect thereto would permit upon notice, lapse of time or both any holder of any other Indebtedness (other than the Loans or the Term Notes) of such Person to declare a default on such other Indebtedness or cause the payment thereof to be accelerated or payable prior to its stated maturity.

“Liquidity” means, at any time, the aggregate amount of unrestricted (other than Liens under the Loan Documents and Liens arising by operation of law) cash and Cash Equivalents of the Loan Parties at such time.

“Loan” means the term loan deemed to be made by the Lenders pursuant to Section 2.01.

“Loan Documents” means this Agreement, the Term Notes, the Guaranty, the Collateral Documents and each Accession Agreement, collectively, in each case as the same may be amended, modified or supplemented from time to time, and all other related agreements and documents executed by a Loan Party in favor of, and delivered to, any Senior Credit Party in connection with or pursuant to any of the foregoing.

“Loan Party” means each of Holdings, the Borrower and each Subsidiary Guarantor, and “Loan Parties” means any combination of the foregoing.

“Margin Stock” means “margin stock” as such term is defined in Regulation U.

“Material Adverse Effect” means (i) a material adverse effect on the business, assets, liabilities, operations, results of operations, or condition (financial or otherwise) of Holdings and its Subsidiaries, taken as a whole, (ii) a material adverse effect on the ability of Holdings and its Subsidiaries (taken as a whole) to perform their respective obligations under this Agreement or (iii) a material adverse effect on the validity or enforceability of the Loan Documents or the rights and remedies of the Lenders thereunder.

“Maturity Date” means [\_\_\_\_\_], 2019<sup>2</sup>; provided that, if such date is not a Business Day, the Maturity Date shall be the immediately preceding Business Day.

“Maximum Rate” has the meaning specified in Section 10.09.

“Moody’s” means Moody’s Investors Service, Inc., a Delaware corporation, and its successors or, absent any such successor, such nationally recognized statistical rating organization as the Borrower and the Administrative Agent may select.

“Multiemployer Plan” means a “multiemployer plan” as defined in Section 3(37) or 4001(a)(3) of ERISA.

“Net Cash Proceeds” means:

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<sup>2</sup> NTD: The date that is five years after the Closing Date.

(i) with respect to any Asset Disposition (other than an Asset Disposition consisting of a lease where one or more Group Companies is acting as lessor entered into in the ordinary course of business), Casualty or Condemnation, (A) the gross amount of all cash proceeds (including cash Insurance Proceeds and cash Condemnation Awards in the case of any Casualty or Condemnation) (except to the extent and for so long as such cash proceeds constitute Reinvestment Funds) actually paid to or actually received by any Group Company in respect of such Asset Disposition, Casualty or Condemnation (including any cash proceeds received as income or other proceeds of any noncash proceeds of any Asset Disposition, Casualty or Condemnation as and when received, including all payments and other proceeds with respect to any debt obligations received in connection with Asset Dispositions pursuant to Section 7.05(o)), less (B) the sum of (1) the amount, if any, of all taxes (other than income taxes) and all income taxes (as estimated by a senior financial or accounting officer of Holdings and its Subsidiaries) and customary fees, legal fees, brokerage fees, commissions, costs and other expenses (other than those payable to any Group Company or to Affiliates of any Group Company except for those payable on terms and conditions as favorable to the applicable Group Company as would be obtainable by it in a comparable arm's length transaction with an independent, unrelated third party) that are incurred in connection with such Asset Disposition, Casualty or Condemnation and are payable by any Group Company, but only to the extent not already deducted in arriving at the amount referred to in clause (i)(A) above, (2) appropriate amounts that must be set aside as a reserve in accordance with GAAP against any indemnities, liabilities (contingent or otherwise) associated with such Asset Disposition, Casualty or Condemnation, (3) if applicable, the amount of any Indebtedness secured by a Permitted Lien that has been repaid or refinanced in accordance with its terms with the proceeds of such Asset Disposition, Casualty or Condemnation and (4) any payments to be made by any Group Company as agreed between such Group Company and the purchaser of any assets subject to an Asset Disposition, Casualty or Condemnation in connection therewith; and

(ii) with respect to any Equity Issuance or Debt Issuance, the gross amount of cash proceeds paid to or received by any Group Company in respect of such Equity Issuance or Debt Issuance as the case may be (including cash proceeds subsequently as and when received at any time in respect of such Equity Issuance or Debt Issuance from non-cash consideration initially received or otherwise), net of underwriting discounts and commissions or placement fees, investment banking fees, legal fees, consulting fees, accounting fees and other customary fees and expenses directly incurred by any Group Company in connection therewith (other than those payable to any Group Company or any Affiliate of any Group Company except for those payable on terms and conditions as favorable to the applicable Group Company as would be obtainable by it in a comparable arm's length transaction with an independent, unrelated third party).

"Nominal Shares" means (i) for any Subsidiary of the Borrower that is not a Domestic Subsidiary, nominal issuances of Equity Interests in an aggregate amount not to exceed 5.0% of the Equity Interests or Equity Equivalents of such Subsidiary on a fully-diluted basis and (ii) in any case, director's qualifying shares, in each case to the extent such issuances are required by applicable Laws.



“Notice of Extension/Conversion” has the meaning specified in Section 2.06(a).

“Obligation Currency” has the meaning specified in Section 10.18(a).

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

“Organization Documents” means, (i) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-United States jurisdiction); (ii) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (iii) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Other Taxes” means all present or future stamp or documentary taxes or any other excise, property or similar taxes, charges or levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“Pari Passu Intercreditor Agreement” means a “pari passu” intercreditor agreement among the Collateral Agent and the holders of Permitted Pari Passu Debt (or their representative) in form and substance reasonably satisfactory to the Administrative Agent.

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

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

“PBGC” means the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA or any entity succeeding to any or all of its functions under ERISA.

“Perfection Certificate” means with respect to any Loan Party a certificate, substantially in the form of Exhibit G-3 to this Agreement, completed and supplemented with the schedules and attachments contemplated thereby and duly executed on behalf of such Loan Party by a Responsible Officer of such Loan Party.

“Permitted Acquisition” means

(a) a Business Acquisition; provided that:

(i) the Equity Interests or property or assets acquired in such acquisition relate to a line of business similar to the business of the Borrower or any of its

Subsidiaries engaged in on the Closing Date or reasonably related, ancillary or complementary thereto;

(ii) within 30 days after (or such later date as may be agreed to by the Administrative Agent, in its sole discretion) the date of the consummation of such Business Acquisition, each applicable Loan Party and the acquired entity and its Subsidiaries shall have executed and delivered to the Administrative Agent or the Collateral Agent, as applicable, all items in respect of the Equity Interests or property or assets acquired in such acquisition (and/or the seller thereof) required to be delivered by Section 6.12;

(iii) in the case of an acquisition of the Equity Interests of another Person, (A) except in the case of the incorporation of a new Subsidiary, the board of directors (or other comparable governing body) of such other Person shall have duly approved such acquisition and (B) the Equity Interests acquired shall constitute all (other than Nominal Shares) of the total Equity Interests of the issuer thereof;

(iv) no Event of Default shall have occurred and be continuing immediately before or immediately after giving effect to such acquisition;

(v) any Person or assets or division as acquired in accordance herewith (y) shall be in same business or lines of business in which the Borrower and its Subsidiaries are engaged as of the Closing Date or similar or related businesses and (z) shall have generated positive cash flow for the four quarter period most recently ended prior to the date of such acquisition; and

(vi) immediately after giving effect to such acquisition, Liquidity shall be not less than \$10,000,000; and

(b) the acquisition of franchisees in an amount after giving effect to all such acquisitions not to exceed \$1,500,000 in the aggregate (other than expenditures included in Consolidated Capital Expenditures), plus the proceeds of any Equity Issuances of Holdings issued to make such acquisition.

“Permitted Holder” means (x) each Scheduled Permitted Holder and (y) unless otherwise indicated on Schedule 1.01, each investment fund and other account managed or advised by such Scheduled Permitted Holder or its investment advisor or by an investment advisor affiliate of such Scheduled Permitted Holder.

“Permitted Joint Venture” means a joint venture, in the form of a corporation, limited liability company, business trust, joint venture, association, company or partnership, entered into by the Borrower or any of its Subsidiaries which (i) is engaged in a line of business related, ancillary or complementary to those engaged in by the Borrower and its Subsidiaries and (ii) is formed or organized in a manner that limits the exposure of Holdings, the Borrower and its Subsidiaries for the liabilities thereof to (A) the Investments of the Borrower and its Subsidiaries therein permitted under Section 7.06 and (B) any Indebtedness of any Permitted Joint Venture or any Guaranty Obligations by Holdings or any of its Subsidiaries in respect of such Indebtedness, which Indebtedness or Guaranty Obligations are permitted at the time under Section 7.01.

“Permitted Liens” has the meaning specified in Section 7.02.

“Permitted Pari Passu Debt” means any secured Indebtedness incurred by the Borrower, provided that (i) such Indebtedness is secured by the Collateral on a pari passu basis with the Senior Credit Obligations and under security documents substantially similar to the Collateral Documents and is not secured by any property or assets of Holdings, Borrower or any Subsidiary other than the Collateral, (ii) such Indebtedness is not at any time guaranteed by any Subsidiaries other than Subsidiaries that are Subsidiary Guarantors and the terms of such guarantee shall be no more favorable to the secured parties in respect of such Indebtedness than the terms of the Guaranty, (iii) the holders of such Indebtedness (or their representative) and the Collateral Agent shall be party to the Pari Passu Intercreditor Agreement, (iv) the maturity date of such Indebtedness shall not be earlier than the Maturity Date, (v) there shall be no scheduled amortization of such Indebtedness, and such Indebtedness shall not be subject to mandatory redemption, repurchase, prepayment or sinking fund obligations (except for customary asset sale or change-in-control provisions that provide for the prior payment in full of the Loans and all other Senior Credit Obligations) in each case prior to the Maturity Date, and (vi) such Indebtedness has covenants, default and remedy provisions and other terms and conditions (other than interest, fees, premiums, funding discounts, or optional prepayment provisions) that are substantially similar to, or (taken as a whole) not materially more favorable to the investors providing such Permitted Pari Passu Debt than, those set forth in this Agreement (or (A) as otherwise reasonably satisfactory to the Administrative Agent or (B) that take effect after the Maturity Date).

“Permitted Refinancing” means, with respect to any Person, any modification, refinancing, refunding, renewal or extension of any Indebtedness of such Person; provided that (i) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed or extended except by an amount equal to any interest capitalized in connection with, any premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal or extension and by an amount equal to any existing commitments unutilized thereunder or as otherwise permitted pursuant to Section 7.01, (ii) such modification, refinancing, refunding, renewal or extension has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed or extended, (iii) if the Indebtedness being modified, refinanced, refunded, renewed or extended is subordinated in right of payment to the Senior Credit Obligations, such modification, refinancing, refunding, renewal or extension is subordinated in right of payment to the Senior Credit Obligations on terms at least as favorable on the whole to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed or extended, (iv) the terms and conditions (including, if applicable, as to collateral) of any such modified, refinanced, refunded, renewed or extended Indebtedness are not, taken as a whole, materially less favorable to the Loan Parties or the Lenders than the terms and conditions of the Indebtedness being modified, refinanced, refunded, renewed or extended, (v) such modification, refinancing, refunding, renewal or extension is incurred by the Person who is the obligor on the Indebtedness being modified, refinanced, refunded, renewed or extended, and (vi) at the time thereof, no Default shall have occurred and be continuing.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Petition Date” has the meaning assigned to such term in the preamble hereto.

“PIK Interest” has the meaning specified in Section 2.05(d)(i).

“PIK Interest Rate” has the meaning specified in Section 2.05(d)(i).

“Plan” means an employee pension benefit plan which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code maintained by or contributed to by any Group Company or any ERISA Affiliate, including a Multiemployer Plan.

“Plan of Reorganization” means that certain Proposed Joint Prepackaged Chapter 11 Plan of Reorganization of Sbarro LLC and its Debtor Affiliates, dated as of March 5, 2014 and filed by the Debtors with the Bankruptcy Court on March 10, 2014, as supplemented by the Plan Supplement, and as further amended, supplemented or otherwise modified from time to time (whether any such further amendment, supplement or other modification is effected through an amendment, supplement or other modification to the Plan of Reorganization itself or through the Confirmation Order), so long as any such further amendment, supplement or other modification does not adversely affect the Lenders.

“Plan Supplement” has the meaning specified in the Plan of Reorganization.

“Platform” has the meaning specified in Section 6.02.

“Pledge Agreement” means the Pledge Agreement, substantially in the form of Exhibit G-2 hereto, dated as of the date hereof among Holdings, the Borrower, the Subsidiary Guarantors and the Collateral Agent, as the same may be amended, modified or supplemented from time to time.

“Pledged Collateral” means the “Collateral” as defined in the Pledge Agreement.

“PPA” has the meaning assigned to such term in the definition of “ERISA Event”.

“Pre-Closing Information” means, taken as an entirety, all written information in respect of the Debtors provided to any Agent or Lender by the Borrower prior to the Closing Date (including, for the avoidance of doubt, all such written information included in the Plan of Reorganization and the Disclosure Statement).

“Preferred Stock” means, as applied to the Equity Interests of a Person, Equity Interests of any class or classes (however designated) which is preferred as to the payment of dividends or distributions, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over the Equity Interests of any other class of such Person.

“Prepayment Fee” has the meaning specified in Section 2.10(b).

“Prepetition Credit Agreement” means that certain Credit Agreement, dated as of November 28, 2011, by and among New Sbarro Intermediate Holdings, Inc., as borrower, New Sbarro Finance, Inc., the lenders party thereto, CFS, as administrative agent and collateral agent, and the other agents, arrangers and managers party thereto, as amended, supplemented or otherwise modified prior to the Closing Date.

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

“Purchase Money Indebtedness” means Indebtedness of the Borrower or any of its Subsidiaries incurred for the purpose of financing all or any part of the purchase price or cost of construction or improvement of property used in the business of the Borrower or such Subsidiary.

“Qualified Capital Stock” means any Equity Interests of Holdings that does not include a cash dividend and is not mandatorily redeemable by Holdings or any of its Subsidiaries or redeemable at the option of the holder of such Equity Interests, in each case prior to the 181st day following the Maturity Date (other than in connection with an asset sale or change of control, so long as the definitions of asset sale and change of control in the instruments governing such Equity Interests are no more restrictive with respect to Holdings and its Subsidiaries than the corresponding definitions herein and so long as the Senior Credit Obligations (other than contingent indemnification obligations) are either repaid or waived with respect to such asset sale or change of control prior to the redemption of such Equity Interests).

“Real Property” means, with respect to any Person, all of the right, title and interest of such Person in and to land, improvements and fixtures, including leaseholds.

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

“Registered Public Accounting Firm” has the meaning specified in the Securities Laws and shall be independent of the Borrower as prescribed by the Securities Laws.

“Regulation T, U or X” means Regulation T, U or X, respectively, of the Board of Governors of the Federal Reserve System as amended, or any successor regulation.

“Reinvestment Funds” means, with respect to any Net Cash Proceeds of Insurance Proceeds, any Condemnation Award or any Asset Disposition in respect of the single event or series of related events giving rise thereto, that portion of such funds as shall, according to a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent within 30 days after the occurrence of the Casualty, Condemnation or Asset Disposition giving rise thereto, be reinvested within 365 days (or if the Borrower has entered into a commitment to apply such proceeds to a reinvestment within such time period to the extent such amounts are actually reinvested, within six months of the expiration of such 365 days) after the occurrence of the Casualty, Condemnation or Asset Disposition giving rise thereto in the repair, restoration or replacement of the properties that were the subject of such Casualty, Condemnation or Asset Disposition; provided that no Event of Default shall have occurred and be continuing on the date of such reinvestment notice or, if the Borrower or one or more of its Subsidiaries shall have then entered into one or more continuing agreements with a Person not an Affiliate of any of them for the repair, restoration or replacement of the properties that were the subject of such Casualty, Condemnation or Asset Disposition, none of the Administrative Agent or the Collateral Agent

shall have commenced any action or proceeding to exercise or seek to exercise any right or remedy with respect to any Collateral (including any action of foreclosure, enforcement, collection or execution or by any proceeding under any Insolvency or Liquidation Proceeding).

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

“Required Lenders” means, at any date of determination, Lenders holding a principal amount of Loans constituting more than 50% of the outstanding principal amount of all Loans at such time; provided, however, that if any Lender shall be a Defaulting Lender at such time then there shall be excluded from the determination of Required Lenders such Lender and its Loans at such time.

“Responsible Officer” means the chief executive officer, president, senior vice president, vice president, chief financial officer, treasurer, controller, assistant treasurer, secretary or assistant secretary of a Loan Party or any other Person expressly authorized by the board of directors of such Loan Party to act on behalf of such Loan Party with respect to the applicable matter. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payment” means (i) any dividend or other distribution (whether in cash, securities or other property), direct or indirect, on account of any class of Equity Interests or Equity Equivalents of any Group Company, now or hereafter outstanding, (ii) any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation, termination or similar payment, purchase or other acquisition for value, direct or indirect, of any class of Equity Interests or Equity Equivalents of any Group Company, now or hereafter outstanding and (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire any class of Equity Interests or Equity Equivalents of any Group Company, now or hereafter outstanding.

“S&P” means Standard & Poor’s Ratings Group, a division of McGraw Hill, Inc., a New York corporation, and its successors or, absent any such successor, such nationally recognized statistical rating organization as the Borrower and the Administrative Agent may select.

“Sale/Leaseback Transaction” means any direct or indirect arrangement with any Person or to which any such Person is a party providing for the leasing to Holdings or any of its Subsidiaries of any property, whether owned by Holdings or any of its Subsidiaries as of the Closing Date or later acquired, which has been or is to be sold or transferred by Holdings or any of its Subsidiaries to such Person or to any other Person from whom funds have been, or are to be, advanced by such Person on the security of such property.

“Sbarro Parent” means Sbarro Holdings, Inc.

“Scheduled Permitted Holder” means each Person set forth on Schedule 1.01(A).

“Scheduled Stores” means the stores set forth on Schedule 1.01(B).

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

“Secured Swap Obligations” means all Swap Obligations of any Loan Party permitted under Section 7.01(h) excluding any Excluded Swap Obligations; provided, that (x) the Swap Creditor and the Borrower shall have designated such Swap Obligations as “Secured Swap Obligations” by written notice to the Administrative Agent and (y) the aggregate amount of Secured Swap Obligations shall not exceed \$10,000,000 at any time.

“Securities Laws” means the Securities Act of 1933, the Securities Exchange Act of 1934 and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the Public Company Accounting Oversight Board, as each of the foregoing may be amended and in effect on any applicable date hereunder.

“Security Agreement” means the Security Agreement, substantially in the form of Exhibit G-1 hereto, dated as of the date hereof among Holdings, the Borrower, the Subsidiary Guarantors and the Collateral Agent, as the same may be amended, modified or supplemented from time to time.

“Senior Credit Obligations” means, with respect to each Loan Party, without duplication:

(i) in the case of the Borrower, all principal of and interest (including, without limitation, any interest which accrues after the commencement of any Insolvency or Liquidation Proceeding with respect to the Borrower, whether or not allowed or allowable as a claim in any such proceeding) on any Loan under, or any Term Note issued pursuant to, this Agreement or any other Loan Document;

(ii) all fees (including the Prepayment Fee), expenses, indemnification obligations and other amounts of whatever nature now or hereafter payable by such Loan Party (including, without limitation, any amounts which accrue after the commencement of any Insolvency or Liquidation Proceeding with respect to such Loan Party, whether or not allowed or allowable as a claim in any such proceeding) pursuant to this Agreement or any other Loan Document;

(iii) all expenses of the Agents as to which one or more of the Agents have a right to reimbursement by such Loan Party under Section 10.04(a) of this Agreement or under any other similar provision of any other Loan Document, including, without limitation, any and all sums advanced by the Collateral Agent to preserve the Collateral or preserve its security interests in the Collateral to the extent permitted under any Loan Document or applicable Law;

(iv) all amounts paid by any Indemnitee as to which such Indemnitee has the right to reimbursement by such Loan Party under Section 10.04(b) of this Agreement or under any other similar provision of any other Loan Document; and

(v) in the case of Holdings and each Subsidiary Guarantor, all amounts now or hereafter payable by Holdings and such Subsidiary Guarantor and all other obligations or liabilities now existing or hereafter arising or incurred (including, without limitation, any amounts which accrue after the commencement of any Insolvency or Liquidation Proceeding with respect to the Borrower, Holdings or such Subsidiary Guarantor, whether or not allowed or allowable as a claim in any such proceeding) on the part of Holdings or such Subsidiary Guarantor pursuant to this Agreement, the Guaranty or any other Loan Document;

together in each case with all renewals, modifications, consolidations or extensions thereof.

“Senior Credit Party” means each Lender, the Administrative Agent, the Collateral Agent and each Indemnitee and their respective successors and assigns, and “Senior Credit Parties” means any two or more of them, collectively.

“Shareholders’ Agreement” means that certain Amended and Restated Stockholders Agreement, dated as of [\_\_\_\_\_], 2014, among Sbarro Parent and the shareholders of Sbarro Parent from time to time party thereto.<sup>3</sup>

“Solvent” means, with respect to any Person as of a particular date, that on such date (i) such Person is able generally to pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (ii) the value of the assets of such Person (both at fair value and present fair saleable value in each case calculated on a going concern basis) is greater than the total amount of liabilities (including contingent and unliquidated liabilities) and (iii) such Person does not have unreasonably small capital. In computing the amount of contingent or unliquidated liabilities at any time, such liabilities shall be computed at the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (in each case as interpreted in accordance with fraudulent conveyance, bankruptcy, insolvency and similar laws and other applicable Law).

“Subordinated Indebtedness” of any Person means all Indebtedness which (i) the principal of which by its terms is not required to be repaid, in whole or in part, before six months after the Maturity Date, (ii) is subordinated in right of payment to such Person’s indebtedness, obligations and liabilities to the Loan Parties under the Loan Documents pursuant to payment and subordination provisions reasonably satisfactory in form and substance to the Administrative Agent and (iii) is issued pursuant to credit documents having covenants, subordination provisions and events of default that are taken as a whole in no event less favorable, including with respect to rights of acceleration, to such Person than the terms hereof or are otherwise reasonably satisfactory in form and substance to the Administrative Agent.

“Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company, association or other business entity of which (i) if a corporation, more than 50% of the total voting power of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled,

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<sup>3</sup> NTD: Details of Shareholder Agreement to be confirmed.



directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a partnership, limited liability company, association or business entity other than a corporation, more than 50% of the partnership or other similar ownership interests thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have more than 50% ownership interest in a partnership, limited liability company, association or other business entity if such Person or Persons shall be allocated more than 50% of partnership, association or other business entity gains or losses or shall be or control the managing director, manager or a general partner of such partnership, association or other business entity. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrower.

"Subsidiary Guarantor" means each Subsidiary of Holdings on the Closing Date (other than the Borrower and a Foreign Subsidiary) and each Subsidiary of Holdings (other than the Borrower and a Foreign Subsidiary) that becomes a party to the Guaranty after the Closing Date by execution of an Accession Agreement, and "Subsidiary Guarantors" means any two or more of them.

"Swap Agreement" means (i) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement and (ii) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Swap Creditor" means any Person from time to time party to one or more Swap Agreements permitted under Section 7.01(h) with a Loan Party, and its successors and assigns, and "Swap Creditors" means any two or more of them, collectively.

"Swap Obligations" of any Person means all obligations (including, without limitation, any amounts which accrue after the commencement of any bankruptcy or insolvency proceeding with respect to such Person, whether or not allowed or allowable as a claim under any Insolvency or Liquidation Proceeding) owing under any Swap Agreement, excluding any amounts which such Person is entitled to setoff against its obligations under applicable Law.

"Swap Termination Value" means, at any date and in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreements relating to such Swap Agreements, (i) for any date on or after the date such Swap Agreements

have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (ii) for any date prior to the date referenced in clause (i), the amount(s) determined as the mark-to-market value(s) for such Swap Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements (which may include any Lender).

“Synthetic Lease Obligation” means the monetary obligation of a Person under (i) a so-called synthetic, off-balance sheet or tax retention lease or (ii) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such person (without regard to accounting treatment).

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

“Term Note” means a promissory note, substantially in the form of Exhibit B hereto, evidencing the obligations of the Borrower to repay outstanding Loans, as such note may be amended, modified or supplemented from time to time.

“Threshold Amount” means \$5,000,000.

“Transaction” means (i) the Consummation of the Plan of Reorganization, (ii) the execution and delivery by each Loan Party of the Loan Documents to which it is a party, (iii) the deemed borrowing of the Loans on the Closing Date, (iv) the consummation of any transactions in connection with the foregoing and (v) the payment of the fees and expenses incurred in connection with any of the foregoing.

“Type” has the meaning specified in Section 1.05.

“UCC” shall mean the Uniform Commercial Code as in effect from time to time (except as otherwise specified) in any applicable state or jurisdiction.

“Unfunded Liabilities” means, except as otherwise provided in Section 5.12(a)(i)(B), (i) with respect to each Plan, the amount (if any) by which the present value of all nonforfeitable benefits under such Plan exceeds the current value of such Plan’s assets allocable to such benefits, all determined in accordance with the respective most recent valuations for such Plan based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87 and (ii) with respect to each Foreign Plan, the amount (if any) by which the present value of all nonforfeitable benefits under such Foreign Plan exceeds the current value of such Foreign Plan’s assets allocable to such benefits.

“United States” means the United States of America, including each of the States and the District of Columbia, but excluding its territories and possessions.

“U.S. Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L.

107-56 (signed into Law October 26, 2001)), as the same may be amended, supplemented, modified, replaced or otherwise in effect from time to time.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (i) the sum of the products obtained by multiplying (A) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (B) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (ii) the then outstanding principal amount of such Indebtedness.

“Welfare Plan” means a “welfare plan” as such term is defined in Section 3(1) of ERISA.

“Wholly-Owned Subsidiary” means, with respect to any Person at any date, any Subsidiary of such Person all of the shares of capital stock or other ownership interests of which (except Nominal Shares) are at the time directly or indirectly owned by such Person.

**Section 1.02 Other Interpretative Provisions.** With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “herein,” “hereof” and “hereunder” and words of similar import when used in any Loan Document shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such Law and any reference to any law or regulation shall, unless otherwise specified, refer to such Law or regulation as amended, modified or supplemented from time to time and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including,” the words “to” and “until” each mean “to but excluding” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

**Section 1.03 Accounting Terms and Determinations.**

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, except as otherwise specifically prescribed herein or as disclosed to the Administrative Agent.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either (x) the Borrower or (y) within 30 days after delivery of any financial statements reflecting any change in GAAP (or after the Lenders have been informed of the change in GAAP affecting such financial statements, if later), the Administrative Agent or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and any other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

**Section 1.04 Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

**Section 1.05 Types of Borrowings.** The term “Borrowing” denotes the aggregation of Loans of one or more Lenders deemed made to the Borrower pursuant to Article 2 on the Closing Date, all of which Loans are initially of the same Type (subject to Article 3) and have the same initial Interest Period. Loans hereunder are distinguished by “Type.” The “Type” of a Loan refers to whether such Loan is a Eurodollar Loan or a Base Rate Loan.

**ARTICLE 2**  
**THE CREDIT FACILITIES**

**Section 2.01 Loans.** Subject to the terms and conditions set forth herein and to give effect to the Plan of Reorganization and provide for the conversion of each Lender’s DIP Facility Loans (taking into account the Discounted Purchase Price), each Lender shall be deemed to have made a term loan (each a “Loan”) to the Borrower on the Closing Date in a principal amount (such amount for each Lender, its “Closing Date Loan Amount”) equal to (a) the aggregate principal amount of the DIP Facility Loans immediately prior to the Closing Date of such Lender divided by (b) the Discounted Purchase Price, resulting in an aggregate principal amount of Loans outstanding hereunder on the Closing Date for all Lenders of \$[20,618,556.70].

The Loans deemed made or issued pursuant to this Section 2.01 shall be made without any actual funding. Loans repaid or prepaid may not be reborrowed.

**Section 2.02 [Reserved].**

**Section 2.03 [Reserved].**

**Section 2.04 Evidence of Loans.** The Loans deemed made by each Lender on the Closing Date shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Loans deemed made by the Lenders to the Borrower on the Closing Date and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Senior Credit Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a single Term Note, substantially in the form of Exhibit B, payable to the order of such Lender for the account of its Lending Office in an amount equal to the aggregate unpaid principal amount of such Lender's Loans, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender having one or more Term Notes shall record the date, amount and Type of each Loan deemed made by it and the date and amount of each payment of principal made by the Borrower with respect thereto, and may, if such Lender so elects in connection with any transfer or enforcement of any Term Note, endorse on the reverse side or on the schedule, if any, forming a part thereof appropriate notations to evidence the foregoing information with respect to each outstanding Loan evidenced thereby; provided that the failure of any Lender to make any such recordation or endorsement or any error in any such recordation or endorsement shall not affect the obligations of the Borrower hereunder or under any such Term Note. Each Lender is hereby irrevocably authorized by the Borrower so to endorse each of its Term Notes and to attach to and make a part of each of its Term Notes a continuation of any such schedule as and when required.

**Section 2.05 Interest.**

(a) Interest Applicable to Loans. After the Closing Date, the Loans may from time to time be Eurodollar Loans or Base Rate Loans, as determined by the Borrower and notified to the Administrative Agent, in accordance with Section 2.06. In connection with Eurodollar Loans there shall be not more than five separate Groups of Eurodollar Loans outstanding hereunder at any one time. Loans having different Interest Periods, regardless of whether commencing on the same date, shall be considered separate Groups. For this purpose, interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment and before and after the commencement of any proceeding under any Insolvency or Liquidation Proceeding.

(b) Rates Applicable to Loans. Subject to the provisions of subsection (c) below,  
(i) each Eurodollar Loan shall bear interest on the outstanding principal amount thereof for each

Interest Period applicable thereto at a rate per annum equal to the sum of the Adjusted Eurodollar Rate for such Interest Period plus the Applicable Margin and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof for each day from the date such Loan is made as, or converted into, a Base Rate Loan until it becomes due or is converted into a Loan of any other Type, at a rate per annum equal to the Base Rate for such day plus the Applicable Margin.

(c) Additional Interest. (x) Immediately upon an Event of Default, all Loans shall bear interest at a fluctuating interest rate per annum equal to the Default Rate and (y) if any Senior Credit Obligation is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such overdue amount shall thereafter bear interest at a fluctuating interest rate per annum equal to the Default Rate, in each case, until such Default or Event of Default has been cured or waived, to the fullest extent permitted by applicable Laws.

(d) Cash and PIK Interest in Respect of Loans. Interest on Loans of each Type shall be payable on each Interest Payment Date applicable thereto (and on each other date on which any such Loans are converted to another Type) in a combination of (x) cash ("Cash Interest") and (y) by increasing the outstanding principal amount of such Loans on such Interest Payment Date (or such other date) by the amount of interest payable in kind ("PIK Interest") that has accrued from the first date of the Interest Period ending on such Interest Payment Date (or such other date) (and, in the case of an Interest Period in excess of three months, that has not been added to the principal amount of such Loans on a previous Interest Payment Date in accordance with Section 2.05(f)), as determined in accordance with the succeeding provisions of this Section 2.05(d). Unless the context otherwise requires, for all purposes hereof, references to "principal amount" of the Loans includes any interest so capitalized and added to the principal amount of the Loans from and after the Interest Payment Date on which such interest has been so added. PIK Interest and Cash Interest shall accrue on the Loans as follows:

(i) PIK Interest shall accrue on the Loans during each Interest Period at a rate of 3.00% per annum (the "PIK Interest Rate"); provided that at any time prior to the third anniversary of the Closing Date, the Borrower may, at its option and in accordance with Section 2.05(e), elect (an "Additional PIK Interest Election") to increase the PIK Interest Rate applicable to any Group of Loans for any Interest Period by up to an additional 6.50% per annum (in integral multiples of 0.50%), in which case the PIK Interest Rate applicable to such Group of Loans for such Interest Period shall be equal to such increased rate per annum.

(ii) Cash Interest shall accrue on each Group of Loans during each Interest Period at a rate per annum equal to (x) the rate per annum determined in accordance with Section 2.05(b) with respect to such Group of Loans for such Interest Period minus (y) the PIK Interest Rate with respect to such Group of Loans determined in accordance with Section 2.05(d)(i).

(e) Additional PIK Interest Election Procedures. The Borrower may make an Additional PIK Interest Election with respect to any Group of Loans by delivering a written notice thereof to the Administrative Agent simultaneously with the delivery in accordance with

Section 2.06 of a Notice of Extension/Conversion with respect to such Loans, which notice shall specify (x) the Group of Loans (or any portion thereof) to which such Additional PIK Interest Election applies and the principal amount thereof, (y) the amount (expressed in percentage per annum) by which the PIK Interest Rate applicable to such Group of Loans (or portion thereof) is to be increased (which amount shall comply with Section 2.05(d)(i)) and (z) the requested Interest Period with respect to such Group of Loans (or portion thereof). Any such Additional PIK Interest Election shall be effective commencing on the first date of the immediately following Interest Period that will be applicable to such Group of Loans (or to the Group of Loans that will arise as a result of the applicable Notice of Extension/Conversion). The Administrative Agent shall promptly deliver a corresponding notice to each Lender. An Additional PIK Interest Election with respect to any Group of Loans shall remain in effect until the earlier of (i) the last day of the Interest Period with respect to such Group of Loans and (ii) the Maturity Date. For the avoidance of doubt, in the absence of such an Additional PIK Interest Election, the PIK Interest Rate applicable to any Group of Loans shall be equal to 3.00% per annum.

(f) Interest Payments. Interest on each Loan (other than PIK Interest on Loans) shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. PIK Interest on Loans shall be payable by increasing the outstanding principal amount of the applicable Loans by the amount of PIK Interest accrued thereon on the Interest Payment Date applicable to such Loans for such period and in such amounts as required by Section 2.05(d)(i). Any interest so added to the principal amount of any Loans shall bear interest as provided in this Section 2.05 from the date on which such interest has been so added. The obligation of the Borrower to pay PIK Interest shall be automatically evidenced by this Agreement or, if applicable, any promissory notes issued pursuant to this Agreement. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any Insolvency or Liquidation Proceeding. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(g) Determination and Notice of Interest Rates. The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Loans upon determination of such interest rate (and the PIK Interest Rate applicable thereto). At any time when Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the Prime Rate used in determining the Base Rate promptly following the public announcement of such change.

## **Section 2.06 Extension and Conversion.**

(a) Continuation and Conversion Options. The Loans shall initially be Eurodollar Loans with an Interest Period of one month. Thereafter, the Borrower shall have the option, on any Business Day, to elect to change or continue the type of interest rate borne by each Group of Loans (subject in each case to the provisions of Article 3 and Section 2.06(d)), as follows:

(i) if such Loans are Base Rate Loans, the Borrower may elect to convert such Loans to Eurodollar Loans as of any Business Day; and

(ii) if such Loans are Eurodollar Loans, the Borrower may elect to convert such Loans to Base Rate Loans or elect to continue such Loans as Eurodollar Loans for an additional Interest Period, subject to Section 3.05 in the case of any such conversion or continuation effective on any day other than the last day of the then current Interest Period applicable to such Loans.

Each such election shall be made by delivering a notice, substantially in the form of Exhibit A hereto (a “Notice of Extension/Conversion”) (which may be by telephone if promptly confirmed in writing), which notice shall not thereafter be revocable by the Borrower, to the Administrative Agent not later than 12:00 Noon on the third Business Day before the conversion or continuation selected in such notice is to be effective. A Notice of Extension/Conversion may, if it so specifies, apply to only a portion of the aggregate principal amount of the relevant Group of Loans; provided that (i) such portion is allocated ratably among the Loans comprising such Group and (ii) the portion to which such Notice of Borrowing applies, and the remaining portion to which it does not apply, are each \$500,000 or any larger multiple of \$100,000.

(b) Contents of Notice of Extension/Conversion. Each Notice of Extension/Conversion shall specify:

- (i) the Group of Loans (or portion thereof) to which such notice applies;
- (ii) the date on which the conversion or continuation selected in such notice is to be effective, which shall comply with the applicable clause of Section 2.06(a) above;
- (iii) if the Loans comprising such Group are to be converted, the new Type of Loans and, if the Loans being converted are to be Eurodollar Loans, the duration of the next succeeding Interest Period applicable thereto; and
- (iv) if such Loans are to be continued as Eurodollar Loans for an additional Interest Period, the duration of such additional Interest Period.

Each Interest Period specified in a Notice of Extension/Conversion shall comply with the provisions of the definition of the term “Interest Period.” If no Notice of Extension/Conversion is timely received prior to the end of an Interest Period for any Group of Eurodollar Loans, the Borrower shall be deemed to have elected that such Group be converted to Base Rate Loans as of the last day of such Interest Period.

(c) Notification to Lenders. Upon receipt of a Notice of Extension/Conversion from the Borrower pursuant to Section 2.06(a) above, the Administrative Agent shall promptly notify each Lender of the contents thereof.

(d) Limitation on Conversion/Continuation Options. The Borrower shall not be entitled to elect to convert any Loans to, or continue any Loans for an additional Interest Period as, Eurodollar Loans if the aggregate principal amount of any Group of Eurodollar Loans created or continued as a result of such election would be less than \$500,000. If an Event of Default shall have occurred and be continuing when the Borrower delivers notice of such election to the Administrative Agent, the Borrower shall not be entitled to elect to convert any Eurodollar Loans



to, or continue any Eurodollar Loans for an additional Interest Period as, Eurodollar Loans having an Interest Period in excess of one month.

**Section 2.07 Maturity of Loans.** The Borrower shall repay, and there shall become due and payable (together with accrued interest thereon) on the Maturity Date, the unpaid principal amount of all Loans then outstanding.

**Section 2.08 Prepayments.**

(a) **Voluntary Prepayment of Loans.** The Borrower shall have the right voluntarily to prepay Loans in whole or in part from time to time; provided, however, that (i) each partial prepayment of Loans shall be in a minimum principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof, in the case of Eurodollar Loans, and \$500,000 or a whole multiple of \$100,000 in excess thereof, in the case of Base Rate Loans, (ii) all prepayments under this Section 2.08(a) shall be subject to Section 3.05 and Section 2.10(b) and (iii) all prepayments of Loans under this Section 2.08(a) shall be applied ratably to the Loans then outstanding. Each payment pursuant to this Section 2.08(a) shall be applied as set forth in Section 2.08(d).

(b) **Mandatory Prepayments.**

(i) **Change of Control.** Upon the occurrence of any Change of Control, the Borrower shall, within 5 Business Days of the occurrence of such Change of Control, prepay all of the Loans in full.

(ii) **Asset Dispositions, Casualties and Condemnations, Etc.**

(A) Within five Business Days after receipt by any Group Company of Net Cash Proceeds from any Asset Disposition (other than any Asset Disposition permitted under clause (a), (b), (c), (d), (e), (g), (h), (i), (j), (k), (l), (m), (n), (o), (q), (t), (u) or (v) of Section 7.05), Casualty or Condemnation (excluding all such Net Cash Proceeds to the extent and so long as they constitute Reinvestment Funds), the Borrower shall prepay the Loans in an aggregate amount equal to 100% of the Net Cash Proceeds of such Asset Disposition, Casualty or Condemnation; provided that no such prepayment caused by the receipt of Net Cash Proceeds from any Asset Disposition shall be required to the extent that the sum of such Net Cash Proceeds and all other Net Cash Proceeds from Asset Dispositions occurring after the Closing Date and during the same fiscal year does not exceed \$250,000 (it being understood that a prepayment shall only be required of such excess).

(B) Within five Business Days after receipt by any Group Company of Net Cash Proceeds from any Asset Disposition pursuant to Section 7.05(o), the Borrower shall prepay the Loans in an aggregate amount equal to 100% of the Net Cash Proceeds of such Asset Disposition.

(iii) **Debt Issuances.** Within five Business Days after receipt by any Group Company of Net Cash Proceeds from any Debt Issuance (other than any Debt Issuance permitted pursuant to Section 7.01 of this Agreement), the Borrower shall prepay the

Loans in an aggregate amount equal to 100% of the Net Cash Proceeds of such Debt Issuance.

(iv) Application of Mandatory Prepayments. All amounts required to be paid pursuant to Section 2.08(b)(i), Section 2.08(b)(ii) and Section 2.08(b)(iii) shall be applied to prepay the outstanding Loans (ratably to the Loans then outstanding) until the Loans have been prepaid in full.

(v) Order of Applications, Etc. Within the parameters of the applications set forth above, prepayments shall be applied first to Base Rate Loans and then to Eurodollar Loans in direct order of Interest Period maturities. All prepayments of Eurodollar Loans under this Section 2.08(b) shall be subject to Section 3.05, and all prepayments under Section 2.08(b)(i) shall be subject to Section 2.10(b). All prepayments under this Section 2.08(b) shall be accompanied by accrued interest on the principal amount being prepaid to the date of payment.

(vi) Payments Cumulative. Except as otherwise expressly provided in this Section 2.08, payments required under any subsection or clause of this Section 2.08 are in addition to payments made or required under any other subsection or clause of this Section 2.08.

(c) Notice of Mandatory Prepayment Events. The Borrower shall use commercially reasonable efforts to give to the Administrative Agent and the Lenders at least one Business Day's prior written or telecopy notice of each and every event or occurrence requiring a prepayment under Section 2.08(b)(i), Section 2.08(b)(ii) or Section 2.08(b)(iii), including the amount of Net Cash Proceeds expected to be received therefrom and the expected schedule for receiving such proceeds; provided, however, that in the case of any prepayment event (i) consisting of a Casualty or Condemnation, the Borrower shall give such notice within five Business Days after the occurrence of such event, and (ii) occurring under Section 2.08(b)(i), the Borrower shall give such notice at least five Business Days prior to the occurrence of any Change of Control.

(d) Notice of Prepayment. The Borrower shall notify the Administrative Agent, (i) in the case of Base Rate Loans, by 11:00 A.M. on the date of any voluntary prepayment thereof hereunder, and (ii) in the case of any Eurodollar Loans, by 11:00 A.M. at least three Business Days prior to the date of any voluntary prepayment thereof hereunder. Each notice of prepayment shall specify the prepayment date, the principal amount to be prepaid, whether the Loan to be prepaid is a Eurodollar Loan or a Base Rate Loan and, in the case of a Eurodollar Loan, the Interest Period of such Loan. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's pro-rata share, if any, thereof. Once such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable as specified therein. Subject to Section 2.08(a), if the Borrower fails to specify the application of a voluntary prepayment, then such prepayment shall be applied, first to Base Rate Loans and then to Eurodollar Loans in direct order of Interest Period. Amounts prepaid under Section 2.08(b) shall be applied as set forth therein. All prepayments of Loans under this Section 2.08 shall be

accompanied by accrued interest on the principal amount being prepaid to the date of payment, together with any additional amounts required pursuant to Section 3.05 and Section 2.10(b).

**Section 2.09 [Reserved].**

**Section 2.10 Fees.**

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

(b) Prepayment Fee. In the event that the Loans are prepaid in whole or in part pursuant to Section 2.08(a), Section 2.08(b)(i) or Section 2.08(b)(iii) on or after the Closing Date and prior to the third anniversary of the Closing Date, the Borrower shall pay to the Lenders a prepayment fee (the “Prepayment Fee”) on the principal amount of the Loans so prepaid during the relevant period as set forth in the table below:

<b>Relevant Period</b>	<b>Prepayment premium as a percentage of the principal amount of Loans so prepaid</b>	
	<b>Prepayments made pursuant to Sections 2.08(a) or 2.8(b)(iii)</b>	<b>Prepayments made pursuant to Section 2.08(b)(i)</b>
On or after the Closing Date and prior to the first anniversary of the Closing Date	3.00%	1.00%
On or after the first anniversary of the Closing Date and prior to the second anniversary of the Closing Date	2.00%	1.00%
On or after the second anniversary of the Closing Date and prior to the third anniversary of the Closing Date	1.00%	0.00%
On or after the third anniversary of the Closing Date	0.00%	0.00%

It is understood and agreed that if the Loans are voluntarily prepaid or refinanced on or after the Closing Date and prior to the second anniversary of the Closing Date in connection with a Change of Control, the Prepayment Fee set forth in the column headed “Prepayments made pursuant to Section 2.08(b)(i)” in the table above shall apply to the Loans so prepaid or refinanced and not the Prepayment Fee set forth in the column headed “Prepayments made pursuant to Sections 2.08(a) or 2.08(b)(iii)” in the table above.

(c) Original Issue Discount. The parties hereto acknowledge that, as compensation for each Lender’s Loan, the Closing Date Loan Amount of each Lender represents a purchase price of 97% of the aggregate principal amount of such Lender’s Loan and the Borrower shall be

obligated to repay in full the face amount of such Loan plus accrued interest thereon (and the Prepayment Fee, if applicable) in accordance with the terms hereof.

**Section 2.11 Pro Rata Treatment.** Except to the extent otherwise provided herein, each payment or prepayment of principal of or interest on any Loan, each payment of fees and each conversion or continuation of any Loan, shall be allocated pro-rata among the Lenders in accordance with their respective outstanding Loans; provided that, in the event any amount paid to any Lender pursuant to this Section 2.11 is rescinded or must otherwise be returned by the Administrative Agent, each Lender shall, upon the request of the Administrative Agent, repay to the Administrative Agent the amount so paid to such Lender, with interest for the period commencing on the date such payment is returned by the Administrative Agent until the date the Administrative Agent receives such repayment at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

**Section 2.12 Sharing of Payments by Lenders.** If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Loans deemed made by it resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans and accrued interest thereon greater than its pro-rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participation in the Loans, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing thereon; provided that:

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

(ii) the provisions of this Section 2.12 shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans, other than to Holdings, the Borrower or any Subsidiary thereof (as to which the provisions of this Section 2.12 shall apply).

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

**Section 2.13 Payments Generally; Administrative Agent's Clawback.**

(a) Payments by the Borrower. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Each payment of principal of and interest on Loans and fees hereunder shall be paid not later than

3:00 P.M. on the date when due, in Dollars and in Federal or other funds immediately available to the Administrative Agent at the account designated by it by notice to the Borrower. Payments received after 3:00 P.M. shall be deemed to have been received on the next Business Day, and any applicable interest or fee shall continue to accrue. The Administrative Agent may, in its sole discretion, distribute such payments to the applicable Lenders on the date of receipt thereof, if such payment is received prior to 3:00 P.M.; otherwise the Administrative Agent may, in its sole discretion, distribute such payment to the applicable Lenders on the date of receipt thereof or on the immediately succeeding Business Day. Whenever any payment hereunder shall be due on a day which is not a Business Day, the date for payment thereof shall be extended to the next succeeding Business Day (and such extension of time shall be reflected in computing interest or fees, as the case may be), unless (in the case of Eurodollar Loans) such Business Day falls in another calendar month, in which case the date for payment thereof shall be the next preceding Business Day. If the date for any payment of principal is extended by operation of Law or otherwise, interest thereon shall be payable for such extended time.

(b) Presumption by the Administrative Agent. Unless the Administrative Agent shall have received notice (which may be by telephone if promptly confirmed in writing) from the Borrower prior to the date on which any payment is due to the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith, and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. A notice of the Administrative Agent to any Lender with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) [Reserved].

(d) [Reserved].

(e) [Reserved].

(f) Computations. All computations of interest for Base Rate Loans when the Base Rate is determined by the Prime Rate shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which such Loan is deemed made (or converted or continued), and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is deemed made (or continued or converted) shall, subject to subsection (a) above, bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

**ARTICLE 3**  
**TAXES, YIELD PROTECTION AND ILLEGALITY**

**Section 3.01 Taxes.**

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Loan Parties hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, provided that if any Loan Party shall be required by applicable Law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent or Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable Loan Party shall make such deductions and (iii) the applicable Loan Party shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Law.

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

(c) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent and each Lender within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) payable by the Administrative Agent or such Lender and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; provided that if Borrower reasonably believes that such Taxes were not correctly or legally asserted, the Administrative Agent or such Lender, as the case may be, will use reasonable efforts to cooperate with such Borrower to obtain a refund of such Taxes so long as such efforts would not, in the sole determination of the Administrative Agent or such Lender, as the case may be, result in any additional costs, expenses or risks or be otherwise disadvantageous to it; provided, further, that Borrower shall not be required to compensate the Administrative Agent or any Lender pursuant to this Section 3.01(c) for any amounts incurred more than twelve months prior to the date such Lender or the Administrative Agent, as the case may be, notifies Borrower of such Lender's or the Administrative Agent's intention to claim compensation therefor, but if the circumstances giving rise to such claim have a retroactive effect (*e.g.*, in connection with the audit of a prior tax year), then such twelve-month period shall be extended to include such period of retroactive effect. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Loan Party to a Governmental Authority, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such

Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders. To the extent it is legally entitled to do so, any Lender that is entitled to an exemption from or reduction of withholding tax under the Law of the jurisdiction in which the Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Without limiting the generality of the foregoing, in the event that the Borrower is resident for tax purposes in the United States, any Foreign Lender shall, to the extent it is legally able to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be reasonably requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(i) duly completed copies of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party;

(ii) duly completed copies of Internal Revenue Service Form W-8ECI;

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (A) a certificate to the effect that such Foreign Lender is not (x) a “bank” within the meaning of section 881(c)(3)(A) of the Code, (y) a “10 percent shareholder” of the Borrower within the meaning of section 881(c)(3)(B) of the Code, or (z) a “controlled foreign corporation” described in section 881(c)(3)(C) of the Code and (B) duly completed copies of Internal Revenue Service Form W-8BEN;

(iv) any tax forms or other documents as shall be prescribed by applicable law, if any, or as otherwise reasonably requested, to demonstrate, to the extent applicable, that payments to such Lender under this Agreement and any other Loan Document are exempt from any withholding under FATCA; or

(v) any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower to determine the withholding or deduction required to be made.

(f) Inability of Lender to Submit Forms. If any Foreign Lender determines, as a result of any change in applicable law, regulation or treaty, or in any official application or interpretation thereof, that it is required to withdraw or cancel any such form or certificate previously submitted or any such form or certificate otherwise becomes ineffective or inaccurate, such Foreign Lender shall promptly notify the Borrower and the Administrative Agent of such fact and the Foreign Lender will be entitled to withdraw or cancel any affected form or certificate, as applicable.

(g) Treatment of Certain Refunds. If the Administrative Agent or any Lender determines, in its sole discretion, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by a Loan Party or with respect to which a Loan Party has paid additional amounts pursuant to this Section, it shall pay to the Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Loan Party under this Section with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

**Section 3.02 Illegality.** If, on or after the date of this Agreement, the adoption of any applicable Law, or any change in any applicable Law, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or its Lending Office) with any request or directive (whether or not having the force of Law) of any such authority, central bank or comparable agency shall make it unlawful or impossible for any Lender (or its Lending Office) to maintain any of its Eurodollar Loans and such Lender shall so notify the Administrative Agent, the Administrative Agent shall forthwith give notice thereof to the other Lenders and the Borrower, whereupon, until such Lender notifies the Borrower and the Administrative Agent that the circumstances giving rise to such suspension no longer exist, the obligation of such Lender to convert outstanding Loans into Eurodollar Loans, shall be suspended. If such notice is given, each Eurodollar Loan of such Lender then outstanding shall be converted to a Base Rate Loan either (i) on the last day of the then current Interest Period applicable to such Eurodollar Loan, if such Lender may lawfully continue to maintain and fund such Loan to such day or (ii) immediately, if such Lender shall determine that it may not lawfully continue to maintain and fund such Loan to such day.

**Section 3.03 Inability to Determine Rates.** If on or prior to the first day of any Interest Period for any Eurodollar Loan:



(a) the Administrative Agent determines (which determination shall be conclusive) that by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the applicable Eurodollar Rate for such Interest Period; or

(b) the Required Lenders advise the Administrative Agent that the Eurodollar Rate as determined by the Administrative Agent will not adequately and fairly reflect the cost to such Lenders of maintaining their Eurodollar Loans for such Interest Period;

the Administrative Agent shall forthwith give notice thereof to the Borrower and the Lenders, whereupon, until the Administrative Agent notifies the Borrower that the circumstances giving rise to such suspension no longer exist, (i) the obligations of the Lenders to continue or convert outstanding Loans as or into Eurodollar Loans, shall be suspended and (ii) each outstanding Eurodollar Loan shall be converted into a Base Rate Loan on the last day of the then current Interest Period applicable thereto.

**Section 3.04 Increased Costs and Reduced Return; Capital Adequacy.**

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

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets held by, deposits with or for the account of, or credit extended or participated in by, any Lender (or its Lending Office) (except any reserve requirement which is reflected in the determination of the Adjusted Eurodollar Rate hereunder);

(ii) subject any Lender (or its Lending Office) to any tax of any kind whatsoever with respect to this Agreement or any Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for (x) Indemnified Taxes or Other Taxes indemnified under Section 3.01(c) and (y) the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender);

(iii) impose on any Lender (or its Lending Office) or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender (or its Lending Office) of maintaining any Loan or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Loans deemed made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's

holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section 3.04 and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delays in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section 3.04 for any increased costs incurred or reductions suffered more than 180 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

**Section 3.05 Compensation for Losses.** Promptly upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower to prepay, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or

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

excluding any loss of anticipated profits from maintaining such broken LIBOR contract and excluding any differential on an applicable margin on funds so redeployed but including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing. A certificate (with reasonable supporting detail) of any Lender setting forth any amount or amounts which such Lender is entitled to receive pursuant to this Section 3.05 shall be delivered to the Borrower and shall be conclusive absent manifest error; provided that the Borrower shall not be required to compensate such Lender pursuant to this Section 3.05 for any increased costs or reductions incurred more than 180 days prior to the date that such Lender notifies the Borrower in writing of the increased costs or reductions and of such Lender's intention to claim compensation thereof; provided further that, if the change in law giving rise to

such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

**Section 3.06 Base Rate Loans Substituted for Affected Eurodollar Loans.** If (a) the obligation of any Lender to continue or convert outstanding Loans as or to Eurodollar Loans has been suspended pursuant to Section 3.02 or (b) any Lender has demanded compensation under Section 3.01 or 3.04 with respect to its Eurodollar Loans, and in any such case the Borrower shall, by at least five Business Days' prior notice to such Lender through the Administrative Agent, have elected that the provisions of this Section 3.06 shall apply to such Lender, then, unless and until such Lender notifies the Borrower that the circumstances giving rise to such suspension or demand for compensation no longer exist, all Loans which would otherwise be continued as or converted to Eurodollar Loans shall instead be Base Rate Loans (on which interest and principal shall be payable contemporaneously with the related Eurodollar Loans of the other Lenders). If such Lender notifies the Borrower that the circumstances giving rise to such suspension or demand for compensation no longer exist, the principal amount of each such Base Rate Loan shall be converted into a Eurodollar Loan on the first day of the next succeeding Interest Period applicable to the related Eurodollar Loans of the other Lenders.

**Section 3.07 Mitigation Obligations; Replacement of Lenders.**

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

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

**Section 3.08 Survival.** All of the Borrower's obligations under this Article 3 shall survive repayment of all Senior Credit Obligations hereunder.

## ARTICLE 4 CONDITIONS PRECEDENT

**Section 4.01 Conditions to Closing Date.** The effectiveness of (x) this Agreement and (y) the deemed issuance of the Loans hereunder is subject to the satisfaction or waiver of the following conditions precedent:

(a) **Executed Loan Documents.** The Administrative Agent shall have received duly executed counterparts from each party thereto of: (i) this Agreement; (ii) the Term Notes; (iii) the Guaranty; (iv) the Security Agreement; (v) the Pledge Agreement; and (vi) each other Collateral Document required to be delivered prior to the Closing Date pursuant to Section 4.01 of the Security Agreement, each in form and substance reasonably satisfactory to the Administrative Agent.

(b) **Organization Documents.** After giving effect to the transactions contemplated hereby, the Administrative Agent shall have received: (i) a copy of the Organization Documents, including all amendments thereto, of each Loan Party, certified as of a recent date by the Secretary of State or other applicable Governmental Authority of its respective jurisdiction of organization; (ii) a certificate as to the good standing (or comparable status) of each Loan Party, as of a recent date, from the Secretary of State or other applicable Governmental Authority of its respective jurisdiction of organization; (iii) a certificate of the Secretary or Assistant Secretary of each Loan Party dated the Closing Date and certifying (A) that the Organization Documents of such Loan Party have not been amended since the date of the last amendment thereto shown on the certificate of good standing from its jurisdiction of organization furnished pursuant to clause (ii) above; (B) that attached thereto is a true and complete copy of the agreement of limited partnership, operating agreement or by-laws of such Loan Party, as applicable, as in effect on the Closing Date and at all times since a date prior to the date of the resolutions described in clause (C) below, (C) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors or other governing body of such Loan Party authorizing the execution, delivery and performance of the Loan Documents to which it is to be a party and, in the case of the Borrower, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect; and (D) as to the incumbency and specimen signature of each officer executing any Loan Document; and (E) a certificate of another officer as to the incumbency and specimen signature of the Secretary, Assistant Secretary or other Responsible Officer executing the certificate pursuant to clause (iii) above.

(c) **Officer's Certificates.** The Administrative Agent shall have received a certificate, dated the Closing Date and signed by a Responsible Officer of the Borrower, confirming compliance with the conditions precedent set forth in Section 4.01(n), Section 4.01(t) and Section 4.01(u).

(d) **Opinion of Counsel.** The Administrative Agent shall have received a favorable written opinion of Kirkland & Ellis LLP, counsel to the Loan Parties, addressed to the Administrative Agent, Collateral Agent and each Lender, dated the Closing Date, in form and substance reasonably satisfactory to the Administrative Agent.

(e) Perfection of Personal Property Security Interests and Pledges; Search Reports.  
The Collateral Agent shall have received:

- (i) a Perfection Certificate from each Loan Party;
  - (ii) appropriate financing statements (Form UCC-1 or such other financing statements or similar notices as shall be required by local Law) authenticated and authorized for filing under the UCC or other applicable local law of each jurisdiction in which the filing of a financing statement or giving of notice may be required, or reasonably requested by the Collateral Agent, to perfect the security interests intended to be created by the Collateral Documents;
  - (iii) copies of reports from an independent search service reasonably satisfactory to the Collateral Agent listing all effective financing statements, notices of tax or judgment liens or similar notices that name Holdings, the Borrower and any other Loan Party, as such (under its present organizational name and any previous organizational name), as debtor or seller that are filed in the jurisdictions referred to in clause (ii) above or in any other jurisdiction having files which must reasonably be searched in order to determine fully the existence of the UCC security interests, notices of the filing of federal tax Liens (filed pursuant to Section 6233 of the Code) or judgment Liens on any Collateral, together with copies of such financing statements, notices of tax or judgment Liens or similar notices (none of which shall cover the Collateral except (x) to the extent evidencing Permitted Liens, (y) for which the Collateral Agent shall have received termination statements (Form UCC-3 or such other termination statements as shall be required by local Law) authenticated and authorized for filing) or (z) if agreed by the Administrative Agent, to the extent evidencing Liens which shall be discharged pursuant to the terms of the Confirmation Order);
  - (iv) searches of ownership of intellectual property in the appropriate governmental offices and such patent, trademark and/or copyright filings as may be requested by the Collateral Agent to the extent necessary or reasonably advisable to perfect the Collateral Agent's security interest in intellectual property Collateral;
  - (v) evidence of the authorization of the filing of all UCC-1 filings to perfect the security interests intended to be created by the Collateral Documents; and
  - (vi) such other documentation required by the Collateral Agent to be satisfied, in its sole discretion, that the security interest intended to be created by the Collateral Documents is a perfected first-priority security interest in the Collateral.
- (f) Evidence of Insurance. The Collateral Agent shall have received copies of insurance policies or certificates of insurance of the Loan Parties and their Subsidiaries evidencing liability and casualty insurance meeting the requirements set forth in the Loan Documents, including, but not limited to, endorsements reasonably satisfactory to the Collateral Agent naming the Collateral Agent as additional insured or loss payee, as applicable, on behalf of the Lenders.

(g) Solvency Certificate. The Borrower shall have delivered or caused to be delivered to the Administrative Agent a solvency certificate from a Responsible Officer or chief accounting officer of the Borrower, substantially in the form of Exhibit K hereto and dated as of the Closing Date, setting forth the conclusions that, after giving effect to the consummation of the Transaction, the Loan Parties (on a consolidated basis) are Solvent.

(h) Financial Information. The Administrative Agent shall have received all financial statements and other reports required to be delivered by the Borrower pursuant to Sections 6.01(b), 6.01(c), 6.01(d) and 6.01(e) of the Debtor-in-Possession Credit Agreement within the time periods specified in such sections.

(i) Material Adverse Effect. Since December 30, 2012, there shall have been no event, effect or condition that, individually or in the aggregate, has had, or could reasonably be expected to have, a Material Adverse Effect (other than as customarily occurs as a result of events leading up to and following the commencement of the Cases and the continuation and prosecution thereof).

(j) Payment of Fees. All costs, fees and expenses due and payable to the Lenders, the Administrative Agent and the Collateral Agent on or before the Closing Date shall have been paid to the extent invoiced in reasonable detail.

(k) Counsel Fees. The Borrower shall have paid all reasonable fees, charges and disbursements of counsel to the Administrative Agent to the extent invoiced in reasonable detail prior to or on the Closing Date, plus to the extent submitted in writing to the Borrower prior to or on the Closing Date such additional amounts of fees, charges and disbursements as shall constitute the reasonable written estimate of such fees, charges and disbursements incurred or to be incurred by it prior to or on the Closing Date in connection with the facility contemplated hereunder, the preparation of the definitive documentation therefor and the other transactions contemplated hereby (provided that such estimate shall not thereafter preclude a final settling of accounts between the Group Companies and such counsel) directly to (i) Milbank, Tweed, Hadley & McCloy LLP, counsel to the Administrative Agent, and (ii) any special and local counsel to the Administrative Agent retained by or on behalf of the Administrative Agent in consultation with the Borrower in each jurisdiction or for each specialty which the Administrative Agent reasonably determine it to be necessary to retain such counsel.

(l) Margin Regulations. All Loans made by the Lenders to the Borrower shall be in full compliance with the Federal Reserve's Margin Regulations within the meaning of Regulation U.

(m) U.S. Patriot Act. At least two (2) Business Days prior to the Closing Date, each Loan Party shall have provided the documentation and other information to the Administrative Agent that is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the U.S. Patriot Act, to the extent such information was requested at least five (5) Business Days prior to the Closing Date.

(n) Confirmation Order; Plan of Reorganization.

(i) The Administrative Agent shall be satisfied with (A) the Plan of Reorganization and the Disclosure Statement and (B) the terms of the Confirmation Order.

(ii) The Confirmation Order shall have been entered in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, any applicable orders of the Bankruptcy Court and any applicable local rules.

(iii) The Confirmation Order shall be in full force and effect and shall not, without the consent of the Administrative Agent, have been stayed, reversed, modified or amended, shall not be subject to a motion to stay, and shall be final and non-appealable.

(iv) All conditions to the effectiveness of the Plan of Reorganization shall have been satisfied or waived (the waiver thereof having been approved by the Administrative Agent) and the Consummation of the Plan of Reorganization in accordance with its terms shall occur on the Closing Date substantially simultaneously with the deemed making of the Loans pursuant to Section 2.01.

(o) Cash Balance; Outstanding Indebtedness. On the Closing Date, immediately after giving effect to the Consummation of the Plan of Reorganization and the deemed making of the Loans on the Closing Date pursuant to Section 2.01 contemplated hereby, (i) Holdings, the Borrower and its Subsidiaries shall have, on a consolidated basis, not less than \$5,000,000 of unrestricted (other than Liens granted under the Loan Documents) cash and Cash Equivalents and (ii) Holdings, the Borrower and its Subsidiaries shall have outstanding no Indebtedness or Preferred Stock other than Indebtedness outstanding or permitted under this Agreement.

(p) Government Approvals. All governmental and third party approvals required in respect of the Transaction shall have been obtained, and there shall be no litigation, governmental, administrative or judicial action that could reasonably be expected to restrain, prevent or impose burdensome restrictions on the reorganization contemplated by the Plan of Reorganization, the Loans or the rights and remedies of the Lenders under the Loan Documents.

(q) Debtor-in-Possession Credit Agreement; Prepetition Credit Agreement. The Administration Agent and the Required Lenders shall be satisfied that all accrued and unpaid interest, all fees, expenses (including all fees, charges and disbursements of counsel to the administrative agent and the lenders thereunder), indemnification amounts and any other amounts outstanding under the Debtor-In-Possession Credit Agreement shall have been paid in full. Arrangements reasonably satisfactory to the Administrative Agent shall have been made for the termination of all Liens granted in connection with the Debtor-in-Possession Credit Agreement and the Prepetition Credit Agreement.

(r) Funds Flow. The Required Lenders and the Administrative Agent shall be satisfied with the flow of funds to occur on the Closing Date.

(s) No New Information. None of the Required Lenders or the Administrative Agent shall have become aware after the Petition Date of any information or other matters affecting the Borrower and its Subsidiaries or the Transactions which is inconsistent in a material and adverse way with the information or other matters, taken as a whole, disclosed prior to January 1, 2013.

(t) Representations and Warranties. The representations and warranties of Holdings and the Borrower contained in Article 5 of this Agreement and of Holdings, the Borrower and all other Loan Parties in any other Loan Document, or which are contained in any Compliance Certificate furnished at any time under or in connection herewith, shall be (i) in the case of representations and warranties qualified by “materiality,” “Material Adverse Effect” or similar language, true and correct in all respects and (ii) in the case of all other representations and warranties, true and correct in all material respects, in each case on and as of the Closing Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct on the basis set forth above as of such earlier date.

(u) No Default. No Default or Event of Default shall exist or would result from the deemed making of the Loans or from the application of the proceeds thereof.

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES**

Each of Holdings and the Borrower represents and warrants to the Administrative Agent and the Lenders that on and as of the Closing Date and after giving effect to the deemed making of the Loans on the Closing Date:

**Section 5.01 Existence, Qualification and Power; Compliance with Laws.** Each Group Company (a) is duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization (b) has all requisite corporate or other organizational power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and is licensed and in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license, and (d) is in compliance with all Laws (including, without limitation, the U.S. Patriot Act), except in any case referred to in clause (b)(i), (c) or (d), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

**Section 5.02 Authorization; No Contravention.** The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party have been duly authorized by all necessary corporate, partnership, limited liability company or other organizational action, and do not and will not (a) contravene the terms of any of such Person’s Organization Documents, (b) conflict with or result in any breach or contravention of, or the creation of any Lien (other than Permitted Liens) under, any Contractual Obligation to which such Person is a party or any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject except in any case that such conflict, breach or contravention would not reasonably be expected individually or in the aggregate to have a Material Adverse Effect or (c) violate any Law, except in any case for such violations could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

**Section 5.03 Governmental Authorization; Other Consents.** No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental



Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document to which it is a party.

**Section 5.04 Binding Effect.** This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except (a) as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and (b) that rights of acceleration and the availability of equitable remedies may be limited by equitable principles of general applicability (regardless of whether enforcement is sought by proceedings in equity or at law).

**Section 5.05 Financial Condition; No Material Adverse Effect.**

(a) **Audited Financial Statements.** The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein and (ii) fairly present in all material respects the financial condition of the Borrower as of the date thereof and its results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein.

(b) **Interim Financial Statements.** The unaudited balance sheet of the Borrower as of [\_\_\_\_], 2014, and the related statement of income for the [\_\_]-week period then ended, copies of which have been delivered to each of the Lenders, fairly present in all material respects, in conformity with GAAP applied on a basis consistent with the financial statements referred to in subsection (a) of this Section 5.05 (except for the absence of footnotes and normal year-end audit adjustments), the financial position of the Borrower as of such date and its results of operations for such period (subject to normal year-end audit adjustments).

(c) **Material Adverse Change.** Since January 1, 2013, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect (other than as customarily occurs as a result of events leading up to and following the commencement of the Cases and the continuation and prosecution thereof).

(d) **Projections.** As of the Closing Date, the projections prepared as part of, and included in, the Pre-Closing Information (which include projected balance sheets and income and cash flow statements on an annual basis for the period from the Closing Date through the calendar year ending [\_\_\_\_]) have been prepared in good faith and based upon assumptions believed to be reasonable at the time made, it being recognized by the Lenders, however, that projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by such projections may differ from the projected results and that such differences may be material.

**Section 5.06 Litigation.** Except as specifically disclosed in Schedule 5.06, there are no actions, suits, investigations or legal, equitable, arbitration or administrative proceedings pending or, to the knowledge of any Loan Party, threatened against or affecting any Group Company in which there is a reasonable possibility of an adverse decision that would reasonably be expected to result in a Material Adverse Effect.

**Section 5.07 No Default.** No Group Company is in default under or with respect to any Contractual Obligation that could reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement.

**Section 5.08 Ownership of Property; Liens.** The Group Companies, in the aggregate, have good and marketable title to, or valid leasehold interests or license in, all its properties and assets, except for Permitted Liens and minor defects in title that do not interfere with its ability to conduct its business as currently conducted and to the extent that would not reasonably be expected to result in a Material Adverse Effect.

**Section 5.09 Environmental Compliance.** No Group Company has failed to comply with any Environmental Law or to obtain, maintain, or comply with any permit, license or other approval required under any Environmental Law or is subject to any Environmental Liability in any case which, individually or collectively, could reasonably be expected to result in a Material Adverse Effect or has received written notice of any claim with respect to any Environmental Liability the subject of which notice could reasonably be expected to have a Material Adverse Effect, and no Group Company knows of any basis for any Environmental Liability against any Group Company that would reasonably be expected to have a Material Adverse Effect.

**Section 5.10 Insurance.** The properties of each Group Company are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts (after giving effect to any self-insurance compatible with the following standards), with such deductibles and covering such risks as are prudent in the reasonable business judgment of the Borrower's officers.

**Section 5.11 Taxes.**

(a) Each Group Company has filed, or caused to be filed, all federal and material state, local and foreign tax returns required to be filed and paid (i) all amounts of taxes shown thereon to be due (including interest and penalties) and (ii) all other material taxes, fees, assessments and other governmental charges (including mortgage recording taxes, documentary stamp taxes and intangible taxes) owing by it, except for such taxes (A) which are not yet delinquent, (B) that are being contested in good faith and by proper proceedings diligently pursued, and against which adequate reserves are being maintained in accordance with GAAP or (C) the failure to pay would not reasonably be expected to result in a Material Adverse Effect. No Loan Party knows of any pending investigation of such party by any taxing authority or proposed tax assessments against any Group Company that would, if made, have a Material Adverse Effect. All amounts have been withheld by each Group Company from their respective employees for all periods in compliance with the tax, social security and unemployment withholding provisions of the applicable law and such withholdings have been timely paid to the

respective Governmental Authorities, except to the extent that the failure to withhold and pay would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) No Group Company has ever “participated” in a “listed transaction” within the meaning of Treasury Regulation Section 1.6011-4, except as would not reasonably be expected to have, in any case, individually or in the aggregate, a Material Adverse Effect.

**Section 5.12 ERISA; Foreign Pension Plans; Employee Benefit Arrangements.**

Except as disclosed in Schedule 5.12:

(a) ERISA. (i) There are no Unfunded Liabilities in excess of the Threshold Amount (A) with respect to any member of the Group Companies and (B) except as would not reasonably be expected to have a Material Adverse Effect, with respect to any ERISA Affiliate.

(ii) Each Plan, other than a Multiemployer Plan, complies in all respects with the applicable requirements of ERISA and the Code, and each Group Company complies in all respects with the applicable requirements of ERISA and the Code with respect to all Multiemployer Plans to which it contributes and all Employee Benefit Arrangements, except to the extent that the failure to comply therewith would not reasonably be expected to have a Material Adverse Effect.

(iii) Except as would not reasonably be expected to have a Material Adverse Effect, no ERISA Event has occurred or, subject to the passage of time, is reasonably expected to occur with respect to any Plan maintained by any member of the Group Companies and, except to the extent that such ERISA Event would not reasonably be expected to have a Material Adverse Effect, no ERISA Event has occurred or, subject to the passage of time, is reasonably expected to occur with respect to any Plan maintained by an ERISA Affiliate.

(iv) Except as would not reasonably be expected to have a Material Adverse Effect, no Group Company: (A) is or has been within the last six years a party to any Multiemployer Plan; or (B) has completely or partially withdrawn from any Multiemployer Plan.

(v) If any Group Company or any ERISA Affiliate were to incur a complete withdrawal (as described in Section 4203 of ERISA) from any Multiemployer Plan as of the Closing Date, the aggregate withdrawal liability, as determined under Section 4201 of ERISA, with respect to all such Multiemployer Plans would not exceed an amount that would reasonably be expected to have a Material Adverse Effect.

(vi) No Group Company has any contingent liability with respect to any post-retirement benefit under a Welfare Plan that would reasonably be expected to have a Material Adverse Effect.

(b) Foreign Pension Plans. Each Foreign Pension Plan has been maintained in material compliance with its terms and with the requirements of any and all applicable Laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing

with applicable regulatory authorities except to the extent that the failure to comply therewith would not reasonably be expected to have a Material Adverse Effect. No Group Company has incurred any obligation in an amount that would reasonably be expected to have a Material Adverse Effect in connection with the termination of or withdrawal from any Foreign Pension Plan.

(c) Employee Benefit Arrangements. (i) All liabilities under the Employee Benefit Arrangements are (A) funded to at least the minimum level required by Law or, if higher, to the level required by the terms governing the Employee Benefit Arrangements, (B) insured with a reputable insurance company, (C) provided for or recognized in the financial statements most recently delivered to the Administrative Agent pursuant to Section 6.01 hereof or (D) estimated in the formal notes to the financial statements most recently delivered to the Administrative Agent pursuant to Section 6.01 hereof, where such failure to fund, insure, provide for, recognize or estimate the liabilities arising under such arrangements could reasonably be expected to have a Material Adverse Effect.

(ii) There are no circumstances which may give rise to a liability in relation to the Employee Benefit Arrangements which are not funded, insured, provided for, recognized or estimated in the manner described in clause (i) above and which could reasonably be expected to have a Material Adverse Effect.

(iii) Each Group Company is in compliance with all applicable Laws, trust documentation and contracts relating to the Employee Benefit Arrangements, except as would not be expected to have a Material Adverse Effect.

**Section 5.13 Subsidiaries; Equity Interests.** Schedule 5.13 sets forth a complete and accurate list as of the Closing Date (giving effect to the Consummation of the Plan of Reorganization) of all Subsidiaries of Holdings. Schedule 5.13 sets forth as of the Closing Date (giving effect to the Consummation of the Plan of Reorganization) the jurisdiction of formation of each such Subsidiary. All the outstanding Equity Interests of each Subsidiary of Holdings are validly issued, fully paid and non-assessable (to the extent applicable) and were not issued in violation of the preemptive rights of any shareholder and, as of the Closing Date (giving effect to the Consummation of the Plan of Reorganization), those owned by Holdings, directly or indirectly, are free and clear of all Liens (other than those arising under the Collateral Documents and nonconsensual Liens permitted under Section 7.02).

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

(a) No Group Company is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying "margin stock" within the meaning of Regulation U. No part of the proceeds of the Loans will be used, directly or indirectly, for the purpose of purchasing or carrying any "margin stock" within the meaning of and in violation of Regulation U. If requested by any Lender or the Administrative Agent, Holdings and the Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form U-1 referred to in Regulation U. No indebtedness being reduced or retired out of the proceeds of the Loans was or will be incurred for the purpose of purchasing or carrying any margin stock within the meaning

of Regulation U or any “margin security” within the meaning of Regulation T. “Margin stock” within the meaning of Regulation U does not constitute more than 25% of the value of the consolidated assets of Holdings and its Consolidated Subsidiaries. None of the transactions contemplated by this Agreement (including the direct or indirect use of the proceeds of the Loans) will violate or result in a violation of the Securities Act, the Exchange Act or Regulation T, U or X.

(b) None of the Group Companies is subject to regulation under the Investment Company Act of 1940, each as amended. In addition, none of the Group Companies is (i) an “investment company” registered or required to be registered under the Investment Company Act of 1940, as amended, or (ii) controlled by such a company.

**Section 5.15 Disclosure.** No report, financial statement, certificate or other information (other than general market data not prepared by, or specific to, the Group Companies, forecasted budgets and projections) furnished concerning or affecting any Group Company by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished), when taken as a whole, contains as of the date furnished any material misstatement of a material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading in light of the circumstances under which they were made; *provided that*, with respect to projected financial information, Holdings and the Borrower represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time made (it being understood and agreed that projections as to future events are not to be viewed as facts or guaranties of future performance, that actual results during the period or periods covered by such projections may differ from the projected results and that such differences may be material and that the Loan Parties make no representation that such projections will in fact be realized).

**Section 5.16 Compliance with Law.** Each Group Company is in compliance with all requirements of Law (including Environmental Laws) applicable to it or to its properties, except for any such failure to comply which could not reasonably be expected to cause a Material Adverse Effect. To the knowledge of the Loan Parties, none of the Group Companies or any of their respective material properties or assets is subject to or in default with respect to any judgment, writ, injunction, decree or order of any court or other Governmental Authority which, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. As of the Closing Date, except as disclosed in Schedule 5.16, none of the Group Companies has received any written communication from any Governmental Authority that alleges that any of the Group Companies is not in compliance in any material respect with any Law, except for allegations that have been satisfactorily resolved and are no longer outstanding or which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

**Section 5.17 Intellectual Property.** Except as set forth on Schedule 5.17, each Group Company owns, or possesses the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other rights that are reasonably necessary for the operation of its respective business, without conflict with the rights of any other

Person except for those conflicts which could not reasonably be expected to have a Material Adverse Effect.

**Section 5.18 Purpose of Loans.** The purpose of the Loans deemed made on the Closing Date pursuant to Section 2.01 is to refinance the DIP Facility Loans.

**Section 5.19 Solvency.** The Loan Parties (on a consolidated basis) are and, after consummation of the Transaction and the financings related thereto, will be Solvent.

**Section 5.20 Collateral Documents.**

(a) **Article 9 Collateral.** Each of the Security Agreement and the Pledge Agreement is effective to create in favor of the Collateral Agent, for the ratable benefit of the Finance Parties, a legal, valid and enforceable security interest in the Collateral described therein and, when financing statements in appropriate form are filed in the offices specified on Schedule 4.01 to the Security Agreement and the Pledged Collateral is delivered to the Collateral Agent, each of the Security Agreement and the Pledge Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the grantors thereunder in such of the Collateral in which a security interest can be perfected under Article 9 of the UCC by filing or by possession or control thereof, in each case superior in right to any other Person, other than with respect to Permitted Liens, and except for certain items of Collateral with respect to which such Lien may be perfected only by possession or control thereof and the failure of the Collateral Agent to have possession or control thereof is expressly permitted pursuant to the Security Agreement and/or Pledge Agreement or any other Loan Document, as applicable.

(b) **Intellectual Property.** When financing statements in the appropriate form are filed in the offices specified on Schedule 4.01 to the Security Agreement, the Assignment of Patents and Trademarks, substantially in the form of Exhibit A to the Security Agreement, is filed in the United States Patent and Trademark Office and the Assignment of Copyrights, substantially in the form of Exhibit B to the Security Agreement, is filed in the United States Copyright Office, then to the extent that Liens and security interests may be perfected by such filings, the Security Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the grantors thereunder in the United States patents, trademarks, copyrights, licenses and other intellectual property rights covered in such assignments, in each case prior and superior in right to any other Person (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a Lien on registered trademarks, trademark applications and copyrights acquired by the Loan Parties after the Closing Date).

(c) **Status of Liens.** The Collateral Agent, for the ratable benefit of the Finance Parties, will at all times have the Liens provided for in the Collateral Documents and, subject to the filing by the Collateral Agent of continuation statements to the extent required by the UCC and to the qualifications and limitations set forth in clauses (a) and (b) above, the Collateral Documents will at all times constitute valid and continuing liens of record and first priority perfected security interests in all the Collateral referred to therein, except as priority may be affected by Permitted Liens.

**Section 5.21 Ownership of Securities of the Borrower.** Holdings owns good, valid and marketable title to all the outstanding common stock of the Borrower, free and clear of all Liens of every kind, whether absolute, matured, contingent or otherwise, other than those arising under the Collateral Documents and Permitted Liens described in clause (c) or (o) of Section 7.02. Except as set forth on Schedule 5.21, as of the Closing Date there are no shareholder agreements or other agreements pertaining to Holdings' beneficial ownership of the common stock of the Borrower, including any agreement that would restrict Holdings' right to dispose of such common stock and/or its right to vote such common stock.

**Section 5.22 Anti-Corruption Laws.** None of the Borrower or Guarantors or, to the knowledge of each such Borrower or Guarantor, any of its directors, officers, employees, agents or Subsidiaries is subject to any sanctions or economic embargoes administered or enforced by the U.S. Department of State or the Office of Foreign Asset Control of the U.S. Department of Treasury (collectively, "Sanctions", and the associated laws, rules, regulations and orders, collectively, "Sanctions Laws"), except to the extent that being subject to such Sanctions would both not (1) reasonably be expected to have a Material Adverse Effect and (2) reasonably be expected to result in any Lender or Agent violating any Sanctions Laws. Each of the Borrower and Guarantors and, to the knowledge of such Borrower and Guarantors, its directors, officers, employees, agents and Subsidiaries is in compliance with (i) all Sanctions Laws, (ii) the United States Foreign Corrupt Practices Act of 1977, as amended, and any other applicable anti-bribery or anti-corruption laws, rules, regulations and orders (collectively, "Anti-Corruption Laws") and (iii) the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001) the "Patriot Act") and any other applicable terrorism and money laundering laws, rules, regulations and orders (collectively, "Anti-Money Laundering Laws"), except in each case to the extent that such non-compliance therewith would not (1) reasonably be expected to have a Material Adverse Effect and (2) reasonably be expected to result in any Lender or Agent violating any such Sanctions Laws, Anti-Corruption Laws or Anti-Money Laundering Laws. No part of the proceeds of the loans made under the Debtor-In-Possession Credit Agreement, or the Loans deemed made hereunder, will be used by any Loan Party, directly or indirectly, (A) for the purpose of funding, financing or facilitating any activities or business of or with, or making any payments to, any Person or in any country or territory in violation of any Sanctions Law or (B) for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of any Anti-Corruption Law, except in each case to the extent that such use would not (1) reasonably be expected to have a Material Adverse Effect and (2) reasonably be expected to result in any Lender or Agent violating any Sanctions Laws, Anti-Corruption Laws or Anti-Money Laundering Laws.

## **ARTICLE 6 AFFIRMATIVE COVENANTS**

Each of Holdings and the Borrower agrees that so long as any Senior Credit Obligation or other amount payable hereunder or under any Term Note or other Loan Document (in each case other than contingent indemnification obligations) remains unpaid:

**Section 6.01 Financial Statements.** The Borrower will deliver to the Administrative Agent for further distribution to each Lender (or directly to each Lender at any time when there is not an incumbent Administrative Agent):

(a) **Annual Financial Statements.** (i) Not later than May 31, 2014 with respect to the Borrower's fiscal year ending December 29, 2013, (ii) within 120 days after the end of the Borrower's fiscal year ending December [28], 2014 and (ii) within 90 days after the end of each subsequent fiscal year of the Borrower, a consolidated balance sheet of Holdings and its Consolidated Subsidiaries as of the end of such fiscal year, the related consolidated statements of operations and shareholders' equity and a consolidated statement of cash flows for such fiscal year, setting forth in each case in comparative form the consolidated figures for the preceding fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of a "Big Four" accounting firm or other Registered Public Accounting Firm of nationally recognized standing reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and, except with respect to such report and opinion delivered in relation to the Borrower's fiscal year ending December 29, 2013, shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit.

(b) **Interim Financial Statements.** (i) Within 50 days after the end of the first three fiscal quarters of the Borrower (commencing with the fiscal quarter ending [\_\_\_\_], 2014) and (ii) within 45 days after the end of each fiscal month (commencing with the fiscal month of [\_\_\_\_] 2014) which does not coincide with the end of a fiscal quarter of Holdings, a consolidated balance sheet of Holdings and its Consolidated Subsidiaries as of the end of such period, together with related consolidated statements of operations and a consolidated statement of cash flows for such period and the then elapsed portion of such fiscal year, setting forth for all periods in comparative form the consolidated figures for the corresponding periods of the preceding fiscal year, all in reasonable detail, certified by a Responsible Officer of the Borrower as fairly presenting, in all material respects, the financial condition, results of operations and cash flows of Holdings and its Consolidated Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes [(it being understood that the fiscal months of [\_\_\_\_] and [\_\_\_\_] of the Borrower's 2014 fiscal year may be subject to any further adjustments arising from Fresh Start Reporting)].

(c) **Forecasts.** Not later than 60 days after the commencement of each fiscal year of the Borrower (commencing with the fiscal year commencing December [29] 2014), forecasts prepared by management of the Borrower, in form reasonably satisfactory to the Administrative Agent and the Required Lenders, of consolidated balance sheets and statements of income or operations and cash flows of Holdings and its Consolidated Subsidiaries, which forecasts shall be presented on an annual basis for the then current fiscal year.

**Section 6.02 Certificates; Other Information.** The Borrower will deliver to the Administrative Agent for further distribution to each Lender (or directly to each Lender at any time when there is not an incumbent Administrative Agent):

(a) [Reserved].



(b) Compliance Certificate. At the time of (x) each delivery of financial statements provided for in Section 6.01(a) and (y) each delivery of financial statements provided for in Section 6.01(b) above coinciding with the end of each fiscal quarter of Holdings (commencing, in the case of this clause (y), with the delivery of the financial statements for the fiscal quarter ending [\_\_\_\_\_, \_\_\_\_]), (i) a duly completed Compliance Certificate signed by a Responsible Officer of Holdings (A) stating that no Default or Event of Default exists, or if any Event of Default does exist, specifying the nature and extent thereof and what action the Borrower proposes to take with respect thereto and (B) stating whether, since the date of the most recent financial statements delivered hereunder, there has been any material change in the GAAP applied in the preparation of the financial statements of Holdings and its Consolidated Subsidiaries, and, if so, describing such change, and (ii) a report setting forth the results of such operations, including a discussion and analysis of such results for such fiscal quarter and the then elapsed portion of the year as compared to the comparable periods in the previous year, in a format consistent with such reports delivered prior to the Closing Date pursuant to the Debtor-in-Possession Credit Agreement.

(c) Auditor's Reports. Promptly after any request by the Administrative Agent (or by any Lender communicated through the Administrative Agent), copies of any final detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Group Company by independent accountants in connection with the accounts or books of any Group Company, or any audit of any of them.

(d) Reports to Holders of Debt Securities. Promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities or other Indebtedness in excess of the Threshold Amount of any Group Company pursuant to any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02.

(e) [Reserved].

(f) ERISA Reports. Promptly upon request by the Administrative Agent, the most recently prepared actuarial reports in relation to any Plan or Foreign Pension Plan for the time being operated by Group Companies which are prepared in order to comply with the then current statutory or auditing requirements within the relevant jurisdiction. Promptly upon request, the Borrower shall also furnish the Administrative Agent and the Lenders with such additional information concerning any Plan, Foreign Pension Plan or Employee Benefit Arrangement as may be reasonably requested, including, but not limited to, with respect to any Plans, copies of each annual report/return (Form 5500 series), as well as all schedules and attachments thereto required to be filed with the Department of Labor and/or the Internal Revenue Service pursuant to ERISA and the Code, respectively, for each "plan year" (within the meaning of Section 3(39) of ERISA).

(g) Additional Patents, Trademarks and Copyrights. At the time of delivery of the financial statements and reports provided for in Section 6.01(a), a report signed by a Responsible Officer of the Borrower setting forth (i) a list of registration numbers for all patents, trademarks, service marks, tradenames and copyrights awarded to any Group Company since the last day of the immediately preceding fiscal year of the Borrower and (ii) a list of all patent applications,

trademark applications, service mark applications, trade name applications and copyright applications submitted by any Group Company since the last day of the immediately preceding fiscal year and the status of each such application, all in such form as shall be reasonably satisfactory to the Administrative Agent.

(h) Domestication in Other Jurisdiction. Not less than 30 days after any change in the jurisdiction of organization of any Loan Party, a copy of all documents and certificates intended to be filed or otherwise executed to effect such change.

(i) Maintenance of Ratings. If requested by the Required Lenders, the Borrower shall use its reasonable best efforts to secure, and thereafter maintain, ratings with respect to the Loans from Moody's and S&P.

(j) Other Information. Promptly following a request therefor, such other information regarding the business, properties or financial condition of any Group Company as the Administrative Agent or any Lender may reasonably request, which may include such information as any Lender may reasonably determine is necessary or advisable to enable it either (i) to comply with the policies and procedures adopted by it and its Affiliates to comply with the Bank Secrecy Act, the U.S. Patriot Act and all applicable regulations thereunder or (ii) to respond to requests for information concerning Holdings and its Subsidiaries from any governmental, self-regulatory organization or financial institution in connection with its anti-money laundering and anti-terrorism regulatory requirements or its compliance procedures under the U.S. Patriot Act, including in each case information concerning the Borrower's direct and indirect shareholders.

Documents required to be delivered pursuant to Section 6.01 or Section 6.02 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or Intranet website, if any, to which the Administrative Agent has access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) the Borrower shall deliver copies (which may be electronic) of such documents to the Administrative Agent or any Lender which so requests until a written request to cease delivering copies is given by the Administrative Agent or such Lender and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent (and each Lender if there is at the time no incumbent Administrative Agent) of the posting of any such documents. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents. Furthermore, if any financial statement, certificate or other information required to be delivered pursuant to Section 6.01 or Section 6.02 shall be required to be delivered on any date that is not a Business Day, such financial statement, certificate or other information may be delivered to the Administrative Agent on the next succeeding Business Day after such date.

Each of Holdings and the Borrower hereby acknowledges that (i) the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of Holdings and the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (ii) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to Holdings, the Borrower or their respective securities) (each, a "Public Lender"). Each of Holdings and the Borrower hereby agrees that so long as Holdings or the Borrower is the issuer of any outstanding debt or equity securities that are issued pursuant to a public offering registered with the SEC or in a private placement for resale pursuant to Rule 144A under the Securities Laws or is actively contemplating issuing any such securities: (i) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (ii) by marking Borrower Materials "PUBLIC," each of Holdings and the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to Holdings or the Borrower or its or their securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (iii) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor"; and (iv) the Administrative Agent shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor". Notwithstanding the foregoing, Holdings and the Borrower shall be under no obligation to mark any Borrower Materials "PUBLIC."

**Section 6.03 Notices.** The Borrower will promptly notify the Administrative Agent (and each Lender if there is then no incumbent Administrative Agent), and the Administrative Agent will in turn notify the Lenders:

- (a) of the occurrence of any Default or Event of Default;
- (b) of (i) any breach or non-performance of, or any default under, any material Contractual Obligation of the Borrower or any of its Subsidiaries, (ii) any dispute, litigation, investigation, proceeding or suspension between the Borrower or any of its Subsidiaries and any Governmental Authority, (iii) the commencement of, or any material adverse development in, any litigation or proceeding affecting Holdings, the Borrower or any of its Subsidiaries, including pursuant to any applicable Environmental Law, (iv) any litigation, investigation or proceeding affecting any Loan Party, (v) and any other matter, event or circumstance, in each case of subclauses (i) through (v) to the extent that the same have resulted or could reasonably be expected to result in a Material Adverse Effect;
- (c) of the occurrence of any ERISA Event to the extent that such ERISA Event has resulted or could reasonably be expected to result in a liability of a Group Company in excess of \$1,000,000; and
- (d) of any material change in accounting policies or financial reporting practice by Holdings or any of its Subsidiaries.

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

**Section 6.04 Payment of Obligations.** Each of the Group Companies will pay and discharge all material taxes, assessments and other governmental charges or levies imposed upon it, or upon its income or profits, or upon any of its properties, before they shall become more than 90 days delinquent; provided, however, that no Group Company shall be required to pay any such tax, assessment, charge, levy, claim or Indebtedness (a) which is being contested in good faith by appropriate proceedings and as to which adequate reserves have been established in accordance with GAAP or (b) the failure to make any such payment could not reasonably be expected to have a Material Adverse Effect.

**Section 6.05 Preservation of Existence Etc.** Except as a result of or in connection with a dissolution, merger or disposition of a Subsidiary of the Borrower permitted under Section 7.04 or Section 7.05, each Group Company will: (a) preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary in the normal conduct of its business, except in the case of clause (a) or (b) to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

**Section 6.06 Maintenance of Properties.** Each Group Company will: (a) maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear and Casualty and Condemnation excepted; and (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

**Section 6.07 Maintenance of Insurance; Certain Proceeds.**

(a) **Insurance Policies.** Each of the Group Companies will at all times maintain in full force and effect insurance (including worker's compensation insurance, liability insurance, casualty insurance and business interruption insurance) in such amounts, covering such risk and liabilities and with such deductibles or self-insurance retentions as are prudent in the good faith judgment of the officers of the Borrower. The Collateral Agent, shall be named as loss payees or mortgagees, as its interest may appear, with respect to all such property and casualty policies and additional insured with respect to all business interruption or liability policies (other than worker's compensation, director and officer liability or other policies in which such endorsements are not customary), and each provider of any such insurance shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Collateral Agent, that if the insurance carrier shall have received written notice from the Collateral Agent of the occurrence and continuance of an Event of Default, the insurance carrier

shall pay all proceeds otherwise payable to the Borrower or one or more of its Subsidiaries under such policies directly to the Collateral Agent and that it will give the Collateral Agent 10 days' prior written notice before any such policy or policies shall be altered or canceled, and that no act or default of any Group Company or any other Person shall affect the rights of the Collateral Agent or the Lenders under such policy or policies.

(b) Loss Events. In case of any Casualty or Condemnation with respect to any property of any Group Company or any part thereof having a fair market value in excess of the Threshold Amount, the Borrower shall promptly give written notice thereof to the Administrative Agent generally describing the nature and extent of such damage, destruction or taking.

**Section 6.08 Compliance with Laws.** Each of the Group Companies will comply with all requirements of Law (including all Environmental Laws) applicable to it and its properties to the extent that noncompliance with any such requirement of Law would reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, each of the Group Companies will do each of the following as it relates to any Plan maintained by, or Multiemployer Plan contributed to by, each of the Group Companies, Foreign Pension Plan or Employee Benefit Arrangement except to the extent that any failure to comply with clauses (a) through (e) below would not reasonably be expected to result in a Material Adverse Effect: (a) maintain each Plan (other than a Multiemployer Plan), Foreign Pension Plan and Employee Benefit Arrangement in compliance in all respects with the applicable provisions of ERISA, the Code or other Federal, state or foreign Law; (b) cause each Plan (other than a Multiemployer Plan) that is qualified under Section 401(a) of the Code to maintain such qualifications; (c) make all required contributions to any Plan subject to Section 412 of the Code and make all required contributions to Multiemployer Plans; (d) ensure that there are no Unfunded Liabilities in excess of the Threshold Amount unless the aggregate amount of such Unfunded Liabilities is reduced below the Threshold Amount within a 30-day period; and (e) make all contributions (including any special payments to amortize any Unfunded Liabilities) required to be made in accordance with all applicable laws and the terms of each Foreign Pension Plan in a timely manner.

**Section 6.09 Books and Records.** Each of the Group Companies will keep books and records of its transactions that are complete and accurate in all material respects in accordance with GAAP (including the establishment and maintenance of appropriate reserves).

**Section 6.10 Inspection Rights.** Each of the Group Companies will (but, if no Default or Event of Default shall have occurred and be continuing, not more often than twice per fiscal year at the Borrower's expense) permit representatives and independent contractors of the Administrative Agent and the Lenders to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (and each Loan Party hereby authorizes, and each of Holdings and the Borrower shall cause each other Group Company which is not a Loan Party to authorize, such independent accountants to discuss its affairs, finances and accounts with the Administrative Agent or any representative or independent contractor thereof; *provided* that a representative of such or any other Loan Party has been given the opportunity to be present), all at such reasonable times during normal business hours and as often as may be reasonably desired, upon two (2) Business

Days' advance notice to the Borrower; *provided, however*, that when an Event of Default exists the Administrative Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice.

**Section 6.11 [Reserved].**

**Section 6.12 Additional Loan Parties; Additional Security.**

(a) Additional Subsidiary Guarantors. The Borrower will take, and will cause each of its Subsidiaries (other than Foreign Subsidiaries and Permitted Joint Ventures) to take, such actions from time to time as shall be necessary to ensure that all Subsidiaries of the Borrower (other than such Foreign Subsidiaries and Permitted Joint Ventures) are Subsidiary Guarantors. Without limiting the generality of the foregoing, if any Group Company shall form or acquire any new Subsidiary, the Borrower, as soon as practicable and in any event within 30 days after such formation or acquisition, will provide the Collateral Agent with notice of such formation or acquisition setting forth in reasonable detail a description of all of the assets of such new Subsidiary and will cause such new Subsidiary (other than any such Foreign Subsidiary or Permitted Joint Venture) to:

(i) within 30 days after such formation or acquisition, execute an Accession Agreement pursuant to which such new Subsidiary shall agree to become a "Guarantor" under the Subsidiary Guaranty, a "Loan Party" under the Security Agreement and a "Loan Party" under the Pledge Agreement and/or an obligor under such other Collateral Documents as may be applicable to such new Subsidiary; and

(ii) deliver such proof of organizational authority, incumbency of officers, opinions of counsel and other documents as is consistent with those delivered by each Loan Party pursuant to Section 4.01 on the Closing Date or as the Administrative Agent or the Collateral Agent shall have reasonably requested.

(b) Additional Security. The Borrower will cause, and will cause each of its Subsidiaries (other than Foreign Subsidiaries and Permitted Joint Ventures) to cause, all of its owned Real Properties with a fair market value in excess of \$2,000,000 hereafter acquired and all or substantially all personal property located in the United States to be subject at all times to perfected and, in the case of owned Real Property, title insured Liens in favor of the Collateral Agent pursuant to the Collateral Documents or such other security agreements, pledge agreements, mortgages or similar collateral documents as the Collateral Agent shall request in its sole reasonable discretion (collectively, the "Additional Collateral Documents"). With respect to any owned Real Property having a fair market value in excess of \$2,000,000 acquired by any Loan Party subsequent to the Closing Date, such Person will cause to be delivered to the Collateral Agent with respect to such Real Property mortgages, deeds of trust or other appropriate instruments under applicable law sufficient to create a mortgage, deed of trust or similar Lien of record on such Real Property and including landlords' consents and estoppels, ALTA or other appropriate forms of mortgagee title insurance policies, maps or plats of survey, flood insurance certificates and other instruments, certificates and documents, as are in form and substance reasonably satisfactory to the Collateral Agent. In furtherance of the foregoing terms

of this Section 6.12, the Borrower agrees to promptly provide the Administrative Agent with written notice of the acquisition by the Borrower or any of its Subsidiaries (other than Foreign Subsidiaries and Permitted Joint Ventures) of any owned Real Property having a market value greater than \$2,000,000, setting forth in each case in reasonable detail the location and a description of the asset(s) so acquired. Without limiting the generality of the foregoing, the Borrower will cause, and will cause each of its Subsidiaries that is or becomes a Subsidiary Guarantor to cause, (x) 100% of the Equity Interests of each of their respective direct and indirect Domestic Subsidiaries (other than Permitted Joint Ventures) that are not Subsidiaries of Foreign Subsidiaries (or 65% of the Equity Interests of each of their respective direct Foreign Subsidiaries that is not a Permitted Joint Venture), or (y) to the extent not prohibited by the terms of any Organization Document or other agreement governing a Permitted Joint Venture, such percentage as is equal to their respective ratable ownership of all Equity Interests in Permitted Joint Ventures) to be subject at all times to a first priority, perfected Lien in favor of the Collateral Agent, subject only to Permitted Liens described in Section 7.02(c) or (d).

If requested by the Administrative Agent, the Borrower shall use commercially reasonable efforts to provide a leasehold mortgage (along with the other documents and agreements referenced in the second sentence of Section 6.12(b) if so requested) with respect to any leasehold interest having a fair market value (as determined by the Borrower in good faith) of at least \$2,000,000 in any Real Property owned by a Loan Party. Any collateral documents executed and delivered in accordance with the preceding sentence shall constitute "Additional Collateral Documents" for purposes hereof.

If, subsequent to the Closing Date, a Loan Party shall acquire any material patents, trademark registrations, service mark registrations, registered trade names, copyright registrations or any applications related to the foregoing, securities, instruments, chattel paper or other personal property required to be delivered to the Collateral Agent as Collateral hereunder or under any of the Collateral Documents, the Borrower shall notify the Collateral Agent of the same no later than the end of the fiscal quarter of Holdings during which any such acquisitions take place, provided that if any such acquisition is accomplished by means of a Permitted Acquisition, the Borrower shall promptly (and in any event within ten Business Days after any Responsible Officer of any Loan Party acquires knowledge of the same) notify the Collateral Agent of the same.

All such security interests and mortgages shall be granted pursuant to documentation consistent with the Collateral Documents delivered on the Closing Date and otherwise reasonably satisfactory in form and substance to the Collateral Agent and shall constitute valid and enforceable perfected security interests and mortgages and subject to no other Liens except for Permitted Liens. The Additional Collateral Documents or instruments related thereto shall have been duly recorded or filed in such manner and in such places as are required by law to establish, perfect, preserve and protect the Liens in favor of the Collateral Agent required to be granted pursuant to the Additional Collateral Documents, and all taxes, fees and other charges payable in connection therewith shall have been paid in full. The Borrower shall cause to be delivered to the Collateral Agent such opinions of counsel, title insurance and other related documents as may be reasonably requested by the Collateral Agent to assure itself that this Section 6.12(b) has been complied with.

(c) Real Property Appraisals. If the Collateral Agent determines that it or the Lenders are required by Law or regulation to have appraisals prepared in respect of the Real Property of any Group Company constituting Collateral, the Borrower shall provide to the Collateral Agent appraisals which satisfy the applicable requirements set forth in 12 C.F.R., Part 34 - Subpart C or any successor or similar statute, rule, regulation, guideline or order, and which shall be in scope, form and substance, and from appraisers, reasonably satisfactory to the Required Lenders and shall be accompanied by a certification of the appraisal firm providing such appraisals that the appraisals comply with such requirements.

(d) Completion of Actions. The Borrower agrees that each action required by this Section 6.12 shall be completed no later than 45 days (or such later date as determined by the Administrative Agent) after such action is either requested to be taken by the Collateral Agent or required to be taken by the Borrower or any of its Subsidiaries pursuant to the terms of this Section 6.12.

Notwithstanding the foregoing, any assets acquired subsequent to the Closing Date whose relative value to the Lenders does not justify the cost and/or effort required to obtain security interests in such assets, as reasonably determined by the Administrative Agent (in consultation with the Borrower), shall not be subject to the requirements hereof. In addition, notwithstanding anything to the contrary contained herein or in any other Loan Document, in no event shall any Loan Party be required to deliver control, lockbox or similar type agreements with respect to any local depository account.

**Section 6.13 Further Assurances.** The Borrower shall, at the Borrower's cost and expense and upon request of the Administrative Agent, execute and deliver or cause to be executed and delivered, to the Administrative Agent such further instruments, documents and certificates, and do and cause to be done such further acts that may be reasonably necessary or advisable in the reasonable opinion of the Administrative Agent to carry out more effectively the provisions and purposes of this Agreement and the other Loan Documents, subject in all respects to the express provisions of such Loan Documents.

**Section 6.14 Deposit and Security Accounts.** Commencing on the date that is [45] days following the Closing Date (or such later date as the Collateral Agent shall agree in its discretion), each Loan Party shall cause each of its lockboxes, deposit accounts and securities accounts (other than Exempt Deposit Accounts) to be subjected and to remain subjected to an account control agreement, in form and substance reasonably satisfactory to the Collateral Agent, properly executed by such Loan Parties, the applicable bank or other financial institution at which such lockbox, deposit account and securities account is maintained and the Collateral Agent.

## **ARTICLE 7 NEGATIVE COVENANTS**

Each of Holdings and the Borrower agrees that so long as any Senior Credit Obligation or other amount payable hereunder or under any Term Note or other Loan Document (in each case other than contingent indemnification obligations) remains unpaid:



**Section 7.01 Limitation on Indebtedness.** None of the Group Companies will incur, create, assume or permit to exist any Indebtedness or Swap Obligations except:

(a) Indebtedness of the Borrower and its Subsidiaries outstanding on the Closing Date and disclosed on Schedule 7.01 (collectively, the “Existing Indebtedness”);

(b) Indebtedness of the Loan Parties under this Agreement and the other Loan Documents (including, without limitation any increase to the principal amount of the Loans as a result of the payment of PIK Interest;

(c) Purchase Money Indebtedness, Attributable Indebtedness in respect of Capital Leases and Synthetic Lease Obligations of the Borrower and its Subsidiaries incurred after the Closing Date to finance Consolidated Capital Expenditures and Attributable Indebtedness in respect of Sale/Leaseback Transactions of the Borrower and its Subsidiaries permitted pursuant to Section 7.13; provided that (x) the aggregate amount of all such Indebtedness does not exceed \$2,500,000 at any time outstanding and (y) no Lien securing such Indebtedness shall extend to or cover any property or asset of any Group Company other than the asset so financed and proceeds thereof;

(d) Indebtedness of the Borrower or its Subsidiaries secured by Liens permitted by clauses (q), (r) and (s) of Section 7.02 and any other Indebtedness of a Person whose Equity Interests or assets are acquired in a Permitted Acquisition which is acquired or assumed by the Borrower or a Subsidiary of the Borrower in such Permitted Acquisition and any Permitted Refinancing thereof; provided that such Indebtedness was not incurred in connection with, or in anticipation of, the events described in such clauses or such Permitted Acquisition;

(e) any Permitted Refinancing of Indebtedness permitted under clause (a), (c), or (d) above; provided that (i) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so refinanced except by an amount equal to any interest capitalized in connection with, any premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing, (ii) such refinancing Indebtedness has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being refinanced, (iii) such refinancing Indebtedness shall not be secured by any Lien unless the Indebtedness being refinanced was subject to a Lien permitted hereunder, in which case any Liens on such refinancing indebtedness shall not extend to any additional assets and shall, if the existing Liens were subordinated, be subordinated on no less favorable terms, (iv) the terms and conditions (including, if applicable, as to collateral) of any such refinancing Indebtedness are not, taken as a whole, materially less favorable to the Loan Parties or the Lenders than the terms and conditions of the Indebtedness being refinanced, (v) such refinancing, refunding is incurred by the Borrower or by a Subsidiary Guarantor and (vi) after giving effect to the incurrence of such refinancing Indebtedness, no Default shall have occurred and be continuing;

(f) unsecured Subordinated Indebtedness of Holdings or any of its Subsidiaries that is issued to a seller of assets or Person acquired in a Permitted Acquisition and any Permitted

Refinancing thereof if, immediately prior to and immediately after giving effect thereto, no Event of Default shall exist or result therefrom;

(g) (i) contingent liabilities in respect of any indemnification, adjustment of purchase price, earn-out, non-compete, consulting, deferred compensation and similar obligations of the Borrower and its Subsidiaries incurred in connection with Permitted Acquisitions, Permitted Joint Ventures, Investments permitted by Section 7.06 and Asset Dispositions and (ii) obligations in respect of earn-outs, purchase price adjustments or similar adjustments incurred by the Borrower or its Subsidiaries under agreements governing Permitted Acquisitions, Investments permitted by Section 7.06 or Asset Dispositions;

(h) Swap Obligations of the Borrower or any Subsidiary under Swap Agreements to the extent entered into after the Closing Date or to manage interest rate, foreign currency exchange rate and commodity pricing risks and not for speculative purposes;

(i) Indebtedness owed to any Person providing property, casualty or liability insurance to the Borrower or any Subsidiary of the Borrower, so long as such Indebtedness shall not be in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the annual period in which such Indebtedness is incurred and such Indebtedness shall be outstanding only during such year;

(j) Indebtedness consisting of Guaranty Obligations incurred (i) by the Borrower in respect of Indebtedness, leases or other ordinary course obligations permitted to be incurred by, or obligations in respect of Permitted Acquisitions, Investments permitted by Section 7.06 or Permitted Joint Ventures of, Wholly-Owned Domestic Subsidiaries of the Borrower, (ii) by Domestic Subsidiaries of the Borrower of Indebtedness, leases or other ordinary course obligations permitted to be incurred by, or obligations in respect of Permitted Acquisitions, Investments permitted by Section 7.06 or Permitted Joint Ventures of, the Borrower or Wholly-Owned Domestic Subsidiaries of the Borrower, (iii) by Foreign Subsidiaries of the Borrower of Indebtedness, leases or other ordinary course obligations permitted to be incurred by, or obligations in respect of Permitted Acquisitions, Investments permitted by Section 7.06 or Permitted Joint Ventures of, Wholly-Owned Foreign Subsidiaries of the Borrower and (iv) by the Borrower or any Subsidiary of the Borrower of Indebtedness, leases or other ordinary course obligations permitted to be incurred by Foreign Subsidiaries or Permitted Joint Ventures; provided that the aggregate amount of Guaranty Obligations referred to in this clause (iv), together with all Investments by the Borrower and its Wholly-Owned Domestic Subsidiaries permitted under Section 7.06(a)(xi)(A), will not exceed \$2,500,000 at any one time outstanding;

(k) intercompany Indebtedness of the Borrower or a Subsidiary of the Borrower to the extent permitted by Section 7.06(a)(x) or (xi); provided, that any such Indebtedness of a Loan Party owed to a non-Loan Party shall be subordinated to the Senior Credit Obligations on terms substantially consistent with those set forth in Exhibit I;

(l) Indebtedness of Foreign Subsidiaries and Permitted Joint Ventures incurred to finance working capital requirements and general corporate purposes of Foreign Subsidiaries and Permitted Joint Ventures, in an aggregate principal amount not to exceed \$2,500,000 (or its equivalent in one or more applicable foreign currencies) at any time outstanding;

(m) (i) Indebtedness of Holdings, the Borrower and its Subsidiaries arising from the honoring by a bank or other financial institution of a check, draft, credit or purchase card or similar instrument drawn against insufficient funds in the ordinary course of business; provided that (A) such Indebtedness (other than credit or purchase cards) is extinguished within five Business Days after receipt of notice of its incurrence and (B) such Indebtedness in respect of credit or purchase cards is extinguished within 60 days from its incurrence, and (ii) contingent indemnification obligations of the Borrower and its Subsidiaries to financial institutions, in each case to the extent in the ordinary course of business and on terms and conditions which are within the general parameters customary in the banking industry, entered into to obtain cash management services or deposit account overdraft protection services (in amount similar to those offered for comparable services in the financial industry) or other services in connection with the management or opening of deposit accounts or incurred as a result of endorsement of negotiable instruments for deposit or collection purposes;

(n) Indebtedness in respect of letters of credit incurred in the ordinary course of business and consistent with past practice in an aggregate principal amount not to exceed \$3,000,000 at any time outstanding;

(o) accretion or amortization of original issue discount and accretion of interest paid in kind, in each case in respect of Indebtedness otherwise permitted by this Section 7.01;

(p) Permitted Pari Passu Debt in an aggregate principal amount, together with the aggregate principal amount of Indebtedness incurred or assumed pursuant to Section 7.01(q), not to exceed \$5,000,000 at any time outstanding; provided that, immediately before and after giving effect to the incurrence of such Permitted Pari Passu Debt, no Default or Event of Default shall have occurred and be continuing;

(q) unsecured Indebtedness of the Borrower and its Subsidiaries incurred after the Closing Date in an aggregate principal amount, together with the aggregate principal amount of Indebtedness incurred or assumed pursuant to Section 7.01(p), not to exceed \$5,000,000 at any time outstanding; and

(r) Indebtedness incurred by any Loan Party in connection with an Asset Disposition of a Scheduled Store permitted under Section 7.05(o) consisting of Guaranty Obligations in respect of the rental obligations under any lease of real property transferred to the Franchisee Purchaser pursuant to such Asset Disposition; provided that (i) the aggregate amount of Guaranty Obligations incurred pursuant to this Section 7.01(r) shall not exceed \$10,000,000 at any time outstanding; and (ii) the incurrence of such Guaranty Obligations shall be determined in good faith by the board of directors of the Borrower (or similar governing body) to be reasonably necessary in order to consummate such Asset Disposition.

**Section 7.02 Restriction on Liens.** None of the Group Companies will create, incur, assume or permit to exist any Lien on any property or assets (including Equity Interests or other securities of any Person, including the Borrower or any Subsidiary of the Borrower) now owned or hereafter acquired by it or on any income or rights in respect of any thereof, or sign or file or authorize the filing under the Uniform Commercial Code of any jurisdiction of a financing statement that names any Group Company as debtor, or sign any security agreement authorizing

any secured party thereunder to file such a financing statement, except Liens described in any of the following clauses (collectively, “Permitted Liens”):

(a) Liens (other than Liens permitted under Section 7.02(u)) existing on the Closing Date and listed on Schedule 7.02 hereto and any modifications, replacements, renewals or extensions thereof; provided that (i) the Lien does not extend to any additional property other than (x) after-acquired property that is affixed or incorporated into the property covered by such Lien or financed by Indebtedness permitted under Section 7.01 and (y) proceeds and products thereof, and (ii) the renewal, extension or modification of the obligations secured or benefited by such Lien is permitted by Section 7.01;

(b) Liens created by the Collateral Documents;

(c) Liens for taxes, assessments and other governmental charges or levies (i) not more than 90 days delinquent or (ii) which are being contested in good faith by appropriate proceedings and as to which adequate reserves have been established in accordance with GAAP;

(d) Liens securing the charges, claims, demands or levies of landlords, carriers, suppliers, warehousemen, materialmen, workmen, mechanics, carriers and other like Liens imposed by Law which were incurred in the ordinary course of business and which (i) do not, individually or in the aggregate, materially detract from the value of the property or assets which are the subject of such Lien or materially impair the use thereof in the operation of the business of the Borrower or any of its Subsidiaries or (ii) which are being contested in good faith by appropriate proceedings diligently pursued for which adequate reserves (in the good faith judgment of the management of the Borrower) have been established in accordance with GAAP, which proceedings have the effect of preventing the forfeiture or sale of the property or assets subject to such Lien;

(e) Liens (other than any Liens imposed by ERISA or pursuant to any Environmental Law) not securing Indebtedness or Swap Obligations incurred or deposits made in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security and other similar obligations incurred in the ordinary course of business;

(f) Liens securing obligations in respect of surety bonds (other than appeal bonds), statutory obligations to Governmental Authorities, tenders, sales, contracts (other than for borrowed money), bids, leases, government contracts, indemnity, warranty, release, performance and return-of-money bonds and other similar obligations or with respect to other regulatory requirements, letters of credit, bankers’ acceptances issued and completion guarantees incurred in the ordinary course of business for sums not more than 90 days overdue or being contested in good faith by appropriate proceedings and for which the Borrower and its Subsidiaries maintain adequate reserves in accordance with GAAP;

(g) Liens upon specific items of inventory or other goods of the Borrower or any of its Subsidiaries and proceeds thereof securing such Person’s obligations in respect of bankers’ acceptances or documentary letters of credit issued or created for the account of such Person to facilitate the shipment or storage of such inventory or other goods;

(h) pledges or deposits of cash and Cash Equivalents securing deductibles, self-insurance, co-payment, co-insurance, retentions or similar obligations to providers of property, casualty or liability insurance in the ordinary course of business;

(i) Liens on (i) insurance premiums, dividends and rebates and other identifiable proceeds therefrom which may become payable under insurance policies and loss payments which reduce the incurred premiums on such insurance policies and (ii) rights which may arise under State insurance guarantee funds relating to any such insurance policy, in each case securing Indebtedness permitted to be incurred pursuant to Section 7.01(i);

(j) Liens arising solely by virtue of any statutory or common Law provision relating to banker's liens, rights of setoff or similar rights, in each case incurred in the ordinary course of business;

(k) licenses, sublicenses, leases or subleases granted to third Persons or to the Borrower or its Subsidiaries by the Borrower and its Subsidiaries in the ordinary course of business not interfering in any material respect with the business of any Group Company and not otherwise prohibited by Section 7.05(n);

(l) zoning restrictions, building codes, land use and other similar Laws and municipal ordinances, easements, rights of way, licenses, reservations, covenants, conditions, waivers, restrictions on the use of property or other minor encumbrances or irregularities of title not securing Indebtedness or Swap Obligations which do not, individually or in the aggregate, materially impair the use of any property in the operation or business of the Borrower or any of its Subsidiaries or the value of such property for the purpose of such business;

(m) Liens arising from precautionary UCC financing statements regarding, and any interest or title of a licensor, lessor or sublessor under, Operating Leases permitted by this Agreement or other obligations not constituting Indebtedness;

(n) Liens in favor of licensors, lessors, sublessors, lessees or sublessees securing Operating Leases or other obligations not constituting Indebtedness;

(o) Liens arising from judgments, decrees or attachments (or securing of appeal bonds with respect thereto) in circumstances not constituting an Event of Default under Section 8.01;

(p) Liens securing Indebtedness incurred under Section 7.01(c) or Section 7.01(e);

(q) any Lien existing on any asset of any Person at the time such Person becomes a Subsidiary of the Borrower and not created in contemplation of such event;

(r) any Lien on any asset (other than on the Equity Interests of one or more Subsidiaries) of any Person existing at the time such Person is merged or consolidated with or into the Borrower or a Subsidiary of the Borrower and not created in contemplation of such event;

(s) any Lien existing on any asset (other than on the Equity Interests of one or more Subsidiaries) prior to the acquisition thereof by the Borrower or a Subsidiary of the Borrower and not created in contemplation of such acquisition;

(t) Liens solely on any cash earnest money deposits made by the Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement with respect to a Permitted Acquisition, a Permitted Joint Venture or any other Investment permitted under Section 7.06; provided that the aggregate amount of such cash earnest money deposits shall not exceed \$500,000;

(u) Liens on an aggregate of up to \$3,500,000 of cash and Cash Equivalents securing Indebtedness incurred under Section 7.01(h) or Section 7.01(n);

(v) Liens on any assets or Equity Interests of a Foreign Subsidiary of the Borrower securing Indebtedness of such Foreign Subsidiary incurred pursuant to Section 7.01(l);

(w) Liens in favor of customs and revenue authorities arising as a matter of Law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(x) Liens that might be deemed to exist on assets subject to a repurchase agreement permitted hereunder, if such Liens are deemed to exist solely because of the existence of such repurchase agreement;

(y) Liens in favor of Holdings, the Borrower or any Subsidiary Guarantor;

(z) security given to a public or private utility or any other Governmental Authority in the ordinary course of business;

(aa) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of Holdings or any of its Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower and its Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any of its Subsidiaries in the ordinary course of business;

(bb) Liens (i) of a collection bank arising under Section 4-210 of the UCC on items in the course of collection, (ii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business and (iii) in favor of a banking institution arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(cc) Liens on Collateral securing Permitted Pari Passu Debt permitted pursuant to Section 7.01(p); provided that such Liens are subject to the Pari Passu Intercreditor Agreement at all times; and

(dd) other Liens securing obligations permitted under Section 7.01 if the aggregate amount of the obligations or liabilities secured thereby does not exceed \$500,000 at any time.

**Section 7.03 Nature of Business.** None of the Group Companies will alter in any material respect the character or conduct of the business conducted by such Person as of the Closing Date and activities directly related thereto and similar, complimentary or related businesses.

**Section 7.04 Consolidation, Merger and Dissolution.** Except in connection with an Asset Disposition permitted by the terms of Section 7.05, none of the Group Companies will enter into any transaction of merger or consolidation or liquidate, wind up or dissolve itself or its affairs (or suffer any liquidations or dissolutions); provided that:

(a) any Domestic Subsidiary of the Borrower may merge with and into, or be voluntarily dissolved or liquidated into, the Borrower, so long as (i) the Borrower is the surviving corporation of such merger, dissolution or liquidation, (ii) the security interests granted to the Collateral Agent for the benefit of the Finance Parties pursuant to the Collateral Documents in the assets of the Borrower and such Domestic Subsidiary so merged, dissolved or liquidated shall remain in full force and effect and perfected (to at least the same extent as in effect immediately prior to such merger, dissolution or liquidation) and (iii) no Person other than the Borrower or a Subsidiary Guarantor receives any consideration in respect or as a result of such transaction;

(b) any Domestic Subsidiary of the Borrower may merge with and into, or be voluntarily dissolved or liquidated into, any other Domestic Subsidiary of the Borrower, so long as (i) in the case of any such merger, dissolution or liquidation involving one or more Subsidiary Guarantors, (x) a Subsidiary Guarantor is the surviving corporation of such merger, dissolution or liquidation and (y) no Person other than the Borrower or a Subsidiary Guarantor receives any consideration in respect of or as a result of such transaction and (ii) the security interests granted to the Collateral Agent for the benefit of the Finance Parties pursuant to the Collateral Documents in the assets of each Domestic Subsidiary so merged, dissolved or liquidated and in the Equity Interests of the surviving entity of such merger, dissolution or liquidation shall remain in full force and effect and perfected (to at least the same extent as in effect immediately prior to such merger, dissolution or liquidation);

(c) any Foreign Subsidiary of the Borrower may be merged with and into, or be voluntarily dissolved or liquidated into, the Borrower or any Wholly-Owned Subsidiary of the Borrower, so long as (i) in the case of any such merger, dissolution or liquidation involving one or more Subsidiary Guarantor, (x) the Borrower or such Subsidiary Guarantor, as the case may be, is the surviving corporation of any such merger, dissolution or liquidation and (y) no Person other than the Borrower or a Subsidiary Guarantor receives any consideration in respect of or as a result of such transaction and (ii) the security interests granted to the Collateral Agent for the benefit of the Finance Parties pursuant to the Collateral Documents in the assets of such Foreign Subsidiary, if any, and the Borrower or such other Subsidiary, as the case may be, and in the Equity Interests of the surviving entity of such merger, dissolution or liquidation shall remain in full force and effect and perfected (to at least the same extent as in effect immediately prior to such merger, dissolution or liquidation);

(d) the Borrower or any Subsidiary of the Borrower may merge with any Person (other than Holdings) in connection with a Permitted Acquisition if (i) in the case of any such

merger involving the Borrower, the Borrower shall be the continuing or surviving corporation in such merger, (ii) in the case of any such merger involving a Subsidiary Guarantor, such Subsidiary Guarantor shall be the continuing or surviving corporation in such merger or the continuing or surviving corporation in such merger shall, simultaneously with the consummation of such merger, become a Subsidiary Guarantor having all the responsibilities and obligations of the Subsidiary Guarantor so merged, (iii) the Loan Parties shall cause to be executed and delivered such documents, instruments and certificates as the Administrative Agent may reasonably request so as to cause the Loan Parties to be in compliance with the terms of Section 6.12 after giving effect to such transactions and (iv) no Default shall have occurred and be continuing or would result therefrom;

(e) any Subsidiary of the Borrower may merge with any Person (other than Holdings) in connection with an Investment permitted by Section 7.06 (other than clause (xiv) thereof) if (i) in the case of any such merger involving a Subsidiary Guarantor, such Subsidiary Guarantor shall be the continuing or surviving corporation in such merger or the continuing or surviving corporation in such merger shall, simultaneously with the consummation of such merger, become a Subsidiary Guarantor having all the responsibilities and obligations of the Subsidiary Guarantor so merged, (ii) the Loan Parties shall cause to be executed and delivered such documents, instruments and certificates as the Administrative Agent may reasonably request so as to cause the Loan Parties to be in compliance with the terms of Section 6.12 after giving effect to such transactions and (iii) no Default shall have occurred and be continuing or would result therefrom; and

(f) the Transaction is permitted.

In the case of any merger or consolidation permitted by this Section 7.04 of any Subsidiary of Holdings which is not a Loan Party into a Loan Party, the Loan Parties shall cause to be executed and delivered such documents, instruments and certificates as the Administrative Agent may reasonably request so as to cause the Loan Parties to be in compliance with the terms of Section 6.12 after giving effect to such transaction. Notwithstanding anything to the contrary contained above in this Section 7.04, no action shall be permitted which results in a Change of Control.

**Section 7.05 Asset Dispositions.** None of the Group Companies will make any Asset Disposition; provided that:

(a) any Group Company may sell or otherwise dispose of inventory, equipment and other assets in the ordinary course of business;

(b) any Group Company may make any Asset Disposition to the Borrower or any Subsidiary Guarantor;

(c) Holdings, the Borrower and its Subsidiaries may liquidate or sell Cash Equivalents and Foreign Cash Equivalents;

(d) the Borrower or any of its Subsidiaries may dispose of machinery or equipment which will be replaced or upgraded with machinery or equipment used or useful in the ordinary course of business of and owned by such Person;



(e) the Borrower or any of its Subsidiaries may dispose of obsolete, worn-out or surplus tangible assets in the ordinary course of business;

(f) any Group Company may dispose of non-core assets acquired in Permitted Acquisitions;

(g) the Borrower or any Subsidiary of the Borrower may sell, lease or otherwise transfer all or substantially all or any part of its assets (including any such transaction effected by way of merger or consolidation) to the Borrower or any Subsidiary Guarantor;

(h) any Foreign Subsidiary of the Borrower may sell, lease or otherwise transfer all or any part of its assets (including any such transaction effected by way of merger or consolidation) to any Group Company;

(i) the Borrower or any Subsidiary of the Borrower may issue Equity Interests in the Borrower or such Subsidiary to qualify directors where required by applicable Law or to satisfy other requirements of applicable Law with respect to the ownership of Equity Interests in Foreign Subsidiaries or Nominal Shares for tax considerations;

(j) any Group Company may transfer assets as a part of the consideration for Investments permitted by Section 7.06;

(k) Asset Dispositions effected by transactions permitted under Section 7.04 shall be permitted;

(l) any Group Company may lease, as lessor or sublessor, or license, as licensor or sublicensor, real or personal property in the ordinary course of business;

(m) any Group Company may write off, discount, sell or otherwise dispose of defaulted or past due receivables and similar obligations in the ordinary course of business and not as part of an accounts receivable financing transaction;

(n) any Group Company may, in the ordinary course of business, license and sublicense intellectual property;

(o) any Loan Party may make an Asset Disposition with respect to any Scheduled Store to a prospective or existing franchisee of the Borrower or its Subsidiaries (a "Franchisee Purchaser"); provided that (i) the consideration received for such Asset Disposition shall be in an amount at least equal to the fair market value thereof (as determined in good faith by the board of directors of the Borrower (or similar governing body)); (ii) the Net Cash Proceeds of such Asset Disposition shall be applied in accordance with Section 2.08(b)(ii)(B); (iii) any non-cash consideration received for such Asset Disposition shall be in the form of a debt obligation, which debt obligation shall (A) have a scheduled final maturity date not longer than the date occurring five years after the date of consummation of such Asset Disposition; (B) be secured by a perfected security interest in the assets subject to such Asset Disposition; and (C) be evidenced by a promissory note delivered to the applicable Loan Party upon consummation of such Asset Disposition (and the applicable Loan Party shall deliver such promissory note promptly (and in any event not later than five Business Days after receipt thereof) to the Collateral Agent); (iv) if

the cash consideration received for such Asset Disposition is less than 5% of the total consideration payable for such Asset Disposition, such Asset Disposition shall be approved in good faith by the board of directors of the Borrower (or similar governing body); (v) such Asset Disposition shall be made to a Person that is not an Affiliate of any Loan Party; and (vi) the Administrative Agent shall have received a certificate in the form of Exhibit L from a Responsible Officer of the Borrower, certifying as to the satisfaction of the conditions set forth in this Section 7.05(o) with respect to such Asset Disposition;

(p) any Group Company may enter into any Sale/Leaseback Transaction not prohibited by Section 7.01 or Section 7.13;

(q) any Group Company may make Asset Dispositions to any other Group Company or Permitted Joint Venture which is not a Subsidiary Guarantor where such Asset Disposition constitutes an Investment permitted by Section 7.06(a);

(r) [reserved];

(s) [reserved];

(t) the Borrower or any of its Subsidiaries may enter into co-marketing or co-branding agreements, distribution agreements and intellectual property licensing agreements in the ordinary course of business that do not materially interfere with the business of the Borrower or its Subsidiaries;

(u) the Borrower may dispose of stores in the ordinary course of business, in its reasonable business judgment;

(v) any foreclosure by Holdings, the Borrower or any Subsidiary upon any assets subject to a Lien in favor of Holdings, the Borrower or any Subsidiary or the disposition of assets so foreclosed; and

(w) any Group Company may make any other Asset Disposition; provided that (i) at least 75% of the consideration therefor is cash or Cash Equivalents; (ii) such transaction does not involve the sale or other disposition of a minority Equity Interest in any Group Company which is a Wholly-Owned Subsidiary; (iii) the aggregate fair market value of all assets sold or otherwise disposed of by the Group Companies in all such transactions in reliance on this clause (w) shall not exceed \$5,000,000 in the aggregate; and (iv) no Default or Event of Default is then in existence or would otherwise arise therefrom.

Upon consummation of an Asset Disposition permitted under this Section 7.05 to a Person that is not a Loan Party, the Lien created thereon under the Collateral Documents (but not the Lien on any proceeds thereof) shall be automatically released, and the Administrative Agent shall (or shall cause the Collateral Agent to) (to the extent applicable) deliver to the Borrower, upon the Borrower's request and at the Borrower's expense, such documentation as is reasonably necessary to evidence the release of the Collateral Agent's security interests, if any, in the assets being disposed of, including amendments or terminations of UCC Financing Statements, if any, the return of stock certificates, if any, and the release of any Subsidiary being disposed of in its entirety from all of its obligations, if any, under the Loan Documents.

**Section 7.06 Investments, Etc.**

(a) Investments. None of the Group Companies will hold, make or acquire, any Investment in any Person, except the following:

(i) Investments existing on the Closing Date disclosed on Schedule 7.06 hereto;

(ii) Holdings, the Borrower or any Domestic Subsidiary of the Borrower may invest in cash (including cash held in deposit accounts) and Cash Equivalents;

(iii) Foreign Subsidiaries of the Borrower may invest in cash (including cash held in deposit accounts), Cash Equivalents or Foreign Cash Equivalents;

(iv) the Borrower and each Subsidiary of the Borrower may acquire and hold receivables, accounts, notes receivable, chattel paper, payment intangibles and prepaid accounts owing to them, if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms;

(v) the Borrower and each Subsidiary of the Borrower may acquire and own Investments (including obligations evidencing Indebtedness) received in connection with the settlement of accounts in the ordinary course or in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, and other disputes with, customers and suppliers or others arising in the ordinary course of business;

(vi) (A) (i) commissions, payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business and (ii) loans and advances to employees of the Group Companies in the ordinary course of business in an aggregate principal amount not to exceed \$1,000,000 at any one time and (B) loans and advances to franchisees and to Foreign Subsidiaries with respect to items required to operate a restaurant not to exceed \$2,500,000 in the aggregate;

(vii) the Borrower or any Subsidiary may make deposits in the ordinary course of business to secure the performance of Operating Leases and payment of utility contracts;

(viii) the Borrower or any Subsidiary may make good faith deposits in the ordinary course of business in connection with Permitted Acquisitions or obligations in respect of surety bonds, appeal bonds, statutory obligations to Governmental Authorities, tenders, sales, contracts (other than for borrowed money), bids, leases, government contracts, performance and return-of-money bonds and other similar obligations incurred in the ordinary course of business for sums not more than 90 days overdue or being contested in good faith by appropriate proceedings and for which the Borrower and its Subsidiaries maintain adequate reserves in accordance with GAAP;

(ix) loans by the Borrower to officers and employees of the Borrower the proceeds of which are used to purchase Holdings' or its parents' Equity Interests or Holdings' or its parents' Equity Equivalents;

(x) the Borrower may make Investments in any Subsidiary Guarantor and any Subsidiary of the Borrower may make Investments in the Borrower or any Subsidiary Guarantor; provided that all such Investments in the form of intercompany loans or advances made by Loan Parties outside the ordinary course of business (other than any such Investment in a principal amount less than \$500,000 individually) shall be evidenced by an Intercompany Note that has been pledged pursuant to the Pledge Agreement; provided that notwithstanding the foregoing, not more than \$1,000,000 aggregate principal amount of such Investments made by Loan Parties outside the ordinary course of business shall not be evidenced by one or more Intercompany Notes that have been pledged pursuant to the Pledge Agreement;

(xi) the Borrower and its Subsidiaries may make Investments in any Foreign Subsidiary or any Domestic Subsidiary of the Borrower that is a Permitted Joint Venture (A) in the case of Investments by the Borrower or any Subsidiary Guarantor, in an aggregate amount together with all Guaranty Obligations permitted under Section 7.01(j)(iv) (determined without regard to any write-downs or write-offs of any such Investments constituting Indebtedness) at any one time outstanding not exceeding \$2,500,000 and (B) to the extent such Investments arise from the sale of inventory or consisting of the licensing, co-development, co-branding, co-marketing (in each case on a revocable basis) in the ordinary course of business by the Borrower or such Subsidiary to such Foreign Subsidiary or Domestic Subsidiary that is a Permitted Joint Venture for resale by such Foreign Subsidiary or Domestic Subsidiary that is a Permitted Joint Venture (including any such Investments resulting from the extension of the payment terms with respect to such sales);

(xii) (A) Guaranty Obligations permitted by Section 7.01(j) and (B) loans in lieu of any Restricted Payments permitted under Section 7.07(c) or Section 7.07(d);

(xiii) Investments arising out of the receipt by the Borrower or any of its Subsidiaries of non-cash consideration for the sale of assets permitted under Section 7.05;

(xiv) the Borrower and its Subsidiaries may make Investments constituting Permitted Acquisitions; provided that the aggregate amount of all such Investments made after the Closing Date shall not exceed \$10,000,000;

(xv) the Borrower and its Subsidiaries may make Investments in Permitted Joint Ventures in an aggregate amount (determined without regard to any write-downs or write-offs of any such Investments constituting Indebtedness), together with any Investments made pursuant to Section 7.06(a)(xxi), at any one time outstanding not exceeding \$2,500,000;

(xvi) the Borrower and its Subsidiaries may in the ordinary course of business make Investments which consist of the licensing or contribution of intellectual property

pursuant to marketing, co-branding and co-development agreements that do not materially interfere with the business of the Borrower or its Subsidiaries;

(xvii) Investments in any Person to the extent such Investments consist of prepaid expenses, negotiable instruments held for collection and lease, utility and workers' compensation, performance and other similar deposits made in the ordinary course of business by Holdings or any of its Subsidiaries;

(xviii) Investments in any Person to the extent such Investment consists of loans, guarantees and advances to suppliers, licensees, franchisees or customers of the Borrower or any of the Subsidiaries made in the ordinary course of business; provided that the amount of Investments made pursuant to this clause (xviii) does not exceed \$2,500,000 at any one time outstanding;

(xix) performance guarantees (other than of Indebtedness) consistent with past practice;

(xx) Investments in any Person where such Investment was acquired by Holdings or any of its Subsidiaries as a result of a foreclosure by Holdings or any of its Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(xxi) the Borrower or its Subsidiaries may purchase additional equity interests in joint ventures that are, prior to such Investment, at least 51% owned by Borrower or its Subsidiaries so long as subsequent Investments are not required at the time of such Investment in an aggregate amount, together with any Investments made pursuant to Section 7.06(a)(xv), at any time outstanding not exceeding \$2,500,000;

(xxii) Holdings may make contributions to the capital of the Borrower;

(xxiii) the Borrower and its Subsidiaries may make other Investments not otherwise permitted by this Section 7.06 in an aggregate amount (determined without regard to any write-downs or write-offs of any such Investments constituting Indebtedness but excluding any portion thereof funded with proceeds of an Equity Issuance of Qualified Capital Stock) not exceeding \$2,500,000 at any time outstanding;

(xxiv) the Group Companies may make Investments required to effectuate the Transaction; and

(xxv) Investments consisting of Guaranty Obligations permitted by Section 7.01(r);

provided that no Group Company may make or own any Investment in Margin Stock in violation of Regulation T, U or X.

(b) Limitation on the Creation of Subsidiaries. No Group Company will establish, create or acquire after the Closing Date any Subsidiary; provided that the Borrower and its Subsidiaries shall be permitted to establish, create or acquire Subsidiaries so long as (i) the

Investment resulting from such establishment, creation or acquisition is permitted pursuant to Section 7.06(a) above and (ii) such new Subsidiary takes all other actions required pursuant to Section 6.12.

**Section 7.07 Restricted Payments, Etc.** None of the Group Companies will declare or pay any Restricted Payments (other than Restricted Payments payable solely in Equity Interests (exclusive of Debt Equivalents) of such Person), except that:

(a) any Wholly-Owned Subsidiary of the Borrower may make Restricted Payments to the Borrower or to any Wholly-Owned Subsidiary of the Borrower that is a Guarantor or to any other Subsidiary of the Borrower that directly owns Equity Interests in such Wholly-Owned Subsidiary (so long as such Restricted Payments are made ratably to all direct owners of Equity Interests in such Wholly-Owned Subsidiary);

(b) any non-Wholly-Owned Subsidiary of the Borrower may make Restricted Payments to the Borrower or to any Wholly-Owned Subsidiary of the Borrower that is a Guarantor or ratably to all holders of its outstanding Equity Interests;

(c) so long as no Default or Event of Default is then in existence or would otherwise arise therefrom, (i) the Borrower may make cash Restricted Payments to Holdings to enable Holdings to make Restricted Payments to its parent to permit its parent (or any parent thereof) to redeem or repurchase its Equity Interests (or Equity Equivalents) from officers, employees and directors of any Group Company (or their estates, spouses or former spouses) upon the death, permanent disability, retirement or termination of employment of any such Person or otherwise; provided that the aggregate amount of all cash paid in respect of all such shares so redeemed or repurchased does not exceed \$2,000,000 in the aggregate from and after the Closing Date and (ii) Holdings may make the Restricted Payments to its parent described in the preceding clause (i);

(d) (1) the Borrower may make cash Restricted Payments to Holdings to enable Holdings to pay, and in amounts not to exceed the amount necessary to pay, (i) the then currently due fees and expenses of counsel to Holdings (or any direct or indirect parent thereof), accountants and other advisors and consultants, reimbursements of fees and other operating and administrative expenses of Holdings or any direct or indirect parent thereof (including employee and compensation expenditures, directors' and officers' insurance premiums and other similar costs and expenses) incurred in the ordinary course of business that are for the benefit of, or are attributable to, or are related to, including the financing or refinancing of, Holdings' Investment in the Borrower and its Subsidiaries, (ii) the then currently due fees and expenses of directors of Holdings or any direct or indirect parent thereof in an aggregate amount not to exceed \$2,000,000, plus any indemnities owed to such person, (iii) dividends, distributions or advances to Holdings to be used by Holdings or any direct or indirect parent thereof to pay (A) federal, state and local taxes payable by Holdings or any direct or indirect parent thereof and directly attributable to (or arising as a result of) the operations of the Borrower and its Subsidiaries and (B) franchise taxes and other fees required to maintain the existence of Holdings or any direct or any indirect parent thereof and (2) Holdings may make Restricted Payments to its parent in the amount necessary to permit its parent (or any direct or indirect parent thereof) to make the payments described in the preceding clause (1);

(e) redemption of stock deemed to occur upon the exercise of stock options or the purchase of stock issued to employees as part of a stock option plan, employee incentive plan or employee benefit plan;

(f) the purchase of fractional shares by the Borrower upon conversion of any securities of the Borrower into Equity Interests (other than Debt Equivalents) of the Borrower; and

(g) the Group Companies may make Restricted Payments required to effectuate the Transaction.

**Section 7.08 Prepayments of Indebtedness, Etc.**

(a) Amendments of Certain Agreements. None of the Group Companies will, or will permit any of their respective Subsidiaries to, after the issuance thereof, amend, waive or modify (or permit the amendment, waiver or modification of) any of the material terms, agreements, covenants or conditions of or applicable to any Subordinated Indebtedness issued by such Group Company or any Permitted Pari Passu Debt if, in any such case, such amendment, waiver or modification would add or change any material terms, agreements, covenants or conditions in any manner materially adverse, taken as a whole, to any Group Company, or shorten the final maturity or average life to maturity or require any payment to be made sooner than originally scheduled or increase the interest rate payable in cash applicable thereto or change any material provision thereof in a manner that would be materially adverse to the interests of the Senior Credit Parties.

(b) Prohibition Against Payments of Certain Indebtedness. None of the Group Companies will directly or indirectly redeem, purchase, prepay, retire, defease or otherwise acquire for value (other than exchanges solely for Equity Interests not constituting Debt Equivalents), prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment, any Subordinated Indebtedness (excluding any Permitted Refinancing thereof or conversion to Equity Interests or repayment with the proceeds of Equity Interests), or set aside any funds for such purpose, whether such redemption, purchase, prepayment, retirement or acquisition is made at the option of the maker or at the option of the holder thereof, and whether or not any such redemption, purchase, prepayment, retirement or acquisition is required under the terms and conditions applicable to such Indebtedness.

(c) Equity Interests. No Equity Interests of Holdings or the Borrower shall be subject to redemption, put, call, repurchase or similar provision prior to the date which is 90 days after the Maturity Date.

**Section 7.09 Transactions with Affiliates.** None of the Group Companies will engage in any transaction or series of transactions with (a) any officer, director, holder of any Equity Interest in or other Affiliate of Holdings or (b) any Affiliate of any such officer, director or holder, other than:

(i) the consummation of the Transaction, including the execution and delivery of the Loan Documents (and any amendment or other modification thereto);

(ii) transactions, arrangements, fee reimbursements and indemnities specifically and expressly permitted between or among such parties under the Plan of Reorganization;

(iii) transactions pursuant to the Shareholders' Agreement as in effect on the Closing Date;

(iv) transactions expressly permitted by Section 7.01, Section 7.02, Section 7.04, Section 7.05, Section 7.06, Section 7.07 or Section 7.12;

(v) compensation, severance, indemnities and reimbursement of reasonable expenses of officers, employees, consultants and directors, including stock incentive and option plans and agreements relating thereto and premiums in respect of director's and officer's insurance policies;

(vi) providing and maintaining indemnities (including indemnity agreements) for directors and officers and director's and officer's insurance policies;

(vii) any transaction entered into solely among Foreign Subsidiaries;

(viii) any transaction entered into among Holdings, the Borrower and the Guarantors, or among Permitted Joint Ventures;

(ix) the issuance or sale of any Equity Interests (other than Debt Equivalents) of Holdings, the Borrower and the granting of other customary rights in connection therewith;

(x) the entering into of a tax sharing agreement, or payments pursuant thereto, between the Borrower and one or more Subsidiaries, on the one hand, and any other Person with which the Borrower and such Subsidiaries are required or permitted to file a consolidated tax return or with which the Borrower and such Subsidiaries are part of a consolidated group for tax purposes, on the other hand;

(xi) transactions with franchisees, joint venturers, customers, clients, suppliers, or purchasers or sellers of goods or services (including the Borrower and its Subsidiaries), in each case in the ordinary course of business and otherwise in compliance with the terms hereof;

(xii) transactions with Foreign Subsidiaries and Permitted Joint Ventures in the ordinary course of business involving the sale of items by the Borrower or its Subsidiaries or the provision of services by the Borrower or its Subsidiaries, in each case (other than de minimis items) for remuneration at least equal to Borrower's or such Subsidiary's cost of such items sold or services provided; and

(xiii) other transactions which are engaged in by the Borrower or any of its Subsidiaries on terms and conditions as favorable to such Person as would be obtainable by it in a comparable arms'-length transaction with an independent, unrelated third party.



**Section 7.10 Fiscal Year and Accounting Changes; Organizational and Other Documents.** None of the Group Companies will (a) change its fiscal year or make any change in its accounting treatment and reporting policies except as required (or with the consent of the Administrative Agent, which shall not be unreasonably withheld) by GAAP or (b) enter into any amendment, modification or waiver to its articles or certificate of incorporation, bylaws (or analogous organizational documents), in each case as in effect on the Closing Date except for changes that do not materially and adversely affect the rights and privileges of the Senior Credit Parties.

**Section 7.11 Restrictions with Respect to Intercorporate Transfers.** None of the Group Companies will create or otherwise cause or permit to exist any encumbrance or restriction which prohibits or otherwise restricts the ability of any such Group Company to (a) make Restricted Payments or pay any Indebtedness owed to the Borrower or any Subsidiary of the Borrower, (b) pay Indebtedness or other obligations owed to any Loan Party, (c) make loans or advances to the Borrower or any Subsidiary of the Borrower, (d) transfer any of its properties or assets to the Borrower or any Subsidiary Guarantor or (e) act as a Subsidiary Guarantor pursuant to the Loan Documents or any renewals, refinancings, exchanges, refundings or extensions thereof, except in each case for prohibitions or restrictions existing under or by reason of

- (i) this Agreement and the other Loan Documents;
- (ii) applicable Law;
- (iii) [reserved];
- (iv) customary non-assignment provisions with respect to contracts, leases or licensing agreements entered into by the Borrower or any of its Subsidiaries, in each case entered into in the ordinary course of business;
- (v) any restriction or encumbrance with respect to any asset of the Borrower or any of its Subsidiaries or a Subsidiary of the Borrower imposed pursuant to an agreement which has been entered into for the sale or disposition of such assets or all or substantially all of the capital stock or assets of such Subsidiary, so long as such sale or disposition is permitted under this Agreement;
- (vi) customary provisions in joint venture agreements and other similar agreements entered into in the ordinary course of business in connection with Permitted Joint Ventures;
- (vii) Liens permitted under Section 7.02 and any documents or instruments governing the terms of any Indebtedness or other obligations secured by any such Liens; provided that such prohibitions or restrictions apply only to the assets subject to such Liens;
- (viii) restrictions that are customary with respect to any Indebtedness permitted hereunder that are not materially more restrictive, taken as a whole, than those contained herein;

(ix) any encumbrance or restriction with respect to a Subsidiary pursuant to an agreement relating to any Equity Interests or Indebtedness incurred by such Subsidiary on or prior to the date on which such Subsidiary was acquired by the Borrower (other than Equity Interests or Indebtedness incurred as consideration in, or to provide all or any portion of the funds or credit support utilized to consummate, the transaction or series of related transactions pursuant to which such Subsidiary became a Subsidiary or was acquired by the Borrower) and outstanding on such date;

(x) any restriction on cash or other deposits or net worth provisions in leases and other agreements entered into in the ordinary course of business;

(xi) provisions with respect to dividends, the disposition or distribution of assets or property in joint venture agreements, license agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements entered into in the ordinary course of business; and

(xii) restrictions on deposits imposed under contracts entered into in the ordinary course of business.

**Section 7.12 Ownership of Subsidiaries; Certain Limitations.**

(a) Holdings and the Borrower will not (i) permit any wholly-owned Loan Party to issue Equity Interests to any Person, except (A) to any other wholly-owned Loan Party or (B) Nominal Shares to qualify directors where required by applicable Law or Nominal Shares to satisfy other requirements of applicable Law with respect to the ownership of Equity Interests of Foreign Subsidiaries or (ii) permit any wholly-owned Loan Party to issue any shares of Preferred Stock.

(b) Holdings will not (i) have any material liabilities other than (A) liabilities under the Loan Documents, and liabilities otherwise permitted hereunder and (B) tax and other liabilities in the ordinary course of business, (ii) engage in any business or activity other than (A) entering into the Loan Documents and activities incidental or related thereto, (B) owning the Equity Interests of the Borrower (including purchasing additional Equity Interests of the Borrower after the Closing Date) and activities incidental or related thereto or to the maintenance of the existence of Holdings or compliance with applicable Law or agreements to which Holdings is permitted to be a party hereunder, (C) acting as a Guarantor under the Guaranty and pledging its assets to the Collateral Agent, for the benefit of the Senior Credit Parties, pursuant to the Collateral Documents to which it is a party or (D) issuing its own Equity Interests and Equity Equivalents and repurchasing the same in accordance with the terms hereof or (iii) without limiting the foregoing, form or acquire any direct Subsidiary.

(c) Holdings and the Borrower will not permit any Person other than Holdings to hold any Equity Interests or Equity Equivalents of the Borrower.

**Section 7.13 Sale and Leaseback Transactions.** None of the Group Companies will directly or indirectly become or remain liable as lessee or as guarantor or other surety with respect to any lease (whether an Operating Lease or a Capital Lease) of any property (whether real, personal or mixed), whether now owned or hereafter acquired (a) which such Group

Company has sold or transferred or is to sell or transfer to any other Person which is not a Group Company or (b) which such Group Company intends to use for substantially the same purpose as any other property which has been sold or is to be sold or transferred by such Group Company to another Person which is not a Group Company in connection with such lease; provided that the Group Companies may enter into such transactions, in an aggregate amount of up to \$1,000,000 in sales proceeds during the term of this Agreement, if (i) after giving effect to any such transaction the Borrower shall be in compliance with all other provisions of this Agreement, including Section 7.01 and Section 7.02, (ii) the gross cash proceeds of any such transaction are at least equal to the fair market value of such property (as determined by a Responsible Officer or the Board of Directors, whose determination shall be conclusive if made in good faith) and (iii) the Net Cash Proceeds are forwarded to the Administrative Agent for application as set forth in Section 2.08(b)(ii) to the extent required therein.

**Section 7.14 Additional Negative Pledges.** None of the Group Companies (other than Foreign Subsidiaries and non-Wholly-Owned Subsidiaries) will enter into, assume or become subject to any effective agreement prohibiting or otherwise restricting the creation or assumption of any Lien in favor of the Collateral Agent upon its properties or assets, whether now owned or hereafter acquired, or requiring the grant of any security for an obligation if security is given for some other obligation, except (a) pursuant to this Agreement and the other Loan Documents; (b) pursuant to any document or instrument governing Capital Lease Obligations or Purchase Money Indebtedness incurred pursuant to Section 7.01 if any such restriction contained therein relates only to the asset or assets acquired in connection therewith or assets which are cross-collateralized; (c) pursuant to applicable law; (d) any Indebtedness permitted by Section 7.01(a), (b), (c), (d), (e), (f), (h) and (p); (e) restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses and other similar agreements entered into in the ordinary course of business (provided that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses, or similar agreements, as the case may be); (f) any prohibition or limitation that consists of customary restrictions and conditions contained in any agreement relating to the sale of any property permitted under this Agreement; (g) documents, agreements or constituent documents governing Permitted Joint Ventures; (h) any agreement in effect at the time a Subsidiary becomes a Subsidiary of Holdings, the Borrower or any of its Subsidiaries; (i) agreements relating to Liens incurred under Section 7.02(a), (h), (i), (q), (r), (s), (t) and (u) (but in each case only to the extent that the applicable restriction relates only to the assets subject to such Lien); (j) Liens incurred under Section 7.02(cc) to the extent the assets subject thereto do not constitute Collateral; and (k) agreements permitted under Section 7.13.

## **ARTICLE 8 DEFAULTS**

**Section 8.01 Events of Default.** An Event of Default shall exist upon the occurrence of any of the following specified events or conditions (each an “Event of Default”):

- (a) Payment. Any Loan Party shall:
  - (i) default in the payment when due (whether by scheduled maturity, acceleration or otherwise) of any principal of the Loans; or

(ii) default, and such default shall continue for three or more Business Days, in the payment when due of any interest on the Loans or of any fees or other amounts owing hereunder, under any of the other Loan Documents or in connection herewith.

(b) Representations. Any representation or warranty made or deemed to be made by any Loan Party herein or in any of the other Loan Documents or certificates delivered or required to be delivered pursuant hereto or thereto shall prove untrue in any material respect on the date as of which it was made or deemed to have been made.

(c) Covenants. Any Loan Party shall:

(i) default in the due performance or observance of any term, covenant or agreement contained in Section 6.10, 6.11, 6.12 or 6.14 or Article 7; or

(ii) default in the due performance or observance by it of any term, covenant or agreement contained in Article 6 (other than those referred to in subsection (a) or (c)(i) of this Section 8.01) and such default shall continue unremedied for a period of 30 days after the earlier of a Responsible Officer of a Loan Party becoming aware of such default or notice thereof given by the Administrative Agent.

(d) Other Loan Documents. (i) Any Loan Party shall default in the due performance or observance of any term, covenant or agreement in any of the other Loan Documents the consequence of which is to adversely affect the ability of the Loan Parties to perform their material obligations under the Loan Documents taken as a whole and such default shall continue unremedied for a period of 30 days after the earlier of an executive officer of a Loan Party becoming aware of such default or notice thereof given by the Administrative Agent, (ii) except pursuant to the terms thereof, any Loan Document shall fail in any material respect to be in full force and effect or any Loan Party shall so assert or (iii) except pursuant to the terms thereof, any Loan Document shall fail in any material respect to give the Administrative Agent, the Collateral Agent and/or the Lenders the security interests, liens, rights, powers and privileges purported to be created thereby.

(e) Cross-Default. (A) Any Group Company (i) fails to make payment when due after lapse of all applicable grace periods (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), regardless of amount, in respect of any Indebtedness or Guaranty Obligation (other than in respect of (x) Indebtedness outstanding under the Loan Documents and (y) Swap Agreements) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, (ii) fails to perform or observe any other condition or covenant, or any other event shall occur or condition shall exist, under any agreement or instrument relating to any such Indebtedness or Guaranty Obligation if the effect of such failure, event or condition is to cause, or to permit the holder or holders or beneficiary or beneficiaries of such Indebtedness or Guaranty Obligation (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, such Indebtedness to be declared to be due and payable prior to its stated maturity, or such Guaranty Obligation to become payable, or cash collateral in respect thereof to be demanded or (iii) shall fail to comply with the terms of any Indebtedness or Guaranty Obligation requiring such Group

Company to offer to prepay or repurchase such Indebtedness or the primary Indebtedness underlying such Guaranty Obligation (or any portion thereof) prior to the stated maturity thereof; or (B) there occurs under any Swap Agreement or Swap Obligation an Early Termination Date (as defined in such Swap Agreement) resulting from (x) any event of default under such Swap Agreement as to which any Group Company is the Defaulting Party (as defined in such Swap Agreement) or (y) any Termination Event (as so defined) as to which any Group Company is an Affected Party (as so defined), and, in either event, the Swap Termination Value owed by a Group Company as a result thereof is greater than the Threshold Amount and such Group Company fails to pay such Swap Termination Value when due after applicable grace periods.

(f) Insolvency Events. The Borrower or any other Group Company having assets in excess of \$1,000,000 shall commence (i) a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any Insolvency or Liquidation Proceeding now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing or (ii) an involuntary case or other proceeding shall be commenced against the Borrower or any other Group Company having assets in excess of \$1,000,000 seeking liquidation, reorganization or other relief with respect to it or its debts under any Insolvency or Liquidation Proceeding now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 days, or any order for relief shall be entered against any Group Company under the federal bankruptcy laws as now or hereafter in effect.

(g) Judgments. One or more judgments, orders, decrees or arbitration awards is entered against any Group Company having assets in excess of \$1,000,000 involving in the aggregate a liability (to the extent not covered by independent third-party insurance or an indemnity from a creditworthy third party as to which the insurer or indemnitor, as applicable, does not dispute coverage), as to any single or related series of transactions, incidents or conditions, in excess of the Threshold Amount, and the same shall not have been discharged, vacated or stayed pending appeal within 30 days after the entry thereof.

(h) ERISA. (i) An ERISA Event occurs which has resulted or could reasonably be expected to result in liability of any Group Company or any ERISA Affiliate in an aggregate amount in excess of the Threshold Amount; (ii) there shall exist an amount of Unfunded Liabilities, individually or in the aggregate, for all Plans and Foreign Pension Plans (excluding for purposes of such computation any Plans and Foreign Pension Plans with respect to which assets exceed benefit liabilities), in an aggregate amount in excess of the Threshold Amount; (iii) any Foreign Pension Plan is not in substantial compliance with all applicable pension benefits and tax laws; (iv) any contribution required to be made in accordance with any applicable law or the terms of any Foreign Pension Plan has not been made; (v) any event has occurred or condition exists with respect to any Foreign Pension Plan that has resulted or could result in any Foreign Pension Plan being ordered or required to be wound up in whole or in part pursuant to any applicable laws or having any applicable registration revoked or refused for the

purposes of any applicable pension benefits or tax laws or being placed under the administration of the relevant pension benefits regulatory authority or being required to pay any taxes or penalties under applicable pension benefits and tax laws; (vi) an order has been made or notice has been given pursuant to any applicable pension benefits and tax laws in respect of any Foreign Pension Plan requiring any person to take or refrain from taking any action in respect thereof or that there has been a contravention of any such applicable laws; (vii) an event has occurred or a condition exists that has resulted or could result in any Group Company being required to pay, repay or refund any amount other than contributions required to be made or expenses required to be paid in the ordinary course) to or on account of any Foreign Pension Plan or a current or former member thereof; or (viii) an event has occurred or a condition exists that has resulted or could result in a payment being made out of a guarantee fund established under the applicable pension benefits laws in respect of a Foreign Pension Plan; and which, with respect to all the events and obligations described in the preceding clauses (iii) through (viii) of this Section 8.01(h), would reasonably be expected to have a Material Adverse Effect.

(i) Guaranties. Any Guaranty given by any Loan Party or any provision thereof shall, except pursuant to the terms thereof, cease to be in full force and effect, or any Guarantor thereunder or any Person acting by or on behalf of such Guarantor shall deny or disaffirm such Guarantor's obligations under such Guaranty.

(j) Impairment of Collateral. Any security interest purported to be created by any Collateral Document shall cease to be, or shall be asserted by any Group Company not to be, a valid, perfected Lien (except as otherwise expressly provided in such Collateral Document) in the securities, assets or properties covered thereby, other than in respect of assets and properties which, individually and in the aggregate, are not material to the Group Companies taken as a whole or in respect of which the failure of the security interests in respect thereof to be valid, perfected first priority security interests will not in the reasonable judgment of the Collateral Agent have a Material Adverse Effect on the rights and benefits of the Lenders under the Loan Documents taken as a whole.

**Section 8.02 Acceleration; Remedies.** Upon the occurrence of and during the continuation of an Event of Default, and at any time thereafter, unless and until such Event of Default has been cured by the Borrower or waived in writing by the Required Lenders (or the Lenders as may be required pursuant to Section 10.01), the Administrative Agent (or the Collateral Agent, as applicable) may, and at the request of the Required Lenders shall, take any or all of the following actions:

(a) [Reserved].

(b) Acceleration of Loans. Declare the unpaid principal of and any accrued interest in respect of all Loans and any and all other indebtedness or obligations (including the Prepayment Fee) of any and every kind (other than contingent indemnification obligations) owing by a Loan Party to any of the Lenders hereunder to be due whereupon the same shall be immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Loan Parties.

(c) Enforcement of Rights. Enforce any and all rights and interests created and existing under the Loan Documents, including, without limitation, all rights and remedies existing under the Loan Documents, all rights and remedies against any Loan Party and all rights of setoff.

(d) Enforcement Rights Vested Solely in Administrative Agent and Collateral Agent. The Lenders agree that this Agreement may be enforced only by the action of the Administrative Agent, acting upon the instructions of the Required Lenders, and, with respect to the Collateral, the Collateral Agent, and that no other Senior Credit Party shall have any right individually to seek to enforce any Loan Document or to realize upon the security to be granted hereby.

Notwithstanding the foregoing, if an Event of Default specified in Section 8.01(f) shall occur, then all Loans, all accrued interest in respect thereof and all accrued and unpaid fees and other indebtedness or obligations owing to the Lenders hereunder and under the other Loan Documents shall immediately become due and payable without the giving of any notice or other action by the Administrative Agent or the Lenders, which notice or other action is expressly waived by the Loan Parties.

### **Section 8.03 Allocation of Payments After Event of Default.**

(a) Priority of Distributions. The Borrower hereby irrevocably waives the right to direct the application of any and all payments in respect of its Finance Obligations and any proceeds of Collateral after the occurrence and during the continuance of an Event of Default and agrees that, notwithstanding the provisions of Sections 2.08(b) and 2.13, after the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable), all amounts collected or received on account of any Finance Obligation shall be applied by the Administrative Agent (or the Collateral Agent, as applicable) in the following order:

FIRST, to the payment of all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees) of the Administrative Agent or the Collateral Agent in connection with enforcing the rights of the Senior Credit Parties under the Loan Documents, including all expenses of sale or other realization of or in respect of the Collateral, including reasonable compensation to the agents and counsel for the Collateral Agent, and all expenses, liabilities and advances incurred or made by the Collateral Agent in connection therewith, and any other obligations owing to the Collateral Agent in respect of sums advanced by the Collateral Agent to preserve the Collateral or to preserve its security interest in the Collateral;

SECOND, to the payment of all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees) of each of the Lenders in connection with enforcing its rights under the Loan Documents or otherwise with respect to the Senior Credit Obligations owing to such Lender in their capacity as such, pro rata in proportion to the respective amounts owed to the Lender;

THIRD, to the payment of all of the Senior Credit Obligations consisting of accrued fees (including the Prepayment Fee) and interest in respect of the Loans owing to the Lenders, pro rata in proportion to the respective amounts owed to the Lender;

FOURTH, to the payment of (i) all of the Senior Credit Obligations consisting of principal of the Loans owing to the Lenders and (ii) all of the Secured Swap Obligations owing to the Swap Creditors, pro-rata in proportion to the respective amounts owed to the Lenders and the Swap Creditors;

FIFTH, to the payment of all other outstanding Senior Credit Obligations owing to the Lenders, pro-rata in proportion to the respective amounts owed to the Lenders; and

SIXTH, to the payment of the surplus, if any, to whomever may be lawfully entitled to receive such surplus.

In carrying out the foregoing, amounts received shall be applied in the numerical order provided until exhausted prior to application to the next succeeding category. If at any time the aggregate amount of the Swap Obligations that would constitute Secured Swap Obligations but for the application of clause (y) of the definition of Secured Swap Obligations (the “Designated Swap Obligations”) would exceed \$10,000,000, distributions pursuant to clause FOURTH in respect of the Designated Swap Obligations shall be reduced ratably based on a fraction the numerator of which is equal to \$10,000,000 and the denominator of which is equal to the amount of the Designated Swap Obligations.

## ARTICLE 9 AGENCY PROVISIONS

**Section 9.01 Appointment and Authority.** Each of the Lenders hereby irrevocably appoints CFS to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent and the Lenders, and none of Holdings, the Borrower or any other Loan Party shall have rights as a third party beneficiary of any of such provisions.

**Section 9.02 Rights as a Lender.** The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.



**Section 9.03 Exculpatory Provisions.** The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), *provided* that the Administrative Agent shall not be required to take any action that, in its opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (x) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (y) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower or a Lender.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article 4 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

**Section 9.04 Reliance by Administrative Agent.** The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for

relying thereon. In determining compliance with any condition hereunder to the making of a Loan, that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**Section 9.05 Delegation of Duties.** The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

**Section 9.06 Resignation of Administrative Agent.** The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right to appoint a successor, which shall be a bank, trust company or other financial institution with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; *provided* that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (i) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (ii) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section 9.06. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.06). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of

any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

**Section 9.07 Non-reliance on Administrative Agent and Other Lenders.** Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**Section 9.08 Administrative Agent May File Proofs of Claim.** In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Senior Credit Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.08 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.08 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Senior Credit Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

**Section 9.09 Collateral and Guaranty Matters.** Each Lender agrees that any action taken by the Collateral Agent or the Required Lenders (or, where required by the express terms of this Agreement, a greater or lesser proportion of the Lenders) in accordance with the provisions of this Agreement or of the other Loan Documents, and the exercise by the Collateral Agent or Required Lenders (or, where so required, such greater or lesser proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. Without limiting the generality of the foregoing, the Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion:

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon Discharge of Senior Credit Obligations, (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any Loan Document, or (iii) subject to Section 10.01, if approved, authorized or ratified in writing by the Required Lenders;

(b) to subordinate any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.02(p); and

(c) to release any Subsidiary Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Subsidiary Guarantor from its obligations under the Guaranty pursuant to this Section 9.09.

**Section 9.10 Right to Credit Bid.** The Collateral Agent may purchase, in any public or private sale conducted under the provisions of the UCC (including pursuant to sections 9-610 and 9-620 of the UCC), the provisions of the Bankruptcy Code (including pursuant to section 363 of the Bankruptcy Code) or at any sale or foreclosure conducted by the Collateral Agent (whether by judicial action or otherwise) in accordance with applicable Laws, all or any portion of the Collateral. The Lenders hereby irrevocably authorize the Collateral Agent, upon the written consent of the Required Lenders to Credit Bid (in an amount and on such terms as may be directed by the Required Lenders) and purchase at any such sale (either directly or through one or more acquisition vehicles) all or any portion of the Collateral on behalf of and for the benefit of the Lenders (but not as agent for any individual Lender or Lenders, unless the Required Lenders shall otherwise agree in writing). Each Lender hereby agrees that, except as otherwise provided in the Loan Documents or with the written consent of the Collateral Agent and the Required Lenders, it will not exercise any right that it might otherwise have to Credit Bid at any sales of all or any portion of the Collateral conducted under the provisions of the UCC or the Bankruptcy Code, foreclosure sales or other similar dispositions of Collateral.

**ARTICLE 10**  
**MISCELLANEOUS**

**Section 10.01 Amendments, Etc.**

(a) Amendments Generally. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall in any event be effective unless the same shall be in writing signed by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders or such other number or percentage of the Lenders as may be specified herein) and the Borrower and the Administrative Agent shall have received notice and a fully executed written copy thereof, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that the Administrative Agent and the Borrower may, with the consent of the other, amend, modify or supplement this Agreement and any other Loan Document to cure any ambiguity, typographical error, defect or inconsistency if such amendment, modification or supplement does not adversely affect the rights of any Agent or any Lender.

(b) Amendments and Waivers Pertinent to Affected Lenders. Notwithstanding paragraph (a) above and in addition to any other consent that may be required thereunder, no amendment, waiver or consent shall:

(i) [reserved]

(ii) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest (other than default interest), fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby;

(iii) reduce the principal of, or the rate of interest specified herein on, any Loan or (subject to subsection (c) below) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; provided, however, that only the consent of the Required Lenders shall be necessary to amend the definition of “Default Rate” or to waive any obligation of the Borrower to pay interest at the Default Rate;

(iv) change Section 2.12 or Section 8.03 in a manner that would alter the pro-rata sharing of payments required thereby (or, in the case of Section 8.03, the order of application of proceeds provided for therein) without the written consent of each Lender directly affected thereby;

(v) change any provision of this Section 10.01 or the definition of “Required Lenders” or any other provision hereof specifying the percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

(vi) release all or substantially all of the value of the Guarantees without the written consent of each Lender (provided that the Administrative Agent may, without the consent of any Lender, release any Subsidiary Guarantor (or all or substantially all of the assets of a Subsidiary Guarantor) that is sold or transferred in compliance with Section 7.05);

(vii) release all or substantially all of the Collateral securing the Senior Credit Obligations hereunder without the written consent of each Lender (provided that the Collateral Agent may, without consent from any other Lender, release any Collateral that is sold or transferred by a Loan Party in compliance with Section 7.05 or released in compliance with Section 9.09);

(viii) impose any greater restrictions on the ability of the Lenders to assign any of their respective rights or obligations hereunder without the written consent of each Lender;

(ix) [Reserved]; or

(x) affect the rights or duties of the Administrative Agent or the Collateral Agent under this Agreement or any other Loan Document, without the prior written consent of the Administrative Agent or the Collateral Agent, as applicable.

Notwithstanding the foregoing or anything to the contrary herein, this Agreement and the other Loan Documents may be amended with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment is delivered in order to cure an ambiguity or defect.

(c) Defaulting Lenders. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder.

(d) Agency Fee Letter Amendment. Notwithstanding anything to the contrary herein, the Agency Fee Letter may be amended, or rights and privileges thereunder waived, in a writing executed only by the parties thereto.

Each Lender and each holder of a Term Note shall be bound by any waiver, amendment or modification authorized by this Section 10.01 regardless of whether its Term Note shall have been marked to make reference therein, and any consent by any Lender or holder of a Term Note pursuant to this Section 10.01 shall bind any Person subsequently acquiring a Term Note from it, whether or not such Term Note shall have been so marked.

#### **Section 10.02 Notices; Effectiveness; Electronic Communication.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand, electronic mail or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly

permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to Holdings, the Borrower or the Administrative Agent, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article 2 if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent, Holdings or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE GROUP COMPANY MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE GROUP COMPANY MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH

THE GROUP COMPANY MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, "Agent Parties") have any liability to any Loan Party, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Loan Party's or the Administrative Agent's transmission of Group Company materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Agent Party; *provided, however*, that in no event shall any Agent Party have any liability to any Loan Party, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of Holdings, the Borrower, its Subsidiaries and the Administrative Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to Holdings, the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic notices) purportedly given by or on behalf of Holdings, the Borrower or any other Loan Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. Holdings and the Borrower shall, jointly and severally, indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of Holdings or the Borrower. All telephonic notices to and other communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

**Section 10.03 No Waiver; Cumulative Remedies.** No failure by any Lender or by the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

**Section 10.04 Expenses; Indemnity; Damage Waiver.**

(a) Costs and Expenses. Holdings and the Borrower, jointly and severally, agree to pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its



Affiliates (including the reasonable fees, charges and disbursements of (x) Milbank, Tweed, Hadley & McCloy LLP, counsel for the Administrative Agent, and certain special and local counsel and (y) Houlihan Lokey Capital, Inc., financial advisor for the Administrative Agent in connection with their due diligence investigation of the Loan Parties, the syndication of the credit facilities provided for herein and the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof, (ii) all out-of-pocket expenses incurred by the Administrative Agent and any Lender (including the fees, charges and disbursements of any counsel for the Administrative Agent or any Lender) in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section 10.04, or (B) in connection with the Loans deemed made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans; provided, however, that the Borrower will not be required to pay the fees and expenses of other third party advisors to the Administrative Agent (which shall not include counsel) retained without consent of Borrower (such consent not to be unreasonably withheld or delayed) or more than one counsel (plus local and special counsel).

(b) Indemnification. The Borrower and each Guarantor, jointly and severally, shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all (subject to clause (d) below) actual losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of Milbank, Tweed, Hadley & McCloy LLP, counsel for the Administrative Agent, and certain special and local counsel engaged on behalf of the Administrative Agent, and Houlihan Lokey Capital, Inc., financial advisor for all Indemnities), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by Holdings, the Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Group Company, or any Environmental Liability related in any way to Holdings, the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to the Loan Documents or the transactions contemplated hereby brought by a third party or by Holdings, the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or a Related Party thereof or (y) result from a claim brought by Holdings, the Borrower or any other Loan Party against an Indemnitee or such Indemnitee’s Related Parties for material breach of such Indemnitee’s obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final nonappealable judgment in its favor on such claim as determined by a court of competent

jurisdiction, and provided that Holdings, the Borrower and the other Loan Parties shall not be required to reimburse the legal fees and expenses of more than one firm of outside counsel (in addition to any reasonably necessary special counsel and up to one local counsel in each applicable local jurisdiction) for all Indemnitees unless, in the written opinion of outside counsel reasonably satisfactory to the Borrower and the Administrative Agent, representation of all such Indemnitees would be inappropriate due to the existence of an actual or potential conflict of interest.

(c) Reimbursement by Lenders. To the extent that Holdings or the Borrower for any reason fails indefeasibly to pay any amount required under subsection (a) or (b) of this Section 10.04 to be paid by it or them to the Administrative Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on the percentage of the total outstanding Loans) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this subsection (c) several and not joint.

(d) Waiver of Consequential Damages. To the fullest extent permitted by applicable Law, Holdings and the Borrower agree not to assert, and hereby waive, any claim against any Indemnitee, and each of the Lenders agrees not to assert or permit any of their respective Subsidiaries to assert any claim against Holdings, the Borrower or any of its Subsidiaries or any of their respective directors, officers, employees, attorneys, agents or advisors, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section 10.04 shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section 10.04 shall survive the resignation of the Administrative Agent, the replacement of any Lender and the repayment, satisfaction or discharge of all the other Senior Credit Obligations.

**Section 10.05 Payments Set Aside.** To the extent that any payment by or on behalf of Holdings, the Borrower or any other Loan Party is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement

entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency or Liquidation Proceeding or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Senior Credit Obligations and the termination of this Agreement.

#### **Section 10.06 Successors and Assigns.**

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of subsection (b) of this Section 10.06, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section 10.06 or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section 10.06 (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of the Loans at the time owing to it); provided, however, that:

(i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Loans, or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$1,000,000 unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lenders' rights and obligations under this Agreement with respect to the Loans assigned; provided, that the foregoing shall not be construed to prohibit the assignment of all or a part of the assigning Lenders rights and obligations with respect to the Loans;

(iii) any assignment of a Loan must be approved by the Administrative Agent, which approval shall not be unreasonably withheld or delayed, and which shall not be required if the proposed assignee is itself a Lender, an Affiliate of such Lender or an Approved Fund;

(iv) any assignment of a Loan must be approved by the Borrower, which approval shall (A) not be unreasonably withheld or delayed and (B) be deemed given if the Borrower shall have failed to respond to a written request therefor within 10 days, and which shall not be required if (x) the proposed assignee is itself a Lender, an Affiliate of such Lender or an Approved Fund or (y) an Event of Default has occurred and is continuing; and

(v) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, *however*, that (A) no such fee shall be payable for assignments to an Affiliate or Approved Fund of such assigning Lender and (B) the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section 10.06, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, 10.04 and 10.18 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, the Borrower (at its expense) shall execute and deliver a Term Note or Term Notes to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section 10.06.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and principal amounts of the Loans owing to, each Lender pursuant to the terms hereof (including as a result of PIK Interest) from time to time (the "Register"). The entries in

the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower at any reasonable time and from time to time upon reasonable prior notice. In addition, at any time that a request for a consent for a material or other substantive change to the Loan Documents is pending, any Lender wishing to consult with other Lenders in connection therewith may request and receive from the Administrative Agent a copy of the Register.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts of each participant's interest in the Loans held by it (the "Participant Register"). The entries in the Participant Register shall be conclusive, absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such Loan or other obligation hereunder as the owner thereof for all purposes of this Agreement notwithstanding any notice to the contrary. Any such Participant Register shall be available for inspection by the Administrative Agent at any reasonable time and from time to time upon reasonable prior notice.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 relating to (a) [reserved], (b) reductions of principal, interest (other than a waiver of Default Rate of interest) or fees payable to such Participant, (c) extensions of final maturity or scheduled amortization of the Loans in which such Participant participates and (d) releases of all or substantially all of the value of the Guarantees, or all or substantially all of the Collateral. Subject to subsection (e) of this Section 10.06, the Borrower agrees that each Participant shall be entitled to the benefits and subject to the requirements of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section 10.06. To the extent permitted by Law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.12 as though it were a Lender.

(e) Limitation upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the

participation to such Participant is made with the Borrower's prior written consent or the right to receive a greater payment results from a Change in Law after the participant becomes a Participant.

(f) Certain Pledges. Any Lender may at any time, without the consent of the Borrower or the Administrative Agent, pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Term Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act or any other similar state laws based on the Uniform Electronic Transactions Act.

**Section 10.07 Treatment of Certain Information; Confidentiality.** Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to it and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (in which case the Administrative Agent or such Lender shall use reasonable efforts to notify the Borrower prior to such disclosure, in any case including any self-regulatory authority, such as the National Association of Insurance Commissioners); (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process; (d) to any other party hereto; (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section 10.07, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (ii) any pledgee referred to in Section 10.06(f) or (iii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 10.07 or (ii) becomes available to the Administrative Agent or any Lender on a nonconfidential basis from a source other than the Borrower.

For purposes of this Section 10.07, "Information" means all information received from Holdings, the Borrower or any of its Subsidiaries relating to Holdings, the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by

Holdings, the Borrower or any Subsidiary. Any Person required to maintain the confidentiality of Information as provided in this Section 10.07 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. Notwithstanding the foregoing, any Agent and any Lender may place advertisements in financial and other newspapers and periodicals or on a home page or similar place for dissemination of information on the Internet or worldwide web as it may choose, and circulate similar promotional materials, after the closing of the transactions contemplated by this Agreement in the form of a “tombstone” or otherwise describing the names of the Loan Parties, or any of them, and the amount, type and closing date of such transactions, all at their sole expense.

Each of the Administrative Agent and the Lenders acknowledges that (i) the Information may include material non-public information concerning Holdings, the Borrower or one or more Subsidiaries, (ii) it has developed compliance procedures regarding the use of material non-public information and (iii) it will handle such material non-public information in accordance with applicable Laws, including Federal and state securities Laws.

**Section 10.08 Right of Setoff.** If an Event of Default shall have occurred and be continuing and each Lender is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency but in any event excluding Exempt Deposit Accounts described in clauses (i) and (ii) of the definition thereof) at any time held and other obligations (in whatever currency) at any time owing by such Lender to or for the credit or the account of Holdings, the Borrower or any other Loan Party against any and all of the obligations of Holdings, the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, to the extent then due and owing, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender and their respective Affiliates under this Section 10.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

**Section 10.09 Interest Rate Limitation.** Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “Maximum Rate”). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof and (c) amortize, prorate,

allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Senior Credit Obligations hereunder.

**Section 10.10 Counterparts; Integration.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

**Section 10.11 Survival of Representations and Warranties.** All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by any Agent or any Lender or on their behalf and notwithstanding that the Agent or any Lender may have had notice or knowledge of any Default or Event of Default at the time of the deemed making of the Loans, and shall continue in full force and effect until the Discharge of Senior Credit Obligations (other than contingent indemnification obligations).

**Section 10.12 Severability.** If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**Section 10.13 Replacement of Lenders.** If (a) any Lender requests compensation under Section 3.04, (b) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, (c) the obligation of any Lender to make Eurodollar Loans has been suspended pursuant to Section 3.02, (d) any Lender is a Defaulting Lender or (e) any Lender has failed to consent to a proposed amendment, waiver, discharge or termination which pursuant to the terms of Section 10.01 or any other provision of any Loan Document requires the consent of all of the Lenders or each affected Lender and with respect to which the Required Lenders shall have granted their consent, the Borrower shall have the right, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, to replace such Lender by causing such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights and obligations under this Agreement and the other Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:



(i) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.06(b);

(ii) such Lender shall have received payment of an amount equal to the outstanding principal amount of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with applicable Laws; and

(v) (A) if the Borrower elects to exercise such right with respect to any Lender pursuant to this Section 10.13, it shall be obligated to remove or replace, as the case may be, all Lenders that have similar requests then outstanding for compensation pursuant to Section 3.04 or 3.01 or whose obligation to make Eurodollar Loans has been similarly suspended and (B) in the case of any replacement of Lenders under the circumstances described in this Section 10.13, the applicable amendment, waiver, discharge or termination that the Borrower has requested shall become effective upon giving effect to such replacement (and any related Assignment and Assumptions required to be effected in connection therewith in accordance with this Section 10.13).

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

#### **Section 10.14 Governing Law; Jurisdiction; Etc.**

(a) Governing Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN SUCH OTHER LOAN DOCUMENTS) AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING, WITHOUT LIMITATION, SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK).

(b) Submission to Jurisdiction. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES

THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) Waiver of Venue. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION 10.14. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) Service of Process. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW

**Section 10.15 Waiver of Jury Trial.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.15.

**Section 10.16 Patriot Act Notice; Lenders' Compliance Certification.**

(a) Notice to Borrower. Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the U.S. Patriot Act it may be required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each such Loan Party in accordance with the U.S. Patriot Act.

(b) Lenders' Certification. Each Lender or assignee or participant of a Lender that is not incorporated under the Laws of the United States or a State thereof (and is not excepted from the certification requirement contained in Section 313 of the U.S. Patriot Act and the applicable regulations because it is both (i) an Affiliate of a depository institution or foreign bank that maintains a physical presence in the United States or foreign country and (ii) subject to supervision by a banking regulatory authority regulating such affiliated depository institution or foreign bank) shall deliver to the Administrative Agent the certification or, if applicable, recertification, certifying that such Lender is not a "shell" and certifying to other matters as required by Section 313 of the U.S. Patriot Act and the applicable regulations thereunder: (i) within 10 days after the Closing Date or, if later, the date such Lender, assignee or participant of a Lender becomes a Lender, assignee or participant of a Lender hereunder and (ii) at such other times as are required under the U.S. Patriot Act.

**Section 10.17 No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated hereby, the Borrower and Holdings each acknowledge and agree, and acknowledge their respective Affiliates' understanding, that: (a) the credit facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Borrower, Holdings and their respective Affiliates, on the one hand, and the Agents and the Lenders, on the other hand, and each of the Borrower and Holdings is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (b) in connection with the process leading to such transaction, each of the Agents and the Lenders is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Borrower, Holdings or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (c) neither the Agents nor any Lender has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Borrower or Holdings with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any Agent or any Lender has advised or is currently advising the Borrower, Holdings or any of their respective Affiliates on other matters) and neither any Agent nor any Lender has any obligation to the Borrower, Holdings or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (d) the Agents and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, Holdings and their respective Affiliates, and neither any Agent nor any Lender has any obligation to disclose any of

such interests by virtue of any advisory, agency or fiduciary relationship; and (e) the Agents and the Lenders have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Borrower and Holdings has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Borrower and Holdings hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against any Agent and any Lender with respect to any breach or alleged breach of agency or fiduciary duty.

**Section 10.18 Judgment Currency.**

(a) The obligations of the Loan Parties hereunder and under the other Loan Documents to make payments in a specified currency (the “Obligation Currency”) shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into any currency other than the Obligation Currency, except to the extent that such tender or recovery results in the effective receipt by a Lender of the full amount of the Obligation Currency expressed to be payable to it under this Agreement or another Loan Document. If, for the purpose of obtaining or enforcing judgment against any Loan Party in any court or in any jurisdiction, it becomes necessary to convert into or from any currency other than the Obligation Currency (such other currency being hereinafter referred to as the “Judgment Currency”) an amount due in the Obligation Currency, the conversion shall be made, at the rate of exchange (as quoted by the Administrative Agent or if the Administrative Agent does not quote a rate of exchange on such currency, by a known dealer in such currency designated by the Administrative Agent) determined, in each case, as of the Business Day immediately preceding the date on which the judgment is given (such Business Day being hereinafter referred to as the “Judgment Currency Conversion Date”).

(b) If there is a change in the rate of exchange prevailing between the Judgment Currency Conversion Date and the date of actual payment of the amount due, the Borrower covenants and agrees to pay, or cause to be paid, or remit, or cause to be remitted, such additional amounts, if any (but in any event not a lesser amount), as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial award at the rate of exchange prevailing on the Judgment Currency Conversion Date.

(c) For purposes of determining any rate of exchange or currency equivalent for this Section 10.18, such amounts shall include any premium and costs payable in connection with the purchase of the Obligation Currency.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

NEW SBARRO FINANCE, INC.

By: \_\_\_\_\_  
Name:  
Title:

NEW SBARRO INTERMEDIATE  
HOLDINGS, INC.

By: \_\_\_\_\_  
Name:  
Title:

CANTOR FITZGERALD SECURITIES,  
as Administrative Agent, Collateral  
Agent and Lender

By: \_\_\_\_\_  
Name:  
Title:

**Exhibit B**

**Assumed Executory Contract/Unexpired Lease List**

**SBARRO LLC**  
**SCHEDULE OF ASSUMED CONTRACTS AND UNEXPIRED LEASES**

COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
1604-1610 BROADWAY OWNER LLC	1606 BROADWAY #897 NEW YORK, NY 10019	SBARRO LLC	\$80,195.32	
1713797 ALBERTA LTD	1876, 8882 -170 Street, Edmonton, Alberta T5T 3J7 CANADA	SBARRO LLC	\$0.00	
421 SEVENTH AVENUE LLC	159 WEST 33RD STREET NEW YORK, NY 10001	SBARRO LLC	\$138,336.42	
627656 ALBERTA INC	100 ANDERSON ROAD SE BOX FC-8, CALGARY Calgary T2J 3V1 CANADA	SBARRO LLC	\$0.00	
697770 ALBERTA INC	109 ST & PRINCESS ELIZABETH AVE, EDMONTON ALBERTA T5G 3A6 CANADA	SBARRO LLC	\$0.00	
A&G Realty Partners	Attn: Emilio Amendola 445 Broad Hollow Road Suite 410, Melville, NY 11747 US	SBARRO LLC	\$0.00	
Accurate	7515 IRVINE CENTER DRIVE, IRVINE, CA 92618 US	SBARRO LLC	\$641.50	
ACE American Insurance Company	ACE USA, Professional Risk 140 Broadway 41st Floor, New York, NY 10005 US	SBARRO LLC	\$0.00	
ACS/Xerox	5225 Auto Club Drive, Dearborn, MI 48126 US	SBARRO LLC	\$3,116.35	
ADMINISTRADORA DE RESTAURANTES LP, SA	DIAGONAL 6 13-01 ZONA 10 LOCAL # FC-04 GUATEMALA CITY 01010 GUATEMALA	SBARRO LLC	\$0.00	
ALLOUR FRESH ITALIAN FOOD CO.	MECCA AL MUKARAMA STREET FIRST FLOOR AMMAN JORDAN	SBARRO LLC	\$0.00	
ALLOUR FRESH ITALIAN FOOD CO.	MEDICAL CITY STREET AMMAN JORDAN	SBARRO LLC	\$0.00	
ALLOUR FRESH ITALIAN FOOD CO.	PRINCE HASHIM - ABDOUN DISTRICT AMMAN JORDAN	SBARRO LLC	\$0.00	
Aloha	1320 Tennis Drive, Bedford, TX 76022 US	SBARRO LLC	\$0.00	
American Corporate Record Center, Inc.	135 Spagnoli Rd. , Melville, NY 11747 US	SBARRO LLC	\$0.00	
AMERICAN STAR TOANO, LLC	9220 OLD STAGE ROAD TOANO VA 23168 USA	SBARRO LLC	\$0.00	
Ancor, Inc. (Cucinova Olentangy, LLC)	Attn: General Counsel 831 James Street 2nd Floor, Syracuse, NY 13203 US	SBARRO AMERICA, INC.	\$0.00	
Ancor, Inc. (Kenwood Place, LLC)	Attn: General Counsel 831 James Street 2nd Floor, Syracuse, NY 13203 US	SBARRO AMERICA, INC.	\$0.00	
Andy Abbajay - Offer Ltr	555 CHURCH STREET APT 403 , NASHVILLE , TN 37219 US	SBARRO LLC	\$0.00	
ANGELO PARENTE	TWO PPG PLACE PITTSBURGH PA 15222 USA	SBARRO LLC	\$0.00	
ANGELO PARENTE	LIBERTY PLACE 213 PITTSBURGH PA 15222 USA	SBARRO LLC	\$0.00	
ANMA RESTAURANT'S LLC	1668 COLLINS STREET MIAMI BEACH FL 33139 USA	SBARRO LLC	\$0.00	
ARAMARK CORPORATION	800 S. MAIN ST 0902 GIBBONS HALL 150 BLUE STONE DRIVE HARRISONBURG VA 22806 USA	SBARRO LLC	\$0.00	
ARAMARK CORPORATION	ROCKY TOP FOOD COURT 1502 W. CUMBERLAND AVENUE KNOXVILLE TN 37996 USA	SBARRO LLC	\$0.00	
ARAMARK EDUCATIONAL SERVICES LLC	STUDENT CENTER 724 SW HARRISON STREET PORTLAND OR 97201 USA	SBARRO LLC	\$0.00	
ARAMARK EDUCATIONAL SERVICES LLC	OBSERVATORY HILL DINING FACILITY CORNER ALDERMAN & MCCORMICK CHARLOTTESVILLE VA 22904 USA	SBARRO LLC	\$0.00	
ARAMARK FOOD AND SUPPORT SERVICE, INC	9001 STOCKDALE HIGHWAY C/O ARAMARK BAKERSFIELD CA 93311 USA	SBARRO LLC	\$0.00	



COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
AS UCLA	308 WESTWOOD PLAZA LEVEL 1 KERCKHOFF HALL 332 LOS ANGELES, CA 90024	SBARRO LLC	\$13,210.74	
ASC ACQUISITION CORPORATION	NORTH PLAZA, TERMINAL D SAN JUAN, CAROLINA 00914 PUERTO RICO	SBARRO LLC	\$0.00	
ASHKENAZY	50 MASSACHUSETTS AVE NE WASHINGTON, DC 20002	SBARRO LLC	\$14,796.85	
AT&T	Attn: Christopher Wengatz 8 Two Mile Road, Farmington, CT 06032-2513 US	SBARRO LLC	\$0.00	
Aurelien Orphanides - Amend Consulting Agmt	6, Rue AA de Furstenberg, Strasbourg, 67000 France	SBARRO LLC	\$0.00	
AVI RESORT & CASINO	10,000 AHA MACAV PKWY LAUGHLIN, NV 89028	SBARRO LLC	\$432.78	
Avis	6 Sylvan Way, Parsippany, NJ 7054 US	SBARRO LLC	\$10,366.38	
Axis Surplus Insurance Company	Attn: Claims Administrator 11680 Great Oaks Way  Suite 500, Alpharetta, GA 30022 US	SBARRO LLC	\$0.00	
B.V.S. FOODS, INC	777 E. MERRITT CAUSEWAY MERRITT ISLAND FL 32952 USA	SBARRO LLC	\$0.00	
BAA PITTSBURGH, INC.	P.O. BOX 12406 MIDFIELD TERMINAL SP AC2B PITTSBURGH, PA 15231	SBARRO LLC	\$4,262.06	
BALL STATE UNIVERSITY	RESIDENCE HALL DINING SER CARMICHAEL HALL 140 MUNCIE IN 47306 USA	SBARRO LLC	\$0.00	
BALLY'S LAS VEGAS	3645 LAS VEGAS BLVD. SO. #119 LAS VEGAS, NV 89109	SBARRO LLC	\$8,772.50	
BANGEL GROUPS INC	TERMINAL B BOSTON MA 02128 USA	SBARRO LLC	\$0.00	
BANGEL GROUPS INC	500 TERMINAL E BOSTON MA 02128 USA	SBARRO LLC	\$0.00	
BANGEL GROUPS INC	300 TERMINAL C LOGAN INTERNATIONAL AIRPORT BOSTON MA 02128 USA	SBARRO LLC	\$0.00	
BANGEL GROUPS INC	TERMINAL A BOSTON MA 02128 USA	SBARRO LLC	\$0.00	
Barbara Herling - Offer Ltr	60 Windswept Lane, Honey Brook, PA 19344 US	SBARRO LLC	\$0.00	
Barnett	61 Hilton Avenue, Garden City, NY 11530 US	SBARRO LLC	\$0.00	
BASSETT CENTER	6101 GATEWAY WEST EL PASO, TX 79925	SBARRO LLC	\$5,975.95	
BDO	401 Broadhollow Road, Melville, NY 11474 US	SBARRO LLC	\$22,470.00	
BELLE FUTURES, INC	NAVAL EXCHANGE COMMISARY 1170 AMPHIBIOUS DRIVE VIRGINIA BEACH VA 23545 USA	SBARRO LLC	\$0.00	
BELVIDERE LATUS LLC	2510 PEARL STREET BELVIDERE IL 61008 USA	SBARRO LLC	\$0.00	
BEST FRANCHISE LLC	8300 Sudley Road Manassas VA 20109 USA	SBARRO LLC	\$0.00	
BEYONDGROUP CIA. LTDA.	Urbanizacion Santa Lucis, PAsaje A Y Via Interoceanica Pichincha Quito ECUADOR	SBARRO LLC	\$0.00	
BEYONDGROUP CIA. LTDA.	CIUDAD COMERCIAL EL BOSQUE AVENIDA OCCIDENTAL S-N Y EDMUNDO CARVAJAL QUITO ECUADOR	SBARRO LLC	\$0.00	
BEYONDGROUP CIA. LTDA.	NACIONES UNIDAS Y SEIS DE DICIEMBRE QUITO ECUADOR	SBARRO LLC	\$0.00	
BEYONDGROUP CIA. LTDA.	AV REPUBLICA NO 6-114 Y AMAZONAS MALL EL JARDIN QUITO ECUADOR	SBARRO LLC	\$0.00	
BJ'S WHOLESALE CLUB CORP.	BJ's Valley Stream 125 Green Acres Road Valley Stream, NY 11581	SBARRO LLC	\$2,628.17	
Bloomfield Holding LLC	200 BASS PRO DRIVE PEARL, MS 39208	SBARRO LLC	\$1,185.12	
BOYD GAMING CORPORATION	4500 West Tropicana Avenue Las Vegas, NV 89103	SBARRO LLC	\$10,117.20	
CADILLAC FAIRVIEW CORP.	260 YONGE ST. TORONTO TORONTO, M5B2L	SBARRO LLC	\$0.00	
CAFARO/MILLCREEK MALL	654 Mill Creek Mall Erie, PA 16565	SBARRO LLC	\$5,585.23	
CAFE SBARRO ATLANTIC CITY, LLC	225 BOARDWALK ATLANTIC CITY NJ 08401 USA	SBARRO LLC	\$0.00	
CAL STATE UNIVERSITY (LA)	5151 STATE UNIVERSITY DRIVE LOS ANGELES, CA 90032	SBARRO LLC	\$5,788.00	
Capital Retail Services	19825 B North Cove Rd Ste. 169, Cornelius, NC 28031 US	SBARRO LLC	\$0.00	

COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
CAPREF Eden Prairie LLC	1018 EDEN PRAIRE SP# 132 EDEN PRAIRIE , MN 55344	SBARRO LLC	\$3,531.31	
Careerbuilder	200 NORTH LASALLE STREET SUITE # 1100, CHICAGO, IL 60601 US	SBARRO LLC	\$0.00	
Carl Rickertsen - Director Agmt	c/o Pine Creek Partners 1025 Thomas Jefferson Street, NW Suite 308 East, Washington, DC 20007 US	SBARRO LLC	\$0.00	
Carl Rickertsen - Indemnification Agmt	c/o Pine Creek Partners 1025 Thomas Jefferson Street, NW Suite 308 East, Washington, DC 20007 US	SBARRO LLC	\$0.00	
CARMIKE THEATRES	41803 SOUTH HURSTBOURNE PARKWAY LOUISVILLE KY 40220 USA	SBARRO LLC	\$0.00	
Carolyn Spatafora - Change of Control Agmt	112 OAKSIDE DRIVE, SMITHTOWN, NY 11787 US	SBARRO LLC	\$0.00	
Carousel Industries -WARRANTY (Avaya)	659 South County Trail, Exeter, RI 02822-34112 US	SBARRO LLC	\$0.00	
Casual Restaurants LLC	Khalid Bin Waleed (Bank Street) PO Box 61113 Dubai UNITED ARAB EMIRATES	SBARRO LLC	\$0.00	
CBL	6700 DOUGLAS BLVD. SP# FC-1 DOUGLASVILLE, GA 30135	SBARRO LLC	\$16,305.47	As amended on 3/10/2014
CBL	3 S.TUNNEL RD. ASHVILLE, NC 28805	SBARRO LLC	\$3,150.60	
CBL	1178 BURNSVILLE CENTER BURNSVILLE, MN 55337	SBARRO LLC	\$18,867.67	As amended on 3/10/2014
CBL	1105 WALNUT STREET CARY, NC 27511	SBARRO LLC	\$22,817.97	As amended on 3/10/2014
CBL	2000 BRITAIN ROAD #103 AKRON, OH 44310	SBARRO LLC	\$5,007.41	
CBL	7200 HARRISON AVE FC-2 ROCKFORD, IL 61112	SBARRO LLC	\$17,179.10	As amended on 3/10/2014
CBL	1800 GALLERIA BLVD. SPC #3120 FRANKLIN, TN 37067	SBARRO LLC	\$5,773.51	
CBL	3379 NICHOLASVILLE ROAD#F LEXINGTON, KY 40503	SBARRO LLC	\$4,773.39	
CBL	2100 HAMILTON PLACE BLVD CHATTANOOGA, TN 37421	SBARRO LLC	\$4,110.62	
CBL	3320 SILAS CREEK PKWY SUITE #4 WINSTON SALEM, NC 27103	SBARRO LLC	\$5,645.58	
CBL	5300 SAN DARIO #168 LAREDO, TX 78041	SBARRO LLC	\$2,572.23	
CBL	1982 GRAND RIVER AVENUE OKEMOS, MI 48864	SBARRO LLC	\$4,893.32	
CBL	200 MONROEVILLE MALL MONROEVILLE, PA 15146	SBARRO LLC	\$21,055.33	As amended on 3/10/2014
CBL	2150 NORTHWOODS BLVD.FC#2 N.CHARLESTON, SC 29406	SBARRO LLC	\$4,136.48	
CBL	2801 MEMORIAL PKWY. S. HUNTSVILLE, AL 35801	SBARRO LLC	\$4,591.79	
CBL	4802 VALLEY VIEW BEND NW SPACE # LC105 ROANOKE, VA 24012	SBARRO LLC	\$3,278.00	
CBL	1700 WEST INTER. SPEEDWAY BLVD SP# 150 DAYTONA, FL 32114	SBARRO LLC	\$23,964.81	As amended on 3/10/2014
CBL	205 W. BLACKSTOCK ROAD SUITE #530 SPARTANBURG, SC 29301	SBARRO LLC	\$3,702.52	
CBRE MANAGEMENT	2800 LEAVENWORTH STREET SAN FRANCISCO, CA 94133	SBARRO LLC	\$5,955.24	
Cedar Real Co Ltd	1328 DUBLIN ROAD SUITE 300, COLUMBUS, OH 43215 US	SBARRO LLC	\$290.00	
Chartis Insurance Group	Financial Lines Claims 175 Water Street 18th Floor, New York, NY 10038 US	SBARRO LLC	\$0.00	
CINEMARK	500 RIVERS EDGE DRIVE MILFORD OH 45150 USA	SBARRO LLC	\$0.00	
CINEMARK	864 RIVERDALE ROAD WEST SPRINGFIELD MA 01089 USA	SBARRO LLC	\$0.00	
CINEMARK	4100 CARPENTER ROAD YPSILANTI MI 48197 USA	SBARRO LLC	\$0.00	

COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
CINEMARK	195 MALL WOODS DR WEST CARROLLTON OH 45449 USA	SBARRO LLC		\$0.00
CINEMARK	4489 GLENGARRY DRIVE BEAVERCREEK OH 45440 USA	SBARRO LLC		\$0.00
CINEMARK	2005 HOLLENBECK DRIVE PERRYSBURG OH 43551 USA	SBARRO LLC		\$0.00
CINEMARK	5001 MONROE STREET TOLEDO OH 43623 USA	SBARRO LLC		\$0.00
CINEMARK	99 REDSTONE ROAD MANCHESTER CT 06045 USA	SBARRO LLC		\$0.00
CINEMARK	9700 PRESTON CROSSING BLVD OKOLONA KY 40229 USA	SBARRO LLC		\$0.00
CINEMARK	1201 BOSTON POST RD MILFORD CT 06460 USA	SBARRO LLC		\$0.00
CINEMARK	11900 PALACE WAY FAIRFAX VA 22030 USA	SBARRO LLC		\$0.00
CLIPPERS EHF	Kringlan Mall Kringlan Mall 4-12 Reykjavik ICELAND	SBARRO LLC		\$0.00
COLMAR RESTAURANT	N/A N/A BELGIUM	SBARRO LLC		\$0.00
COLMAR RESTAURANT	TURNHOUTSEBAAN 5 - SHOP 84 ANTWERPEN 2100 BELGIUM	SBARRO LLC		\$0.00
COLMAR RESTAURANT	KAPELSTRAAT 100, SHOP 21 SINT-NIKLAAS 9100 BELGIUM	SBARRO LLC		\$0.00
COLMAR RESTAURANT	MIDI ZUID FONSNYLAAN 46 BUS21 BRUSSELS 1060 BELGIUM	SBARRO LLC		\$0.00
COLUMBIA PROPERTIES OZARKS,LTD	STATE ROAD KK OSAGE BEACH MO 65065 USA	SBARRO LLC		\$0.00
Commercial Services, Inc.	2443 St. Johns Bluff Road S, Jacksonville, FL 32246 US	SBARRO LLC		\$10,875.70
COMPASS GROUP USA, INC.	1525 WEST WT HARRIS BLVD CHARLOTTE NC 28262 USA	SBARRO LLC		\$0.00
COMPASS GROUP USA, INC.	100 Fulton Ave Hempsted NY 11549 USA	SBARRO LLC		\$0.00
Computer Network Solutions	131 Hoffman Lane, Islandia, NY 11749 US	SBARRO LLC		\$0.00
CONCORD MALL FAST FOODS INC.	4737 CONCORD TPKE WILMINGTON DE 19803 USA	SBARRO LLC		\$0.00
Consortium Holding Group, Inc.	One Connecticut Turnpike East Milford CT 06460 USA	SBARRO LLC		\$0.00
CRAIG REALTY GROUP	150 CITADEL RD. SP#148 LOS ANGELES, CA 90040	SBARRO LLC		\$3,196.74
CT General Life Ins. Co. (CIGNA)	Senior Client Manager 3 Huntington Quadrangle , Melville, NY 11747 US	SBARRO LLC		\$0.00
CYPRUS AIRPORTS F&B	PO BOX 11610 T.T. 8062 PAFOS CYPRUS (EUR)	SBARRO LLC		\$0.00
DARTMOUTH-HICKCOCK MED. CTR.	DHMC SUITE 835 ONE MEDICAL CENTER DR. LEBANON, NH 03766	SBARRO LLC		\$3,260.11
David Coleman - Amend Consulting Agmt	d/b/a Coleman Realty Services, LLC 100 East Holland Road, Holland, PA 18966 US	SBARRO LLC		\$4,625.10
David Gleason - Offer Ltr	139 Crescent Street, Closter, NJ 7624 US	SBARRO LLC		\$0.00
DAVID HOCKER & ASSOCIATES	1001 BARNES CROSSING RD TUPELO, MS 38801	SBARRO LLC		\$2,662.84
David Karam - Employment Agmt	2380 Onandaga Dr, Columbus, OH 43221 US	SBARRO LLC		\$0.00
David Karam - Investment Agreement	2380 Onandaga Dr, Columbus, OH 43221 US	SBARRO LLC		\$0.00
DEER PARK/HAUPPAUGE LLC	30 DEER SHORE SQUARE NO. BABYLON, NY 11703	SBARRO LLC		\$0.00
DELICIOSO LLC	12302 UNIVERSITY MALL COURT TAMPA FL 33612 USA	SBARRO LLC		\$0.00
Department of Homeland Security - Verification Division	470 L'enfant Plaza, SW, Washington, DC 20024 US	SBARRO LLC		\$0.00
Des Hague - Director Agmt	One Broad Street, PH4, Stamford, CT 6901 US	SBARRO LLC		\$0.00
Des Hague - Indemnification Agmt	One Broad Street, PH4, Stamford, CT 6901 US	SBARRO LLC		\$0.00
Don Hurell - Offer Ltr	170 Windermere Way, Madisonville, LA 70447- 9262 US	SBARRO LLC		\$0.00
Dr Pepper/Seven Up, Inc.	Attn: M Martin, VP Sales 5301 Legacy Drive, Plano, TX 75024-3109 US	SBARRO LLC		\$0.00
Dr Pepper/Seven Up, Inc.	Attn: Vicki L. Stewart, Admin Asst 5301 Legacy Drive, Plano, TX 75024-3109 US	SBARRO LLC		\$0.00
DUBAI COMERCIO e REPRESENTACOE	SHCS CL Quadra 405 Bloco C LJ 20 Brasilia 70239-510 BRAZIL	SBARRO LLC		\$0.00

COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
DUBAI COMERCIO e REPRESENTACOE	ROD Federal BR-060,LUC 1077 S/N Km21 Industrial DA Serra Ouro Alexania 72930-000 BRAZIL	SBARRO LLC	\$0.00	
DUBAI COMERCIO e REPRESENTACOE	AV. PERIMETRAL NORTE NO. 8303 EUC N FF - 14 PASSEIO DAS AGUAS SHOPPING BAIRRO FAZENDA CAVEIRAS GOIANIA BRAZIL	SBARRO LLC	\$0.00	
Dunbar Armored, Inc.	Attn: Russell E. Daniels, VP, Admin. 2701 Cindel Drive, Cinnaminson, NJ 8077 US	SBARRO AMERICA, INC.	\$655.04	
EDDIE ABRAHIM	165 UNIVERSITY AVENUE NEWARK NJ 07103 USA	SBARRO LLC	\$0.00	
EDDIE ABRAHIM	700 PARAMUS PARK PARAMUS NJ 07652- 3509 USA	SBARRO LLC	\$0.00	
EGYPTIAN CO. FOR MODERN RESTAURANT MANAGEMENT	KHALIG NEAMAH, THE SANAFEEER HOTEL ENTRANCE SHARM EL SKEIKH EGYPT	SBARRO LLC	\$0.00	
EGYPTIAN CO. FOR MODERN RESTAURANT MANAGEMENT	ROAD 9 MADDI CAIRO EGYPT	SBARRO LLC	\$0.00	
EGYPTIAN CO. FOR MODERN RESTAURANT MANAGEMENT	CITYSTARS SHOPPING CENTER HELIOPOLIS CAIRO EGYPT	SBARRO LLC	\$0.00	
EGYPTIAN CO. FOR MODERN RESTAURANT MANAGEMENT	37 EL NAHAS STREET NARCITY CAIRO EGYPT	SBARRO LLC	\$0.00	
EGYPTIAN CO. FOR MODERN RESTAURANT MANAGEMENT	EL SOUK HURGHADA SHOPPING CENTRE SHERATON ROAD HURGHADA EGYPT EGYPT	SBARRO LLC	\$0.00	
EGYPTIAN CO. FOR MODERN RESTAURANT MANAGEMENT	EL BATRAVI STREET NASR CITY CAIRO EGYPT	SBARRO LLC	\$0.00	
EGYPTIAN CO. FOR MODERN RESTAURANT MANAGEMENT	179 HARAM STREET GIZZA CAIRO EGYPT	SBARRO LLC	\$0.00	
EGYPTIAN CO. FOR MODERN RESTAURANT MANAGEMENT	ALEX ABDUL EL-SALAM AREF STREET ALEXANDRIA EGYPT	SBARRO LLC	\$0.00	
Eric Taylor – Offer Ltr	14716 Pensham Drive, Frisco, TX 75035 US	SBARRO LLC	\$0.00	
Escalon Premier Brands	1905 McHenry Ave, Escalon, CA 95320 US	SBARRO LLC	\$0.00	
Executive Severance Plan	Law Office of David F. Zeid 1057 Broad Street Second Floor, Bridgeport, CT 6604 US	SBARRO LLC	\$0.00	
F&S FOODS, INC	4201 COLDWATER ROAD SPACE #20 FORT WAYNE IN 46805 USA	SBARRO LLC	\$0.00	
F&S FOODS, INC	SLATELITE UNION ON MALL 1717 W. POLK STREET CHICAGO IL 60635 USA	SBARRO LLC	\$0.00	
F&S FOODS, INC	CHAMPAIGN-URBANA 1401 WEST GREEN STREET URBANA IL 61801 USA	SBARRO LLC	\$0.00	
F&S FOODS, INC	1720 OLD FORT PARKWAY MURFREESBORO TN 37129 USA	SBARRO LLC	\$0.00	
F&S FOODS, INC	7601 SOUTH CICERO AVENUE CHICAGO IL 60652 USA	SBARRO LLC	\$0.00	
F&S FOODS, INC	200 COMMERCE STREET NASHVILLE TN 37201 USA	SBARRO LLC	\$0.00	
F&S FOODS, INC	3200 N AMERISTAR DRIVE SPACE B KANSAS CITY MO 64161 USA	SBARRO LLC	\$0.00	
FAMNIK LLC	1212 BELLFLOWER BLVD, SUITE 242 LONG BEACH CA 90815-4199 USA	SBARRO LLC	\$0.00	
FEIL	3301 VETERANS BLVD #78H METAIRRIE, LA 70002	SBARRO LLC	\$3,582.67	
FEIL	7501 W. CERMAK ROAD #VC- NORTH RIVERSIDE, IL 60546	SBARRO LLC	\$3,269.58	
First Data	6200 S. Quebec Street #1, Greenwood Village, CO 80111 US	SBARRO NEW HYDE PARK, INC.	\$0.00	
Fishbowl	44 Canal Center Plaza Suite 500, Alexandria, VA 22314 US	SBARRO LLC	\$0.00	
FIVE RIVERS PETROLEUM	I-70 AT EXIT 6 CLAYSVILLE PA 15323 USA	SBARRO LLC	\$0.00	
FORBES/COHEN PROPERTIES	4200 CONROY ROAD #255 ORLANDO, FL 32839	SBARRO LLC	\$6,315.63	
FORBES/COHEN PROPERTIES	2800 W. BIG BEAVER ROAD SPACE # Y327 TROY, MI 48084	SBARRO LLC	\$8,087.43	
FORBES/COHEN PROPERTIES	3101 PGA BLVD.P. BEACH GDNS, FL 33410	SBARRO LLC	\$35,241.46	As amended on 3/10/2014
FOREST CITY COMM. MGMT.	3027 CHARLESTON TOWN CENTER CHARLESTON, WV 25389	SBARRO LLC	\$4,596.68	
FOREST CITY COMM. MGMT.	1300 SUNSET ROAD SPACE #2845 HENDERSON, NV 89014	SBARRO LLC	\$3,242.60	
FOREST CITY COMM. MGMT.	11800 WEST BROAD STREET RICHMOND, VA 23233	SBARRO LLC	\$1,241.63	

COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
FRAN HORGAN AND JAMES HORGAN	STUDENT UNION BUILDING ONE PEGASUS CIRCLE ORLANDO FL 32816 USA	SBARRO LLC	\$0.00	
FRANJO EAST CHICAGO LLC	777 RESORTS BLVD EAST CHICAGO IL 46312 USA	SBARRO LLC	\$0.00	
FRANJO LLC	4202A N. HARLEM AVENUE CHICAGO IL 60634 USA	SBARRO LLC	\$0.00	
FRANQUICIAS DEL ISTMO SA	VIA ISRAEL CUIDAD DE PANAMA PANAMA	SBARRO LLC	\$0.00	
FRANQUICIAS DEL ISTMO SA	PASILO DE DELPHIN LOCAL PA-1 PANAMA PANAMA	SBARRO LLC	\$0.00	
FRANQUICIAS DEL ISTMO SA	PASILO DE DELPHIN tba PANAMA	SBARRO LLC	\$0.00	
GATEWAY PIZZA LLC	100 LAUREL HILL DRIVE SPACE 716 SECAUCUS NJ 07094 USA	SBARRO LLC	\$0.00	
GATEWAY PIZZA LLC	ONE HUDSON PLACE HOBOKEN NJ 07030 USA	SBARRO LLC	\$0.00	
GEMINI PROPERTY MANAGEMENT	1868 TAMAMI TRAIL NAPLES, FL 34102	SBARRO LLC	\$4,087.45	
GGP	1450 ALA MOANA BLVD. HONOLULU, HI 96814	SBARRO LLC	\$12,410.68	
GGP	3450 WRIGHTSBORO RD. SPACE 2340 AUGUSTA, GA 30901	SBARRO LLC	\$4,967.09	
GGP	400 Commons Way Bridgewater, NJ 08807	SBARRO LLC	\$7,014.82	
GGP	194 BUCKLAND HILLS MANCHESTER, CT 06040	SBARRO LLC	\$11,129.78	
GGP	11025 CAROLINA PLACE PARK PINEVILLE, NC 28134	SBARRO LLC	\$5,133.08	
GGP	Route 95 and Route 7 Newark, DE 19702	SBARRO LLC	\$10,021.68	
GGP	12000 82nd Avenue Happy Valley, OR 97086	SBARRO LLC	\$5,013.80	
GGP	6600 MENAUL NE SPACE # I-6 ALBUQUERQUE, NM 87110	SBARRO LLC	\$3,954.58	
GGP	4101 WEST DIVISION STREET ST.CLOUD, MN 56301	SBARRO LLC	\$3,787.72	
GGP	6650 WESTEDGE AVE. SP# 229 PORTAGE, MI 49002	SBARRO LLC	\$3,054.95	
GGP	804 EAGLE RIDGE DRIVE SPACE 611 LAKE WALES, FL 33853	SBARRO LLC	\$2,747.56	
GGP	6191 State Street Murray, UT 84107	SBARRO LLC	\$3,949.22	
GGP	3200 LAS VEGAS BLVD LAS VEGAS, NV 89109	SBARRO LLC	\$9,781.66	
GGP	16535 SOUTHWEST FREEWAY SP# 430 SUGARLAND, TX 77479	SBARRO LLC	\$7,455.14	
GGP	343 FOUR SEASONS TOWN CEN GREENSBORO, NC 27407	SBARRO LLC	\$6,699.46	
GGP	4301 W. WISCONSIN AVENUE APPLETON, WI 54913	SBARRO LLC	\$3,523.62	
GGP	2625 SCOTTSVILLE ROAD BOWLING GREEN, KY 42101	SBARRO LLC	\$2,829.23	
GGP	7875 MONTGOMERY ROAD CINCINNATI, OH 45236	SBARRO LLC	\$7,050.89	
GGP	2500 NO. MAYFAIR ROAD WAUWATOSA, WI 53226	SBARRO LLC	\$5,333.94	
GGP	22500 TOWN GATE CIRCLE SPACE # 2127 MORENO VALLEY, CA 92553	SBARRO LLC	\$5,302.37	
GGP	1245 WORCESTER RD. #2000 NATICK, MA 01760	SBARRO LLC	\$7,403.02	
GGP	2186 NORTHPOINT CIRCLE ALPHARETTA, GA 30202	SBARRO LLC	\$5,749.30	
GGP	8401 PARK MEADOWS CTR. DR. SUITE 3032 LONE TREE, CO 80124	SBARRO LLC	\$6,996.60	
GGP	4700 MILLHAVEN ROAD MONROE, LA 71203	SBARRO LLC	\$3,093.87	
GGP	700 S.W. FIFTH AVE. SP#1145 PORTLAND, OR 97204	SBARRO LLC	\$4,820.08	
GGP	2000 RIVERCHASE GALLERIA BIRMINGHAM, AL 35244	SBARRO LLC	\$4,652.60	
GGP	2601 PRESTON RD SP#2052 FRISCO, TX 75034	SBARRO LLC	\$7,964.84	
GGP	2063 TOWN EAST MALL #3022 MESQUITE, TX 75150	SBARRO LLC	\$5,556.44	
GGP	2701 MING AVE #402 BAKERSFIELD, CA 93304	SBARRO LLC	\$4,410.28	
GGP	10000 CALIFORNIA ST. #10 OMAHA, NE 68114	SBARRO LLC	\$2,959.17	

COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
GGP	SBARRO 310 WOODBRIDGE CTR. DR. WOODBIDGE, NJ 07095	SBARRO LLC	\$8,171.17	
GLIMCHER	500 WINCHESTER AVE. ASHLAND, KY 41101	SBARRO LLC	\$3,540.62	
GLIMCHER	400 MILL AVE. SUITE 557 NEW PHILA., OH 44663	SBARRO LLC	\$1,087.50	
GLIMCHER	98-1005 Moanalua Rd. Aiea, HI 96701	SBARRO LLC	\$3,862.82	
GLIMCHER	1500 POLARIS PARKWAY FC#8 COLUMBUS, OH 43240	SBARRO LLC	\$9,445.38	
GLIMCHER	I-275 WESTSHORE BLVD. SP#J TAMPA, FL 33609	SBARRO LLC	\$3,694.69	
Granite	100 Newport Avenue Ext., Quincy, MA 2171 US	SBARRO LLC	\$19,459.29	
GROVERS, INC.	9401 MALL ROAD MORGANTOWN WESTOVER WV 26501 USA	SBARRO LLC	\$0.00	
GUAM FAST FOODS, INC.	GUAM SHOP. CTR. SPC. IJ 199 CHALAN SAN ANTONIO TAMUNING 96911 GUAM	SBARRO LLC	\$0.00	
GUAM FAST FOODS, INC.	1088 W MARINE DRIVE DEDEO 96912 GUAM	SBARRO LLC	\$0.00	
HASSOUN ENTERPRISES LTD	5150 YONGE STREET TORONTO, ONTARIO M2N6L8 CANADA	SBARRO LLC	\$0.00	
HASSOUN ENTERPRISES LTD	25 Peel Centre Drive Bramalea, Ontario L6T3R5 CANADA	SBARRO LLC	\$0.00	
HASSOUN ENTERPRISES LTD	222 Hunt Club Ottawa, Ontario K1V1C1 CANADA	SBARRO LLC	\$0.00	
HASSOUN ENTERPRISES LTD	13850 Steeles Ave West Unit 812 Halton Hills Ontario L7G0J1 CANADA	SBARRO LLC	\$0.00	
HASSOUN ENTERPRISES LTD	2863 Ellesmere Rd. Unit 209A Scarborough Ontario M1E4B9 CANADA	SBARRO LLC	\$0.00	
HAUPPAUGE LLC	586 VETERANS MEMORIAL HWYHAUPPAGUE, NY 11788	SBARRO LLC	\$0.00	
Hendon Properties LLC	3700 ATLANTA HIGHWAY ATHENS, GA 30606	SBARRO LLC	\$6,052.32	
HILTON STEEVES	1308-3800 MEMORIAL DRIVE CALGARY ALBERTA T2A 2K2 CANADA	SBARRO LLC	\$0.00	
HILTON STEEVES	UNIT 401H EDMONTON EDMONTON CANADA	SBARRO LLC	\$0.00	
HILTON STEEVES	UNIT 15J EDMONTON CITY CENTER EAST 10025 102A AVENUE EDMONTON AB T5J 2Y7 CANADA	SBARRO LLC	\$0.00	
HINSDALE LATUS LLC	5800 W TRI STATE TOLL ROAD HINSDALE IL 60521 USA	SBARRO LLC	\$0.00	
HMSHOST	PENNSYLVANIA TURNPIKE EXIT 146 EASTBOUND MILEPOST 147.3 BEDFORD PA 15522 USA	SBARRO LLC	\$0.00	
HMSHOST	PENNSYLVANIA TURNPIKE EXIT 146 WESTBOUND MILEPOST 147.3 BEDFORD PA 15522 USA	SBARRO LLC	\$0.00	
HMSHOST	MAINE TURNPIKE SOUTH MILE 25 SOUTH KENNEBUNK ME 04043 USA	SBARRO LLC	\$0.00	
HMSHOST	PENNSYLVANIA TURNPIKE EXIT 298 WESTBOUND MILEPOST 304.8 ELVERSON PA 19520 USA	SBARRO LLC	\$0.00	
HMSHOST	2188 TAG ROAD CANASTOTA NY 13032 USA	SBARRO LLC	\$0.00	
HMSHOST	NEW YORK THRUWAY 3236 ROUTE 96 WEST CLIFTON SPRINGS NY 14432 USA	SBARRO LLC	\$0.00	
HMSHOST	NEW YORK STATE THRUWAY MILE MARKER 33 NORTH SLOATSBURG NY 10974 USA	SBARRO LLC	\$0.00	
HMSHOST	NEW YORK STATE THRUWAY 5365 STATE RT. #233 MILE POST 244 EAST WESTMORELAND NY 13490 USA	SBARRO LLC	\$0.00	
HMSHOST	WEST VIRGINIA TURNPIKE MILEMAKER 45 SOUTH BECKLEY WV 25801 USA	SBARRO LLC	\$0.00	
HMSHOST	GARDEN STATE PARKWAY MILE MARKER 173 MONTVALE NJ 07645 USA	SBARRO LLC	\$0.00	
HMSHOST	GARDEN STATE PARKWAY MILE MARKER 75.5 FORKED RIVER NJ 08731 USA	SBARRO LLC	\$0.00	
HMSHOST	CONCOURSE F, 3RD LEVEL MIAMI FL 33122 USA	SBARRO LLC	\$0.00	
HMSHOST	JACKSONVILLE INT'L AIRPORT 2400 YANKEE CLIPPER DRIVE JACKSONVILLE FL 32034 USA	SBARRO LLC	\$0.00	
HMSHOST	OHIO TURNPIKE 888 NORTH COUNTY ROAD 260 CLYDE OH 43410 USA	SBARRO LLC	\$0.00	

COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
HMSHOST	OHIO TURNPIKE 1012 NORTH COUNTY ROAD 260 CLYDE OH 43410 USA	SBARRO LLC		\$0.00
HMSHOST	8111 CONCORD MILLS BLVD SUITE 101 CONCORD NC 28027 USA	SBARRO LLC		\$0.00
HMSHOST	651 KAPKOWSKI ROAD ELIZABETH NJ 07201 USA	SBARRO LLC		\$0.00
HMSHOST	C/O HMSHOST 5501 JOSH BIRMINGHAM PKWY #13 CHARLOTTE NC 28214 USA	SBARRO LLC		\$0.00
HMSHOST	NEW JERSEY TURNPIKE BETWEEN 8A AND 9 NORTH MILE MARKER 78.7 MILLTOWN NJ 08850 USA	SBARRO LLC		\$0.00
HMSHOST	C/O HMSHOST 3400 SKY HARBOR BLVD PHOENIX AZ 85034 USA	SBARRO LLC		\$0.00
HMSHOST	7000 ARUNDEL MILLS CIRCLE SUITE FC HANOVER MD 21076 USA	SBARRO LLC		\$0.00
HMSHOST	HMS HOST CALGARY INT'L AIRPORT 2000 AIRPORT ROAD NE CALGARY ALBERTA T2E 6W5 CANADA	SBARRO LLC		\$0.00
HMSHOST	GARDEN STATE PARKWAY MILE POST 124 SOUTH AMBOY NJ 08879 USA	SBARRO LLC		\$0.00
HMSHOST	9520 LIME RIDGE ROAD MANTUA OH 42555 USA	SBARRO LLC		\$0.00
HMSHOST	9520 LIME RIDGE ROAD MANTUA OH 42555 USA	SBARRO LLC		\$0.00
HMSHOST	HMS HOST 1000 AIRPORT PARKWAY PRIVATE OTTAWA, ONTARIO K1V9B4 CANADA	SBARRO LLC		\$0.00
HMSHOST	5555 ST LOUIS MILLS BLVD HAZELWOOD MO 63042 USA	SBARRO LLC		\$0.00
HMSHOST	C/O HMSHOST 9333 AIRPORT BLVD ORLANDO FL 32827 USA	SBARRO LLC		\$0.00
HMSHOST	NEW JERSEY TURNPIKE SOUTH MILE POST 92.9 WOODBIDGE NJ 07095 USA	SBARRO LLC		\$0.00
HMSHOST	2000 AIRPORT ROAD NE CALGARY ALBERTA T2E 6W5 CANADA	SBARRO LLC		\$0.00
HMSHOST	C/O HMSHOST ROOM 202 SEATTLE WA 98158 USA	SBARRO LLC		\$0.00
HMSHOST	C/O HMSHOST PO BOX 11007 LAS VEGAS NV 89111 USA	SBARRO LLC		\$0.00
HMSHOST	SOUTHWEST FLORIDA INT'L AIRPORT 11000 TERMINAL ACCESS ROAD FORT MEYERS FL 33913 USA	SBARRO LLC		\$0.00
HMSHOST	SBARRO/GREENWICH BISTRO TERMINAL 1, BUILDING 55 JAMAICA NY 11430 USA	SBARRO LLC		\$0.00
HMSHOST	C/O HMSHOST 4300 GLUMACK DRIVE - LINDBERGH TERMINAL ST PAUL MN 55111 USA	SBARRO LLC		\$0.00
HMSHOST	21747 CO RD M WEST UNITY OH 43570 USA	SBARRO LLC		\$0.00
HMSHOST	21738 CO. RD M-50 WEST UNITY OH 43570 USA	SBARRO LLC		\$0.00
HMSHOST SWEDEN AB	190 45 STOCKHOLM - ARLANDA SKY CITY, UPPGANG E, 3 TRAPPOR STOCKHOLM S-19045 SWEDEN	SBARRO LLC		\$0.00
HOFFMAN ESTATES LATUS, LLC	3333 BEVERLY ROAD HOFFMAN ESTATES IL 60179 USA	SBARRO LLC		\$0.00
HORECA AXPLOITATIE MAATSCHAPPIJ SCHIPHOL B.V.	POST BUS 75041 1117 ZN SCHIPHOL AIRPORT AMSTERDAM NETHERLANDS	SBARRO LLC		\$0.00
HORECA AXPLOITATIE MAATSCHAPPIJ SCHIPHOL B.V.	POSTBUS 75041 117 2N SCHIPHOL AMSTERDAM NETHERLANDS	SBARRO LLC		\$0.00
Houlihan & Lokey - Engagement Letter	Accounts Receivable Department 10250 Constellation Blvd., 5th Floor, Los Angeles, CA 90067 US	SBARRO LLC		\$0.00
Hyperion	5450 Great America Parkway, Santa Clara, CA 95054 US	SBARRO LLC		\$0.00
INDIANA UNIVERSITY	C/O THE TRUSTEES OF INDIANA UNIVERSITY 801 NORTH JORDAN AVENUE WRIGHT PLACE FOOD COURT BLOOMINGTON IN 47405-2107 USA	SBARRO LLC		\$0.00
INTERIT SA DE CV	AVENIDA CAPITAN CARLOS LEON S/N POST SECURITY LOCAL N B 10-A, SALA B TERMINAL 1 MEXICO DELEGACION VENUSTIANO CARRANZA CP 15620 MEXICO	SBARRO LLC		\$0.00

COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
INTERIT SA DE CV	Av. Patria S/N netre Av. Americas y Av. Manuel Avila Camacho Guadalajara, Zapopan Jalisco cp 45160 MEXICO	SBARRO LLC	\$0.00	
INTERIT SA DE CV	Paseo de la Reforma 222 Col. Juarez Del. Cuauhtemoc Mexico D.F. Mexico C.P. 06600 MEXICO	SBARRO LLC	\$0.00	
INTERIT SA DE CV	Blvd Aeropuerto #104 Local F-1, Col.Carritp de Jerez, Leon Guanajuato MEXICO	SBARRO LLC	\$0.00	
INTERIT SA DE CV	Eje 1 Mosqueta No. 259 esq. Avenida Insurgentes entre las calles de mariano Azuela y Mercurio, Col. Buenavista Mexico City MEXICO	SBARRO LLC	\$0.00	
INTERIT SA DE CV	CIRCUITO CENTRO COMERICAL, 2251 LOCAL R456 CD SATALITE MEXICO DF 53100 MEXICO	SBARRO LLC	\$0.00	
INTERIT SA DE CV	EJERCITO NACIONAL 843-F113 COL DELEG.MIGUEL HIDALGO GRANADA MEXICO	SBARRO LLC	\$0.00	
INTERIT SA DE CV	VASCO DE QUIROGA 3800 COLONIA ANTIGUA MINA LA TOTOLAPA DELEGACION CUAJIMALPA MEXICO DF 05109 MEXICO	SBARRO LLC	\$0.00	
INTERIT SA DE CV	AV. COYOACAN NO. 2000 COL. XOCO MEXICO DF MEXICO	SBARRO LLC	\$0.00	
INTERIT SA DE CV	PASEO DE TAMARINDOS 90 COLONIA BOSQUES DE LAS LOMAS DELEGACION CUAJIMALPA MEXICO DF 05120 MEXICO	SBARRO LLC	\$0.00	
INTERIT SA DE CV	BOULEVARD FRANCISCO MEDINA, ASCENCIO INTERIOR AEROPUERTO INTERNACIONAL, COLONIA VILLA LAS FLORES PUERTO VALLARTA 48335 MEXICO	SBARRO LLC	\$0.00	
INTERIT SA DE CV	AEROPUERTO INTERNATIONAL BENITO JUAREZ, TERMINAL 2, TS-16 COLONIA PENON DE LOS BANOS, DELEGACION VENUSTIANO CARRANZA MEXICO CITY 15620 MEXICO	SBARRO LLC	\$0.00	
INTERIT SA DE CV	AV. UNIVERSIDAD 1000 COLONIA SANTA CRUZ DELEGACION BENITO JUAREZ LOCAL E-49 MEXICO DF 03310 MEXICO	SBARRO LLC	\$0.00	
INTERIT SA DE CV	LOCAL 82 BOULEVARD FRANCISCO MEDINA ASCENCIO INTERIOR AEROPUERTO INTERNACIONAL COLONIA VILLA LAS FLORES PUERTO VILLARTA JALISCO 48335 MEXICO	SBARRO LLC	\$0.00	
INTERIT SA DE CV	BOULEVARD PUERTA DE HIERRO S/N ESQUINA AV. PATRIA COLONIA PUERTA DE HIERRO, ZAPOPAN GUADALAJARA 45115 MEXICO	SBARRO LLC	\$0.00	
INTERIT SA DE CV	AEROPUERTO INTERNACIONAL DE SAN JOSE DEL CABO SALA DE ULTIMA ESPERA TERMINAL 3 LOCAL 36B PLANTA ALTA, COLONIA LAS VEREDAS SAN JOSE DEL CABO, BAJA CALIFORNIA SUR MEXICO	SBARRO LLC	\$0.00	
INTERIT SA DE CV	EJE 1 NORTE MOSQUETA 259 ESQUINA AVENIDA INSURGENTES LOCAL N2-FC-03 COLONIA BUENAVISTA DELEGACION CUAUHTEMOC MEXICO DF 06350 MEXICO	SBARRO LLC	\$0.00	
INTERIT SA DE CV	CALLE RAFAEL SANZIO 150 LOCAL FF-2 COL RESIDENCIAL LA ESTANCIA ZAPOPAN JALISCO 45030 MEXICO	SBARRO LLC	\$0.00	
INTERIT SA DE CV	CENTRO COMERICAL VIA ACOXPA AV ACOXPA #430, FC 6 - 7 COLONIA: EX HACIENDA DE COAPA MEXICO DF DELEGACION TLALPAN DF 14300 MEXICO	SBARRO LLC	\$0.00	
INTERIT SA DE CV	AVENIDA CAPTIAN CARLOS LEON S/N POST SECRUITY PRIMER NIVEL, EDIFICIO C. LOCALES 9/10, COL. PENON DE LOS BANOS MEXICO CITY, DELEGACION VENUSTIANO CARRANZA CP 15620 MEXICO	SBARRO LLC	\$0.00	



COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
INTERIT SA DE CV	CENTRO COMERCIAL GALERIAS COAPA, CALZADA DEL HUESO #519, LOCAL 426, COLONIA: RESIDENCIAL ACOXPA MEXICO DF DELEGACION TLALPAN CP 14300 MEXICO	SBARRO LLC		\$0.00
INTERIT SA DE CV	AVENIDA ANILLO PERIFERICO#4690, LOCAL #509 DEL FOOD COURT DELEGACION COYOACAN MEXICO DF 04500 MEXICO	SBARRO LLC		\$0.00
INTERIT SA DE CV	VIALIDAD DE LA BARRANCA NO 6 COLONIA, EX HACIENDA JESUS DEL MONTE, MUNICIPIO HUIXQUILUCAN ESTADO DE MEXICO MEXICO	SBARRO LLC		\$0.00
INTERIT SA DE CV	AV CUAUHTEMOC NO 462, ESQUINA VIADUCTO MIGUEL ALEMAN COLONIA NARVARTE, DELEGACION BENITO JUAREZ, LOCAL FC 05 MEXICO DF MEXICO	SBARRO LLC		\$0.00
INTERIT SA DE CV	RIOBAMBA NUMERO 589 LOCAL FF-10, COLONIA MAGDALENA DE LAS SALINAS, DELEGACION GUSTAVO A MADERO MEXICO DISTRITO FEDERAL CP 07760 MEXICO	SBARRO LLC		\$0.00
INTERIT SA DE CV	NO 1512 de la Avenida Canal de Tezontle Colonia Alfonso Ortiz Tirado, Delegacion Iztapalapa Mexico DF MEXICO	SBARRO LLC		\$0.00
INTERIT SA DE CV	AV UNIVERSIDAD 936 A COLONIA SANTA CRUZ ATOYAC BENITO JUAREZ CP 03310, ENTRE LAS CALLES DE PARROQUIA Y FELIX CUEVAS MEXICO DF MEXICO	SBARRO LLC		\$0.00
Intralinks	150 East 42 Street 8th Floor, New York, NY 10017 US	SBARRO LLC		\$0.00
INVERSIONES DE MODA SA	KM 5 CARRETERA A MASSAYA CENTRO COMERCIAL GALERIAS SANTO DOMINGO MANAGUA NICARAGUA	SBARRO LLC		\$0.00
INVERSIONES ORIENTE LTDA	BANDERA # 101 L/10 SANTIAGO CHILE	SBARRO LLC		\$0.00
IOA PROPERTIES LLC	1819 STATE RD 434 WEST SP #24 LONGWOOD, FL 32750	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES BALTICS	NEFTCHILAR AVE, PARK BULVAR MALL, LEVEL 3, PREMISE NO 315 BAKU AZ1001 AZERBAIJAN	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES BALTICS	44, TABRIZA STREET BAKU AZERBAIJAN	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES BALTICS	H. Javid 556/57 Baku AZERBAIJAN	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES BALTICS	DACIA BOULEVARD CHISINAU 0222 MOLDOVA	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES BALTICS	LEVEL 2, PREMISE 165 80/3, BUL DACHIA STREET KISHINEV 2026 MOLDOVA	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES E.EUROPE	VINOHRADSKA STREET 151/2828 PRAGUE 3 180 05 CZECH REPUBLIC	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES E.EUROPE	STREET PLZENSKA 8 PRAGUE 5 150 00 CZECH REPUBLIC	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES E.EUROPE	VESELSKA 665 PRAGUE 9 - LETNANY 19000 CZECH REPUBLIC	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES E.EUROPE	VESELSKA 669 PRAHA 9 19000 CZECH REPUBLIC	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES E.EUROPE	U DALNICE 777 BRNO 664 42 CZECH REPUBLIC	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	43, LENINA AVENUE SURGUT RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	VOLGOGRAD, 30 let POBEDY Blvd., 21 VOLGOGRAD RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	Suchevsky val, 5 Moscow RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	REPINA STREE, 94 URAL-SIBERIA, EKATERINBURG RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	Tsurjupy Str. 97, TC Centralny Ural-Siberia, UFA RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	Yaroslavskoe Highway, Yadreevo-1 Moscow RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	Sovetskaya Str. 9 Moscow Region Zheleznodorozhny RUSSIAN FEDERATION	SBARRO LLC		\$0.00

COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
IP CREATIONS ENTERPRISES RUSSIA	Zemlyachi Str., 110B Volgograd RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	Repina Street, 94 Ural-Siberia Ekaterinburg RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	Dzerjinskiy pr., 23 Orenburg RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	52a Revolutionaya Toliatti RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	Moscow, Dmitriy Donskoy Blvd, 9 Build. 2 Moscow RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	Ulitsa 3 Iyulya, 5A Ural-Siberia Irkutsk RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	Moscow, MKAD, 24th km, build 1 South Russia RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	30 Lenin Street TC Pushkinsky Kursk RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	MOSCOW REGION, CITY ZELENograd, KRYUKOVSKAYA SQUARE 1 ZELENograd RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	BRYANSK, ST. OBEZDNAYA, 30 ST. OBEZDNAYA RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	MOSCOW REGION, SOLNECHNOGORSK DISTRICT, NEAR THE VILLAGE LUNEVSKOE BLACK MUD STR. COMMERCE AND INDUSTRY. BUILDING 6 RUSSIA RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	1 KRASNOPRUDNAYA STREET MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	1 MANEZHNAYA SQUARE LOCATION 1028 MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	60A SHEREMETEVSKAYA STREET MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	1 MANEZHNAYA SQUARE MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	2 BLDG 16 KASHIRSKOE SHOSSE MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	14 KIROVOGRADSKAYA STREET MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	2ND FLOOR MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	23 KM KASHIRSKOE SHOSSE, MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	12 DEKABRISTOV STREET MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	1 OSTASHKOVSKOE SHOSSE MITISCHI MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	1 BLD 1 KALUZHSKAYA SQUARE MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	21 KM KALUZHSKOE SHOSSE LENINSKY DISTRICT MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	65-66 KM MKAD KRASNOGORSKY DISTRICT MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	5 NOVORYAZANSKOE SHOSSE KOTELNIKI RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	62 A LENINGRADSKY PROSPECT MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	54 YAROSLAVSKOE SHOSSE, MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	MARFINO VILLAGE ODINTSOVSKY DISTRICT MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	45 BOLSHAYA SERPUKHOVSKAYA STREET PODOLSK MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	61 A PROFSOUZNAYA STREET MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	1 BLD 43 PERERVA STREET MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	6, BURTISKAYA STREET MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	PUTILKOVO VILLAGE 71KM MKAD KRASNOGORSKY DISTRICT MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	

COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
IP CREATIONS ENTERPRISES RUSSIA	40-42 NEVSKY STREET, LITER 1 ST PETERSBURG RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	1 LENINGRADSKAYA STREET MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	141 POBEDY PROSPECT KAZAN RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	8 SREDNII OVCHINIKOVSKY PEREULOK MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	34/29 DUBRAVNAYA STREET. MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	7 SEVASTOPOLSKY PROSPECT ST PETERSBURG RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	3, MUCHURINSKY PROSPECT, BLD 1 TRADE CENTER FESTIVAL MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	6, MIKLUKHO-MAKLAYA STREET MOSCOW 117198 RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	2 SENNAYA SQUARE ST PETERSBURG RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	37, SIGNALNIJ PROEzd MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	6/12 PROSPECT KOROLYOVA KOROLYOV MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	154 ENGELSA PROSPECT ST PETERSBURG RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	99 STACHEK PROSPECT ST PETERSBURG RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	2A POBEDY STREET, MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	25 B 18 KM MOSKOVSKOE SHOSSE KIROVSKIJ DISTRICT SAMARA RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	56 KAZAN IBRAGIMOV PROSPECT KAZAN RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	160 M NOVOSAFOVAYA STREET MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	11 NOVOYASENEVSKIJ PROSPECT MOSCOW	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	2 RYAZANSKI PROSPECT MOSCOW RUSSIA RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	KOTELNIK MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	1 KIEVSKIJ STATION SQUARE TC EUROPEISKI MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	KSTOVSKI REGION FEDYAKOVO VILLAGE TC MEGA RUSSIA RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	12 KM MURMANSKOE SHOSSE ST PETERSBURG RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	9 KM MOSCOW TRAKT YEKATERINBURG RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	6 VERNADSKY PROSPECT MOSCOW RUSSIAN	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	26 BLD 39 KHOROSHEVSKY SHOSSE MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	123 LENINGRADSKYT PROSPECT YAROSLAVL RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	KORABELKI VSEVOLZHSKI DISTRICT ST PETERSBURG RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	KARNIVAL TC, FOOD COURT 55 KHALTURINA STREET YEKATERINBURG RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	TRADE CENTRE - KRUSNY KIT BLDG 2, SHARAPOVSKI PROEzd, MYTISHI MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	BUILDING 9, 2 CHERNYSHEVSKI STREET TC GERTSEN PLAZA OMSK RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	12A ULYANOVSKI PROSPECT ULYANOVSK RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	2B KRASNOGO MAYAKA STREET MOSCOW RUSSIAN FEDERATION	SBARRO LLC	\$0.00	
IP CREATIONS ENTERPRISES RUSSIA	TBA ST PETERSBURG RUSSIAN FEDERATION	SBARRO LLC	\$0.00	

COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
IP CREATIONS ENTERPRISES RUSSIA	BLDG 100, 100 SHCHELKOVSKOE SHOSSE MOSCOW RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	BLDG 11-17, 13 BOLSHAYA TULSKAYA STREET MOSCOW RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	MOSCOW PROSPECT TRADE CENTRE MOSCOW PROSPECT 129 VORONEZH RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	SCHUKINSKAYA STREET 42 MOSCOW RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	2TH RELSONAYA STREET 2.B.3 MOSCOW RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	TORGOVIE RIYADI CENTRE BOLSHAYA MOSCOVSKAYA ST, 19A VLADIMIR RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	PROSPECT MIRA STREET, 3 NEBEREZHNE CHELNY CITY RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	KALININA STREET, 105A CHEBOKSARY RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	OREHOVIY BOULEVARD, 14, B.2 MOSCOW RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	VATUTINA STREET, 44 MEGA MALL NOVOSIBIRSK RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	NOVOCHERKASSKOE SCHOSSE, 33 AKSAY REGION ROSTOV-NA-DONY CITY RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	8TH OF MARCH STREET, 32 SEREBRYANIY GOROD IVANOVO CITY RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	DOROZHNYA STREET, 6A NAGORNIY VILLAGE YAROSLAVL RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	RODIONOVA STREET, 187 NIZHNIY NOVGOROD MN4 RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	70 YEARS OF OCTOBER, 1/2 OMSK CITY	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	OREHOVY BOULEVARD, 22 MOSCOW RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	DYBENKO STREET, 30 SAMARA CITY RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	TURGENEVSKOE SCHOSSE, 27 NEW-ADYGEI RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	KARL MARX AVENUE, 4 A/1, TC VERSAILLES ULYANOVSK RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	SEMEONOVSKAYA SQ, 1 MOSCOW RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	9 MAYA, 77 KRASNOYARSK SIBERIA 660118 RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	RUBLOVSKIE SHOSSE #62 MOSCOW RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	RODIONOVA, 187 NIZNIY NOVGOROD MN4 RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	LENINGRAD HIGHWAY, D.16, STR.4 MOSCOW RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	PARTEZANA JHELEZNYAKA STR. 23, TC JUNE KRASNOYARSK RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	PROSPECT POBEDI #93 TC RASSVET CHEREPOVETS 162614 RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	ZEMLAYNOY VAL, 29 MOSCOW MKV RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	CG. BAKHCHEVANDZHI EKATERINBURG ME3 RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	STREET MALINOVSKOGO ROSTOV-NA-DONU RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	BOULEVARD ARKHITEKTOROV 35 BUILDING NO 3036 OMSK RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	35 KOLTSOVSKAYA STREET SHOPPING MALL GALEREYA CHIZHOVA VORONEZH RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	KHIMKI MOSCOW 103340 RUSSIAN FEDERATION	SBARRO LLC		\$0.00

COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
IP CREATIONS ENTERPRISES RUSSIA	147 PROSPECT KIROVA SAMARA RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	147 PROSPECT KIROVA SAMARA RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	26-38 LIGOVSKIY PROSPECT, 3RD FLOOR ST PETERSBURG RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	211 PROSPECT MIRA MOSCOW RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	5 VOENNAYA STREET NOVOSIBIRSK RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	2B FESTIVAL'NAYA STREET MOSCOA RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	7 KARIA MARXA SQUARE NOVOSIBIRSK RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	203 TRUDA STREET CHELYABINSK RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	184 RM OKRUZHNOY ROAD RYAZAN RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	BELORECHENSKAYA STREET 36/3 MOSCOW RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	GRAJDANSKY PROSPECT 41/B F7 SAINT PETERSBURG RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	LIGOVSKY PROSPECT 153, 309 SAINT STR VIKTORY AVENUE 91 KAZAN RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	24 MOSKOVSKOE HIGHWAY SAMARA RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	43, LENINA AVENUE YEKATERINBURG RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	BETANKURA STREET, 1 NIZHNIY NOVGOROD RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	72, PRIMORSKIY AVENUE SAINT PETERSBURG	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	1, GENERAL IVANOV STREET SURGUT RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	129 A, PROFSOUZNAYA STREET MOSCOW RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	21, MOSKOVSKOE HIGHWAY RYAZAN RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	70, Street Maxima Gor'kogo Tumen RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	70, STREET MAXIMA GORKOGO TUMEN RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	174, RUBEZHNYA STREET UFA RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	PANFILOVKIY AVENUE, BLD 6A ZELENograd RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	HIMKINSKIY BOULEVARD, BLD 7-23 MOSCOW RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	4B, I Yakovleva Prospect Cheboksary RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	BLDG 1, 25, PULKOVO ROAD SAINT PETERSBURG RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	TYUMEN REGION, KHANTY-MANSI AUTONOMOUS AREA YUGRA NEFTEJUGANSKOE SURGUT RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	JUGORSKY TRAKT SURGOT RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	ROSTOV-ON-DON. PROSPECT MICHAEL NAGIBINA, 17 RUSSIA RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	KAZAN CITY, PROSPECT YAMASHEVA d. 46/33 TATARSTAN RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	UNIVERSITY AVENUE, 107 VOLGOGRAD RUSSIAN FEDERATION	SBARRO LLC		\$0.00
IP CREATIONS ENTERPRISES RUSSIA	OKTYABRSKIY PROSPECT, 103 TVER RUSSIAN FEDERATION	SBARRO LLC		\$0.00
ITAL AMERICAS FOODS CORP.	LOCAL #303, LA TERRAZA, 525 FD ROOSEVELT AVE PLAZA LAS AMERICAS HATO REY 00936 PUERTO RICO	SBARRO LLC		\$0.00
ITAL AMERICAS FOODS CORP.	40 BETANCES CANTON MALL BAYAMON 00960 PUERTO RICO	SBARRO LLC		\$0.00

COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
ITAL AMERICAS FOODS CORP.	LOCAL #231 - 2050 PONCE BY PASS, ROAD #2KM 227.9 PLAZA DEL CARIBE PONCE 00731 PUERTO RICO	SBARRO LLC	\$0.00	
ITAL AMERICAS FOODS CORP.	LOCAL #H - 9410 AVE LOS ROMEROS RIO PIEDRAS 00936 PUERTO RICO	SBARRO LLC	\$0.00	
ITAL AMERICAS FOODS CORP.	200 RAFAEL CORDERO AVENUE PLAZA CENTRO MALL CAGUAS 00725 PUERTO RICO	SBARRO LLC	\$0.00	
ITAL AMERICAS FOODS CORP.	RD PR 52 - CORNER OD RD 156 CAGUAS PUERTO RICO	SBARRO LLC	\$0.00	
IVANHOE CAMBRIDGE INC.	261055 CrossIron Blvd. ROCKY VIEW, T4A0G	SBARRO LLC	\$0.00	
JAIN ENTERPRISES	7401 N. LA CHOLLA BLVD, STE 141 TUSCON AZ 85741 USA	SBARRO LLC	\$0.00	
Jeff Sly	2825 South Glenstone Space VC-02 Springfield MO USA	SBARRO LLC	\$0.00	
JONES LANG LASALLE	201 E. MAGNOLIA BLVD. #386 BURBANK, CA 91501	SBARRO LLC	\$3,012.60	
JONES LANG LASALLE	1595 WEST HIGHWAY 36 ROSEVILLE, MN 55113	SBARRO LLC	\$3,212.56	
JONES LANG LASALLE	300 MARY ESTHER CUT-OFF MARY ESTHER, FL 32569	SBARRO LLC	\$1,914.92	
Joseph Chikhani - Amend Consulting Agmt	Block 6 Qatar Street Building 18, Apt. 84, Salmiyah, Kuwait	SBARRO LLC	\$0.00	
JOSEPH ZITO	537 MONMOUTH ROAD SUITE 174 JACKSON NJ 08527-5366 USA	SBARRO LLC	\$0.00	
JUMPUP, INC.	1500 EAST VILLAGE WAY SUITE 2217 ORANGE CA 92865 USA	SBARRO LLC	\$0.00	
KAISERMAN MGMT. CO.	111 S. INDEPENDENCE MALL EAST PHILADELPHIA, PA 19106	SBARRO LLC	\$3,391.80	
Kenexa Assessment Agreement	650 East Swedesford Second Floor, Wayne, PA 19087 US	SBARRO LLC	\$54,312.50	
Kenexa -Click and Hire ATS	650 East Swedesford Second Floor, Wayne, PA 19087 US	SBARRO LLC	\$0.00	
Kenexa Hospitality Solutions	650 East Swedesford Second Floor, Wayne, PA 19087 US	SBARRO LLC	\$0.00	
Kirkland & Ellis - Retention Letter	Attn: Nicole Greenblatt 601 Lexington Avenue, New York, NY 10022 US	SBARRO LLC	\$0.00	
KUWAIT FOOD CO. (AMERICANA)	EL SALMIYA FASHION WAY SALEM MUBARAK STREET KUWAIT CITY KUWAIT	SBARRO LLC	\$0.00	
KUWAIT FOOD CO. (AMERICANA)	CO-OPERATIVE SOCIETY EDUCATION FACULTY ROUND KUWAIT CITY KUWAIT	SBARRO LLC	\$0.00	
LA TASTY GRILL, LLC	252 SOUTH BROADWAY NUESTRA SENORA REYNA DE TODOS LOS ANGELES CA 90013 USA	SBARRO LLC	\$0.00	
LAKE FOREST LATUS LLC	13783 W OASIS SERVICE ROAD LAKE FOREST IL 60045 USA	SBARRO LLC	\$0.00	
Lawson (Infor)	380 Saint Peter St., Saint Paul, MN 55102 US	SBARRO LLC	\$0.00	
LERNER COMPANY	21100 DULLES TOWN CIRCLE STE. 248 Sterling, VA 20166	SBARRO LLC	\$19,923.41	As amended on TBD
Liberty Mutual Fire Insurance Company	175 Berkeley Street, Boston, MA 2117 US	SBARRO LLC	\$0.00	
Liberty Mutual Fire Insurance Company	175 Berkeley Street, Boston, MA 2117 US	SBARRO LLC	\$0.00	
Liberty Mutual Fire Insurance Company	175 Berkeley Street, Boston, MA 2117 US	SBARRO LLC	\$0.00	
Liberty Mutual Fire Insurance Company	175 Berkeley Street, Boston, MA 2117 US	SBARRO LLC	\$0.00	
Liberty Mutual Fire Insurance Company	175 Berkeley Street, Boston, MA 2117 US	SBARRO LLC	\$0.00	
Liberty Mutual Fire Insurance Company	175 Berkeley Street, Boston, MA 2117 US	SBARRO LLC	\$0.00	
Liberty Mutual Fire Insurance Company	175 Berkeley Street, Boston, MA 2117 US	SBARRO LLC	\$0.00	
Liberty Mutual Fire Insurance Company	175 Berkeley Street, Boston, MA 2117 US	SBARRO LLC	\$0.00	
Liberty Mutual Fire Insurance Company	175 Berkeley Street, Boston, MA 2117 US	SBARRO LLC	\$0.00	
Liberty Mutual Fire Insurance Company	175 Berkeley Street, Boston, MA 2117 US	SBARRO LLC	\$0.00	
Lighttower	f/k/a Open Access, Inc f/k/a Lighttower Fiber Networks 80 CENTRAL STREET, BOXBOROUGH, MA 01719 US	SBARRO LLC	\$0.00	
LINCOLN LATUS LLC	700 EAST TRI-STATE TOLL ROAD SOUTH HOLLAND IL 60473 USA	SBARRO LLC	\$0.00	

COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
Loughlin Management Partners & Co-Retention Ltr	220 West 42nd Street 9th Floor, New York, NY 10036 US	SBARRO LLC	\$0.00	
MACERICH	1689 ARDEN WAY SACRAMENTO, CA 95815	SBARRO LLC	\$5,797.30	
MACERICH	7700 WEST ARROWHEAD TOWNE CENTER SPACE 2082 GLENDALE, AZ 85308	SBARRO LLC	\$31,358.97	As amended on TBD
MACERICH	3710 ROUTE 9 FREEHOLD, NJ 07728	SBARRO LLC	\$7,762.24	
MACERICH	108 INLAND CENTER SAN BERNADINO, CA 92408	SBARRO LLC	\$4,717.95	
MACERICH	2509 FLATBUSH AVENUE BROOKLYN, NY 11234	SBARRO LLC	\$16,130.05	
MACERICH	127 LOS CERRITOS CTR. SPACE FC-13 LOS CERRITOS, CA 90701	SBARRO LLC	\$5,908.40	
MACERICH	5800 Northgate Drive San Raphael, CA 94903	SBARRO LLC	\$5,849.70	
MACERICH	3301-2521 E. MAIN ST. VENTURA, CA 93003	SBARRO LLC	\$6,606.95	
MACERICH	90-15 QUEENS BLVD. REGO PARK, NY 11373	SBARRO LLC	\$56,502.23	As amended on TBD
MACERICH	395 SANTA MONICA PLACE SANTA MONICA, CA 90401	SBARRO LLC	\$3,439.45	
MACERICH	7014 EAST CAMEL BACK RD #568 SCOTTSDALE, AZ 85251	SBARRO LLC	\$39,885.19	As amended on TBD
MACERICH	131 STONEWOOD ST. #FC-1 DOWNEY, CA 90241	SBARRO LLC	\$6,503.97	
MACERICH	6555 EAST SOUTHERN SPACE # H-12 MESA, AZ 85205	SBARRO LLC	\$29,999.40	As amended on TBD
MACERICH	1961 Chain Bridge Rd. McLean, VA 22102	SBARRO LLC	\$33,674.20	As amended on TBD
MACERICH	S.W. WASHINGTON SQUARE RD PORTLAND, OR 97223	SBARRO LLC	\$30,088.59	As amended on TBD
MARIO ARMOCIDA & ADELE ARMOCIDA	5220 Fashion Outlet Way Rosemont IL 60502 USA	SBARRO LLC	\$0.00	
MARIO ARMOCIDA & ADELE ARMOCIDA	125 STRATFORD SQUARE ROOM A-25 BLOOMINGDALE IL 60108 USA	SBARRO LLC	\$0.00	
MarketForce	248 Centennial Parkway Suite 150, Louisville , CO 80027 US	SBARRO LLC	\$0.00	
MarketForce	248 Centennial Parkway Suite 150, Louisville , CO 80027 US	SBARRO LLC	\$0.00	
MARTIZA VAN ROMONDT- KUIPERI	AEROPUERTO INTERNATIONAL US BOUND, GATE 5 ORANJESTAD ARUBA	SBARRO LLC	\$0.00	
MARTIZA VAN ROMONDT- KUIPERI	PLAZA MARGARETH ABRAHAM Z/N CURACAO ARUBA	SBARRO LLC	\$0.00	
MARTIZA VAN ROMONDT- KUIPERI	J.E. IRAUSQUIN BLVD. 250 PO BOX 250 ORANJESTAD ARUBA	SBARRO LLC	\$0.00	
MARTIZA VAN ROMONDT- KUIPERI	JE IRAUSQUIN BLVD 382 PALM BEACH ARUBA	SBARRO LLC	\$0.00	
MARTIZA VAN ROMONDT- KUIPERI	AEROPUERTO INTERNATIONAL ORANJESTAD ARUBA	SBARRO LLC	\$0.00	
MATER INC	ILLINOIS ATRIUM 100 WEST RANDOLPH CHICAGO IL 60601 USA	SBARRO LLC	\$0.00	
McAfee SaaS Email Protection & Continuity	6052 PAYSPHERE CIRCLE, CHICAGO, IL 60674-6052 US	SBARRO LLC	\$0.00	
MCO ENTERPRISES, INC	9029A AIRPORT BLVD EAST ORLANDO FL 32827 USA	SBARRO LLC	\$0.00	
MEDOUM, INC	114 YORKTOWN ROAD LOMBARD IL 60108 USA	SBARRO LLC	\$0.00	
METRO	900 GESSNER SPACE 395C HOUSTON, TX 77024	SBARRO LLC	\$6,392.69	
Michael Forbes	793 West State Street Columbus OH 43222 USA	SBARRO LLC	\$0.00	
Michael Manley - Indemnification Agmt	2617 CORABELLA PLACE , CEDAR PARK , TX 78613 US	SBARRO LLC	\$0.00	
Michael Manley- Agreement and Release	2617 CORABELLA PLACE , CEDAR PARK , TX 78613 US	SBARRO LLC	\$0.00	
MIDWEST MALL PROPERTIES	4201 N SHILOH DR. SP#303 FAYETTEVILLE, AR 72703	SBARRO LLC	\$2,533.11	
MNS LEBANON VALLEY LLC	8 FISHER AVENUE I-81 AND EXIT 90 JONESTOWN PA 17038 USA	SBARRO LLC	\$0.00	
MODERN FOOD COMPANY LTD	AL BEIT TOWERS FIRST FLOOR - OPPOSITE STARBUCKS MECCA SAUDI ARABIA	SBARRO LLC	\$0.00	
MODERN FOOD COMPANY LTD	DOMESTIC DEPARTURES RIYADH SAUDI ARABIA	SBARRO LLC	\$0.00	

COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
MODERN FOOD COMPANY LTD	2 EAST RING ROAD RIYADH SAUDI ARABIA	SBARRO LLC	\$0.00	
MODERN FOOD COMPANY LTD	FOOD COURT, TERMINAL III DOMESTIC ARRIVAL RIYADH SAUDI ARABIA	SBARRO LLC	\$0.00	
MODERN FOOD COMPANY LTD	ABHA AIRPORT ABHA SAUDI ARABIA	SBARRO LLC	\$0.00	
MODERN FOOD COMPANY LTD	DOMESTIC DEPARTURE AREA, SOUTH TERMINAL JEDDAH SAUDI ARABIA	SBARRO LLC	\$0.00	
MODERN FOOD COMPANY LTD	FOODCOURT LOCATION MADINA SAUDI ARABIA	SBARRO LLC	\$0.00	
MODERN FOOD COMPANY LTD	AL BEIT TOWERS MECCA SAUDI ARABIA	SBARRO LLC	\$0.00	
MODERN FOOD COMPANY LTD	AL RAWDAH STREET JEDDAH SAUDI ARABIA	SBARRO LLC	\$0.00	
MODERN FOOD COMPANY LTD	TBA JEDDAH SAUDI ARABIA	SBARRO LLC	\$0.00	
MODERN FOOD COMPANY LTD	MADINA ROAD JEDDAH SAUDI ARABIA	SBARRO LLC	\$0.00	
MODERN FOOD COMPANY LTD	KHALDOUN STREET - BEFORE PASSPORT CONTROL DAMMAN 3147 SAUDI ARABIA	SBARRO LLC	\$0.00	
MODERN FOOD COMPANY LTD	DEPARTURES TABOUK SAUDI ARABIA	SBARRO LLC	\$0.00	
MODERN FOOD COMPANY LTD	BETWEEN KING FAHD ROAD & OLAYA STREET RIYADH SAUDI ARABIA	SBARRO LLC	\$0.00	
Moelis & Company - Engagement Letter	Adam Keil 399 Park Avenue 5th Floor, New York, NY 10022 US	SBARRO LLC	\$0.00	
Monster	622 Third Avenue 39th Floor, New York, NY 10017 US	SBARRO LLC	\$0.00	
MSE BRANDED FOODS, INC	2000 GRAND COASTAL CIRCLE MYRTLE BEACH SC 29577 USA	SBARRO LLC	\$0.00	
MSE BRANDED FOODS, INC	800 HWY 400 SOUTH SUITE FC-10 DAWSONVILLE GA 30534 USA	SBARRO LLC	\$0.00	
MSE BRANDED FOODS, INC	ONE PREMIUM OUTLETS BLVD SUITE: 100 WRENTHAM MA 02093 USA	SBARRO LLC	\$0.00	
Muzak	Attn: CRR 100-J Executive Drive, Edgewood, NY 11717 US	SBARRO LLC	\$2,575.47	
MWW Addendum #1	One Meadowlands Plaza, East Rutherford, NJ 7073 US	SBARRO LLC	\$0.00	
MWW Contract	One Meadowlands Plaza, East Rutherford, NJ 7073 US	SBARRO LLC	\$0.00	
MWW Statement of Work	One Meadowlands Plaza, East Rutherford, NJ 7073 US	SBARRO LLC	\$0.00	
NA	3150 PARADISE RD LAS VEGAS, NV 89109	SBARRO LLC	\$0.00	
NA	401 BROADHOLLOW ROAD MELVILLE, NY 11747	SBARRO LLC	\$0.00	
NCR (Former Radiant Systems)	1320 Tennis Drive, Bedford, TX 76022 US	SBARRO LLC	\$437.08	
NEW ENGLAND DEVELOPMENT	1741 PALM BEACH LAKES BLVD. WEST PALM BEACH, FL 33401	SBARRO LLC	\$3,245.42	
newBrandAnalytics	1250 23rd Street, NW Suite 450, Washington, DC 20037 US	SBARRO LLC	\$0.00	
Newedge/Earthlink	Attn: General Counsel 3000 Columbia House Blvd. Suite 106, Vancouver, WA 98661 US	SBARRO LLC	\$0.00	
NEXCOM NAVY EXCHANGE	FOOD SERVICE DEPT PSC473 BOX70 FOPAP YOKOSUKA 963490070 JAPAN (USD)	SBARRO LLC	\$0.00	
NIPCORE, INC	301 COX CREEK PARKWAY, SUITE 1218 FLORENCE AL 35630 USA	SBARRO LLC	\$0.00	
NPD	900 West Shore Road, Port Washington, NY 11050 US	SBARRO LLC	\$0.00	
OHARE LATUS LLC	10201 BELL PLAINE AVE SCHILLER PARK IL 60176 USA	SBARRO LLC	\$0.00	
Ohio Casualty Insurance	Wells Fargo Insurance Services 4300 Market Pointe Dr Ste 600, Bloomington, MN 55435- 5455 US	SBARRO LLC	\$0.00	
OHM FOOD LLC	1000 SOUTHLAKE MALL SUITE 1139 MORROW GA 30260 USA	SBARRO LLC	\$0.00	
One Source	Attn: Order Processing 2395 Midway Road, Carrollton, TX 75006-2521 US	SBARRO LLC	\$0.00	
Pepsico	Attn: Chad New P.O. Box 10, Winston-Salem, NC 27102 US	SBARRO LLC	\$7,123.79	
PETER DATTOLI & MARIE DATTOLI AND ADRIK, INC	211 W. ADAMS STREET CHICAGO IL 60606 USA	SBARRO LLC	\$0.00	
PETER OF NORTHBROOK, INC	2274 NORTHBROOK COURT NORTHBROOK IL 60062 USA	SBARRO LLC	\$0.00	
PREIT	400 ROUTE 38 MOORESTOWN, NJ 08057	SBARRO LLC	\$1,665.41	
PREIT	3500 EAST WEST HIGHWAY HYATTSVILLE, MD 20782	SBARRO LLC	\$4,177.97	



COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
PREIT	I-70 US ROUTE 40 SP #622 WASHINGTON, PA 15301	SBARRO LLC	\$2,547.60	
PREIT	3159 28TH STREET GRAND RAPIDS, MI 49508	SBARRO LLC	\$5,164.09	
PREMIERE FOOD INC.	3770 LAS VEGAS BOULEVARD SOUTH SPACE # B LAS VEGAS, NV 89109	SBARRO LLC	\$23,859.21	
PricewaterhouseCoopers	300 Madison Avenue , New York, NY 10017 US	SBARRO LLC	\$0.00	
PricewaterhouseCoopers	300 Madison Avenue , New York, NY 10017 US	SBARRO LLC	\$0.00	
Prime Clerk Engagement Ltr	830 3rd Avenue 9th Floor, New York, NY 10022 US	SBARRO LLC	\$0.00	
PYRAMID	9612 Destiny USA Dr. FC 06 SYRACUSE, NY 13204	SBARRO LLC	\$8,068.65	
PYRAMID	60 SMITH FIELD BLVD. SP#F101 #727 PLATTSBURGH, NY 12901	SBARRO LLC	\$24,353.05	As amended on 3/1/2014
PYRAMID	120 WASHINGTON AVENUE SPACE #B-216 ALBANY, NY 12203	SBARRO LLC	\$5,621.11	
PYRAMID	50 Holyoke Street HOLYOKE, MA 01040	SBARRO LLC	\$3,597.83	
PYRAMID	3613 PALISADES CENTER DR. SPACE FC-07 WEST NYACK, NY 10994	SBARRO LLC	\$34,129.34	As amended on 3/1/2014
PYRAMID	1300 ARSENAL ST. SPACE #B128 WATERTOWN, NY 13601	SBARRO LLC	\$3,525.99	
PYRAMID	1 WALDEN GALLERIA F-208 BUFFALO, NY 14225	SBARRO LLC	\$7,683.91	
RAD, INC	907 HAWTHORNE SHOPPING CENTER VERNON HILLS IL 60061 USA	SBARRO LLC	\$0.00	
RAD, INC	222 MERCHANDISE MART PLAZA, UNIT # FC-5 CHICAGO IL 60654 USA	SBARRO LLC	\$0.00	
RAMP D INC	333 S. STATE STREET CHICAGO IL 60604 USA	SBARRO LLC	\$0.00	
RAYA FOOD SERVICES SA	LA ROMANA SANTO DOMINGO DOMINICAN REPUBLIC	SBARRO LLC	\$0.00	
RAYA FOOD SERVICES SA	SANTIAGO SANTIAGO DE LOS CABALLEROS DOMINICAN REPUBLIC	SBARRO LLC	\$0.00	
RAYA FOOD SERVICES SA	VERON LA ALTAGRACIA DOMINICAN REPUBLIC	SBARRO LLC	\$0.00	
RAYA FOOD SERVICES SA	AVENIDA NUNEZ DE CACERES ESQUINA PABLITO MIRABAL SANTO DOMINGO DOMINICAN REPUBLIC	SBARRO LLC	\$0.00	
RAYA FOOD SERVICES SA	AVENIDA MAXIMO GOMEZ ESQUINA JUAN SANCHEZ RAMIREZ SANTO DOMINGO DOMINICAN REPUBLIC	SBARRO LLC	\$0.00	
Red Urban	1999 BRYAN STREET #2800, DALLAS, TX 75201 US	SBARRO LLC	\$0.00	
Remote DBA Experts	Attn: Rob Brown 100 Sandusky Street 2nd Floor, Pittsburgh, PA 15212 US	SBARRO LLC	\$2,700.00	
Retail Tech Inc.	Attn: Dan Eberhard 1501 Park Road, Chanhassen, MN 55317 US	SBARRO LLC	\$0.00	
RICE KING ENTERPRISES INC	1244 PATTERSON AVENUE SE, BUILDING #22 WASHINGTON NAVAL YARD DC 20310 USA	SBARRO LLC	\$0.00	
RICE KING ENTERPRISES INC	22099 CUDDIHY ROAD, BUILDING 2369 PATUXENT RIVER MD 20670 USA	SBARRO LLC	\$0.00	
RICE KING FOODS, INC Corporate	WARD STREET BLDG# 3421 FOOD COURT NATIONAL CITY - SAN DIEGO CA 92136 USA	SBARRO LLC	\$0.00	
Right Management	445 Hutchinson Ave. Suite 600, Columbus, OH 43235 US	SBARRO LLC	\$0.00	
ROBERT BARBIERI	226 ST. CLAIRE SQUARE HIGHWAY 50 AND 159 FAIRVIEW HEIGHTS IL 62232 USA	SBARRO LLC	\$0.00	
Robert Gerlach - Offer Ltr	407 Kincaid Ave. NW, Wilson, NC 27893 US	SBARRO LLC	\$0.00	
Rohan Shearer - Offer Ltr	1228 East 1240 South, Spanish Fork, UT 84660 US	SBARRO LLC	\$0.00	
ROUSE	4601 EAST MAIN STREET FARMINGTON, NM 87402	SBARRO LLC	\$2,987.48	
ROUSE	3200 S. AIRPORT RD. W. TRAVERSE CITY, MI 49684	SBARRO LLC	\$3,982.19	
ROUSE	1070 SPRING HILL MALL WEST DUNDEE, IL 60118	SBARRO LLC	\$3,398.02	
RUTGERS, THE STATE UNIVERSITY	LIVINGSTON COLLEGE STUDENT CENTER 84 JOYCE KILMER AVE PISCATAWAY NJ 08854 USA	SBARRO LLC	\$0.00	

COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
RW HARVEST, INC	284A SUN VALLEY MALL CONCORD CA 94520 USA	SBARRO LLC	\$0.00	
SAN JUN LEE	12434 NORTH MAINSTREET #101 RANCHO CUCAMONGA CA 91739 USA	SBARRO LLC	\$0.00	
SAPTAGIRI, LLC	100 TWIN RIVER ROAD - FIRST FLOOR LINCOLN RI 02865 USA	SBARRO LLC	\$0.00	
SAPTAGIRI, LLC	100 TWIN RIVER ROAD LINCOLN RI 02865- 4835 USA	SBARRO LLC	\$0.00	
Sarah McAloon - Offer Ltr	4040 Avondale Avenue #201, Dallas, TX 75219 US	SBARRO LLC	\$0.00	
SBARRO JAPAN INC	15-69 Nakagamigunn Tyatanntyou Mihama Okinawakenn JAPAN (YEN)	SBARRO LLC	\$0.00	
SBARRO JAPAN INC	84 KAMIGATO, SHOWA-CHO, NAKAKOMA-GUN YAMANASHI JAPAN (YEN)	SBARRO LLC	\$0.00	
SBARRO JAPAN INC	7-8 HUIS TEN BOSCH-CHO NAGASAKI 8593292 JAPAN (YEN)	SBARRO LLC	\$0.00	
SBARRO JAPAN INC	1-1 HUIS TEN BOSCH-CHO SASEBO CITY NAGASAKI 859-3292 JAPAN (YEN)	SBARRO LLC	\$0.00	
SBARRO JAPAN INC	1-24-15, SHIBUYA SHIBUYA-KU, TOKYO 150- 0022 JAPAN (YEN)	SBARRO LLC	\$0.00	
SBARRO JAPAN INC	FOOD PARK, AEON SHIMOTSUMA SHOPPING CENTER 2F 972-1 HORIKAGO, SHIMOTSUMA- SHI IBARAKI 304-0033 JAPAN (YEN)	SBARRO LLC	\$0.00	
Service Check	5665 New Northside Suite 400, Atlanta, GA 11747 US	SBARRO LLC	\$1,486.13	
SEVEN HILLS, INC	2025 CONCESSIONS PENT ARLINGTON VA 20310 2025 USA	SBARRO LLC	\$0.00	
SEVEN HILLS, INC	3449 CAPITAL MALL DRIVE CAMP HILL PA 17011 USA	SBARRO LLC	\$0.00	
SEVEN HILLS, INC	ROUTE 22 & COLONIAL ROAD HARRISBURG PA 17109 USA	SBARRO LLC	\$0.00	
SEVEN HILLS, INC	6801 ROOSEVELT BLVD 987 FOODCOURT AREA D JACKSONVILLE FL 32212 USA	SBARRO LLC	\$0.00	
SEVEN HILLS, INC	2852 WHITEFORD ROAD SUITE 353 YORK PA 17402 USA	SBARRO LLC	\$0.00	
SEVEN HILLS, INC	5300 RIVERSIDE DRIVE CONCOURSE D - SBARRO CLEVELAND OH 44136 USA	SBARRO LLC	\$0.00	
SEVEN HILLS, INC	6200 GRAND RIVER BLVD EAST, SUITE 362 LEEDS AL 35094 USA	SBARRO LLC	\$0.00	
SEVEN HILLS, INC	3785 S LAS VEGAS BLVD LAS VEGAS NV 89109 USA	SBARRO LLC	\$0.00	
SEVEN HILLS, INC	9800 AIRPORT BOULEVARD SAN ANTONIO TX 78216 USA	SBARRO LLC	\$0.00	
SEVEN HILLS, INC	I-95 MILFORD CT 06460 USA	SBARRO LLC	\$0.00	
SEVEN HILLS, INC	8000 Essington Ave Philadelphia PA 19153 USA	SBARRO LLC	\$0.00	
SEVEN HILLS, INC	One Connecticut Tnpk East Darien CT 06820 USA	SBARRO LLC	\$0.00	
SEVEN HILLS, INC	One Connecticut Tnpk West Darien CT 06820 USA	SBARRO LLC	\$0.00	
SHAWN DAVOOD	201 NORTH LOS ANGELES STREET STE. 22A LOS ANGELES CA 90012 USA	SBARRO LLC	\$0.00	
Shoppertrak	200 W. Monroe Street 11th Floor, Chicago, IL 60606 US	SBARRO LLC	\$0.00	
Shred-It USA, Inc.	850 E. Gude Dr. Ste H , Rockville, MD 20850 US	SBARRO LLC	\$0.00	
Shuster Laboratories, Inc.	Attn: Kaveh Afshar, COO 85 John Road, Canton, MA 2021 US	SBARRO LLC	\$0.00	
Shuster Laboratories, Inc.	Attn: Kaveh Afshar, COO 85 John Road, Canton, MA 2021 US	SBARRO LLC	\$0.00	
SIMON	19575 BISCAYNE BLVD NO. MIAMI, FL 33180	SBARRO LLC	\$13,767.49	
SIMON	303 BAY PARK SQUARE SPACE #165 GREEN BAY, WI 54304	SBARRO LLC	\$3,581.77	
SIMON	7400 S LAS VEGAS BLVD. SPACE #21 LAS VEGAS, NV 89123	SBARRO LLC	\$3,890.21	
SIMON	801 NO. CONGRESS AVENUE BOYNTON BEACH, FL 33426	SBARRO LLC	\$20,657.49	As amended on 3/1/2014
SIMON	2165 BREA MALL BREA, CA 92621	SBARRO LLC	\$38,974.54	As amended on 3/1/2014
SIMON	1574 EAST RIO RD. CHARLOTTESVILLE, VA 22901	SBARRO LLC	\$4,520.46	
SIMON	9411 W. ATLANTIC BLVD. CORAL SPRINGS, FL 33065	SBARRO LLC	\$33,593.51	As amended on 3/1/2014

COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
SIMON	5100 NORTH 9TH AVENUE PENSACOLA, FL 32504	SBARRO LLC	\$5,898.27	
SIMON	13350 Dallas Parkway Dallas, TX 75240	SBARRO LLC	\$4,887.95	
SIMON	216 S. DEL AMO FASHION CT SPACE 2165 TORRANCE, CA 90503	SBARRO LLC	(\$5,165.04)	
SIMON	1365 N Dupont Highway DOVER, DE 19901	SBARRO LLC	\$3,463.83	
SIMON	4125 CLEVELAND AVENUE FORT MYERS, FL 33901	SBARRO LLC	\$19,917.43	As amended on 3/1/2014
SIMON	7007 FRIARS RD SUITE 921 SAN DIEGO, CA 92108	SBARRO LLC	\$8,821.60	
SIMON	SANDLAKE RD & ORANGE #781 BLOSSOM TRAIL SP#954 ORLANDO, FL 32809	SBARRO LLC	\$11,282.67	
SIMON	1878 Franklin Mills Circle PHILADELPHIA, PA 19154	SBARRO LLC	\$2,267.88	
SIMON	2446 E. SUNRISE BLVD. FT. LAUDERDALE, FL 33304	SBARRO LLC	\$8,143.87	
SIMON	3333 Buford Drive BUFORD, GA 30519	SBARRO LLC	\$7,504.79	
SIMON	3000 GRAPEVINE MILLS MALL GRAPEVINE, TX 76051	SBARRO LLC	\$8,176.67	
SIMON	6170 W. GRAND AVE. #721 GURNEE, IL 60031	SBARRO LLC	\$21,034.69	As amended on 3/1/2014
SIMON	700 HAYWOOD RD SP. F2 GREENSVILLE, SC 29607	SBARRO LLC	\$4,955.87	
SIMON	5015 WESTHEIMER STREET HOUSTON, TX 77056	SBARRO LLC	\$48,965.59	As amended on 3/1/2014
SIMON	1600 MILLER TRUNK HIGHWAY DULUTH, MN 55811	SBARRO LLC	\$21,754.26	As amended on 3/1/2014
SIMON	1608 MONTEBELLO TWN.CTR., MONTEBELLO, CA 90640	SBARRO LLC	\$8,320.17	
SIMON	30 MALL DRIVE WEST JERSEY CITY, NJ 07310	SBARRO LLC	\$29,349.52	As amended on 3/1/2014
SIMON	1201 HOOPER AVE. #1128 TOMS RIVER, NJ 08753	SBARRO LLC	\$20,844.67	As amended on 3/1/2014
SIMON	ONE MILLS CIRCLE ONTARIO, CA 91764	SBARRO LLC	\$12,425.02	
SIMON	1441 TAMiami TRAIL #607 PORT CHARLOTTE, FL 33948	SBARRO LLC	\$13,246.57	As amended on 3/1/2014
SIMON	2700 POTOMAC MILLS CIRCLE PRINCE WILLIAM, VA 22192	SBARRO LLC	\$8,020.66	
SIMON	4969 International Drive ORLANDO, FL 32819	SBARRO LLC	\$4,396.57	
SIMON	Prime Outlets of Williamsburg 5625-FC1 Richmond Rd. Williamsburg, VA 23188	SBARRO LLC	\$2,485.88	
SIMON	Roosevelt Field Mall SECOND LEVEL SPACE 2111 GARDEN CITY, NY 11530	SBARRO LLC	\$15,109.05	
SIMON	2108 SANTA ROSA PLAZA SANTA ROSA, CA 95401	SBARRO LLC	\$30,410.21	As amended on 3/1/2014
SIMON	12801 WEST SUNRISE BLVD. SUNRISE, FL 33323	SBARRO LLC	\$9,471.07	
SIMON	356 ORLAND SQUARE MALL FOOD COURT ORLAND PARK, IL 60462	SBARRO LLC	\$4,604.54	
SIMON	MIDDLE COUNTRY ROAD LAKE GROVE, NY 11755	SBARRO LLC	\$44,308.97	As amended on 3/1/2014
SIMON	7401 W. MARKET STREET SPACE FC3 YOUNGSTOWN, OH 44512	SBARRO LLC	\$21,190.93	As amended on 3/1/2014
SIMON	5300 SOUTH 76TH. ST. #102 GREENDALE, WI 53129	SBARRO LLC	\$19,300.25	As amended on 3/1/2014
SIMON	1250 BALTIMORE PIKE SPACE #14L SPRINGFIELD, PA 19064	SBARRO LLC	\$8,979.81	
SIMON	1110 MALL CIRCLE PO BOX 6124 WALDORF, MD 20603	SBARRO LLC	\$5,181.79	
SIMON	3265 W MARKET STREET SP# 178 FAIRLAWN, OH 44333	SBARRO LLC	\$20,817.62	As amended on 3/1/2014
SIMON	10300 SOUTHSIDE BLVD #301 JACKSONVILLE, FL 32256	SBARRO LLC	\$48,525.21	As amended on 3/1/2014
SIMON	14200 E. ALAMEDA AVE SPACE #VC-01 AURORA, CO 80012	SBARRO LLC	\$18,825.37	As amended on 3/1/2014
SIMON	400 EARNEST BARRET PKWY S KENNESAW, GA 30144	SBARRO LLC	\$22,636.64	As amended on 3/1/2014
SIMON	3174 N.W. FEDERAL HIGHWAY SPACE # 3272 & 3724 JENSEN BEACH, FL 34957	SBARRO LLC	\$5,662.85	
SIMON	5043 TUTTLE CROSSING BLVD SP# 168 COLUMBUS, OH 43017	SBARRO LLC	\$28,077.93	As amended on 3/1/2014
SIMON	7600 KINGSTON PIKE SP. # 1300 KNOXVILLE, TN 37919	SBARRO LLC	\$5,068.93	

COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
SIMON	100 Main Street WHITE PLAINS, NY 10601	SBARRO LLC	\$4,477.00	
SIMON	G-123 WOODFIELD MALL SCHAUMBURG, IL 60173	SBARRO LLC	\$48,487.76	As amended on 3/1/2014
SODEXO AMERICA, LLC	STUDENT UNION BLDG 300 POMPTON ROAD WAYNE NJ 07470 USA	SBARRO LLC	\$0.00	
SODEXO AMERICA, LLC	1 UNIVERSITY CIRCLE MACOMB IL 61455 USA	SBARRO LLC	\$0.00	
SODEXO AMERICA, LLC	302 Mushee Mahchaq PO Box 3777 Mashantucket CT 06338 USA	SBARRO LLC	\$0.00	
SOUTHERN ILLINOIS UNIVERSITY	1255 LINCOLN DRIVE CARBONDALE IL 62901 USA	SBARRO LLC	\$0.00	
SSDC Corp. (Dish Machine Rental for Cucinova)	TBD, TBD, TBD TBD TBD	SBARRO LLC	\$0.00	
SSP CATERING CYPRUS	LARNACA AIPOIT LARNACA 7130 CYPRUS (EUR)	SBARRO LLC	\$0.00	
SSP CATERING EGYPT	RED SEA HURGHADA EGYPT	SBARRO LLC	\$0.00	
SSP CATERING EGYPT	INTERNATIONAL AIRSIDE SHARM EL SHAIK EGYPT	SBARRO LLC	\$0.00	
SSP CATERING EGYPT	DOMESTIC AIRSIDE ASWAN EGYPT	SBARRO LLC	\$0.00	
SSP GROUP LIMITED (UAE)	PO BOX45656 ABU DHABI UNITED ARAB EMIRATES	SBARRO LLC	\$0.00	
SSP RESTAURANTS HELLAS SA (Greece)	LEVEL 2, DEPARTURE AREA OF MAIN TERMINAL, EL. VENIZELOS SPATA ATTIKIS 190 19 GREECE	SBARRO LLC	\$0.00	
STAR-WEST	516 CHICAGO RIDGE MALL CHICAGO RIDGE, IL 60415	SBARRO LLC	\$5,360.39	
STAR-WEST	3340 MALL LOOP DRIVE JOLIET, IL 60435	SBARRO LLC	\$4,962.30	
STAR-WEST	768 SOUTHPARK CENTER SP#FC768 STRONGSVILLE, OH 44136	SBARRO LLC	\$27,090.20	As amended on 3/10/2014
STARWOOD	4240 BELDEN VILLAGE CANTON, OH 44718	SBARRO LLC	\$4,294.53	
STARWOOD	5501 MONROE STREET SP# FC6TOLEDO, OH 43623	SBARRO LLC	\$29,364.59	As amended on 3/10/2014
STARWOOD	2288 SOUTHLAKE MALL MERRILLVILLE, IN 46410	SBARRO LLC	\$5,302.52	
STARWOOD	805 PLAZA DRIVE WEST COVINA, CA 91790	SBARRO LLC	\$6,354.47	
STEINER PROPERTIES LLC	160 EASTON TOWN CENTER SP #P-100BCOLUMBUS, OH 43219	SBARRO LLC	\$5,703.28	
Sterling Rice Group (SRG)	1801 13th Street Suite 400, Boulder, CO 80302 US	SBARRO LLC	\$0.00	
Stuart M. Steinberg - Offer Ltr	401 Broadhollow Road, Melville, NY 11747 US	SBARRO LLC	\$0.00	
Stuart M. Steinberg P.C. - Engagement Ltr	401 Broadhollow Road, Melville, NY 11747 US	SBARRO LLC	\$0.00	
SUPERSALUTE FOODS CORP	SM FOOTCOURT; 2ND LEVEL; SUCAT ROAD PARANAQUE PHILIPPINES	SBARRO LLC	\$0.00	
SUPERSALUTE FOODS CORP	NORTH EDSA AVENUE, QUEZON CITY METRO MANILLA PHILIPPINES	SBARRO LLC	\$0.00	
SUPERSALUTE FOODS CORP	SM CITY, ANNEX 3, BARANGAY SAN JOSE CITY OF SAN FERNANDO PAMPANGA 2000 PHILIPPINES	SBARRO LLC	\$0.00	
SUPERSALUTE FOODS CORP	1654 65A SM SOUTH MALL BARANGAY ALMANZA ALABANG ZAPOTE PHILIPPINES	SBARRO LLC	\$0.00	
SUPERSALUTE FOODS CORP	LEVEL 1, ROBINSONS PLACE LEDESMA STREET ILOILA CITY PHILIPPINES	SBARRO LLC	\$0.00	
SUPERSALUTE FOODS CORP	EDSA CORNER JULIA VARGAS AVE MANDALUYONG CITY METRO MANILLA PHILIPPINES	SBARRO LLC	\$0.00	
SUPERSALUTE FOODS CORP	1000 BAY BOULEVARD RECLAMATION AREA, BAY CITY PASAY CITY, METRO MANILLA PHILIPPINES	SBARRO LLC	\$0.00	
SUPERSALUTE FOODS CORP	LEVEL 1 - GROUND FLOOR, SPACE 114, CLARKFIELD PAMPANGA 2009 PHILIPPINES	SBARRO LLC	\$0.00	
SUPERSALUTE FOODS CORP	2ND LEVEL, FORT BONIFACIO GLOBAL CITY TAGUIP NCR METRO MANILLA 1634 PHILIPPINES	SBARRO LLC	\$0.00	
SUPERSALUTE FOODS CORP	LOWER GROUND FLOOR FUENTE OSMENA CEBU CITY 6000 PHILIPPINES	SBARRO LLC	\$0.00	
SUPERSALUTE FOODS CORP	ARROCEROS CORNER, SAN MARCELINO ST BARABGAY 659, ZONE 71 ERMITA MANILL PHILIPPINES	SBARRO LLC	\$0.00	

COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
SUPERSALUTE FOODS CORP	CORNER VALERIA-DELGADO ILOILO CITY PHILIPPINES	SBARRO LLC		\$0.00
SUPERSALUTE FOODS CORP	SM CITY NORTH RECLAMATION AREA CEBU CITY 6000 PHILIPPINES	SBARRO LLC		\$0.00
SUPERSALUTE FOODS CORP	ROBINSON PLAZA PEDRO GIL STREET ERMITA PHILIPPINES	SBARRO LLC		\$0.00
SUPERSALUTE FOODS CORP	SBARRO FRESH ITALIAN COOKING LEVEL 2, TRINOMA, NORTH AVE. COR EDSA QUEZON CITY 1105 PHILIPPINES	SBARRO LLC		\$0.00
SUPERSALUTE FOODS CORP	UNIT 114, UPPER GROUND FLOOR SM CITY SAN LAZARO, GOV. LACSON STREET MANILLA PHILIPPINES	SBARRO LLC		\$0.00
SUPERSALUTE FOODS CORP	GROUND LEVEL, PHASE 3, MARCOS HIGHWAY, CORNER FELIX AVENUE CAINITA, RIZAL PHILIPPINES	SBARRO LLC		\$0.00
SUPERSALUTE FOODS CORP	UNIT 105/106 SM CITY FAIRVIEW G/F ANNEX 2, BARANGAY NORTH FAIRVIEW QUEZON CITY PHILIPPINES	SBARRO LLC		\$0.00
SUPERSALUTE FOODS CORP	SPACE 1085 PHASE II, UPPER GROUND FLOOR QUEZON CITY 0810 PHILIPPINES	SBARRO LLC		\$0.00
SUPERSALUTE FOODS CORP	BARANGAY MAYAMOT ANTIPOLLO CITY PHILIPPINES	SBARRO LLC		\$0.00
SUPERSALUTE FOODS CORP	UPPER GROUND FLOOR, E104 GOVERNOR'S DRIVE, BARANGAY SAMPALOC DASMARINAS, CAVITE 4114 PHILIPPINES	SBARRO LLC		\$0.00
SUPERSALUTE FOODS CORP	SPACE 2083, LEVEL 2, JP LAUREL AVENUE, BAJADA DAVAO CITY PHILIPPINES	SBARRO LLC		\$0.00
SUPERSALUTE FOODS CORP	ALABANG TOWN CENTER GROUND FLOOR, UNIT L9 ALABANG, MUNTINLUPA CITY PHILIPPINES	SBARRO LLC		\$0.00
SUPERSALUTE FOODS CORP	LOWER GROUND FLOOR, FC00B AURORA BLVD, CORNER DONA HEMADY AND N. DOMINGO STS NEW MANILLA, QUEZON CITY PHILIPPINES	SBARRO LLC		\$0.00
SUPERSALUTE FOODS CORP	Space 2150, Level 2, CM Recto Avenue Cagayan de Oro PHILIPPINES	SBARRO LLC		\$0.00
SUPERSALUTE FOODS CORP	Unit 257, SM City Baguio, Upper Session Road Luneta Hills Baguio City 2600 PHILIPPINES	SBARRO LLC		\$0.00
SUPERSALUTE FOODS CORP	GROUND FL, BORACAY UPTOWN HOTEL, STATION 2 BORACAY. MALAY, AKLAN PHILIPPINES	SBARRO LLC		\$0.00
SUPERSALUTE FOODS CORP	UNIT NO. SF06 FOODCOURT, SECOND FLOOR BETWEEN SOUTH SUPERHIGHWAY AND FILMORE STREET MAKATI CITY PHILIPPINES	SBARRO LLC		\$0.00
SUPERSALUTE FOODS CORP	GREAT EATS FOOD COURT, 3RD LEVEL GREENHILLS SAN JUAN, METRO MANILA PHILIPPINES	SBARRO LLC		\$0.00
SUPERSALUTE FOODS CORP	SHOP NO. 1, 2ND FLOOR 6780 AYALA AVENUE MAKATI CITY PHILIPPINES	SBARRO LLC		\$0.00
SUPERSALUTE FOODS CORP	Space #2015, Level 2 Ayala Center New Glorietta 2 Makati City PHILIPPINES	SBARRO LLC		\$0.00
SUPERSALUTE FOODS CORP	A 409, 4th Level, Eastwood Mall, Eastwood City NCR Quezon City PHILIPPINES	SBARRO LLC		\$0.00
SUPERSALUTE FOODS CORP	05-FS Level 4 NCR Taguig City PHILIPPINES	SBARRO LLC		\$0.00
SUPERSALUTE FOODS CORP	SPACE #30-31A - THIRD LEVEL ALABANG MUNTINLUPA CITY, METRO MANILA PHILIPPINES	SBARRO LLC		\$0.00
SUPERSALUTE FOODS CORP	2ND FLR CEBU BUSINESS PARK CEBU CITY 6000 PHILIPPINES	SBARRO LLC		\$0.00
SUPERSALUTE FOODS CORP	Veranza Mall, Ground Floor, Location Code #1L 121 General Sants City PHILIPPINES	SBARRO LLC		\$0.00
SUPERSALUTE FOODS CORP	FS-7, 2nd Floor Foodcourt Sta. Rosa, Laguna PHILIPPINES	SBARRO LLC		\$0.00
SUPERSALUTE FOODS CORP	FH 8 & FH 9 (FOODCOURT); QUEZON AVENUE NATIONAL CAPITAL REGION QUEZON CITY PHILIPPINES	SBARRO LLC		\$0.00

COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
SUPERSALUTE FOODS CORP	SPACE 2008, 2ND LEVEL, AYALA FAIRVIEW TERRACES, QUIRINO HIGHWAY CORNER MALIGAYA DRIVE QUEZON CITY PHILIPPINES	SBARRO LLC	\$0.00	
SUPERSALUTE FOODS CORP	SPACE FS2 FOODCOURT; SM CITY BACOR; AGUINALDO HIGHWAY BACOR PHILIPPINES	SBARRO LLC	\$0.00	
Syntrio	33 Montgomery St. Suite 1280, San Francisco, CA 94105 US	SBARRO LLC	\$0.00	
SYRACUSE UNIVERSITY	GOLDSTEIN STUDENT CENTER SKYTOP ROAD SYRACUSE NY 13244 USA	SBARRO LLC	\$0.00	
SYRACUSE UNIVERSITY	CARRIER DOME KIOSK SYRACUSE NY 13244 USA	SBARRO LLC	\$0.00	
SYRACUSE UNIVERSITY	KIMMEL FOOD COURT 311 WAVERLY AVENUE SYRACUSE NY 13244 USA	SBARRO LLC	\$0.00	
SYRACUSE UNIVERSITY	BROCKWAY FOOD COURT SYRACUSE NY 13244 USA	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	SELANIK CAD. NO:32/A KIZILAY CANKAYA ISTANBUL TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	HOSNUDIYE MAH DOGRUER SOKAK NO 1 TEPEBASI ESKISEHIR TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	KAZIM KARABEKIR CAD SOYDAN KAVASAGI NO 2 VAN TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	DOGUKENT CAD. AKSEMSETTIN MAH. NO 213-A MAMAK ANKARA TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	GAZIEMIR CADDESİ BEYZEVLER MAH İZMİR TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	SOKE BODRUM HIGWAY AYDIN TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	HALİL SEZAL ERKUT CAD AFRA SOK NO 1 KECİOREN ANKARA TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	EMNİYET EVLERİ MAH EB DERE CAD NO 1/1 KAGITHANI ISTANBUL TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	AKKENT MAH KUTAHYA ESKİSEHIR YOLU UZERİ NO 1 KUTAHYA TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	ORAMIRAL SALIM DERVİSOĞLU CADDESİ FUAR YANI İZMİT KOCAELİ KOCAELİ TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	Hasan Borbocelli Sokak Salamis Yolu Uzeri Sakarya Gazi Magusa CYPRUS (TRY)	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	BEDİR MAHALLESİ ATAŞEVRN CADDESİ NO 2, SELÇUKLU KONYA KONYA TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	Marmara Park AVM, 1 Cad Türkiye, Beylikduzu, İstanbul TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	Yahyakaptan Mahallesi Akasyalar Caddesi No:24 İzmit/Kocaeli Middle East İzmit TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	Cumhuriyet Mahallesi Güneşyanyol Mahallesi No:16 Gebze Kocaeli Middle East Kocaeli TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	Carsamba Caddesi No:52 Eski Otogar Mevkii Sanayi Sitesi Yani Samsun TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	Cumhuriyet Caddesi Kemer Mevkii No:6 Ortakent Bodrum Bodrum TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	Kahramanmaraş İl Merkezi Hayrullah Mahallesi Eski Otogar Mevkii Kahramanmaraş TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	Yesilpınar Mahallesi Girne Caddesi 1 Kat 1 K40 Nolu Dükkan İstanbul TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	Milas Bodrum Havaalanı Yolu Muğla Bodrum TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	Tekirdağ İli Çorlu İlçesi Ali Paşa Mahallesi Salih Omurtak Caddesi No: 9 İstanbul TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	Arapsuyu Mevkii 100. Yıl Bulvarı Migros Avm Konyaaltı Antalya Antalya TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	Selçukhatun Mahallesi Unlu Caddesi No: 31-31A Bursa TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	İstanbul İli Atasehir İlçesi Kucukbakkalkoy Mahallesi Gumruk Karsisi İstanbul TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	Tahil Pazarı Mahallesi Genel Sokak Ulusoy Bulvarı No:1 Muratpaşa Antalya Antalya TURKEY	SBARRO LLC	\$0.00	

COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
TAB GIDA SANAYI VE TICARET A.S.	Bagdat Caddesi No:325/1 34738 Erenkoy Gaziantep TURKEY	SBARRO LLC		\$0.00
TAB GIDA SANAYI VE TICARET A.S.	Incivez Mahallesi Milli Egemenlik Caddesi No: 130 Zonguldak Zonguldak TURKEY	SBARRO LLC		\$0.00
TAB GIDA SANAYI VE TICARET A.S.	Gaziantep ili Sehitkamil ilcesi Yaprak Mahallesi Gaziantep TURKEY	SBARRO LLC		\$0.00
TAB GIDA SANAYI VE TICARET A.S.	HARAPARASO MAH.IZZET GUCLU SOK.NO:26 ANTAKYA HATAY ANTAKYA TURKEY	SBARRO LLC		\$0.00
TAB GIDA SANAYI VE TICARET A.S.	IZMIR CEVREYOLU SELWAY OUTLET PARK AVM BALCOVA IZMIR TURKEY	SBARRO LLC		\$0.00
TAB GIDA SANAYI VE TICARET A.S.	SANLIURFA LLI MERKEZ LLCESIDIREKLI MAHHALLESI NO:8,9 SANLIURFA TURKEY	SBARRO LLC		\$0.00
TAB GIDA SANAYI VE TICARET A.S.	Konya Yolu Mevlana Bulvari No:190 B Kapi Ankara TURKEY	SBARRO LLC		\$0.00
TAB GIDA SANAYI VE TICARET A.S.	ALISVERIS MERKEZI MESRUTİYET MAH BUYUKDERE CAD NO 22 ICINDI 134 KOTLU BAGIMIZ ALAL SISLI ISTANBUL TURKEY	SBARRO LLC		\$0.00
TAB GIDA SANAYI VE TICARET A.S.	MARESAL FEVZI CAKMAK BULVAN SEHITKAMIL LLECSI SANKO ALISVERIS MERKEZI GAZIANTEP 27060 TURKEY	SBARRO LLC		\$0.00
TAB GIDA SANAYI VE TICARET A.S.	MERKEZ MAH DENİZ CADDESI NO 41/C STORE NO 3 KEMER ANTALYA TURKEY	SBARRO LLC		\$0.00
TAB GIDA SANAYI VE TICARET A.S.	CAKMAK MAH. METROGROUP SOK. NO. 243 M1 MEYDAN AVN UMRANIYE, ISTANBUL 34770 TURKEY	SBARRO LLC		\$0.00
TAB GIDA SANAYI VE TICARET A.S.	MUDANYA YOLU 9, KM ZEKAI GUMUSDİS MAH. 1 SOK EMEK BURSA 16940 TURKEY	SBARRO LLC		\$0.00
TAB GIDA SANAYI VE TICARET A.S.	GUVENTEVLER MAHALLESİ 20 CADDE NO. 1 FORUM ALISVERIS MERKEZI YENISEHIR MERSİN 33140 TURKEY	SBARRO LLC		\$0.00
TAB GIDA SANAYI VE TICARET A.S.	ESKİ KURT KIREMIT FABRIKASI UNIVERSITE CADDESİ ESKİBAGLAR MAHALLESİ NO.2; ESPAK ALISVERIS MERKEZI ESKİSEHIR 26170 TURKEY	SBARRO LLC		\$0.00
TAB GIDA SANAYI VE TICARET A.S.	KULTUR SOKAK NO. 1, BAHCELİEVLER METRO İSTASYONU USTU METRO PORT AVM BAHCELİEVER, İSTANBUL TURKEY	SBARRO LLC		\$0.00
TAB GIDA SANAYI VE TICARET A.S.	ESKİ SANTRAL GARJI KENT MEYDAN ALISVERIS MERKEZI OSMANGASI, BURSA TURKEY	SBARRO LLC		\$0.00
TAB GIDA SANAYI VE TICARET A.S.	ANTALYA T1 AIRPORT HPS FLOOR 1 NUMBER 1- 39 ANTALYA TURKEY	SBARRO LLC		\$0.00
TAB GIDA SANAYI VE TICARET A.S.	CAMLIK MAHALLESİ DOĞAN DEMİRCİOĞLU CADDESİ DENİZLİ TURKEY	SBARRO LLC		\$0.00
TAB GIDA SANAYI VE TICARET A.S.	FSM BULVARI NO. 244 YOLU YENİM ATA KULE İSTANBUL TURKEY	SBARRO LLC		\$0.00
TAB GIDA SANAYI VE TICARET A.S.	TEVİK BEY MAHALLESİ HALKALI CADDESİ NO 132 2 KAT BB880 K CEKMECE İSTANBUL TURKEY	SBARRO LLC		\$0.00
TAB GIDA SANAYI VE TICARET A.S.	FLOOR 1 NUMBER 1-70 ANTLAYA TURKEY	SBARRO LLC		\$0.00
TAB GIDA SANAYI VE TICARET A.S.	LONDRA ASFALTI ÜZERİ HAVA LAMANI KAVSAGI KÜLTÜR ÜNİVERSİTESİ YANI BAKIRKÖY, İSTANBUL 34750 TURKEY	SBARRO LLC		\$0.00
TAB GIDA SANAYI VE TICARET A.S.	KOCATEPE MAHALLESİ ESKİ LONDRA ASFALTI NO: 52 BAYRAMPASA, İSTANBUL TURKEY	SBARRO LLC		\$0.00
TAB GIDA SANAYI VE TICARET A.S.	2 NOLU COMLEKCI MAH 100 YIL PARK YANI FORUM AVM 1BLK NO 8 TRABZON TURKEY	SBARRO LLC		\$0.00
TAB GIDA SANAYI VE TICARET A.S.	BAHCELİEVLER MAHALLESİ KAPADOKYA FORUM AVM TBA TURKEY	SBARRO LLC		\$0.00
TAB GIDA SANAYI VE TICARET A.S.	LİCABASI MEVKİİ İZMİR-DENİZLİ KARAYOLU 19. KM AYDIN TEKSTİL YANI FORUM AVM AYDIN TURKEY	SBARRO LLC		\$0.00
TAB GIDA SANAYI VE TICARET A.S.	KOZYATAGI MAHALLESİ 221 PAFTA, 2936 ADA, 4 PARSEL PALLADIUM AVM KADIKÖY İSTANBUL TURKEY	SBARRO LLC		\$0.00
TAB GIDA SANAYI VE TICARET A.S.	YOZGAT YOLU BLVD NO:99 FORUM ANKARA AVM OVACIK-ETLİK ANKARA TURKEY	SBARRO LLC		\$0.00

COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
TAB GIDA SANAYI VE TICARET A.S.	AYDOGLU MAH. SARAPCI TARLA YOLU MEVKII NO: 304 TAKIRA ALESVERIS MERKEZI (AVM) KOPRUBASI / TEKIRDAG TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	ISTIKAL SOK NO 10/4 OPTIMUM AVM YENISAHARA KRADIKOY / ISTANBUL TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	ARABAN YOLU UZERI YAVUZELI CAD M1 AVM NO 6 GAZIANTEP TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	ZEYTLIK MAHALLESİ FISEKHANE CADDESİ CAPACITY AVM BAKIRKOYNO ISTANBUL 34140 TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	KAYNARCA MAHALLESİ TERSANE KAVSAI NO 9	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	YENI MAHALLE OGRET MENLER BULVARI 15/84 01360 MI MERKEZ ALISVERIS MERKEZI STORE NUMBER: 106 ADANA TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	YENI SHEHIR MAH DEDE PASA CADDESSİ NO 2 KURTKOY ISTANBUL TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	MAHMUTBEY, MERKEZ MAHALLESİ, TASOCAGI CADDESİ NO:5 BARCILAR 34550 TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	SABIHA GOKCEN HAVALIMANI PENDİK ISTANBUL TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	INONU CADDESİ NO: 192 MALATYA PARK AVM TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	CAM CESME MAHALLESİ FABRIKA SOKAK NO. 3 PENDİK ISTANBUL TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	ESKİSEHIR YOLU 7. KM NO 164 MUSTAFA KEMAI MH. CANKAYA ANKARA TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	ANTALYA HAVALAMANI DIS HATLAR TERMINAL 2 ANTALYA TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	YENİSBOSNA, DEĞİRMEN BAĞCE STREET, ANTİNYILDIZ MALL ISTANBUL TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	INTERNATIONAL TERMINAL - TERMINAL B AFTER PASSPORT CONTROL ISTANBUL TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	YAVUZ SULTAN SELEM BULVARI - ERZURUM SHOP #79 YENİSEHIR TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	YOLU 9 KM İKBAL TESİSLERİ İZMİR TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	ALASAR MAHALLESİ YOLU MEVKİ ANATOLIM AVENUE MALL BURSA TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	KOCAELİ Lİ GEBZE İLCESİ TATIKUYU MAH GEBZE TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	SAADETDERE MH. 137.SOK. E-5 UZERI HARAMİDERE SANAYİ SİTESİ KARSISI ESENİYURT TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	YAVUZ SULTAN SELİM BULVARI ISTANBUL TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	ARBACI ALANI MAH MEHMET AKİF ERSOY CD ADAPAZARI TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	DOMESTIC TERMINAL - TERMINAL A - DEPARTURE GATES ISTANBUL TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	OSMANIYE MAH. EKREM KURT BULVARI E-5 YOLU UZERI BAKIRKOY ISTANBUL 34173 TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	CAMHA MAH GÜLPERİ SK NO 1 NEO AVM ESKİSEHIR TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	HACI SABANCI BULVARI NO 28 YÜREGİR ADANA TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	YÜKSEKALAN MH ALİ CENTINKAYA CAD NO 7/A ANTALYA TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	AFTER PASSPORT ENTRANCE ISTANBUL TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	LARA MEVKİİ KAT: 2 NO:10 ANTALYA TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	ODUNLUK MAH NİLÜFER İLCESİ C-146 BURSA TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	35410 GAZİEMİR INTERNATIONAL DEPARTURE HALL, AFTER PASSPORT CONTROL İZMİR TURKEY	SBARRO LLC	\$0.00	



COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
TAB GIDA SANAYI VE TICARET A.S.	GUVEN MAH ESKI LONDRA ASFALTI NO:89 GUNGOREN ISTANBUL TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	SUKRU BALCI CAD NO 1 ANTAKYA HATAY TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	SANAYII MAH.ESENKENT MEVKII 1655. SOK.NO:6 ESENYURT ISTANBUL TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	ATAKENT MAH. CILEKLI VADI.NO:1 KUCUKCEKMECE ISTANBUL TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	HIGHWAY 227.KM ELMALIK MEVKII ANKARA ISTANBUL BOLU ISTANBUL TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	YANIKOGLU MAH NO 1 MELIKGAZI KAYSERI TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	MECIDIYEKOY MAHALLASI SISLI ISTANBUL TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	HALIT ZIYA USAKLIGIL CADDESI NO 1 34710 BAKIRKOY ISTANBUL TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	ANKARA TAV YENI LC HATLAR TERMINALI ASMA KAT NO:45 ESENBAGA ANKARA ANKARA TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	INKILAP MAH. ALEMDAG CAD. NO:169 UMRANIYE ISTANBUL TURKEY	SBARRO LLC	\$0.00	
TAB GIDA SANAYI VE TICARET A.S.	SABIHA GOKCEN IC HATLER TERMINALI KURTKOY PENDIK INSTANBUL ISTANBUL TURKEY	SBARRO LLC	\$0.00	
TACO HOLDING	Calle 185 No 45-03 locales 360/361/362 Bogota COLOMBIA	SBARRO LLC	\$0.00	
TACO HOLDING	CALLE 20 N 82-52, LOCAL 01 Y 06 BOGOTA COLOMBIA	SBARRO LLC	\$0.00	
TALX	11432 Lackland Road, St. Louis, MO 63146 US	SBARRO LLC	\$0.00	
TAUBMAN	28 SOUTH STATE STREET SALT LAKE CITY, UT 84150	SBARRO LLC	\$7,268.71	
TAUBMAN	11401 NORTHWEST 12TH ST SUITE 118 MIAMI, FL 33172	SBARRO LLC	\$14,604.94	
TAUBMAN	18900 MICHIGAN AVE DEARBORN, MI 48126	SBARRO LLC	\$23,382.91	As amended on 3/10/2014
TAUBMAN	4402 BALDWIN RD. SP FC-12 AUBURN HILLS, MI 48326	SBARRO LLC	\$37,529.89	As amended on 3/10/2014
TAUBMAN	6801 NORTHLAKE MALL DRIVE SP# FC 203 CHARLOTTE, NC 28216	SBARRO LLC	\$26,458.20	As amended on 3/10/2014
TAUBMAN	100 GREY ROCK PLACE STAMFORD, CT 06901	SBARRO LLC	\$4,542.16	
TAUBMAN	27298 NOVI RD, SPACE 105A NOVI, MI 48377	SBARRO LLC	\$8,681.59	
TAUBMAN	10300 W. FOREST HILL BLVD WELLINGTON, FL 33414	SBARRO LLC	\$36,313.38	As amended on 3/10/2014
TAUBMAN	185 WEST FARMS MALL FARMINGTON, CT 06032	SBARRO LLC	\$37,732.46	
TEACHER'S INSURANCE	14045 ABERCORN EXP. #2606 SAVANNAH, GA 31419	SBARRO LLC	\$2,031.91	
Tekserv POS	2495 Pembroke Avenue, Hoffman Estates, IL 60169 US	SBARRO LLC	\$0.00	
TEXAS TECH UNIVERSITY	DOAK HALL LUBBOCK TX 79409 USA	SBARRO LLC	\$0.00	
The Dilenschneider Group	MetLife Building 200 Park Avenue 26th Floor, New York, NY 10166 US	SBARRO LLC	\$0.00	
THE FESTIVAL COMPANIES	3650 MARTIN LUTHER KG JR BLVD Space 143 LOS ANGELES, CA 90008	SBARRO LLC	\$3,678.67	
THE FESTIVAL COMPANIES	2233 KALAKAUA AVE. HONOLULU, HI 96815	SBARRO LLC	\$7,671.98	
The Network	Attn: Mr. Julio Cantillo 333 Research Court, Norcross , GA 30092 US	SBARRO LLC	\$0.00	
THE PACIFIC GROUP	737 WEST JERICO TPKE HUNTINGTON, NY 11743	SBARRO LLC	\$0.00	
THE PENNSYLVANIA STATE UNIVERSITY	28 HUB-ROBESON CENTER UNIVERSITY PARK PA 16802 USA	SBARRO LLC	\$0.00	
Thompson Reuters	P.O. Box 71687, Chicago, IL 60694-1687 US	SBARRO LLC	\$0.00	
Tiger	340 N. Westlake Blvd. Suite 260, Westlake Village, CA 91362 US	SBARRO LLC	\$0.00	
TIN PLATE LIMITED	BAY STREET NASSAU NP BAHAMAS	SBARRO LLC	\$0.00	
TIN PLATE LIMITED	WEST BAY STREET NASSAU BAHAMAS	SBARRO LLC	\$0.00	
TIN PLATE LIMITED	WEST AVENUE PLAZA - CARMICHAEL ROAD NASSAU BAHAMAS	SBARRO LLC	\$0.00	
TIN PLATE LIMITED	MARATHON AND ROBINSON RDS NASSAU BAHAMAS	SBARRO LLC	\$0.00	

COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
TINACO PLAZA LLC	273 CLARKS FALL ROAD NORTH STONINGTON CT 06359 USA	SBARRO LLC	\$0.00	
TRADE CTR. MGMT.ASSOC.	1300 PENN AVE SPACE # FC 101 WASHINGTON, DC 20004	SBARRO LLC	\$2,981.93	
TRAVEL CENTERS OF AMERICA	157&170 STATE RT 32&33 EXIT 160, 1720 W EVERGREEN EFFINGHAM IL 62401 USA	SBARRO LLC	\$0.00	
TRAVEL CENTERS OF AMERICA	10672 LANCASTER RD, SE HEBRON OH 43235 USA	SBARRO LLC	\$0.00	
TRINITY FOOD GROUP OF OKLAHOMA LLC	4901 NORTH KICKAPOO SHAWNEE OK 74801 USA	SBARRO LLC	\$0.00	
Trintech	DEPT 0544 PO BOX 120544, DALLAS, TX 75312-0544 US	SBARRO LLC	\$0.00	
TRIPLE FIVE	390 SOUTH BOULEVARD SPACE #5390 BLOOMINGTON, MN 55425	SBARRO LLC	\$9,201.07	
True Partners	225 West Wacker Driver Suite 1600, Chicago, IL 60606 US	SBARRO LLC	\$0.00	
TRUMP PLAZA CAFÉ	MISSISSIPPI AVENUE AND THE BOARDWALK, ATLANTIC CITY, NJ 08401	SBARRO LLC	\$6,369.00	
TRUMP TAJ MAHAL	CASINO RESORT ATLANTIC CITY, NJ 08401	SBARRO LLC	\$6,368.62	
Trustwave	70 W. MADISON STREET SUITE 1050, CHICAGO, IL 60602 US	SBARRO LLC	\$0.00	
UNION PIZZA, LLC	50 UNION AVENUE NEW HAVEN CT 06519 USA	SBARRO LLC	\$0.00	
UNIVERSITY OF KENTUCKY	239 STUDENT CENTER LANE FOOD COURT LEXINGTON KY 40506 USA	SBARRO LLC	\$0.00	
UNIVERSITY OF MARYLAND	STAMP UNION FOOD COURT 1150 SOUTH CAMPUS DINING HALL COLLEGE PARK MD 20742 USA	SBARRO LLC	\$0.00	
UNIVERSITY OF NORTH DAKOTA	UND DINING SERVICES 3625 CAMPUS ROAD GRAND FORKS ND 58202 USA	SBARRO LLC	\$0.00	
UNIVERSITY OF OKLAHOMA	MEM.UNION 900 ASP AVE. NORMAN, OK 73069	SBARRO LLC	\$3,370.07	
UNL NCARD Campus Account Program	Attn: Sue Ostrander, Project Coordinator 1700 Y Street University of Nebraska, Lincoln, NE 68588-0647 US	SBARRO LLC	\$0.00	
UPPER CRUST FOODS PVT LTD	R CITY MALL, LBS MARG, GHATKOPAR (WEST) MUMBAI, MAHARASHTRA 400086 INDIA	SBARRO LLC	\$0.00	
UPPER CRUST FOODS PVT LTD	F-11, Inorbit Malad, Malad West Mumbai 400064 INDIA	SBARRO LLC	\$0.00	
UPPER CRUST FOODS PVT LTD	FC-05 VIVIANA MALLS, VOLTAS COMPOUND, POKHARAN ROAD NO.2, SUBHASH NAGAR THANE 400 610 INDIA	SBARRO LLC	\$0.00	
UPPER CRUST FOODS PVT LTD	SBARRO C/O HYPERCITY RETAIL INDIA PVT, LTD, MALA LINK ROAD GROUND FLOOR NEXT TO ENRICH BEAUTY SALON MUMBAI 400064 INDIA	SBARRO LLC	\$0.00	
UPPER CRUST FOODS PVT LTD	S-9, SECOND FLOOR, PHOENIX MARKET CITY, KURLA MUMBAI INDIA	SBARRO LLC	\$0.00	
US Specialty Insurance Company	CIGNA Life Insurance Company of New York 140 East 45th Street 0, New York, NY 10017- 3144 US	SBARRO LLC	\$0.00	

COUNTERPARTY	ADDRESS	DEBTOR	CURE AMOUNT	Notes
Verizon Cell Phones	Attn: Associate Director - Contract Administration 100 Southgate, Morristown, NJ 7960 US	SBARRO LLC		\$0.00
VINCENT BOON HOO YEE AND WINNIE YEE	777 WEST CONVENTION WAY ANAHEIM CA 92802 USA	SBARRO LLC		\$0.00
VINCENT BOON HOO YEE AND WINNIE YEE	9200 VALLEY VIEW STREET CYPRESS CA 90630 USA	SBARRO LLC		\$0.00
Vistar 1st Amendment	PO BOX 933580, ATLANTA, GA 31193-3580 US	SBARRO LLC		\$0.00
Vistar 2nd Amendment	PO BOX 933580, ATLANTA, GA 31193-3580 US	SBARRO LLC		\$0.00
Vistar ltr agmt.	PO BOX 933580, ATLANTA, GA 31193-3580 US	SBARRO LLC		\$101,714.15
Vistar/Performance Food Group 3 <sup>rd</sup> Amendment	PO BOX 933580, ATLANTA, GA 31193-3580 US	SBARRO LLC		\$0.00
Vistar/Performance Food Group NDA	PO BOX 933580, ATLANTA, GA 31193-3580 US	SBARRO LLC		\$0.00
WATANIYA RESTAURANTS CO QSC qubk	JAWAAN STREET DOHA QATAR	SBARRO LLC		\$0.00
WEST VIRGINIA UNIVERSITY	West Virginia University Montain Lair 1550 University Ave Morgantown WV 26506 USA	SBARRO LLC		\$0.00
Westchester Fire (ACE)	ACE USA, Professional Risk 140 Broadway 41st Floor, New York, NY 10005 US	SBARRO LLC		\$0.00
WESTFIELD	1062 ANNAPOLIS MALL ANNAPOLIS, MD 21401	SBARRO LLC		\$27,719.71 As amended on TBD
WESTFIELD	1445 ANNAPOLIS MALL ANNAPOLIS, MD 21401	SBARRO LLC		\$45,904.27 As amended on TBD
WESTFIELD	6000 SEPULVEDA BLVD. Culver City, CA 90230	SBARRO LLC		\$5,533.90
WESTFIELD	118 FOX VALLEY CENTER AURORA, IL 60504	SBARRO LLC		\$3,289.43
WESTFIELD	ROUTE 4 & 17 - SP. 1052 PARAMUS, NJ 07653	SBARRO LLC		\$51,301.95 As amended on TBD
WESTFIELD	2800 NORTH MAIN SANTA ANA, CA 92701	SBARRO LLC		\$6,811.23
WESTFIELD	200 E. VIA RANCHO PARKWAY ESCONDIDO, CA 92025	SBARRO LLC		\$3,688.39
WESTFIELD	925A BLOSSOM HILL ROAD SAN JOSE, CA 95123	SBARRO LLC		\$4,772.02
WESTFIELD	72-840 HIGHWAY 111 #S361 PALM DESERT, CA 92260	SBARRO LLC		(\$1,060.34) As amended on TBD
WESTFIELD	3030 PLAZA BONITA RD NATIONAL CITY, CA 91950	SBARRO LLC		\$5,417.41
WESTFIELD	400 SOUTH BALDWIN AVE SUITE 812-L ARCADIA, CA 91007	SBARRO LLC		\$6,232.64
WESTFIELD	479 SUNRISE MALL MASSAPEQUA, NY 11758	SBARRO LLC		\$3,528.19
WHITE PLANET RESTAURANTS PVT LTD	DESTINATION FOOD COURT, PRESTIGE SHANTINIKETAN, WHITEFIELD ROAD, HOODI VILLAGE BANGLORE INDIA	SBARRO LLC		\$0.00
WHITE PLANET RESTAURANTS PVT LTD	DR RAJKUMAR ROAD MALLESWARAM WEST BANGALORE 560 055 INDIA	SBARRO LLC		\$0.00
WHITE PLANET RESTAURANTS PVT LTD	COUNTER NO S-FC-02, 2ND FLOOR, FOOD COURT BANGALORE SOUTH TALUK BANGALORE INDIA	SBARRO LLC		\$0.00
WHITE PLANET RESTAURANTS PVT LTD	STORE #5 - 1 SAMPIGE ROAD BANGALORE INDIA	SBARRO LLC		\$0.00
WHITE PLANET RESTAURANTS PVT LTD	UNIT NO 2-A, OLD MADRAS ROAD PROPERTY BEARING MUNICIPAL NO 3 BANGALORE INDIA	SBARRO LLC		\$0.00
WINDSOR PLACE	22 WEST 34TH STREETNEW YORK, NY 10001	SBARRO LLC		\$21,243.24
Windstream	600 WillBrook Office Park, Fairport, NY 14450 US	SBARRO LLC		\$32.00
WOODMONT CO	7900 S. RITCHIE HIGHWAY GLEN BURNIE, MD 21061	SBARRO LLC		\$30,871.98 As amended on TBD
Worlikar, Naresh Vinod	1229 N Mark Ln, Anaheim, CA 92807-2411 US	SBARRO LLC		\$0.00
WS RESTAURANTS LTD	FOODCOURT UNIT 3 NEWBRIDGE, CO KILDARE IRELAND	SBARRO LLC		\$0.00
WS RESTAURANTS LTD	KIOSK NO 9, FIRST FLOOR 125 UPPER ABBEY STREET DUBLIN IRELAND	SBARRO LLC		\$0.00
WS RESTAURANTS LTD	CENTRAL SQUARE DUBLIN IRELAND	SBARRO LLC		\$0.00

**Exhibit C**

**Rejected Executory Contracts and Unexpired Lease List**

**SBARRO LLC**  
**SCHEDULE OF REJECTED CONTRACTS AND UNEXPIRED LEASES**

COUNTERPARTY	ADDRESS	DEBTOR	EFFECTIVE DATE OF REJECTION
BATTLEFIELD MALL, LLC	C/O M.S. MANAGEMENT ASSOCIATES (Lease Only), 225 WEST WASHINGTON STREET, INDIANAPOLIS, IN 46204	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
Carousel Industries -SERVICE (Avaya) IT	659 South County Trail, Exeter, RI 02822-34112 US	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
CBORD Group, Inc.	Attn: Christine Curkendall, Director Contract Admin. 61 Brown Road, Ithica, NY 14850 US	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
Cintas	6800 Cintas Blvd., Cincinatti, OH 45262-5737 US	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
Creative Restaurant Solutions	401 E GORDON DRIVE, EXTON, PA 19341 US	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
DisposALL Inc.	7904 North Orange Blossom Trail, Orlando, FL 32810 US	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
Emkay	805 W. Thorndale Ave., Itasca, IL 60143 US	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
G2M Int'l (Guest Services)	300 East Big Beaver Road 4th Floor, Troy, MI 48083 US	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
George Wooten - Agreement and Release	9799 Westview Dr Apt 1017, Coral Springs, FL 33076 US	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
GLIMCHER REALTY TRUST	(Storage Agreement Only) 4249 EASTLAND MALL , COLUMBUS , OH 43232	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
IRVINE COMPANY RETAIL PROPERTIES	(Storage Agreement Only) 401 NEWPORT CENTER DRIVE, NEWPORT BEACH, CA 92660	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
James Greco - Agreement and Release	9133 Clayton Manor, Boyton Beach, FL 33473 US	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
James Greco - Indemnification Agmt	9133 Clayton Manor, Boyton Beach, FL 33473 US	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
Kemco Facilities Services LLC	4170 Troy Hwy, Montgomery, AL 36116	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
Kenexa Assessment License Agmt	650 East Swedesford Second Floor, Wayne, PA 19087 US	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
Kenexa Assessment License Agmt-Multi-Units	650 East Swedesford Second Floor, Wayne, PA 19087 US	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
MACERICH SHARED SERVICES	(Storage Agreement Only) 2040 Green Acres Mall, Valley Stream, NY 11581	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
MANAGECAMP, Inc.	Attn: Leonard Herstein, President 1 Evea Drive Suite 148, Marlton, NJ 8053 US	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
Marketing Werks	Attn: Scott Moller 130 East Randolph Street Suite 2400, Chicago, IL 60602 US	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
MARKETPLACE PHILADELPHIA	B/C CONNECTOR SPACE M8 8500 ESSINGTON AVE, PHILADELPHIA, PA 19153	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
MARKETPLACE PHILADELPHIA	(Storage Agreement Only) B/C CONNECTOR SPACE M8 8500 ESSINGTON AVE, PHILADELPHIA, PA 19153	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
Moody's	PO BOX 102597, ATLANTA, GA 30368-0597 US	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
NAMDAR REALTY GROUP/MASON ASSET MANAGEMENT	(Storage Agreement Only) 9501 ARLINGTON EXPWY SPACE #16G , JACKSONVILLE , FL 32225	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
Netbase	2087 LANDINGS DRIVE, MOUNTAIN VIEW, CA 94043 US	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
Netwolves	85 E Gay Street, Columbus, OH 43215-3118 US	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
QUINTARD MALL, LTD.	(Storage Agreement Only) 700 QUINTARD DR FC7, OXFORD, AL 36203	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
ROUSE PROPERTY MGMT. INC.	(Storage Agreement Only) 2950 E. TEXAS ST. #69 , BOSSIER CITY , LA 71111	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
ROUSE PROPERTY MGMT. INC.	(Storage Agreement Only) 3000 GATEWAY ST #908 , SPRINGFIELD , OR 97477	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
S&P	2542 COLLECTION CENTER DRIVE, CHICAGO, IL 60693 US	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
Silk Road	20 West Kinzie St. Suite 1420, Chicago, IL 60654 US	SBARRO LLC	EFFECTIVE DATE OF THE PLAN

COUNTERPARTY	ADDRESS	DEBTOR	EFFECTIVE DATE OF REJECTION
Silk Road Red Carpet	20 West Kinzie St. Suite 1420, Chicago, IL 60654 US	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
SIMON PROPERTY GROUP, INC	(Storage Agreement Only) 3001 KNOXVILLE CENTER DR VC07A , KNOXVILLE , TN 37924	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
SIMON PROPERTY GROUP, INC	(Storage Agreement Only) 4444 FIRST AVE N.E. , CEDAR RAPIDS , IA 52402	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
SIMON PROPERTY GROUP, INC	(Storage Agreement Only) 2269 Tyrone Square, ST PETERSBURG, FL 33710	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
SIMON PROPERTY GROUP, INC	(Storage Agreement Only) 3393 PEACHTREE RD. N.E. # , ATLANTA , GA 30326	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
SIMON PROPERTY GROUP, INC	(Storage Agreement Only) 850 HARTFORD TPKE. SPACE F102 , WATERFORD , CT 06385	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
SIMON PROPERTY GROUP, INC	3933 PEACHTREE ROAD NE, ATLANTA, GA 30326	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
STEADFAST	(Storage Agreement Only) 6148 SUNRISE MALL, CITRUS HEIGHTS, CA 95610	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
Sterling Everify	249 West 17th Street 6th Floor, New York, NY 10011 US	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
THE TAUBMAN COMPANY INC.	(Storage Agreement Only) SP# F-107 1404 PARHAM ROAD , RICHMOND , VA 23229	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
Tony Seta -Offer Ltr	Master Chef Seta, LLC 1494 Wolf Bend Rd, Germantown, TN 38138 US	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
URBAN RETAIL	701 RUSSELL LANE FC#101 GAITHERSBURG, MD 20877	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
VIP ASSOCIATES II LP (Madison Square Agreement)	6148 Lee Highway, Chattanooga, TN 37421 US	SBARRO AMERICA, INC.	EFFECTIVE DATE OF THE PLAN
VIP ASSOCIATES III LP (Oak Hollow Mall)	6148 Lee Highway, Chattanooga, TN 37421 US	SBARRO AMERICA, INC.	EFFECTIVE DATE OF THE PLAN
VIP IV LLP (Bonita Lakes Agreement)	6148 Lee Highway, Chattanooga, TN 37421 US	SBARRO AMERICA, INC.	EFFECTIVE DATE OF THE PLAN
VIP IV LLP (Frontier Mall Agreement)	6148 Lee Highway, Chattanooga, TN 37421 US	SBARRO AMERICA, INC.	EFFECTIVE DATE OF THE PLAN
VIP IX LLP (Midland Mall Agreement)	2030 Hamilton Pace Blvd, Chattanooga, TN 37421 US	SBARRO AMERICA PROPERTIES, INC.	EFFECTIVE DATE OF THE PLAN
VIP V LLP (Hickory Mall Agreement)	6148 Lee Highway, Chattanooga, TN 37421 US	SBARRO AMERICA, INC.	EFFECTIVE DATE OF THE PLAN
VIP V LLP (Hickory Mall Agreement)	6148 Lee Highway, Chattanooga, TN 37421 US	SBARRO AMERICA, INC.	EFFECTIVE DATE OF THE PLAN
VIP V LLP (Stroud Mall Agreement)	6148 Lee Highway, Chattanooga, TN 37421 US	SBARRO AMERICA, INC.	EFFECTIVE DATE OF THE PLAN
VIP V LLP (Twin Peaks Mall Agreement)	6148 Lee Highway, Chattanooga, TN 37421 US	SBARRO AMERICA, INC.	EFFECTIVE DATE OF THE PLAN
VIP V LLP (Twin Peaks Mall Agreement)	6148 Lee Highway, Chattanooga, TN 37421 US	SBARRO AMERICA, INC.	EFFECTIVE DATE OF THE PLAN
VIP VI LLP (Lakes Mall Agreement)	6148 Lee Highway, Chattanooga, TN 37421 US	SBARRO AMERICA PROPERTIES, INC.	EFFECTIVE DATE OF THE PLAN
VIP VII LLP (Lakes Mall Agreement)	6148 Lee Highway, Chattanooga, TN 37421 US	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
VIP VII LLP (Walnut Square Mall Agreement)	6148 Lee Highway, Chattanooga, TN 37421 US	SBARRO AMERICA, INC.	EFFECTIVE DATE OF THE PLAN
VIP VII LLP (Walnut Square Mall Agreement)	6148 Lee Highway, Chattanooga, TN 37421 US	SBARRO AMERICA PROPERTIES, INC.	EFFECTIVE DATE OF THE PLAN
VIP VIII LLP (Janesville Mall Agreement)	2030 Hamilton Pace Blvd Suite 500, Chattanooga, TN 37421 US	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
VIP VIII LLP (Janesville Mall Agreement)	2030 Hamilton Pace Blvd Suite 500, Chattanooga, TN 37421 US	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
WATSON CENTER INC.	(Storage Agreement Only) 1551 VALLEY WEST DR., WEST DES MOINES, IA 50266	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
WESTFIELD INC.	(Storage Agreement Only) 5065 MAIN STREET, TRUMBULL, CT 06611	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
WESTFIELD INC.	(Storage Agreement Only) 8201 S. TAMIAMI TRAIL SP# AF-3 , SARASOTA , FL 34238	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
WESTFIELD INC.	(Storage Agreement Only) 11160 VEIRS MILL RD. SP#P109 , WHEATON , MD 20902	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
WESTFIELD INC.	(Storage Agreement Only) 2600 South Center Mall/Space FC4, Tukwila, WA 98188	SBARRO LLC	EFFECTIVE DATE OF THE PLAN
WILMORITE INC.	(Storage Agreement Only) 442 GREECERIDGE CTR. DR., ROCHESTER, NY 14626	SBARRO LLC	EFFECTIVE DATE OF THE PLAN

**Exhibit D**

**Shareholders Agreement**

**AMENDED & RESTATED STOCKHOLDERS AGREEMENT**

dated as of

[\_\_\_\_], 2014

among

**SBARRO HOLDINGS, INC.**

and

**CERTAIN STOCKHOLDERS OF SBARRO HOLDINGS, INC.**



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Exhibit A	List of Stockholders
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## AMENDED & RESTATED STOCKHOLDERS AGREEMENT

AGREEMENT dated as of [\_\_\_\_], 2014 among Sbarro Holdings, Inc., a Delaware corporation (the “**Company**”), and certain holders of Company Securities (as defined below), including, as of the date hereof, the Persons listed on Exhibit A hereto.

### WITNESSETH:

WHEREAS, pursuant to the [Joint Prepackaged Chapter 11 Plan of Reorganization] (as the same may have been subsequently modified, supplemented and amended, the “**Plan of Reorganization**”) of Sbarro, LLC and its Debtor Affiliates dated as of [\_\_\_\_], 2014, filed in [*In re: Sbarro, LLC et al.*, Case No. [\_\_\_\_] (SCC) (jointly administered), in the United States Bankruptcy Court for the Southern District of New York], the Persons listed on Exhibit A hereto, each constituting a Holder of an [Allowed Prepetition Secured Lender Claim], have received shares of New Common Stock (as such capitalized terms are defined in the Plan of Reorganization);

WHEREAS, pursuant to the Plan of Reorganization, this Agreement shall be deemed to be valid, binding, and enforceable in accordance with its terms, and each holder of New Common Stock (as defined in the Plan of Reorganization) shall be bound hereby, in each case without the need for execution by any party other than the Company;

WHEREAS, pursuant to the Plan of Reorganization, the management of the Company may receive Company Securities pursuant to the Management Equity Plan (as defined in the Plan of Reorganization) and other future employee equity compensation or incentive programs as determined by the Board and shall, as a condition to such receipt, be required to become party to this Agreement (unless the Board determines otherwise); and

WHEREAS, this Agreement shall govern certain rights, duties and obligations of the parties hereto from and after the Effective Date (as defined in the Plan of Reorganization).

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

### ARTICLE 1 DEFINITIONS

Section 1.01. *Definitions.* (a) As used in this Agreement, the following terms have the following meanings:

“**Affiliate**” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person; *provided* that no security holder of the Company shall be deemed an Affiliate of the Company or any other security holder of the Company solely by reason of any investment in the Company or the existence or exercise of any rights (including the right to appoint any director of the Company) or obligations under this Agreement or the Company Securities held by such security holder. For the purpose of this definition, the term “**control**” (including, with correlative meanings, the terms “**controlling**”, “**controlled by**” and “**under common control with**”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person or manage the investments of such Person, whether through the ownership of voting securities, by contract or otherwise.

“**Agreement**” means this Amended & Restated Stockholders Agreement, as amended, modified or supplemented from time to time.

“**Aggregate Ownership Percentage**” means, for any Stockholder at any time, the fraction (expressed as a percentage) that results from dividing (i) the aggregate number of Shares owned by such Stockholder and its Affiliates at such time by (ii) the aggregate number of all Shares then outstanding.

“**Apollo**” means [\_\_\_\_] and each of their respective Permitted Transferees who is (or becomes) a Stockholder hereunder.

“**Babson**” means [\_\_\_\_] and each of their respective Permitted Transferees who is (or becomes) a Stockholder hereunder.

“**Bankruptcy Code**” means Title 11 of the United States Code, as now in effect or hereafter amended.

“**Board**” means the board of directors of the Company.

“**Business Day**” means any day except a Saturday, Sunday or other day on which commercial banks in New York City are authorized by law to close.

“**Bylaws**” means the Bylaws of the Company, as the same may be amended from time to time.

“**Charter**” means the Certificate of Incorporation of the Company, as the same may be amended from time to time.

“**Common Stock**” means the common stock, par value \$0.0001 per share, of the Company and any other security into which such Common Stock may hereafter be converted or changed.

**“Company Securities”** means (i) the Common Stock, (ii) securities convertible into or exchangeable for Common Stock and (iii) any options, warrants or other rights to acquire Common Stock.

**“Company Subsidiary Securities”** means (i) the capital stock of, or other equity interest in, any Subsidiary of the Company, (ii) securities convertible into or exchangeable for the capital stock of, or other equity interest in, any Subsidiary of the Company and (iii) any options, warrants or other rights to acquire the capital stock of, or other equity interest in, any Subsidiary of the Company.

**“Credit Agreement”** means that certain Credit Agreement dated as of March [\_\_\_], 2014 among New Sbarro Intermediate Holdings, Inc., New Sbarro Finance, Inc., the lenders from time to time party thereto and Cantor Fitzgerald Securities.

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

**“FINRA”** means the Financial Industry Regulatory Authority.

**“Fort Hill”** means [\_\_\_\_] and each of their respective Permitted Transferees who is (or becomes) a Stockholder hereunder.

**“Fully-Diluted”** means all outstanding Shares, all Shares issuable in respect of all outstanding securities convertible into or exchangeable for Common Stock and all Shares issuable in respect of all outstanding options, warrants and other rights to acquire Common Stock; *provided* that, if any of the foregoing Company Securities are subject to vesting, such Company Securities subject to vesting shall be included in the definition of “Fully-Diluted” only upon and to the extent of such vesting; *provided further* that any Company Securities that would vest as a result of the consummation of a Drag-Along Sale or a Tag-Along Sale, as the case may be, shall be deemed to be vested solely for the purpose of any calculation of “Fully-Diluted” that is made immediately prior to such Drag-Along Sale or Tag-Along Sale, as the case may be.

**“GAAP”** means generally accepted accounting principles in the United States.

**“Guggenheim”** means [\_\_\_\_] and each of their respective Permitted Transferees who is (or becomes) a Stockholder hereunder.

**“Indebtedness”** means, of any Person, without duplication, (i) indebtedness for borrowed money or indebtedness issued or incurred in substitution or exchange for indebtedness for borrowed money, (ii) indebtedness evidenced by any note, bond, debenture, mortgage or other debt instrument or debt security, (iii) obligations under any performance bond or letter of credit, but

only to the extent drawn or called, (iv) guarantees with respect to any indebtedness of any other Person, or obligations of any other Person secured by any lien on any property or asset, of a type described in clauses (i) through (iv) above. For the avoidance of doubt, Indebtedness shall not include (A) any obligations under any performance bond or letter of credit to the extent undrawn or uncalled and (B) any intercompany Indebtedness of the Company and the Subsidiaries of the Company.

**“IPO”** means the initial Public Offering.

**“Management Holders”** means recipients of Company Securities under the Management Equity Plan (as is defined in the Plan of Reorganization) and any other future employee equity compensation or incentive programs as determined by the Board.

**“Original Ownership Percentage”** means, for any Stockholder at any time, the fraction (expressed as a percentage) that results from dividing (i) the aggregate number of Shares owned by such Stockholder and its Affiliates at such time by (ii) the aggregate number of Shares owned by such Stockholder and its Affiliates as of the date hereof (as adjusted for stock splits, combinations, recapitalizations and the like).

**“Permitted Transferee”** means, with respect to any Stockholder, any Person that is an Affiliate of such Stockholder and with respect to any Stockholder that is an individual, (i) a family member of such individual, or (ii) a trust, corporation, partnership or limited liability company, all of the beneficial interests of which shall be held by such Stockholder or one or more family members of such Stockholder.

**“Person”** means an individual, corporation, limited liability company, partnership, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

**“Preemptive Rights Holder”** means any Person who is an owner of Shares. For the avoidance of doubt, Preemptive Rights Holder shall not include any Person holding only options, warrants or other securities convertible into or exchangeable for Shares.

**“Public Offering”** means an underwritten public offering of Registrable Securities pursuant to an effective registration statement under the Securities Act, other than pursuant to a registration statement on Form S-4 or Form S-8 or any similar or successor form.

**“Registrable Securities”** means, at any time, any Shares and any securities issued or issuable in respect of such Shares by way of conversion,

exchange, stock dividend, split or combination, recapitalization, merger, consolidation, other reorganization or otherwise until (i) a registration statement covering such Shares has been declared effective by the SEC and such Shares have been disposed of pursuant to such effective registration statement, (ii) such Shares are sold under circumstances in which all of the applicable conditions of Rule 144 (or any similar provisions then in force) under the Securities Act are met or (iii) such Shares are otherwise Transferred, the Company has delivered a new certificate or other evidence of ownership for such Shares not bearing the legend required pursuant to this Agreement and such Shares may be resold without subsequent registration under the Securities Act.

**“Registration Expenses”** means any and all expenses incident to the performance of or compliance with any registration or marketing of Company Securities, including all (i) registration and filing fees, and all other fees and expenses payable in connection with the listing of securities on any securities exchange or automated interdealer quotation system, (ii) fees and expenses of compliance with any securities or “blue sky” laws (including reasonable fees and disbursements of counsel in connection with “blue sky” qualifications of the securities registered), (iii) expenses in connection with the preparation, printing, mailing and delivery of any registration statements, prospectuses and other documents in connection therewith and any amendments or supplements thereto, (iv) security engraving and printing expenses, (v) internal expenses of the Company (including all salaries and expenses of its officers and employees performing legal or accounting duties), (vi) reasonable fees and disbursements of counsel for the Company and customary fees and expenses for independent certified public accountants retained by the Company (including the expenses relating to any comfort letters or costs associated with the delivery by independent certified public accountants of any comfort letters requested pursuant to Section 5.04(h)), (vii) reasonable fees and expenses of any special experts retained by the Company in connection with such registration, (viii) reasonable fees, out-of-pocket costs and expenses of the Stockholders, including no more than one counsel for all of the Stockholders participating in the offering selected by the Stockholders holding the majority of the Registrable Securities to be sold for the account of all Stockholders in the offering, (ix) fees and expenses in connection with any review by FINRA of the underwriting arrangements or other terms of the offering, and all fees and expenses of any “qualified independent underwriter,” including the fees and expenses of any counsel thereto, (x) fees and disbursements of underwriters customarily paid by issuers or sellers of securities, but excluding any underwriting fees, discounts and commissions attributable to the sale of Registrable Securities, (xi) costs of printing and producing any agreements among underwriters, underwriting agreements, any “blue sky” or legal investment memoranda and any selling agreements and other documents in connection with the offering, sale or delivery of the Registrable Securities, (xii) transfer agents’ and registrars’ fees and expenses and the fees and expenses of any other agent or

trustee appointed in connection with such offering, (xiii) expenses relating to any analyst or investor presentations or any “road shows” undertaken in connection with the registration, marketing or selling of the Registrable Securities, (xiv) fees and expenses payable in connection with any ratings of the Registrable Securities, including expenses relating to any presentations to rating agencies and (xv) all out-of-pocket costs and expenses incurred by the Company or its appropriate officers in connection with their compliance with Section 5.04(m).

“**Rule 144**” means Rule 144 (or any successor provisions) under the Securities Act.

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

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

“**Shares**” means shares of Common Stock.

“**Stockholder**” means at any time, each Person listed on Exhibit A, the Management Holders and each other Person who shall become an owner of Company Securities and a party to or bound by this Agreement, whether pursuant to Section 3.01, Section 3.03, Section 3.04 or otherwise. As of the date hereof, only those Persons listed on Exhibit A are Stockholders of the Company.

“**Subsidiary**” means, with respect to any Person, any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person.

“**Supermajority Board Approval**” means the approval of (i) if the number of directors then in office is five or less, at least three such directors, (ii) if the number of directors then in office is six, at least four such directors, (iii) if the number of directors then in office is seven, at least five such directors and (iv) if the number of directors then in office is eight or more, at least two-thirds of the entire Board.

“**Transfer**” means, with respect to any Company Securities, (i) when used as a verb, to sell, assign, dispose of, exchange, pledge, encumber, hypothecate or otherwise transfer such Company Securities or any participation or interest therein, whether directly or indirectly (including pursuant to a derivative transaction), or agree or commit to do any of the foregoing and (ii) when used as a noun, a direct or indirect sale, assignment, disposition, exchange, pledge, encumbrance, hypothecation, or other transfer of such Company Securities or any participation or interest therein or any agreement or commitment to do any of the foregoing. Notwithstanding the preceding sentence, Transfer shall not include any pledge, encumbrance or hypothecation by a Stockholder (or its Permitted



Transferees) that is, as of the date hereof, a private equity fund, hedge fund, issuer of collateralized loan, or debt or bond obligations or a securitization vehicle or structured finance entity that is a special purpose vehicle, in each case in accordance with or under its organizational documents, partnership agreement, limited liability company agreement, trust agreement, indenture, pooling and servicing agreement or other securitization or structured finance agreement.

(b) Each of the following terms is defined in the Section set forth opposite such term:

<b><u>Term</u></b>	<b><u>Section</u></b>
Cause	2.02
Company	Preamble
Confidential Information	6.01(b)
Damages	5.05
Demand Registration	5.01(a)
Drag-Along Portion	4.02(a)
Drag-Along Rights	4.02(a)
Drag-Along Sale	4.02(a)
Drag-Along Sale Notice	4.02(b)
Drag-Along Sale Notice Period	4.02(c)
Drag-Along Sale Price	4.02(b)
Drag-Along Seller	4.02(a)
Dragged-Along Seller	4.02(a)
Exercise Notice	4.05(b)
Fundamental Transaction	4.04
Indemnified Party	5.07
Indemnifying Party	5.07
Inspectors	5.04(g)
Involuntary Transfer	3.02
Issuance Notice	4.05(a)
Maximum Offering Size	5.01(e)
Piggyback Registration	5.02(a)
Pro Rata Share	4.05(a)
Records	5.04(g)
Registering Stockholders	5.01(a)
Replacement Nominee	2.03(a)
Representatives	6.01(b)
Requesting Stockholder	5.01(a)
Shelf Registration	5.01(g)

Section 1.02. *Other Definitional and Interpretative Provisions.* The words “hereof”, “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of

reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. “Writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any law include all rules and regulations promulgated thereunder. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively.

## **ARTICLE 2**

### **CORPORATE GOVERNANCE**

Section 2.01. *Composition of the Board.* (a) The Board shall initially consist of up to seven directors and may increase as provided herein to a maximum of nine directors, which shall be designated as follows:

(i) Apollo shall have the right to designate (x) two directors, for so long as its Aggregate Ownership Percentage exceeds 25%, but is less than 40%, (y) three directors, at such time and for so long as its Aggregate Ownership Percentage is equal to or exceeds 40% and (z) one director, at such time and for so long as its Aggregate Ownership Percentage is equal to or exceeds 10%, but is less than or equal to 25%; *provided* that if the number of directors on the Board exceeds seven, Apollo shall have the right to designate three directors pursuant to clause (x) above and four directors pursuant to clause (y) above;

(ii) each of Babson, Fort Hill and Guggenheim shall have the right to designate (x) one director, for so long as such Stockholder's Aggregate Ownership Percentage is equal to or exceeds 10%, but is less than or equal to 25%, (y) two directors, at such time and for so long as such Stockholder's Aggregate Ownership Percentage exceeds 25%, but is less than 40% and (z) three directors, at such time and for so long as such

Stockholder's Aggregate Ownership Percentage is equal to or exceeds 40%; and

(iii) the Chief Executive Officer of the Company shall also be designated and serve as a director.

(b) As of the date hereof, the Board shall consist of the directors set forth on Exhibit B, which includes one or more directors designated in accordance with Section 2.01(a).

(c) Notwithstanding the foregoing, (i) in the event that any Person (other than a Stockholder who has the right to designate one or more directors pursuant to Section 2.01(a)(i) or (ii)) acquires Shares representing an Aggregate Ownership Percentage of 20% or more and becomes a party to this Agreement, such Person shall have the right to designate a director for so long as its Aggregate Ownership Percentage is equal to or exceeds 20%, (ii) in the event that any Person (other than a Stockholder who has the right to designate one or more directors pursuant to Section 2.01(a)(i) or (ii)) acquires Shares representing an Aggregate Ownership Percentage of 30% or more and becomes a party to this Agreement, such Person shall have the right to designate two directors for so long as its Aggregate Ownership Percentage is equal to or exceeds 30% and (iii) in the event that any Stockholder acquires Shares representing an Aggregate Ownership Percentage of more than 50% and becomes a party to this Agreement, such Stockholder shall have the right to designate a majority of the directors on the Board for so long as its Aggregate Ownership Percentage exceeds 50%; *provided* that no director may be appointed to, or remain on (and to the extent previously appointed, shall be required to resign from), the Board pursuant to clause (i) or (ii) of this Section 2.01(c) to the extent that after giving effect to (or, to the extent previously appointed, taking into account) such appointment and after the exercise of the rights set forth in Section 2.01(a)(i) (including the proviso thereto) and Section 2.01(a)(ii) the number of directors on the Board would exceed nine. In any such case, subject to Section 2.01(a)(i) and (ii), each Stockholder agrees to take such actions with respect to its Company Securities, and if applicable to cause such Stockholder's director designees to take such actions, as are necessary and appropriate to ensure that the size and composition of the Board is in accordance with this Section 2.01(c), including without limitation increasing the number of directors on the Board.

(d) In the event that the Aggregate Ownership Percentage of any Stockholder entitled to designate one or more directors pursuant to Section 2.01(a)(i) or (ii) or Section 2.01(c) is reduced below the threshold percentage required to designate one or more directors, such Stockholder shall cause such director or directors so designated to tender his or her resignation to the Board, which may elect to accept such resignation or request such director or directors to continue serving on the Board.

(e) Each Stockholder agrees that, if at any time it is then entitled to vote for the election of directors to the Board, it shall vote all of its Company Securities or execute proxies or written consents, as the case may be, and take all other necessary action with respect to its Company Securities (including causing the Company to call a special meeting of stockholders) in order to ensure that the composition of the Board is as set forth in this Section 2.01. Notwithstanding anything contained in this Section 2.01, if at any time the Stockholders collectively have the right to designate eight directors (including the Chief Executive Officer), then the number of directors on the Board shall be eight and, for the avoidance of doubt, the Board will not be deemed to have a vacancy.

Section 2.02. *Removal.* Each Stockholder agrees that, if at any time it is then entitled to vote for the removal of directors from the Board, it shall not vote any of its Company Securities or execute proxies or written consents, as the case may be, in favor of the removal of any director who shall have been designated pursuant to Section 2.01 or Section 2.03, unless such removal shall be for Cause or the Person or Persons entitled to designate or nominate such director pursuant to Section 2.01 shall have consented to such removal in writing; *provided that*, if the Person or Persons entitled to designate any director pursuant to Section 2.01 shall request in writing the removal of such director, with or without Cause, each Stockholder shall vote all of its Company Securities or execute proxies or written consents, as the case may be, in favor of such removal. Removal for “**Cause**” shall mean removal of a director because of such director’s (i) willful and continued failure substantially to perform his or her duties with the Company in his or her established position, (ii) willful misconduct that is injurious, monetarily or otherwise, to the Company or any of its Subsidiaries, (iii) conviction for or plea of guilty or *nolo contendere* to, a felony or a crime involving moral turpitude, (iv) abuse of illegal drugs or other controlled substances or habitual intoxication or (v) willful breach of this Agreement or any other agreement between such director and the Company or any of its Subsidiaries, in each case as determined in good faith by two-thirds of the other directors.

Section 2.03. *Vacancies.* If, as a result of death, disability, retirement, resignation, removal (with or without Cause) or otherwise, there shall exist or occur any vacancy on the Board:

(a) the Person or Persons entitled under Section 2.01 to designate such director whose death, disability, retirement, resignation or removal resulted in such vacancy, shall have the exclusive right to designate another individual (the “**Replacement Nominee**”) to fill such vacancy and serve as a director on the Board; and

(b) subject to Section 2.01, each Stockholder agrees that if it is then entitled to vote for the election of directors to the Board, it shall vote all of its

Company Securities, or execute proxies or written consents, as the case may be, in order to ensure that the Replacement Nominee be elected to the Board.

Section 2.04. *Meetings.* The Board shall hold a regularly scheduled meeting at least once every calendar quarter. The Company shall pay all reasonable out-of-pocket expenses incurred by each director in connection with attending regular and special meetings of the Board and any committee thereof, and any meetings of the board of directors of any Subsidiary of the Company and any committee thereof.

Section 2.05. *Action by the Board.* (a) A quorum of the Board shall consist of a majority of the directors.

(b) Subject to Section 2.06, actions of the Board shall require (i) the affirmative vote of at least a majority of the directors present at a duly-convened meeting of the Board at which a quorum is present or (ii) the unanimous written consent of the Board; *provided* that, if there is a vacancy on the Board and an individual has been nominated to fill such vacancy, the first order of business shall be to fill such vacancy.

(c) The Board may create executive, compensation, audit and such other committees as it may determine.

Section 2.06. *Actions Requiring Supermajority Board Approval.* The Company agrees that it shall not take, and it shall not permit any of its Subsidiaries to take, any action (including any action by the Board or any board of directors of any of its Subsidiaries or any committee thereof) with respect to any of the following matters without a Supermajority Board Approval:

(a) incur, or approve or authorize the incurrence of, any Indebtedness, the proceeds of which shall be used to repay or prepay, in whole or in part, the facilities under the Credit Agreement, or to repay or prepay, in whole or in part, any such refinancing (or any subsequent such refinancings); *provided* that, for the avoidance of doubt, no action taken under the Credit Agreement shall require Supermajority Board Approval;

(b) create, authorize, issue, sell, acquire, redeem or repurchase (including by merger or otherwise) any Company Securities or Company Subsidiary Securities (other than any (i) Company Securities or Company Subsidiary Securities issued in connection with the IPO or issued to or repurchased or otherwise acquired from employees or directors pursuant to any agreement or equity compensation plan that has been approved by a majority of the Board and (ii) Company Subsidiary Securities issued by any wholly-owned Subsidiary of the Company to the Company or any other wholly-owned Subsidiary of the Company);

(c) agree to, or consummate, a merger, consolidation or other business combination or sale of all or substantially all of its assets (other than any merger, consolidation or sale involving only wholly-owned Subsidiaries of the Company and no other Person);

(d) to the extent not covered by Section 2.06(c), sell, transfer, convey, assign, lease, or acquire (in each case, including by sale or purchase of stock or assets, merger, dividend or other distribution, formation of a joint venture or otherwise) any assets, business, operations or stock in one or a series of related transactions if the fair market value of such assets, business, operations or stock (including the value of any Indebtedness assumed or to be assumed) exceeds \$10 million;

(e) amend its articles of incorporation (including any certificate of designation), bylaws or similar organizational documents or adopt any stockholder rights plan;

(f) engage in any transaction (in a single or series of related transactions) with any officer or director of the Company or any of its Subsidiaries or any other Affiliate of the Company (other than any Subsidiary) if the aggregate payments made or to be made to or from the Company or any of its Subsidiaries, or if the fair market value of the assets, business, operations or stock that are part of the transaction exceeds \$250,000; and/or

(g) enter into any agreement to do any of the foregoing.

Section 2.07. *Charter or Bylaw Provisions.* Each Stockholder agrees to vote all of its Company Securities or execute proxies or written consents, as the case may be, and to take all other actions necessary, to ensure that the Charter and Bylaws (i) facilitate, and do not at any time conflict with, any provision of this Agreement and (ii) permit each Stockholder to receive the benefits to which each such Stockholder is entitled under this Agreement. The Charter and Bylaws shall provide for (A) the elimination of the liability of each director on the Board to the maximum extent permitted by applicable law and (B) indemnification of, and advancement of expenses for, each director on the Board for acts on behalf of the Company to the maximum extent permitted by applicable law.

Section 2.08. *Notice of Meeting.* The Company agrees to give each director (by email or otherwise) notice and the agenda for each meeting of the Board or any committee thereof at least 24 hours prior to such meeting, which required notice shall be deemed to be waived by a director's attendance at a meeting (unless solely for the purpose of objecting to the lack of required notice) or taking action by written consent.

Section 2.09. *Insurance; Indemnification Agreements.* (a) The Company shall obtain and maintain directors' and officers' liability insurance in an amount reasonably acceptable to the Board. Upon request of any director, the Company shall provide copies of such insurance to such director. The Company shall promptly notify all directors of any changes in such insurance.

(b) The Company shall enter into an indemnification agreement with each director with respect to indemnification and advancement of expenses, with such form of indemnification agreement to be based on best practices and reasonably acceptable to the Board.

Section 2.10. *Termination.* The provisions of this Article 2 shall terminate immediately prior to the effectiveness of the registration statement for the IPO.

### **ARTICLE 3**

#### **RESTRICTIONS ON TRANSFER**

Section 3.01. *Restrictions on Transfer.* (a) Each Stockholder agrees that it will not Transfer any Company Securities to any other Person, except in compliance with the terms of this Agreement, including Article 4. Each Stockholder understands and agrees that the Company Securities issued pursuant to the Plan of Reorganization have been distributed by the Company in reliance on the exemption from registration provided under section 1145 of the Bankruptcy Code. Each Stockholder understands that it may Transfer Company Securities (or solicit offers in respect of any Transfer of Company Securities) only so long as it complies with, and agrees that it shall not Transfer any Company Securities (or solicit any offers in respect of any Transfer of any Company Securities) except in compliance with, the terms and conditions of this Agreement and, to the extent applicable, the Securities Act and any other applicable antitrust, securities or "blue sky" laws.

(b) Except as provided in Section 3.01(c), all Company Securities issued in reliance on the exemption from registration provided under Section 1145 of the Bankruptcy Code evidenced by notations in a book entry system shall include a notation in substantially in the following form:

"THE SECURITIES EVIDENCED HEREBY ARE SUBJECT TO VARIOUS CONDITIONS INCLUDING CERTAIN RESTRICTIONS ON ANY OFFER, SALE, DISPOSITION OR TRANSFER AS SET FORTH IN THE CORPORATION'S CERTIFICATE OF INCORPORATION (AS AMENDED, THE "CERTIFICATE OF INCORPORATION") AND A STOCKHOLDERS AGREEMENT DATED AS OF [\_\_\_\_], 2014

(THE **“STOCKHOLDERS AGREEMENT”**). NO REGISTRATION OR TRANSFER OF SUCH SECURITIES WILL BE MADE ON THE BOOKS OF THE CORPORATION UNLESS AND UNTIL SUCH RESTRICTIONS SHALL HAVE BEEN COMPLIED WITH. THE CORPORATION WILL FURNISH WITHOUT CHARGE TO EACH HOLDER OF RECORD OF SUCH SECURITIES A COPY OF THE CERTIFICATE OF INCORPORATION AND STOCKHOLDERS AGREEMENT, CONTAINING THE ABOVE REFERENCED RESTRICTIONS ON TRANSFERS OF SECURITIES, UPON WRITTEN REQUEST TO THE CORPORATION AT ITS PRINCIPAL PLACE OF BUSINESS.

Any trade confirmation or statement of account sent to Stockholders will bear substantially the same legend. If the Company in its sole discretion subject to applicable law issues any physical certificates evidencing any Company Securities, such certificate shall be stamped or otherwise imprinted with substantially the same legend.

(c) All Company Securities issued to an “underwriter” within the meaning of Section 1145 of the Bankruptcy Code and evidenced by notations in a book entry system shall include a notation substantially in the following form:

“THE SECURITIES EVIDENCED HEREBY ARE SUBJECT TO VARIOUS CONDITIONS INCLUDING CERTAIN RESTRICTIONS ON ANY OFFER, SALE, DISPOSITION OR TRANSFER AS SET FORTH IN THE CORPORATION’S CERTIFICATE OF INCORPORATION (AS AMENDED), THE **“CERTIFICATE OF INCORPORATION”**) AND A STOCKHOLDERS AGREEMENT DATED AS OF [\_\_\_\_], 2014 (THE **“STOCKHOLDERS AGREEMENT”**). NO REGISTRATION OR TRANSFER OF SUCH SECURITIES WILL BE MADE ON THE BOOKS OF THE CORPORATION UNLESS AND UNTIL SUCH RESTRICTIONS SHALL HAVE BEEN COMPLIED WITH. THE CORPORATION WILL FURNISH WITHOUT CHARGE TO EACH HOLDER OF RECORD OF SUCH SECURITIES A COPY OF THE CERTIFICATE OF INCORPORATION AND STOCKHOLDERS AGREEMENT, CONTAINING THE ABOVE REFERENCED RESTRICTIONS ON TRANSFERS OF SECURITIES, UPON WRITTEN REQUEST TO THE CORPORATION AT ITS PRINCIPAL PLACE OF BUSINESS.

THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS



AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OF 1933, AS AMENDED, OR AN EXEMPTION THEREFROM AND, IN EACH CASE, IN COMPLIANCE WITH APPLICABLE STATE SECURITIES LAWS. AS A CONDITION TO ANY TRANSFER, THE CORPORATION RESERVES THE RIGHT TO REQUIRE, IN ACCORDANCE WITH THE STOCKHOLDERS AGREEMENT, AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE CORPORATION, THAT SUCH REGISTRATION IS NOT REQUIRED.”

Any trade confirmation or statement of account sent to Stockholders of such Company Securities will bear substantially the same legend. If the Company issues any physical certificates evidencing such Company Securities, such Company Securities shall be stamped or otherwise imprinted with substantially the same legend.

(d) If any Company Securities cease to be subject to any and all restrictions on Transfer set forth in this Agreement and the Charter, the Company, upon the written request of the holder thereof, shall amend the notations in a book entry system (or, if certificated, issue to such holder a new certificate) evidencing such Company Securities without the first paragraph of the legend required by Section 3.01(b) and 3.01(c). If any Company Securities shall cease to be Registrable Securities under clause (i) or clause (ii) of the definition thereof, the Company, upon the written request of the holder thereof, shall amend the notations in a book entry system (or, if certificated, issue to such holder a new certificate) evidencing such Company Securities without the second paragraph of the legend required by Section 3.01(c).

(e) Each Stockholder agrees to provide reasonable prior written notice to the Company of any proposed Transfer and to cause the proposed transferee(s), as a condition to such Transfer, to expressly and in writing agree to be bound by the terms of this Agreement as a Stockholder by signing a joinder hereto substantially in the form of Exhibit C. Such notice shall include the name and address of the proposed transferee(s) and the number of Company Securities proposed to be included in such Transfer and such additional information as the Company may reasonably request. Each Stockholder also agrees that the Company’s consent shall be required but may only be withheld (and the Company agrees that it will withhold its consent) if the Company reasonably and in good faith determines that such Transfer would cause the number of record holders of any class of Company Securities, as calculated under the Exchange Act, to exceed 1,950 (or 450 or more Persons who are not accredited investors (as defined in

Rule 501 under the Securities Act)) or would otherwise require any Company Securities to be registered under the Securities Act, the Exchange Act or under the securities laws of any state or other jurisdiction (or that such Transfer would violate any of such laws or other applicable law, rule, court order or similar legal authority).

(f) Any attempt to Transfer any Company Securities not in compliance with this Agreement shall be null and void, and the Company shall not, and shall cause any transfer agent not to, give any effect in the Company's stock records to such attempted Transfer.

Section 3.02. *Involuntary Transfer.* In the case of any Transfer of Company Securities upon default, foreclosure, forfeit, court order or otherwise than by a voluntary decision on the part of a Stockholder (an "**Involuntary Transfer**"), such Stockholder (or such Stockholder's legal representatives) shall promptly (but in no event later than five (5) days after such Involuntary Transfer) furnish written notice to the Company indicating that the Involuntary Transfer has occurred, specifying the name of the Person to whom such Company Securities have been Transferred, giving a detailed description of the circumstances giving rise to, and stating the legal basis for, the Involuntary Transfer. Notwithstanding Section 3.03, nothing in this Section 3.02 shall be deemed to vest any Person who becomes a holder of Company Securities pursuant to an Involuntary Transfer with any rights under this Agreement.

Section 3.03. *Transferees Deemed to be Stockholders.* By their acceptance of any Transfer of any Company Securities, each transferee of such Company Securities shall be deemed to be and shall be Stockholder for all purposes of this Agreement, and shall be entitled to all the benefits of, and subject to all of the obligations under, this Agreement to the same extent as all other Stockholders, subject to the last sentence of Section 3.02. Notwithstanding the foregoing, prior to recognizing any purported Transfer, the Company shall require as a condition to such Transfer that the intended transferee expressly and in writing agree to be bound by the terms of this Agreement as a Stockholder by signing a joinder hereto substantially in the form of Exhibit C, even if the purported Transfer of such Company Securities has already been effected by a Stockholder to the intended transferee. If the intended transferee refuses such a request by the Company or the Transfer Agent acting on behalf of the Company, such Transfer shall be null and void and neither the Company, the Transfer Agent nor any registrar of such Company Securities shall give any effect to such attempted Transfer in its records.

Section 3.04. *Future Issuances.* Unless otherwise determined by a Supermajority Board Approval, the Company shall not issue or sell any Company Securities to any Person unless, as a condition precedent to such issuance or sale, such Person shall expressly and in writing agree to be bound by the terms of this

Agreement as a Stockholder by signing a joinder hereto substantially in the form of Exhibit C.

#### ARTICLE 4

##### TAG ALONG RIGHTS; DRAG-ALONG RIGHTS; PREEMPTIVE RIGHTS

Section 4.01. *Tag-Along Rights.* (a) Subject to Sections 4.01(h) and 4.03, if a Stockholder or group of Stockholders (the “**Tag-Along Sellers**”) propose to Transfer, in a single transaction or a series of related transactions, a number of Shares representing 50% or more of all outstanding Shares (a “**Tag-Along Sale**”), the Tag-Along Sellers shall, promptly and in any event no later than 30 days prior to the proposed closing date of such proposed Transfer, provide each other Stockholder with written notice of the terms and conditions of such proposed Transfer (the “**Tag-Along Notice**”) and offer each other Stockholder opportunity to participate in such Transfer in accordance with this Section 4.01 (the “**Tag-Along Offer**”).

(b) The Tag-Along Notice shall identify the proposed transferee(s) and the number and class of Company Securities proposed to be sold by the Tag-Along Sellers (the “**Tag-Along Offer**”), the consideration for which the Transfer is proposed to be made, and all other material terms and conditions of the Tag-Along Offer, including the form of the proposed agreement, if any.

(c) Each other Stockholder shall have the right (a “**Tag-Along Right**”), exercisable by written notice (a “**Tag-Along Response Notice**”) given to the Tag-Along Sellers within 15 Business Days after its receipt of the Tag-Along Notice (the “**Tag-Along Notice Period**”), to request that the Tag-Along Sellers include in the proposed Transfer up to a number of Company Securities (as determined on a Fully Diluted basis) representing such other Stockholder’s Tag-Along Portion (each such exercising Stockholder, a “**Tagging Person**”); *provided* that each Tagging Person shall be entitled to include in the Tag-Along Sale no more than its Tag-Along Portion of Company Securities (as determined on a Fully Diluted basis) and the Tag-Along Sellers shall be entitled to include the number of Company Securities (as determined on a Fully Diluted basis) proposed to be Transferred by the Tag-Along Sellers as set forth in the Tag-Along Notice (reduced, to the extent necessary, so that each Tagging Person shall be able to include its Tag-Along Portion) and such additional Company Securities as permitted by Section 4.01(f). Each Tag-Along Response Notice shall include wire transfer or other instructions for payment of any consideration for the Company Securities being transferred in such Tag-Along Sale. Each Tagging Person shall also deliver to the Tag-Along Sellers, together with its Tag-Along Response Notice, the certificates or other applicable instruments representing the Company Securities of such Tagging Person to be included in the Tag-Along Sale, together with a notarized, limited power-of-attorney authorizing the Tag-

Along Sellers or their representative to Transfer such Company Securities on the terms set forth in the Tag-Along Notice. Delivery of the Tag-Along Response Notice shall constitute an irrevocable acceptance of the Tag-Along Offer by such Tagging Person, subject to the provisions of this Section 4.01 and Section 4.03. If at the termination of the Tag-Along Notice Period any Stockholder shall not have elected to participate in the Tag-Along Sale, such Stockholder shall be deemed to have waived its rights under Section 4.01(a) with respect to the Transfer of its Company Securities pursuant to such Tag-Along Sale. **“Tag-Along Portion”** means, with respect to any Stockholder and for any Tag-Along Sale, (i) the number of Shares (as determined on a Fully-Diluted basis) owned by such Stockholder immediately prior to such Tag-Along Sale *multiplied by* (ii) a fraction the numerator of which is the number of Shares (as determined on a Fully Diluted basis) proposed to be sold in such Tag-Along Sale and the denominator of which is the aggregate number of Shares (as determined on a Fully Diluted basis) owned by all Stockholders immediately prior to such Tag-Along Sale. For the avoidance of doubt, any Tag-Along Right of a Management Holder under this Section 4.01 shall apply only to Shares (either purchased or that are or have been issued upon exercise of vested options, warrants or other rights to acquire Shares).

(d) If at the end of a 120-day period after delivery of such Tag-Along Notice (which 120-day period shall be extended if any of the transactions contemplated by the Tag-Along Offer are subject to regulatory approval until the expiration of five (5) Business Days after all such approvals have been received, but in no event later than 180 days following receipt of the Tag-Along Notice by the Tag-Along Sellers), the Tag-Along Sellers have not completed the Transfer of all Company Securities proposed to be sold by the Tag-Along Sellers and all Tagging Persons on substantially the same terms and conditions set forth in the Tag-Along Notice, the Tag-Along Sellers shall (i) return to each Tagging Person the limited power-of-attorney and all certificates and other applicable instruments representing the Company Securities that such Tagging Person delivered for Transfer pursuant to this Section 4.01(a) and any other documents in the possession of the Tag-Along Sellers executed by the Tagging Persons in connection with the proposed Tag-Along Sale, and (ii) all the restrictions on Transfer contained in this Agreement or otherwise applicable at such time with respect to such Company Securities shall continue in effect.

(e) Promptly after the consummation of the Tag-Along Sale, the Tag-Along Sellers shall (i) notify the Tagging Persons thereof, (ii) remit to the Tagging Persons the total consideration for the Company Securities of the Tagging Persons Transferred pursuant thereto *less* the Tagging Persons' *pro rata* share of any escrows, holdbacks or adjustments in purchase price and any transaction expenses as determined in accordance with Section 4.03, with the cash portion of the purchase price paid by wire transfer of immediately available funds in accordance with the wire transfer instructions in the applicable Tag-Along Response Notices and (iii) furnish such other evidence of the completion and the

date of completion of such transfer and the terms thereof as may be reasonably requested by the Tagging Persons. The Tag-Along Sellers shall promptly remit to the Tagging Persons any additional consideration payable upon the release of any escrows, holdbacks or adjustments in purchase price.

(f) If (i) any Stockholder declines to exercise (or is deemed to have declined) its Tag-Along Rights or (ii) any Tagging Person elects to exercise its Tag-Along Rights with respect to less than such Tagging Person's Tag-Along Portion, the Tag-Along Sellers shall be entitled to Transfer, pursuant to the Tag-Along Offer, a number of Company Securities held by it equal to the number of Company Securities (as determined on a Fully Diluted basis) constituting, as the case may be, the Tag-Along Portion of such Stockholder or the portion of such Tagging Person's Tag-Along Portion with respect to which Tag-Along Rights were not exercised.

(g) Notwithstanding anything contained in this Section 4.01, there shall be no liability on the part of the Tag-Along Sellers to the Tagging Persons (other than the obligation to return any certificates evidencing Company Securities and limited powers-of-attorney received by the Tag-Along Sellers) or any other Person if the Transfer of Company Securities pursuant to Section 4.01 is not consummated for whatever reason. Whether to effect a Transfer of Company Securities pursuant to this Section 4.01 by the Tag-Along Sellers is in the sole and absolute discretion of the Tag-Along Sellers.

(h) The provisions of this Section 4.01 shall not apply to any proposed Transfer of Company Securities by the Tag-Along Sellers (i) to a Permitted Transferee, (ii) in a Public Offering or (iii) pursuant to Section 4.02 or 4.04.

(i) The provisions of this Section 4.01 shall terminate immediately prior to the effectiveness of the registration statement for the IPO.

Section 4.02. *Drag-Along Rights.* (a) Subject to Section 4.03, if one or more Stockholders holding 50% or more of the outstanding Shares (collectively, the "**Drag-Along Sellers**") together propose to Transfer Shares representing 50% or more of all outstanding Shares in a bona fide arm's-length transaction to an unaffiliated third party (as related to each of the Drag-Along Sellers) (a "**Drag-Along Sale**"), the Drag-Along Sellers may at their option (the "**Drag-Along Rights**") require each other Stockholder (each, a "**Dragged-Along Seller**") to: (i) Transfer a number of Company Securities (as determined on a Fully Diluted basis) equal to the Drag Along Portion of such Dragged-Along Seller; (ii) if applicable, exercise the number of any options, warrants or other rights to acquire Common Stock held by such Dragged-Along Seller as is required in order that a sufficient number of Shares are available to Transfer the relevant Drag-Along Portion of such Dragged-Along Seller; *provided* that any Dragged-Along Seller that holds options, warrants or other rights the exercise price of which is greater

than the per share price at which any Shares are to be Transferred pursuant to the Drag-Along Sale, if required by the Drag-Along Sellers to exercise such options, warrants or other rights may, in lieu of such exercise, submit to irrevocable cancellation thereof without any liability for payment of any exercise price with respect thereto; and *provided further* that if the Drag-Along Sale is not consummated, any options, warrants or other rights exercised or cancelled in contemplation of such Drag-Along Sale shall be deemed not to have been exercise or cancelled, as applicable; (iii) vote in favor of any merger, consolidation, sale of assets or shares or other transaction required to effect such Drag-Along Sale and (iv) otherwise take all other actions necessary or desirable to consummate the Drag-Along Sale. **“Drag-Along Portion”** means, with respect to any Dragged-Along Seller and for any Drag-Along Sale, (i) the number of Shares (as determined on a Fully-Diluted basis) owned by such Dragged-Along Seller immediately prior to such Drag-Along Sale *multiplied by* (ii) a fraction the numerator of which is the number of Shares (as determined on a Fully Diluted basis) proposed to be sold by the Drag-Along Sellers in such Drag-Along Sale and the denominator of which is the aggregate number of Shares (as determined on a Fully Diluted basis) owned by the Drag-Along Sellers immediately prior to such Drag-Along Sale.

(b) If the Drag-Along Sellers elect to exercise their Drag-Along Rights, the Drag-Along Sellers shall provide notice of such Drag-Along Sale to the Dragged-Along Sellers (a **“Drag-Along Sale Notice”**) not later than 15 Business Days prior to the proposed Drag-Along Sale. The Drag-Along Sale Notice shall identify the purchaser in the Drag-Along Sale, the number and class of Company Securities subject to the Drag-Along Sale, the consideration for which a Transfer is proposed to be made (as determined on a Fully Diluted basis) (the **“Drag-Along Sale Price”**) and all other material terms and conditions of the Drag-Along Sale. Each Dragged-Along Seller shall be required to participate in the Drag-Along Sale on the terms and conditions set forth in the Drag-Along Sale Notice and to tender its Company Securities as set forth below.

(c) If requested by the Drag-Along Sellers, not later than 10 Business Days after the date of the Drag-Along Sale Notice (the **“Drag-Along Sale Notice Period”**), each Dragged-Along Seller shall deliver to a representative of the Drag-Along Sellers designated in the Drag-Along Sale Notice (i) the certificates and other applicable instruments representing the Company Securities of such Dragged-Along Seller to be included in the Drag-Along Sale, together with a notarized, limited power-of-attorney authorizing the Drag-Along Sellers or their representative to Transfer such Company Securities on the terms set forth in the Drag-Along Notice and wire transfer or other instructions for payment of the consideration for the Company Securities being Transferred in such Drag-Along Sale and/or (ii) all other documents required to be executed in connection with the Drag-Along Sale. If a Dragged-Along Seller should fail to deliver such certificates or other applicable instruments to the Drag-Along Sellers, the

Company (subject to Section 4.02(d)) shall cause the books and records of the Company to show that such Company Securities are bound by the provisions of this Section 4.01 and that such Company Securities shall be Transferred to the Drag-Along Transferee immediately upon surrender for Transfer by the holder thereof.

(d) The Drag-Along Sellers shall have a period of 120 days from the date of the Drag-Along Sale Notice to consummate the Drag-Along Sale on the terms and conditions set forth in such Drag-Along Sale Notice; *provided* that, if such Drag-Along Sale is subject to regulatory approval, such 120-day period shall be extended until the expiration of five (5) Business Days after all such approvals have been received, but in no event later than 180 days following the date of the Drag-Along Sale Notice. If the Drag-Along Sale shall not have been consummated during such period, the Drag-Along Sellers shall return to each of the Dragged-Along Sellers the limited power-of-attorney and all certificates and other applicable instruments representing Company Securities that such Dragged-Along Sellers delivered for Transfer pursuant hereto, together with any other documents in the possession of the Drag-Along Sellers executed by the Dragged-Along Sellers in connection with the proposed Drag-Along Sale, and all the restrictions on Transfer contained in this Agreement or otherwise applicable at such time with respect to such Company Securities owned by the Dragged-Along Sellers shall again be in effect.

(e) Promptly after the consummation of the Drag-Along Sale pursuant to this Section 4.01, the Drag-Along Sellers shall (i) notify the Dragged-Along Sellers thereof, (ii) remit to each Dragged-Along Seller the total consideration for the Company Securities of such Dragged-Along Seller Transferred pursuant thereto *less* the Dragged-Along Seller's *pro rata* share of any escrows, holdbacks or adjustments in purchase price and any transaction expenses as determined in accordance with Section 4.03, with the cash portion of the purchase price paid by wire transfer of immediately available funds in accordance with the wire transfer instructions in the applicable Drag-Along Response Notices and (iii) furnish such other evidence of the completion and the date of completion of such transfer and the terms thereof as may be reasonably requested by the Dragged-Along Sellers. The Drag-Along Sellers shall promptly remit to the Dragged-Along Sellers any additional consideration payable upon the release of any escrows, holdbacks or adjustments in purchase price.

(f) Notwithstanding anything contained in this Section 4.02, there shall be no liability on the part of the Drag-Along Sellers to the Dragged-Along Sellers (other than the obligation to return the limited power-of-attorney and the certificates and other applicable instruments representing Company Securities received by the Drag-Along Sellers) or any other Person if the Transfer of Company Securities pursuant to this Section 4.02 is not consummated for whatever reason, regardless of whether the Drag-Along Sellers have delivered a

Drag-Along Sale Notice. Whether to effect a Transfer of Company Securities pursuant to this Section 4.02 by the Drag-Along Sellers is in the sole and absolute discretion of the Drag-Along Sellers.

(g) The provisions of this Section 4.02 shall terminate immediately prior to the effectiveness of the registration statement for the IPO.

Section 4.03. *Additional Conditions to Tag-Along Sales and Drag-Along Sales.* Notwithstanding anything contained in Section 4.01 or 4.02, the rights and obligations of the Tagging Persons to participate in a Tag-Along Sale under Section 4.01 and the Dragged-Along Sellers to participate in a Drag-Along Sale under Section 4.02 are subject to the following conditions:

(a) upon the consummation of such Tag-Along Sale or Drag-Along Sale, (i) all of the Stockholders participating therein will receive the same form and amount of consideration as determined on a Fully Diluted basis; *provided* that in no event shall any consideration for any services, such as placement or transaction fees, investment banking or investment advisory fees payable to the Tag-Along Sellers or Drag-Along Sellers, as the case may be, or any related Person in connection with such transaction, or any consideration for any additional agreements entered into in connection with such transaction, such as non-competition agreements, be included in the amount of consideration, and (ii) if any Stockholders are given an option as to the form and amount of consideration to be received, all Stockholders participating therein will be given the same option;

(b) each Tagging Person or Dragged-Along Seller shall be obligated to pay only its *pro rata* share of expenses incurred in connection with a consummated Tag-Along Sale or Drag-Along Sale to the extent such expenses are incurred for the benefit of all Stockholders and are not otherwise paid by the Company or another Person;

(c) each Tagging Person and Dragged-Along Seller shall (i) make such representations, warranties and covenants, provide such indemnities and enter into such definitive agreements as are customary for transactions of the nature of the proposed Transfer; *provided* that if the Tagging Persons and Dragged-Along Sellers are required to provide any representations or indemnities in connection with such Transfer (other than representations and indemnities concerning each Tagging Person's or Dragged-Along Seller's title to the Company Securities and authority, power and right to enter into and consummate the Transfer without contravention of any law or agreement), liability for misrepresentation or indemnity shall (as to such Tagging Persons or Dragged-Along Sellers) be expressly stated to be several but not joint and each Tagging Person or Dragged-Along Seller shall not be liable for more than its *pro rata* share of any liability for misrepresentation or indemnity, (ii) benefit from all of the same provisions of the



definitive agreements with respect to the Company Securities being Transferred as the Tag-Along Sellers or Drag-Along Sellers, as the case may be, and (iii) be required to bear their proportionate share of any escrows, holdbacks or adjustments in purchase price.

Section 4.04. *Fundamental Transactions*. In the event that the Company proposes to effect (i) a sale, lease, transfer, conveyance or other disposition, in one or a series of related transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, or (ii) a merger, consolidation or other business combination transaction or series of transactions (other than a Drag-Along Sale) the result of which is that any Person or “group” (as defined in Section 13 of the Exchange Act) becomes the beneficial owner (as such term is defined in Rule 13d-3 and Rule 13d-5 of the Exchange Act), directly or indirectly, of more than 50% of the voting power of the outstanding voting stock of the Company (each transaction described in clauses (i) and (ii), a “**Fundamental Transaction**”) and such Fundamental Transaction receives the written consent of Stockholders holding more than 50% of the voting power of the outstanding voting stock of the Company (the “**Consenting Stockholders**”), each other Stockholder agrees it will take all actions requested by the Company or Consenting Stockholders that may be necessary or desirable to consummate such Fundamental Transaction, including, if applicable, to vote (or execute written consents) in favor of such Fundamental Transaction, to waive any dissenters’ or appraisal rights in connection therewith and, if such Fundamental Transaction is structured as a transaction the approval of which requires a vote of stockholders, to deliver an executed proxy, which shall be coupled with an interest and shall be irrevocable, authorizing the Consenting Stockholders to vote such other Stockholder’s Company Securities in favor of such Fundamental Transaction. Each Stockholder shall also, to the extent applicable, (A) make such representations, warranties and covenants, provide such indemnities and enter into such definition agreements as are customary for transactions of the nature of the Fundamental Transaction; *provided* that if the Stockholders are required to provide any representations or indemnities in connection with such Fundamental Transaction (other than representations and indemnities concerning each Stockholder’s title to the Company Securities and authority, power and right to enter into and consummate the Fundamental Transaction without contravention of any law or agreement), liability for misrepresentation or indemnity shall (as to such Stockholders) be expressly stated to be several but not joint and each Stockholder shall not be liable for more than its *pro rata* share (based on the number of Company Securities (as determined on a Fully Diluted basis) Transferred pursuant to such Fundamental Transaction) of any liability for misrepresentation or indemnity, (B) benefit from all of the same provisions of the definitive agreements as the Consenting Stockholders and (C) be required to bear its *pro rata* share (based on the number of Company Securities (as determined on a Fully Diluted basis) Transferred pursuant to such Fundamental Transaction) of

any escrows, holdbacks or adjustments in purchase price. The provisions of this Section 4.04 shall terminate upon the consummation of the IPO.

Section 4.05. *Preemptive Rights.* (a) Subject to Section 4.05(f), the Company shall give each Preemptive Rights Holder notice (an “**Issuance Notice**”) of any proposed issuance by the Company of any Company Securities at least 20 days prior to the proposed issuance date. The Issuance Notice shall specify the price at which such Company Securities are to be issued and the other material terms of the issuance. Subject to Section 4.05(f), each Preemptive Rights Holder shall be entitled to purchase up to such Preemptive Rights Holder’s Pro Rata Share of the Company Securities proposed to be issued, at the price and on the terms specified in the Issuance Notice. “**Pro Rata Share**” means, with respect to a Preemptive Rights Holder, such Preemptive Rights Holder’s Aggregate Ownership Percentage (calculated immediately before giving effect to the issuance).

(b) Each Preemptive Rights Holder who desires to purchase any or all of its Pro Rata Share of the Company Securities specified in the Issuance Notice shall deliver notice to the Company (each, an “**Exercise Notice**”) of its election to purchase such Company Securities within five (5) Business Days of receipt of the Issuance Notice. The Exercise Notice shall specify the number (or amount) of Company Securities to be purchased by such Preemptive Rights Holder and shall constitute exercise by such Preemptive Rights Holder of its rights under this Section 4.05 and a binding agreement of such Preemptive Rights Holder to purchase, at the price and on the terms specified in the Issuance Notice, the number (or amount) of Company Securities specified in the Exercise Notice. If, at the termination of such five-Business-Day period, any Preemptive Rights Holder shall not have delivered an Exercise Notice to the Company, such Preemptive Rights Holder shall be deemed to have waived all of its rights under this Section 4.05 with respect to the purchase of such Company Securities. Promptly following the termination of such five-Business Day period, the Company shall deliver to each Preemptive Rights Holder a copy of all Exercise Notices it received.

(c) If any Preemptive Rights Holder fails to exercise its preemptive rights under this Section 4.05 or elects to exercise such rights with respect to less than such Preemptive Rights Holder’s Pro Rata Share, the Company shall notify each other Preemptive Rights Holder who has delivered an Exercise Notice to exercise its rights to purchase its entire Pro Rata Share, that such Preemptive Rights Holder shall be entitled to purchase from the Company its pro rata portion (which means the fraction that results from dividing (i) the aggregate number of Shares owned by such Preemptive Rights Holder (calculated immediately before giving effect to the issuance) by (ii) the number of Shares owned by all Preemptive Rights Holders exercising in full their preemptive rights with respect to their respective Pro Rata Shares (calculated immediately before giving effect to

the issuance)) of such Company Securities with respect to which any Preemptive Rights Holder shall not have exercised its preemptive rights. The Company shall continue to offer additional pro rata portions to Preemptive Rights Holders choosing to purchase their full pro rata portion of such Company Securities pursuant to this Section 4.05(c) until the earlier of (i) all Company Securities proposed to be issued by the Company and with respect to which Preemptive Rights Holders were entitled to exercise their rights under this Section 4.05 have been purchased by Preemptive Rights Holders or (ii) all Preemptive Rights Holders have purchased the maximum number of Company Securities indicated in their respective Exercise Notice.

(d) The Company shall have 30 days from the date of the Issuance Notice to consummate the proposed issuance of any or all of such Company Securities that the Preemptive Rights Holders have not elected to purchase at the price and upon terms that are not materially less favorable to the Company than those specified in the Issuance Notice; *provided* that, if such issuance is subject to regulatory approval, such 30-day period shall be extended until the expiration of five (5) Business Days after all such approvals have been received, but in no event later than 90 days from the date of the Issuance Notice. If the Company proposes to issue any such Company Securities after such 30-day (or 90-day) period, it shall again comply with the procedures set forth in this Section 4.05.

(e) At the consummation of the issuance of such Company Securities, the Company shall issue certificates or make a notation in a book entry system, as applicable representing the Company Securities to be purchased by each Preemptive Rights Holder exercising preemptive rights pursuant to this Section 4.05 registered in the name of such Preemptive Rights Holder, against payment by such Preemptive Rights Holder of the purchase price for such Company Securities in accordance with the terms and conditions as specified in the Issuance Notice.

(f) Notwithstanding the foregoing, no Preemptive Rights Holder shall be entitled to purchase Company Securities as contemplated by this Section 4.05 in connection with issuances of Company Securities (i) pursuant to the Management Equity Plan or to employees of the Company or any Subsidiary pursuant to employee benefit plans or arrangements approved by the Board (including upon the exercise of employee stock options granted pursuant to any such plans or arrangements), (ii) in connection with any bona fide, arm's-length restructuring of outstanding debt of the Company or any Subsidiary, (iii) in connection with any bona fide, arm's-length direct or indirect merger, acquisition or similar transaction, (iv) pursuant to a Public Offering, (v) in connection with any bona fide, arm's-length transaction with a strategic partner (other than any Affiliate of the Company) or (vi) upon the exercise of any rights or agreements, options, warrants or convertible securities outstanding as of the date of this Agreement or issued or issuable pursuant to the exercise of any such rights or agreements granted after the date of this Agreement (so long as the preemptive

rights provided by this Section 4.5 were complied with as to the initial sale or grant by the Company of such rights or agreements). The Company shall not be obligated to consummate any proposed issuance of Company Securities, nor be liable to any Stockholder if the Company has not consummated any proposed issuance of Company Securities pursuant to this Section 4.05 for whatever reason, including if such issuance would require any Company Securities to be registered under the Securities Act, the Exchange Act or under the securities laws of any state or other jurisdiction (or if such issuance would violate any of such laws or other applicable law, rule, court order or similar legal authority), regardless of whether it shall have delivered an Issuance Notice or received any Exercise Notices in respect of such proposed issuance.

(g) Notwithstanding anything contained in this Section 4.05, the closing date of any proposed issuance of Company Securities to which this Section 4.05 applies may, at the Company's discretion, occur prior to the expiration of the 20-day period contemplated by Section 4.05(a); *provided* that in such case each Preemptive Rights Holder shall (other than those who elected to purchase Company Securities on such closing date) continue to have the right to exercise its rights under this Section 4.05 by delivering an Exercise Notice within 15 days of the receipt of the Issuance Notice pursuant to Section 4.05(b) to acquire from the Company (or, as determined by the Company, from the purchasers of the Company Securities on such closing date) the number of Company Securities determined in accordance with Section 4.05(a) at the price and on the terms specified in the Exercise Notice.

(h) The provisions of this Section 4.05 shall terminate immediately prior to the effectiveness of the registration statement for the IPO.

## ARTICLE 5 REGISTRATION RIGHTS

Section 5.01. *Demand Registration.* (a) If at any time following the earlier of (x) 180 days after the effective date of the registration statement for the IPO and (y) the expiration of the period during which the managing underwriters for the IPO shall prohibit the Company from effecting any other public sale or distribution of Registrable Securities, the Company shall receive a request from any Stockholder or group of Stockholders holding 10% or more of the then outstanding Registrable Securities (the "**Requesting Stockholders**") that the Company effect the registration under the Securities Act of all or any portion of such Requesting Stockholders' Registrable Securities, and specifying the intended method of disposition thereof, then the Company shall promptly give notice of such requested registration (each such request, a "**Demand Registration**") at least 20 Business Days prior to the anticipated filing date of the registration statement relating to such Demand Registration to the other Stockholders and thereupon

shall use its best efforts to effect, as expeditiously as possible, the registration under the Securities Act of:

- (i) all Registrable Securities for which the Requesting Stockholders have requested registration under this Section 5.01; and
- (ii) subject to the restrictions set forth in Sections 5.01(e) and 5.02, all other Registrable Securities of the same class as those requested to be registered by the Requesting Stockholders that any Stockholders with rights to request registration under Section 5.01 (all such Stockholders, together with the Requesting Stockholders, and any Stockholders participating in a Piggyback Registration pursuant to Section 5.02, the “**Registering Stockholders**”) have requested the Company to register by request received by the Company within 15 Business Days after such Stockholders receive the Company’s notice of the Demand Registration;

all to the extent necessary to permit the disposition (in accordance with the intended methods thereof as aforesaid) of the Registrable Securities so to be registered; *provided* that the Company shall not be obligated to effect a Demand Registration unless the aggregate proceeds expected to be received from the sale of the Registrable Securities requested to be included in such Demand Registration equals or exceeds \$20 million. In no event shall the Company be required to effect more than one Demand Registration hereunder within any six-month period.

(b) Promptly after the expiration of the 15-Business Day-period referred to in Section 5.01(a)(ii), the Company will notify all Registering Stockholders of the identities of the other Registering Stockholders and the number of shares of Registrable Securities requested to be included therein. At any time prior to the effective date of the registration statement relating to such registration, the Requesting Stockholders may revoke such request, without liability to the Company or any of the other Registering Stockholders, by providing a notice to the Company revoking such request.

(c) The Company shall be liable for and pay all Registration Expenses in connection with any Demand Registration, regardless of whether such Registration is effected.

(d) A Demand Registration shall not be deemed to have been effected:

- (i) unless the registration statement relating thereto (A) has become effective under the Securities Act and (B) has remained effective for a period of at least 180 days (or such shorter period in which all Registrable Securities of the Registering Stockholders included in such

registration have actually been sold thereunder); *provided* that such registration statement shall not be considered a Demand Registration if, after such registration statement becomes effective, (1) such registration statement is interfered with by any stop order, injunction or other order or requirement of the SEC or other governmental agency or court and (2) less than 75% of the Registrable Securities included in such registration statement have been sold thereunder; or

(ii) if the Maximum Offering Size is reduced in accordance with Section 5.01(e) such that less than two thirds of the Registrable Securities of the Requesting Stockholders sought to be included in such registration are included.

(e) If a Demand Registration involves an underwritten Public Offering and the managing underwriter advises the Company and the Requesting Stockholders that, in its view, the number of shares of Registrable Securities requested to be included in such registration (including any securities that the Company proposes to be included that are not Registrable Securities) exceeds the largest number of shares that can be sold without having an adverse effect on such offering, including the price at which such shares can be sold (the “**Maximum Offering Size**”), the Company shall include in such registration, in the priority listed below, up to the Maximum Offering Size:

(i) first, all Registrable Securities requested to be registered by the Requesting Stockholders and all other Registering Stockholders (allocated, if necessary for the offering not to exceed the Maximum Offering Size, pro rata among such entities on the basis of the relative number of Registrable Securities so requested to be included in such registration by each); and

(ii) second, any securities proposed to be registered by any other Persons (including the Company), with such priorities among them as the Company shall determine.

(f) Upon notice to the Requesting Stockholders, the Company may postpone effecting a registration pursuant to this Section 5.01 on one occasion during any period of six consecutive months for a reasonable time specified in the notice but not exceeding 60 days (which period may not be extended or renewed), if (i) an investment banking firm of recognized national standing shall advise the Company and the Requesting Stockholders in writing that effecting the registration would materially and adversely affect an offering of securities of such Company the preparation of which had then been commenced or (ii) the Company is in possession of material non-public information the disclosure of which during the period specified in such notice the Company reasonably believes would not be in the best interests of the Company.

(g) At any time following the consummation of the IPO, upon the request of the Requesting Stockholders, the Company shall use its best efforts to file a “shelf” registration statement (the “**Shelf Registration**”) with respect to the Registrable Securities on an appropriate form pursuant to Rule 415 (or any similar provision that may be adopted by the SEC) under the Securities Act and to cause such Shelf Registration to become effective and to keep such Shelf Registration in effect until the Requesting Stockholders no longer hold any Registrable Securities. Any offer or sale of Registrable Securities pursuant to the Shelf Registration in any underwritten Public Offering shall be deemed to be a Demand Registration subject to the provisions of Section 5.01(a).

Section 5.02. *Piggyback Registration.* (a) If at any time following the IPO the Company proposes to register any Company Securities under the Securities Act (other than a registration on Form S-8 or S-4, or any successor forms, relating to Shares issuable upon exercise of employee stock options or in connection with any employee benefit or similar plan of the Company or in connection with a direct or indirect acquisition by the Company of another Person), whether or not for sale for its own account, the Company shall each such time give prompt notice at least 20 Business Days prior to the anticipated filing date of the registration statement relating to such registration to each Stockholder, which notice shall set forth such Stockholder’s rights under this Section 5.02 and shall offer such Stockholder the opportunity to include in such registration statement the number of Registrable Securities of the same class or series as those proposed to be registered as each such Stockholder may request (a “**Piggyback Registration**”), subject to the provisions of Section 5.02(b). Upon the request of any such Stockholder made within 10 Business Days after the receipt of notice from the Company (which request shall specify the number of Registrable Securities intended to be registered by such Stockholder), the Company shall use its reasonable best efforts to effect the registration under the Securities Act of all Registrable Securities that the Company has been so requested to register by all such Stockholders, to the extent requisite to permit the disposition of the Registrable Securities so to be registered; *provided* that (i) if such registration involves an underwritten Public Offering, all such Stockholders requesting to be included in the Company’s registration must sell their Registrable Securities to the underwriters selected as provided in Section 5.04(f)(i) on the same terms and conditions as apply to the Company or the Requesting Stockholders, as applicable, and (ii) if, at any time after giving notice of its intention to register any Company Securities pursuant to this Section 5.02(a) and prior to the effective date of the registration statement filed in connection with such registration, the Company shall determine for any reason not to register such securities or to postpone the registration of such securities, the Company shall give notice to all such Stockholders and, thereupon, shall be relieved of its obligation to register or may postpone the registration of any Registrable Securities in connection with such registration. No registration effected under this Section 5.02 shall relieve the

Company of its obligations to effect a Demand Registration to the extent required by Section 5.01. The Company shall pay all Registration Expenses in connection with each Piggyback Registration.

(b) If a Piggyback Registration involves an underwritten Public Offering (other than any Demand Registration, in which case the provisions with respect to priority of inclusion in such offering set forth in Section 5.01(e) shall apply) and the managing underwriter advises the Company that, in its view, the number of Registrable Securities that the Company and such Stockholders intend to include in such registration exceeds the Maximum Offering Size, the Company shall include in such registration, in the following priority, up to the Maximum Offering Size:

(i) first, so much of the Registrable Securities proposed to be registered for the account of the Company as would not cause the offering to exceed the Maximum Offering Size; and

(ii) second, all Registrable Securities requested to be included in such registration by any Stockholders pursuant to Section 5.02 (allocated, if necessary for the offering not to exceed the Maximum Offering Size, pro rata among such Stockholders on the basis of the relative number of shares of Registrable Securities so requested to be included in such registration by each).

Section 5.03. *Lock-Up Agreements.* If any registration of Registrable Securities shall be effected in connection with a Public Offering, neither the Company nor any Stockholder shall effect any public sale or distribution, including any sale pursuant to Rule 144, of Registrable Securities (except as part of such Public Offering) during the period beginning 14 days prior to the effective date of the applicable registration statement until the earlier of (i) such time as the Company and the lead managing underwriter shall agree and (ii) 180 days.

Section 5.04. *Registration Procedures.* Whenever Stockholders request that any Registrable Securities be registered pursuant to Section 5.01 or 5.02, subject to the provisions of such Sections, 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 as quickly as practicable, and, in connection with any such request:

(a) The Company shall as expeditiously as possible prepare and file with the SEC a registration statement on any form for which the Company then qualifies or that counsel for the Company shall deem appropriate and which form shall be available for the sale of the Registrable Securities to be registered thereunder in accordance with the intended method of distribution thereof, and use its reasonable best efforts to cause such filed registration statement to become



and remain effective for a period of not less than 180 days, or in the case of a shelf registration statement, one year (or such shorter period in which all of the Registrable Securities of the Stockholders included in such registration statement shall have actually been sold thereunder).

(b) Prior to filing a registration statement or prospectus or any amendment or supplement thereto, the Company shall, if requested, furnish to each participating Stockholder and each underwriter, if any, of the Registrable Securities covered by such registration statement copies of such registration statement as proposed to be filed, and thereafter the Company shall furnish to such Stockholder and underwriter, if any, such number of copies of such registration statement, each amendment and supplement thereto (in each case including all exhibits thereto and documents incorporated by reference therein), the prospectus included in such registration statement (including each preliminary prospectus and any summary prospectus) and any other prospectus filed under Rule 424, Rule 430A, Rule 430B or Rule 430C under the Securities Act and such other documents as such Stockholder or underwriter may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Stockholder. Each Stockholder shall have the right to request that the Company modify any information contained in such registration statement, amendment and supplement thereto pertaining to such Stockholder and the Company shall use its reasonable best efforts to comply with such request; *provided, however*, that the Company shall not have any obligation so to modify any information if the Company reasonably expects that so doing would cause the prospectus to contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading.

(c) After the filing of the registration statement, the Company shall (i) cause the related prospectus to be supplemented by any required prospectus supplement, and, as so supplemented, to be filed pursuant to Rule 424 under the Securities Act, (ii) comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement during the applicable period in accordance with the intended methods of disposition by the Stockholders thereof set forth in such registration statement or supplement to such prospectus and (iii) promptly notify each Stockholder holding Registrable Securities covered by such registration statement of any stop order issued or threatened by the SEC or any state securities commission and take all reasonable actions required to prevent the entry of such stop order or to remove it if entered.

(d) The Company shall use its reasonable best efforts to (i) register or qualify the Registrable Securities covered by such registration statement under such other securities or "blue sky" laws of such jurisdictions in the United States as any Registering Stockholder holding such Registrable Securities reasonably (in light of such Stockholder's intended plan of distribution) requests and (ii) cause such Registrable Securities to be registered with or approved by such other

governmental agencies or authorities as may be necessary by virtue of the business and operations of the Company and do any and all other acts and things that may be reasonably necessary or advisable to enable such Stockholder to consummate the disposition of the Registrable Securities owned by such Stockholder; *provided* that the Company shall not be required to (A) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 5.04(d), (B) subject itself to taxation in any such jurisdiction or (C) consent to general service of process in any such jurisdiction.

(e) The Company shall immediately notify each Registering Stockholder holding such Registrable Securities covered by such registration statement, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of the occurrence of an event requiring the preparation of a supplement or amendment to such prospectus so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and promptly prepare and make available to each such Stockholder and file with the SEC any such supplement or amendment.

(f) (i) The Requesting Stockholders holding a majority of the Registrable Securities to be sold shall have the right to select an underwriter or underwriters (which must be reasonably acceptable to the Company) in connection with any Public Offering resulting from the exercise by the Requesting Stockholders of a Demand Registration, which underwriter or underwriters may include any Affiliate of any Requesting Stockholder and (ii) the Company shall select an underwriter or underwriters (which must be reasonably acceptable to the holders of a majority of the Registrable Securities) in connection with any other Public Offering. In connection with any Public Offering, the Company shall enter into customary agreements (including an underwriting agreement in customary form) and take such all other actions as are reasonably required in order to expedite or facilitate the disposition of such Registrable Securities in any such Public Offering, including the engagement of a “qualified independent underwriter” in connection with the qualification of the underwriting arrangements with FINRA.

(g) Upon execution of confidentiality agreements in form and substance reasonably satisfactory to the Company, the Company shall make available for inspection by any Stockholder and any underwriter participating in any disposition pursuant to a registration statement being filed by the Company pursuant to this Section 5.04 and any attorney, accountant or other professional retained by any such Stockholder or underwriter (collectively, the “**Inspectors**”), all financial and other records, pertinent corporate documents and properties of the Company (collectively, the “**Records**”) as shall be reasonably necessary or

desirable to enable them to exercise their due diligence responsibility, and cause the Company's officers, directors and employees to supply all information reasonably requested by any Inspectors in connection with such registration statement. Records that the Company determines, in good faith, to be confidential and that it notifies the Inspectors are confidential shall not be disclosed by the Inspectors unless (i) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in such registration statement or (ii) the release of such Records is ordered pursuant to a subpoena or other order from a court of competent jurisdiction. Each Stockholder agrees that information obtained by it as a result of such inspections shall be deemed confidential and shall not be used by it or its Affiliates as the basis for any market transactions in the Registrable Securities unless and until such information is made generally available to the public. Each Stockholder further agrees that, upon learning that disclosure of such Records is sought in a court of competent jurisdiction, it shall give notice to the Company and allow the Company, at its expense, to undertake appropriate action to prevent disclosure of the Records deemed confidential.

(h) The Company shall furnish to each Registering Stockholder and to each such underwriter, if any, a signed counterpart, addressed to such Registering Stockholder or underwriter, of (i) an opinion or opinions of counsel to the Company and (ii) a comfort letter or comfort letters from the Company's independent public accountants, each in customary form and covering such matters of the kind customarily covered by opinions or comfort letters, as the case may be, as a majority of such Stockholders or the managing underwriter therefor reasonably requests.

(i) The Company shall otherwise use its reasonable best efforts to comply with all applicable rules and regulations of the SEC, and make available to its security holders, as soon as reasonably practicable, an earnings statement or such other document that shall satisfy the provisions of Section 11(a) of the Securities Act and the requirements of Rule 158 thereunder.

(j) The Company may require each Stockholder promptly to furnish in writing to the Company such information regarding the distribution of the Registrable Securities as the Company may from time to time reasonably request and such other information as may be legally required in connection with such registration.

(k) Each Stockholder agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 5.04(e), such Stockholder shall forthwith discontinue disposition of Registrable Securities pursuant to the registration statement covering such Registrable Securities until such Stockholder's receipt of the copies of the supplemented or amended prospectus contemplated by Section 5.04(e), and, if so directed by the Company, such Stockholder shall deliver to the Company all copies, other than any

permanent file copies then in such Stockholder's possession, of the most recent prospectus covering such Registrable Securities at the time of receipt of such notice. If the Company shall give such notice, the Company shall extend the period during which such registration statement shall be maintained effective (including the period referred to in Section 5.04(a)) by the number of days during the period from and including the date of the giving of notice pursuant to Section 5.04(e) to the date when the Company shall make available to such Stockholder a prospectus supplemented or amended to conform with the requirements of Section 5.04(e).

(l) The Company shall use its reasonable best efforts to list all Registrable Securities covered by such registration statement on any securities exchange or quotation system on which any of the Registrable Securities are then listed or traded.

(m) The Company shall have appropriate officers of the Company (i) prepare and make presentations at any "road shows" and before analysts and rating agencies, as the case may be, (ii) take other actions to obtain ratings for any Registrable Securities and (iii) otherwise use their reasonable best efforts to cooperate as reasonably requested by the underwriters in the offering, marketing or selling of the Registrable Securities.

Section 5.05. *Indemnification by the Company.* (a) The Company agrees to indemnify and hold harmless each Stockholder beneficially owning any Registrable Securities covered by a registration statement, its officers, directors, employees, partners and agents, and each Person, if any, who controls such Stockholder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all losses, claims, damages, liabilities and expenses (including reasonable expenses of investigation and reasonable attorneys' fees and expenses) ("**Damages**") caused by or relating to any untrue statement or alleged untrue statement of a material fact contained in any registration statement or prospectus relating to the Registrable Securities (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto) or any preliminary prospectus or free writing prospectus (as defined in Rule 405 under the Securities Act), or caused by or relating to any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such Damages are caused by or related to any such untrue statement or omission or alleged untrue statement or omission so made based upon information furnished in writing to the Company by such Stockholder or on such Stockholder's behalf expressly for use therein. The Company also agrees to indemnify any underwriters of the Registrable Securities, their officers and directors and each Person who controls such underwriters within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act on

substantially the same basis as that of the indemnification of the Stockholders provided in this Section 5.05.

Section 5.06. *Indemnification by Participating Stockholders.* Each Stockholder holding Registrable Securities included in any registration statement agrees, severally but not jointly, to indemnify and hold harmless the Company, its officers, directors and agents and each Person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act to the same extent as the foregoing indemnity from the Company to such Stockholder, but only with respect to information furnished in writing by such Stockholder or on such Stockholder's behalf expressly for use in any registration statement or prospectus relating to the Registrable Securities, or any amendment or supplement thereto, or any preliminary prospectus. Each such Stockholder also agrees to indemnify and hold harmless underwriters of the Registrable Securities, their officers and directors and each Person who controls such underwriters within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act on substantially the same basis as that of the indemnification of the Company provided in this Section 5.06. As a condition to including Registrable Securities in any registration statement filed in accordance with Article 5, the Company may require that it shall have received an undertaking reasonably satisfactory to it from any underwriter to indemnify and hold it harmless to the extent customarily provided by underwriters with respect to similar securities. No Stockholder shall be liable under this Section 5.06 for any Damages in excess of the net proceeds realized by such Stockholder in the sale of Registrable Securities of such Stockholder to which such Damages relate.

Section 5.07. *Conduct of Indemnification Proceedings.* If any proceeding (including any governmental investigation) shall be instituted involving any Person in respect of which indemnity may be sought pursuant to this Article 5, such Person (an "**Indemnified Party**") shall promptly notify the Person against whom such indemnity may be sought (the "**Indemnifying Party**") in writing and the Indemnifying Party shall assume the defense thereof, including the employment of counsel reasonably satisfactory to such Indemnified Party, and shall assume the payment of all fees and expenses; *provided* that the failure of any Indemnified Party so to notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder except to the extent that the Indemnifying Party is materially prejudiced by such failure to notify. In any such proceeding, any Indemnified Party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless (i) the Indemnifying Party and the Indemnified Party shall have mutually agreed to the retention of such counsel or (ii) in the reasonable judgment of such Indemnified Party representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that, in connection with any proceeding or related proceedings in the same jurisdiction, the Indemnifying Party shall not

be liable for the reasonable fees and expenses of more than one separate firm of attorneys (in addition to any local counsel) at any time for all such Indemnified Parties, and that all such fees and expenses shall be reimbursed as they are incurred. In the case of any such separate firm for the Indemnified Parties, such firm shall be designated in writing by the Indemnified Parties. The Indemnifying Party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent, or if there be a final judgment for the plaintiff, the Indemnifying Party shall indemnify and hold harmless such Indemnified Parties from and against any loss or liability (to the extent stated above) by reason of such settlement or judgment. Without the prior written consent of the Indemnified Party, no Indemnifying Party shall effect any settlement of any pending or threatened proceeding in respect of which any 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 arising out of such proceeding. Each Indemnified Party shall furnish such information regarding itself or the claim in question as an Indemnifying Party may reasonably request in writing and as shall be reasonably required in connection with the defense of such claim and litigation resulting therefrom.

Section 5.08. *Contribution.* If the indemnification provided for in this Article 5 is unavailable to the Indemnified Parties in respect of any Damages, then each such Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Damages (i) as between the Company and the Stockholders holding Registrable Securities covered by a registration statement on the one hand and the underwriters on the other, in such proportion as is appropriate to reflect the relative benefits received by the Company and such Stockholders on the one hand and the underwriters on the other, from the offering of the Registrable Securities, or if such allocation is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits but also the relative fault of the Company and such Stockholders on the one hand and of such underwriters on the other in connection with the statements or omissions that resulted in such Damages, as well as any other relevant equitable considerations and (ii) as between the Company on the one hand and each such Stockholder on the other, in such proportion as is appropriate to reflect the relative fault of the Company and of each such Stockholder in connection with such statements or omissions, as well as any other relevant equitable considerations. The relative benefits received by the Company and such Stockholders on the one hand and such underwriters on the other shall be deemed to be in the same proportion as the total proceeds from the offering (net of underwriting discounts and commissions but before deducting expenses) received by the Company and such Stockholders bear to the total underwriting discounts and commissions received by such underwriters, in each case as set forth in the table on the cover page of the prospectus. The relative

fault of the Company and such Stockholders on the one hand and of such underwriters on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company and such Stockholders or by such underwriters. The relative fault of the Company on the one hand and of each such Stockholder on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by such party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Stockholders agree that it would not be just and equitable if contribution pursuant to this Section 5.08 were determined by pro rata allocation (even if the underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by an Indemnified Party as a result of the Damages referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 5.08, no underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Registrable Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any Damages that such underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission, and no Stockholder shall be required to contribute any amount in excess of the amount by which the total price at which the Registrable Securities of such Stockholder were offered to the public (less underwriters' discounts and commissions) exceeds the amount of any Damages that such Stockholder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. Each Stockholder's obligation to contribute pursuant to this Section 5.08 is several in the proportion that the proceeds of the offering received by such Stockholder bears to the total proceeds of the offering received by all such Stockholders and not joint.

Section 5.09. *Participation in Public Offering.* No Stockholder may participate in any Public Offering hereunder unless such Stockholder (i) agrees to sell such Stockholder's Registrable Securities on the basis provided in any underwriting arrangements approved by the Persons entitled hereunder to approve such arrangements and (b) completes and executes all questionnaires, powers of

attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements and the provisions of this Agreement in respect of registration rights.

Section 5.10. *Other Indemnification.* Indemnification similar to that specified herein (with appropriate modifications) shall be given by the Company and each Stockholder participating therein with respect to any required registration or other qualification of securities under any federal or state law or regulation or governmental authority other than the Securities Act.

Section 5.11. *Cooperation by the Company.* If any Stockholder shall transfer any Registrable Securities pursuant to Rule 144, the Company shall cooperate, to the extent commercially reasonable, with such Stockholder and shall provide to such Stockholder such information as such Stockholder shall reasonably request.

Section 5.12. *Mergers, Etc.* The Company shall not, directly or indirectly, enter into any merger, consolidation, or reorganization in which the Company shall not be the surviving corporation unless the proposed surviving corporation shall, prior to such merger, consolidation, or reorganization, agree in writing to assume the obligations of the Company under this Agreement, and for that purpose references hereunder to “Registrable Securities” shall be deemed to be references to the securities that a stockholder would be entitled to receive in exchange for Registrable Securities under any such merger, consolidation, or reorganization; *provided, however*, that the provisions of this Agreement shall not apply in the event of any merger, consolidation, or reorganization in which the Company is not the surviving corporation if all stockholders are entitled to receive in exchange for their Registrable Securities consideration consisting solely of: (a) cash; (b) securities of the acquiring corporation that may be immediately sold to the public without registration under the Securities Act and without limitations imposed by Rule 144 or Rule 145 under the Securities Act; or (c) securities of the acquiring corporation that the acquiring corporation has agreed to register within 45 days of completion of the transaction for resale to the public pursuant to the Securities Act.

## ARTICLE 6

### CERTAIN COVENANTS AND AGREEMENTS

Section 6.01. *Confidentiality.* (a) Each Stockholder agrees that Confidential Information furnished and to be furnished to it has been and may in the future be made available in connection with such Stockholder’s investment in the Company. Each Stockholder agrees that it shall use, and that it shall cause any Person to whom Confidential Information is disclosed pursuant to clause (i) below to use, the Confidential Information only in connection with its investment



in the Company and not for any other purpose. Each Stockholder further acknowledges and agrees that it shall not disclose any Confidential Information to any Person, except that Confidential Information may be disclosed:

(i) to such Stockholder's Representatives in the normal course of the performance of their duties or to any financial institution providing credit to such Stockholder;

(ii) to the extent required by applicable law, rule or regulation (including complying with any oral or written questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process to which a Stockholder is subject; *provided* that such Stockholder agrees to give the Company prompt notice of such request(s), to the extent practicable, so that the Company may seek an appropriate protective order or similar relief (and the Stockholder shall cooperate with such efforts by the Company, and shall in any event make only the minimum disclosure required by such law, rule or regulation));

(iii) to any Person to whom such Stockholder is contemplating a Transfer of its Company Securities; *provided* that such Transfer would not be in violation of the provisions of this Agreement and such potential transferee is advised of the confidential nature of such information and agrees to be bound by a confidentiality agreement consistent with the provisions hereof;

(iv) to any regulatory authority or rating agency to which the Stockholder or any of its Affiliates is subject or with which it has regular dealings; *provided* that such authority or agency is advised of the confidential nature of such information;

(v) to the extent related to the tax treatment and tax structure of the transactions contemplated by this Agreement (including all materials of any kind, such as opinions or other tax analyses that the Company, its Affiliates or its Representatives have provided to such Stockholder relating to such tax treatment and tax structure); *provided* that the foregoing does not constitute an authorization to disclose the identity of any existing or future party to the transactions contemplated by this Agreement or their Affiliates or Representatives, or, except to the extent relating to such tax structure or tax treatment, any specific pricing terms or commercial or financial information; or

(vi) if the prior written consent of the Board shall have been obtained.

Nothing contained herein shall prevent the use (subject, to the extent possible, to a protective order) of Confidential Information in connection with the assertion or defense of any claim by or against the Company or any Stockholder.

(b) “**Confidential Information**” means any information concerning the Company or any Persons that are or become its Subsidiaries or the financial condition, business, operations or prospects of the Company or any such Persons in the possession of or furnished to any Stockholder (including by virtue of its present or former right to designate a director of the Company); *provided* that the term “Confidential Information” does not include information that (i) is or becomes generally available to the public other than as a result of a disclosure by a Stockholder or its directors, officers, employees, stockholders, members, partners, agents, counsel, investment advisers or other representatives (all such persons being collectively referred to as “**Representatives**”) in violation of this Agreement, (ii) was available to such Stockholder on a non-confidential basis prior to its disclosure to such Stockholder or its Representatives by the Company, (iii) becomes available to such Stockholder on a non-confidential basis from a source other than the Company after the disclosure of such information to such Stockholder or its Representatives by the Company, which source is (at the time of receipt of the relevant information) not, to the best of such Stockholder’s knowledge, bound by a confidentiality agreement with (or other confidentiality obligation to) the Company or another Person or (iv) is independently developed by such Stockholder without violating any confidentiality agreement with, or other obligation of secrecy to, the Company.

Section 6.02. *Reports.* The Company agrees to furnish to each Stockholder, for so long as each such Stockholder owns any Company Securities and until such time as the Company first becomes subject to the periodic reporting requirements of Section 12(g) or 15(d) of the Exchange Act:

(a) as soon as practicable and, in any event, within 50 days after the end of each of the first three fiscal quarters, the unaudited consolidated balance sheet of the Company and its Subsidiaries as at the end of such quarter and the related unaudited statement of operations and cash flow for such quarter and for the portion of the fiscal year then ended, in each case prepared in accordance with GAAP; and

(b) as soon as practicable and, in any event, within 120 days after the end of the current fiscal year and within 90 days after the end of each fiscal year thereafter, the audited consolidated balance sheet of the Company and its Subsidiaries as at the end of such fiscal year and the related audited statement of operations and cash flow for such fiscal year, and for the portion of the fiscal year then ended, in each case prepared in accordance with GAAP.

Section 6.03. *Limitations on Subsequent Registration Rights.* The Company agrees that it shall not enter into any agreement with any holder or prospective holder of any securities of the Company (i) that would allow such holder or prospective holder to include such securities in any Demand Registration or Piggyback Registration unless, under the terms of such agreement, such holder or prospective holder may include such securities in any such registration only to the extent that their inclusion would not reduce the amount of the Registrable Securities of the Stockholders included therein or (ii) on terms otherwise more favorable than this Agreement.

Section 6.04. *Conflicting Agreements.* The Company and each Stockholder represents and agrees that it shall not (i) grant any proxy or enter into or agree to be bound by any voting trust or agreement with respect to the Company Securities, except as expressly contemplated by this Agreement, (ii) enter into any agreement or arrangement of any kind with any Person with respect to any Company Securities inconsistent with the provisions of this Agreement or for the purpose or with the effect of denying or reducing the rights of any other Stockholder under this Agreement, including agreements or arrangements with respect to the Transfer or voting of its Company Securities or (iii) act, for any reason, as a member of a group or in concert with any other Person (other than its Affiliates) in connection with the Transfer or voting of its Company Securities in any manner that is inconsistent with the provisions of this Agreement. Notwithstanding the preceding sentence, actions of any Stockholder in accordance with or under its organizational documents, partnership agreement, limited liability company agreement, trust agreement, indenture, pooling and servicing agreement or other securitization or structured finance agreement shall not be subject to the provisions of this Section 6.04, but shall not otherwise relieve such Stockholder of its obligations under the other provisions of this Agreement.

Section 6.05. *Business Opportunity.* To the fullest extent permitted by applicable law and the Charter, the doctrine of corporate opportunity, or any other analogous doctrine, shall not apply with respect to the Company or any Stockholder. No Stockholder nor any of its Affiliates shall have any obligation to refrain from (i) engaging in the same or similar activities or lines of business as the Company or developing or marketing any products or services that compete, directly or indirectly, with those of the Company, (ii) investing or owning any interest publicly or privately in, or developing a business relationship with, any Person engaged in the same or similar activities or lines of business as, or otherwise in competition with, the Company, (iii) doing business with any client or customer of the Company or (iv) employing or otherwise engaging a former officer or employee of the Company.

**ARTICLE 7**  
**MISCELLANEOUS**

Section 7.01. *Binding Effect; Assignability; Benefit.* (a) This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, legal representatives and permitted assigns. Any Stockholder that ceases to own beneficially any Company Securities shall cease to be bound by the terms hereof (other than (i) the provisions of Sections 5.05, 5.06, 5.07, 5.08 and 5.10 applicable to such Stockholder with respect to any offering of Registrable Securities completed before the date such Stockholder ceased to own any Company Securities and (ii) Sections 6.01, 7.02, 7.05, 7.06, 7.07 and 7.08).

(b) Neither this Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof shall be assignable by any party hereto pursuant to any Transfer of Company Securities or otherwise, except that any Person acquiring Company Securities from any Stockholder in a Transfer in compliance with Article 3 (but excluding any such Transfer made in a Public Offering or through a national securities exchange) shall be entitled to the rights under and be bound by this Agreement and shall thenceforth be a "Stockholder." For the avoidance of doubt, none of the rights to designate directors that are granted to a Stockholder in Section 2.01(a)(i) or (ii) shall be assignable by such Stockholder, other than to a Permitted Transferee of such Stockholder who is (or becomes) a party to this Agreement.

(c) Nothing in this Agreement, expressed or implied, is intended to confer on any Person other than the parties hereto, and their respective heirs, successors, legal representatives and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

Section 7.02. *Notices.* All notices, requests and other communications to any party shall be in writing and shall be delivered in person, mailed by certified or registered mail, return receipt requested, or sent by facsimile transmission or email transmission so long as confirmation of receipt of such email is requested and received:

if to the Company to:

[Sbarro Holdings, Inc.  
401 Broadhollow Road  
Melville, NY 11747  
Attention: General Counsel  
Fax: (631) 715-4186]

with a copy to each of Apollo, Babson, Fort Hill and Guggenheim, to the address listed for such entity (or its Affiliates) on Exhibit A.

if to a Stockholder, to the address listed for such Stockholder on Exhibit A or if no such address is listed, to the address for such Stockholder listed in the Company's register of stockholders, with a copy to:

Milbank, Tweed, Hadley & McCloy LLP  
One Chase Manhattan Plaza  
New York, New York 10005  
Attention: Jane Morgan  
Fax: (212) 822-5017  
Email: jmorgan@milbank.com

All notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day in the place of receipt. Any notice, request or other written communication sent by facsimile transmission shall be confirmed by certified or registered mail, return receipt requested, posted within one Business Day, or by personal delivery, whether courier or otherwise, made within two Business Days after the date of such facsimile transmissions.

Any Person that becomes a Stockholder shall provide its address and fax number and email address to the Company, which shall promptly provide such information to each other Stockholder in the form of an updated version of Exhibit A to this Agreement.

Section 7.03. *Waiver; Amendment.* (a) Subject to Section 7.03(b), no provision of this Agreement may be amended, waived or otherwise modified except by an instrument in writing executed by the Company with approval of the Board and Stockholders holding at least two-thirds of the Shares then outstanding (as determined on a Fully Diluted basis), held by the parties hereto at the time of such proposed amendment or modification. In addition, any party may waive any provision of this Agreement with respect to itself by an instrument in writing executed by the party against whom the waiver is to be effective. Notwithstanding the foregoing, any amendment or waiver to Sections 2.01, 2.02 or 2.03 shall require the written consent of each affected Stockholder, regardless of the relative effect of such amendment as compared to other Stockholders.

(b) In addition, any amendment, waiver or modification of any provision of this Agreement that would materially and adversely affect any Stockholder in a manner that is disparate from the manner in which it affects the

other Stockholders may be effected only with the consent of the Stockholder so affected.

Section 7.04. *Fees and Expenses.* Except as otherwise provided in Plan of Reorganization, all costs and expenses incurred in connection with the preparation of this Agreement, or any amendment or waiver hereof, and the transactions contemplated hereby shall be paid by the party incurring such costs or expenses.

Section 7.05. *Governing Law.* This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to the conflicts of laws rules of such state.

Section 7.06. *Jurisdiction.* The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in the United States District Court for the Southern District of New York or any New York State court sitting in New York City, so long as one of such courts shall have subject matter jurisdiction over such suit, action or proceeding, and that any case of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of New York, and each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 7.02 shall be deemed effective service of process on such party.

Section 7.07. *WAIVER OF JURY TRIAL.* EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 7.08. *Specific Enforcement.* Each party hereto acknowledges that the remedies at law of the other parties for a breach or threatened breach of this Agreement would be inadequate and, in recognition of this fact, any party to this Agreement, without posting any bond, and in addition to all other remedies that may be available, shall be entitled to obtain equitable relief in the form of specific

performance, a temporary restraining order, a temporary or permanent injunction or any other equitable remedy that may then be available.

Section 7.09. *Effectiveness.* This Agreement shall become effective on the Effective Date (as defined in the Plan of Reorganization).

Section 7.10. *Entire Agreement.* This Agreement and the Plan of Reorganization constitute the entire agreement among the parties hereto and supersede all prior and contemporaneous agreements and understandings, both oral and written, among the parties hereto with respect to the subject matter hereof and thereof.

Section 7.11. *Severability.* If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner so that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

IN WITNESS WHEREOF, the Company has executed this Agreement as of the first date written above and the other parties hereto being bound without the requirement for signatures pursuant to the terms of the Plan of Reorganization.

**SBARRO HOLDINGS, INC.**

By: \_\_\_\_\_  
Name:  
Title:



## EXHIBIT A

## INITIAL STOCKHOLDERS

[illegible]

**EXHIBIT B**

INITIAL BOARD

<b>Name</b>	<b>Designating Entity</b>
1.	
2.	
3.	
4.	
5.	
6.	
7.	

**EXHIBIT C**

**JOINDER TO STOCKHOLDERS AGREEMENT**

This Joinder Agreement (this “**Joinder Agreement**”) is made as of the date written below by the undersigned (the “**Joining Party**”) in accordance with the Stockholders Agreement dated as of [\_\_\_\_], 2014 (as amended, amended and restated or otherwise modified from time to time, the “**Stockholders Agreement**”) among Sbarro Holdings, Inc., a Delaware corporation (the “**Company**”) and the entities listed on Exhibit A thereto, as such agreement may be amended from time to time. Capitalized terms used, but not defined, herein shall have the meaning ascribed to such terms in the Stockholders Agreement.

The Joining Party hereby acknowledges, agrees and confirms that, by its execution of this Joinder Agreement, the Joining Party shall be deemed to be a party to the Stockholders Agreement as of the date hereof and shall have all of the rights and obligations of a “Stockholder” thereunder as if it had executed the Stockholders Agreement. The Joining Party hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions contained in the Stockholders Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement as of the date written below.

Date: \_\_\_\_\_, \_\_\_\_\_

[NAME OF JOINING PARTY]

By: \_\_\_\_\_

Name:

Title:

Address for Notices:

**Exhibit E**

**Certificate of Incorporation**

**WRITTEN CONSENT  
OF  
AUTHORIZED OFFICER  
OF  
SBARRO HOLDINGS, INC.**

I, [\_\_\_\_], being an authorized officer of Sbarro Holdings, Inc., a corporation organized the laws of Delaware (the “**Corporation**”), do hereby certify as follows:

**FIRST:** The name of the Corporation is Sbarro Holdings, Inc.

**SECOND:** The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of Delaware on November 18, 2011.

**THIRD:** On March 10, 2014, the Corporation and certain of its debtor affiliates filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”). On March 10, 2014, the Corporation and certain of its debtor affiliates filed that certain Joint Prepackaged Chapter 11 Plan of Reorganization (the “**Plan**”), which was confirmed on [●], 2014 by order (the “**Order**”) of the Bankruptcy Court. The Plan, as confirmed by the Order, provides for the amendment and restatement of the Corporation’s Certificate of Incorporation in its entirety to read as set forth in Exhibit A attached hereto and made a part hereof (the “**Restated Certificate**”).

**FOURTH:** The Restated Certificate has been duly adopted in accordance with Sections 242, 245 and 303 of the General Corporation Law of the State of Delaware, pursuant to the authority granted to the Corporation under Section 303 of the General Corporation Law of the State of Delaware to put into effect and carry out the Plan, as confirmed by the Order.

**FIFTH:** The Restated Certificate has been duly executed and acknowledged by an officer of the Corporation designated by the Order in accordance with the provisions of Sections 242, 245 and 303 of the General Corporation Law of the State of Delaware.

**IN WITNESS WHEREOF**, the undersigned, for the purpose of amending and restating the Certificate of Incorporation of the Corporation pursuant to the General Corporation Law of the State of Delaware, under penalties of perjury does hereby declare and certify that this is the act and deed of the Corporation and the facts stated herein are true, and accordingly has hereunto signed this Amended and Restated Certificate of Incorporation this [●] day of [●], 2014.

**SBARRO HOLDINGS, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
SBARRO HOLDINGS, INC.**

**ARTICLE I  
NAME**

The name of the corporation is Sbarro Holdings, Inc. (the “**Corporation**”).

**ARTICLE II  
REGISTERED OFFICE AND AGENT**

The address of the Corporation’s registered office in the State of Delaware is 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle, Delaware 19808, and the name of its registered agent at such address is Corporation Service Company. The registered office and registered agent of the Corporation may be amended or modified from time to time in accordance with the Bylaws of the Corporation (as amended, modified or supplemented from time to time, the “**Bylaws**”).

**ARTICLE III  
PURPOSE**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended (the “**DGCL**”).

**ARTICLE IV  
CAPITAL STOCK**

(a) The total number of shares of stock which the Corporation shall have authority to issue is [5,000,000], consisting of [4,000,000] shares of common stock, par value \$0.0001 per share (the “**Common Stock**”), and [1,000,000] shares of preferred stock, par value \$0.0001 per share (the “**Preferred Stock**”)<sup>1</sup>.

(b) The board of directors of the Corporation (the “**Board of Directors**”) is hereby empowered to authorize by resolution or resolutions from time to time the issuance of one or more classes or series of Preferred Stock and to fix the designations, powers, preferences and relative, participating, optional or other rights, if any, and the qualifications, limitations or restrictions thereof, if any, with respect to each such class or series of Preferred Stock and the number of shares constituting each such class or series, and to increase or decrease (but not below the number of shares thereof then outstanding) the number of shares of any such class or series to the extent permitted by the DGCL. Any certificate of designation or resolutions adopted by the Board of Directors designating the designations, powers, preferences and rights of shares of Preferred Stock is referred to herein as a “**Certificate of Designation**”. Except as otherwise required by law, holders of Preferred Stock, as such, shall be entitled only to such

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<sup>1</sup> Note to Draft: Inclusion of “blank check” Preferred Stock to be determined.

voting rights, if any, as shall be expressly granted thereto by this Amended and Restated Certificate of Incorporation (including any Certificate of Designation). Except as may be provided in this Amended and Restated Certificate of Incorporation (including any Certificate of Designation), holders of Preferred Stock shall not be entitled to receive notice of any meeting of stockholders at which they are not entitled to vote.

(c) The number of authorized shares of the Common Stock may be increased or decreased by the affirmative vote of the holders of a majority in voting power of Common Stock (but may not be decreased below (i) the number of shares thereof then outstanding plus (ii) the number of shares of Common Stock issuable upon exercise of outstanding options, warrants, exchange rights, conversion rights or similar rights for Common Stock and reserved under any equity plan).

(d) Each holder of Common Stock, as such, shall be entitled to one vote for each share of Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote; *provided, however*, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation (including any Certificate of Designation) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Amended and Restated Certificate of Incorporation (including any Certificate of Designation) or pursuant to the DGCL.

(e) Subject to the preferences applicable to any series of Preferred Stock outstanding at any time, the holders of shares of Common Stock shall be entitled to receive such dividends and other distributions in cash, property or shares of stock of the Corporation (or any combination thereof) as may be declared thereon by the Board of Directors from time to time out of assets or funds of the Corporation legally available therefor.

(f) The Corporation shall have the power to create and issue, whether or not in connection with the issue and sale of any shares of stock or other securities of the Corporation, options, exchange rights, warrants, convertible rights, and similar rights permitting the holders thereof to purchase from the Corporation any shares of its capital stock of any class or classes at the time authorized, such options, exchange rights, warrants, convertible rights and similar rights to have such terms and conditions, and to be evidenced by or in such instrument or instruments, consistent with the terms and provisions of this Amended and Restated Certificate of Incorporation and as shall be approved by the Board of Directors.

(g) To the extent prohibited by Section 1123(a)(6) of Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”), the Corporation shall not issue non-voting equity securities; *provided, however*, that the foregoing (i) shall have no further force and effect beyond that required under Section 1123(a)(6) of the Bankruptcy Code, (ii) shall have such force and effect, if any, only for so long as such Section 1123(a)(6) is in effect and applicable to the Corporation, and (iii) may be amended or eliminated in accordance with applicable law as from time to time in effect.

**ARTICLE V**  
**PERPETUAL EXISTENCE**

The Corporation shall have perpetual existence.

**ARTICLE VI**  
**ELECTION OF DIRECTORS**

Election of directors need not be by written ballot unless the Bylaws so provide.

**ARTICLE VI**  
**LIMITED LIABILITY OF DIRECTORS**

A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director to the fullest extent permitted by the DGCL (it being understood that, without limiting the foregoing, if in the future the DGCL is amended or modified (including with respect to Section 102(b)(7) thereof) to permit the further limitation or elimination of the personal liability of a director of the Corporation to a greater extent than contemplated above, then the provisions of this ARTICLE VI shall be deemed to provide for the elimination of the personal liability of the directors of the Corporation to such greater extent). This ARTICLE VI shall not eliminate or limit the liability of a director for any act or omission occurring prior to the date when this ARTICLE VI becomes effective. Any repeal or amendment or modification of this ARTICLE VI, or the adoption of any provision of this Amended and Restated Certificate of Incorporation inconsistent with this ARTICLE VI, will, to the extent permitted by applicable law, be prospective only (except to the extent such amendment or change in applicable law permits the Corporation to provide a broader limitation on a retroactive basis than permitted prior thereto), and will not adversely affect any limitation on the personal liability of any director of the Corporation at the time of such repeal or amendment or modification or adoption of such inconsistent provision.

**ARTICLE VII**  
**INDEMNIFICATION**

(a) Each person (and the heirs, executors or administrators of such person) who was or is a party or is threatened to be made a party to, or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, to the fullest extent permitted by law, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment). The right to indemnification conferred in this ARTICLE VII shall also include the right to be paid by the Corporation the expenses incurred in connection with any such proceeding in advance of its final disposition to the fullest extent authorized by the DGCL. The right to indemnification conferred in this ARTICLE VII shall be a contract right.



(b) The Corporation may, by action of its Board of Directors, provide indemnification to the employees and agents of the Corporation to such extent and to such effect as the Board of Directors shall determine to be appropriate and authorized by the DGCL.

(c) The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss incurred by such person in any such capacity or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the DGCL.

(d) The Corporation hereby acknowledges that directors designated by stockholders of the Corporation pursuant to that certain Stockholders Agreement, dated as of [●], by and among the Corporation and each of the stockholders from time to time party thereto (as amended, modified or supplemented from time to time) may have certain rights to indemnification, advancement of expenses and/or insurance provided by such designating stockholders and/or certain of their affiliates (collectively, the "**Fund Indemnitors**"). The Corporation hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to such persons are primary and any obligation of the Fund Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such persons are secondary), (ii) that it shall be required to advance the full amount of expenses incurred by such persons and shall be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Amended and Restated Certificate of Incorporation or the Bylaws (or any other agreement between the Corporation and such persons), without regard to any rights such persons may have against the Fund Indemnitors, and (iii) that it irrevocably waives, relinquishes and releases the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Corporation further agrees that no advancement or payment by the Fund Indemnitors on behalf of such persons with respect to any claim for which such persons have sought indemnification from the Corporation shall affect the foregoing and the Fund Indemnitors shall be subrogated to the extent of such advancement or payment to all of the rights of recovery of such persons against the Corporation. The Corporation and each such person agree that the Fund Indemnitors are express third party beneficiaries of the terms of this paragraph (d).

(e) The rights and authority conferred in this ARTICLE VII shall not be exclusive of any other right which any person may otherwise have or hereafter acquire.

(f) Neither the amendment nor repeal of this ARTICLE VII, nor the adoption of any provision of this Amended and Restated Certificate of Incorporation or the Bylaws, nor, to the fullest extent permitted by the DGCL, any modification of law, shall adversely affect any right or protection of any person granted pursuant hereto existing at, or arising out of or related to any event, act or omission that occurred prior to, the time of such amendment, repeal, adoption or modification (regardless of when any proceeding (or part thereof) relating to such event, act or omission arises or is first threatened, commenced or completed).

**ARTICLE VIII  
ACTION WITHOUT A MEETING OF STOCKHOLDERS**

Any action required to be taken at any annual or special meeting of the stockholders of the Corporation, or any action which may be taken at such annual or special meeting, may be taken by written consent of such stockholders in lieu of such meeting in accordance with the DGCL and the Bylaws.

**ARTICLE IX  
SECTION 203 ELECTION**

The Corporation expressly elects not to be governed by Section 203 of the DGCL.

**ARTICLE X  
BYLAWS**

Except as set forth in the Bylaws, the Board of Directors shall have the power to adopt, amend or repeal the Bylaws.

**ARTICLE XI  
CORPORATE OPPORTUNITIES**

Subject to any express agreement that may from time to time be in effect, (a) the Corporation agrees that any business opportunities that any stockholder (other than an officer or employee of the Corporation), any affiliate of any such stockholder, or any designee of any such stockholder serving on the Board of Directors may become aware of shall not be deemed corporate opportunities of the Corporation, and the Corporation hereby expressly renounces, to the fullest extent permitted by the DGCL, any claim to, interest or expectancy in, or in being informed of or offered any opportunity to participate in, any such business opportunities; *provided, however*, that any corporate opportunity which is expressly offered to such director (whether a stockholder or a designee of a stockholder) in his or her capacity as a director of the Corporation shall belong to the Corporation and (b) the Corporation also acknowledges and agrees that, to the fullest extent permitted by Delaware or other applicable law, any stockholder (other than an officer or employee of the Corporation), any affiliate of any such stockholder, or any designee of any such stockholder serving on the Board of Directors may and shall be permitted to (i) engage in the same or similar activities or lines of business as the Corporation or develop or market any products or services that compete, directly or indirectly, with those of the Corporation, (ii) invest or own any interest publicly or privately in, or develop a business relationship with, any other person engaged in the same or similar activities or lines of business as, or otherwise in competition with, the Corporation, (iii) conduct or otherwise engage in business with any client or customer of the Corporation or (iv) employ or otherwise engage any former officer or employee of the Corporation.

**ARTICLE XII  
AMENDMENTS**

The Corporation reserves the right to amend this Amended and Restated Certificate of Incorporation in any manner permitted by the DGCL and, with the exception of those rights and

powers conferred under the above ARTICLES VI, VII AND XI, all rights and powers conferred herein on stockholders, directors and officers, if any, are subject to this reserved power.

### **ARTICLE XIII SEVERABILITY**

If any provision or provisions of this Amended and Restated Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever, then, to the fullest extent permitted by applicable law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Amended and Restated Certificate of Incorporation (including, without limitation, each portion of any paragraph of this Amended and Restated Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby.

### **ARTICLE XIV FORUM**

Unless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or its stockholders, (c) any action asserting a claim arising pursuant to any provision of the DGCL, or (iv) any action asserting a claim governed by the internal affairs doctrine shall be the Court of Chancery of the State of Delaware, (or, if the Court of Chancery lacks subject matter jurisdiction, another state or federal court located within the state of Delaware). Any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this ARTICLE XIV.

**Exhibit F**

**Bylaws**

**AMENDED AND RESTATED BYLAWS  
OF  
SBARRO HOLDINGS, INC.  
(a Delaware corporation, hereinafter called the “Corporation”)**

**Effective as of [●], 2014**

\* \* \* \*

**ARTICLE 1  
OFFICES**

Section 1.01. *Registered Office.* The registered office of the Corporation, and the registered agent of the Corporation at such address, shall initially be as fixed in the Corporation’s certificate of incorporation (as amended and/or restated from time to time, the “**Certificate of Incorporation**”). The registered office or registered agent of the Corporation may thereafter be changed from time to time by action of the board of directors of the Corporation (the “**Board of Directors**”).

Section 1.02. *Other Offices.* The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

Section 1.03. *Books and Records.* (a) The books and records of the Corporation may be kept within or without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

(b) The Corporation shall, either at its principal executive office or at such place or places as designated by the Board of Directors, keep a copy of these bylaws, as may be amended to date, minute books, accounting books and other records.

(c) Any such records maintained by the Corporation may be kept on, or by means of, or be in the form of, any information storage device or method; *provided*, that the records so kept can be converted into clearly legible paper form within a reasonable time. When records are kept in such manner, a clearly legible paper form produced from or by means of the information storage device or method shall be admissible in evidence, and accepted for all other purposes, to the same extent as an original paper form accurately portrays the record. The Corporation shall so convert any records so kept upon the request of any person or entity entitled to inspect such records pursuant to the provisions of the Certificate of Incorporation, these bylaws or applicable law.

**ARTICLE 2  
MEETINGS OF STOCKHOLDERS**

Section 2.01. *Time and Place of Meetings.* All meetings of stockholders shall be held at such place, either within or without the State of Delaware, on such date and at such time as may be determined from time to time by the Board of Directors (or the Chairman of the Board of

Directors (the “**Chairman**”) in the absence of a designation by the Board of Directors). The Board of Directors may, in its sole discretion, determine that a meeting of stockholders of the Corporation shall not be held at any place, but may instead be held solely by means of remote communication. In the absence of notice to the contrary, meetings of the stockholders of the Corporation shall be held at the principal office of the Corporation.

Section 2.02. *Annual Meetings.* Unless directors are elected by written consent in lieu of an annual meeting as permitted by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended (the “**DGCL**”), an annual meeting of stockholders shall be held for the election of directors and to transact such other business as may properly be brought before the meeting. The annual meeting of the stockholders of the Corporation shall be held on such date and at such place, if any, and/or by the means of remote communication, and time as may be fixed by resolution of the Board of Directors from time to time. Failure to hold any annual meeting as aforesaid shall not constitute, be deemed to be or otherwise effect a forfeiture or dissolution of the Corporation nor shall such failure affect otherwise valid corporate acts. Stockholders may, unless the Certificate of Incorporation otherwise provides, act by written consent to elect directors.

Section 2.03. *Special Meetings.* Special meetings of stockholders may be called by the Board of Directors or the Chairman and shall be called by the Secretary of the Corporation (the “**Secretary**”) at the request in writing of holders of record of a majority of the outstanding capital stock of the Corporation entitled to vote. Such request shall state the purpose or purposes of the proposed meeting. The Board of Directors or the Chairman shall determine the date, time, and place, if any, and/or means of remote communication, of any special meeting, which shall be stated in a notice of meeting delivered by the Board of Directors. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 2.04. *Notice of Meetings and Adjourned Meetings; Waivers of Notice.* (a) Whenever stockholders are required or permitted to take any action at a meeting (whether special or annual), written notice (unless oral notice is reasonable under the circumstances) of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by the DGCL, such notice shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder of record entitled to vote at such meeting. Any meeting of the stockholders of the Corporation, whether or not a quorum is present, may be adjourned to be reconvened at a specific date, time, place (if any) and/or by means of remote communication (if any) by the holders of a majority in voting power of the shares of capital stock present in person or represented by proxy at the meeting and entitled to vote at the meeting or, unless contrary to any provision of the Certificate of Incorporation, these bylaws or applicable law, the Chairman or the Board of Directors. Unless these bylaws otherwise require, when a meeting is adjourned to another time or place (whether or not a quorum is present), notice need not be given of the adjourned meeting if the time, place, if any, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, are announced at the meeting at which the adjournment is taken. Subject to Section 2.05 herein, at the adjourned meeting, the Corporation may transact any business which

might have been transacted at the original meeting. If the adjournment is for more than 30 days, or after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

(b) A written waiver of any such notice signed by the person entitled thereto, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 2.05. *Quorum.* Unless otherwise provided under the Certificate of Incorporation or these bylaws and subject to the DGCL, the presence, in person or by proxy, of the holders of a majority of the outstanding capital stock of the Corporation entitled to vote at a meeting of stockholders shall constitute a quorum for the transaction of business. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the chairman of the meeting or a majority in voting interest of the stockholders present in person or represented by proxy may adjourn the meeting, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted which might have been transacted at the meeting as originally notified.

Section 2.06. *Voting.* (a) Unless otherwise provided in the Certificate of Incorporation (including any Certificate of Designation (as defined below)) and subject to the DGCL, each stockholder shall be entitled to one vote for each outstanding share of capital stock of the Corporation held by such stockholder. Any share of capital stock of the Corporation held by the Corporation shall have no voting rights. Except as otherwise provided by law, the Certificate of Incorporation, these bylaws or the Stockholders Agreement dated as of [●], by and among the Corporation and each of the stockholders from time to time party thereto (as amended, modified or supplemented from time to time, the “**Stockholders Agreement**”), in all matters other than the election of directors, the affirmative vote of the majority of the shares of capital stock of the Corporation present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders, assuming a quorum is present or represented at such meeting. For the purposes of these bylaws, “**Certificate of Designation**” shall have the meaning set forth in the Certificate of Incorporation.

(b) Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to a corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, appointed by an instrument in writing, subscribed by such stockholder or by his attorney thereunto authorized, or by proxy sent by cable, telegram or by any means of electronic communication permitted by law, which results in a writing from such stockholder or by his attorney, and delivered to the secretary of the meeting. No proxy shall be voted after three years from its date, unless said proxy provides for a longer period.

(c) In determining the number of votes cast for or against a proposal or nominee, shares abstaining from voting on a matter will not be treated as a vote cast.

Section 2.07. *Action by Consent.* (a) Unless otherwise provided in the Certificate of Incorporation, any action required to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting of stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding capital stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of stockholders to take the action were delivered to the Corporation as provided in Section 2.07(b) herein.

(b) Every written consent shall bear the date of signature of each stockholder who signs the consent, and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered to the Corporation in the manner required by this Section 2.07 and the DGCL, written consents signed by a sufficient number of holders to take action are delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

Section 2.08. *Organization.* At each meeting of stockholders, the Chairman, if one shall have been elected, or in the Chairman's absence or if one shall not have been elected, the director designated by the vote of the majority of the directors present at such meeting, shall act as chairman of the meeting. The Secretary (or in the Secretary's absence or inability to act, the person whom the chairman of the meeting shall appoint as secretary of the meeting) shall act as secretary of the meeting and keep the minutes thereof.

Section 2.09. *Order of Business.* The Board of Directors shall be entitled to make such rules or regulations for the conduct of meetings of stockholders of the Corporation as it shall deem necessary, appropriate or convenient from time to time. Subject to such rules and regulations, if any, the chairman of the meeting shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all acts as, in the judgment of such chairman, are necessary, appropriate or convenient (and not inconsistent with the Certificate of Incorporation or these bylaws) for the proper conduct of the meeting, including, without limitation, establishing an agenda of business of the meeting, recognizing stockholders entitled to speak, calling for the necessary reports, stating questions and putting them to a vote, calling for nominations, announcing the results of voting, establishing rules or regulations to maintain order, imposing restrictions on entry to the meeting after the time fixed for commencement thereof and the fixing



of the date and time of the opening and closing of the polls for each matter upon which the stockholders of the Corporation will vote at a meeting (and shall announce such at the meeting).

### ARTICLE 3 DIRECTORS

Section 3.01. *General Powers.* All corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed under the direction of, the Board of Directors. In addition to the powers and authority expressly conferred upon it by these bylaws, the Board of Directors shall exercise all such powers of the Corporation and do all such lawful acts and things as are not by the DGCL, by the Stockholders Agreement or any other legal agreement among stockholders of the Corporation, by the Certificate of Incorporation, or by these bylaws directed or required to be exercised or done by the stockholders of the Corporation.

Section 3.02. *Number, Election and Term Of Office.* (a) The number of directors which shall constitute the whole Board of Directors shall be fixed from time to time by resolution of the Board of Directors in accordance with the Stockholders Agreement, but shall not be less than the minimum number required by the DGCL. The directors shall be elected at the annual meeting of the stockholders by written ballot, except as provided in Section 2.02 and Section 3.04 herein or as authorized by the Board of Directors from time to time, and each director so elected shall hold office until such director's successor is elected and qualified or until such director's earlier death, resignation, retirement, disqualification, or removal. Directors need not be stockholders.

(b) Except as provided in Section 3.04 herein, other than for those directors who may be elected by the holders of any class or series of preferred stock as set forth in the Certificate of Designation of such preferred stock or by certain holders of common stock of the Corporation as set forth in the Stockholders Agreement, a plurality of the votes of the shares of capital stock of the Corporation present in person or represented by proxy at any annual meeting of stockholders of the Corporation or any special meeting of the stockholders of the Corporation properly called for the purpose of electing directors shall elect directors of the Corporation. Except as otherwise set forth in the Certificate of Designation of any class or series of preferred stock of the Corporation, no stockholder of the Corporation shall be entitled to cumulate votes on behalf of any candidate at any election of directors of the Corporation.

Section 3.03. *Resignation.* Any director may resign at any time by giving notice in writing or by electronic transmission to the Board of Directors or to the Secretary. The resignation of any director shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice, and unless otherwise specified therein or in the Stockholders Agreement, the acceptance of such resignation shall not be necessary to make it effective.

Section 3.04. *Vacancies and Newly Created Directorships.* Unless otherwise provided in the Certificate of Incorporation (including any Certificate of Designation) and subject to the Stockholders Agreement, any vacancy on the Board of Directors resulting from any death, resignation, retirement, disqualification, removal, or newly created directorship resulting from any increase in the authorized number of directors or otherwise may be filled by the affirmative vote of the holders of a majority of the outstanding capital stock of the Corporation then entitled

to vote at a meeting called for the purpose of filling such vacancy, by the Board of Directors, acting by a majority of the remaining directors then in office, even if less than a quorum, or by a sole remaining director. If there are no directors in office, then an election of directors may be held in accordance with the DGCL. Each director so chosen shall hold office until his or her successor is elected and qualified, or until his or her earlier death, resignation, retirement, disqualification, or removal.

Section 3.05. *Removal.* Subject to the Stockholders Agreement, any director or the entire Board of Directors may be removed, with or without cause, at any time by the affirmative vote of the holders of a majority of the outstanding capital stock of the Corporation then entitled to vote at any election of directors and the vacancies thus created may be filled in accordance with Section 3.04 herein.

Section 3.06. *Chairman.* The Chairman shall be chosen from among the directors by a majority vote of the Board of Directors. Any director elected as Chairman in accordance with this Section 3.06 shall hold such office until such director's earlier death, resignation, retirement, disqualification or removal or the election of any successor by the Board of Directors from time to time. The Chairman shall preside at all meetings of the stockholders of the Corporation and shall preside at all meetings of the Board of Directors at which he or she is present, and shall have such other powers and perform such other duties (including, without limitation, as applicable, as an officer of the Corporation) as may be prescribed by the Board of Directors or provided in these bylaws.

Section 3.07. *Meetings.* Except as otherwise provided by the Stockholders Agreement, the Board of Directors shall hold its meetings at such dates, times and places (either within or without the State of Delaware) and/or by means of remote communication (if any) as shall be determined from time to time by the Board of Directors (or the Chairman in the absence of a determination by the Board of Directors) or as may be specified in a notice regarding a meeting of the Board of Directors. Special meetings of the Board of Directors may be called by the Chairman, the Chief Executive Officer and/or President of the Corporation, and shall be called by the Chairman, Chief Executive Officer and/or President of the Corporation or the Secretary on the written request of two (2) directors. Unless otherwise restricted by the Certificate of Incorporation or these bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or such committee, as the case may be, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

Section 3.08. *Conduct of Meetings.* Meetings of the Board of Directors shall be presided over by the chairman of the meeting, who shall be the Chairman or, in the absence thereof, such director as a majority of the directors present at such meeting shall appoint. The Board of Directors shall be entitled to make such rules or regulations for the conduct of meetings of the Board of Directors as it shall deem necessary, appropriate or convenient.

Section 3.09. *Notice.* (a) Unless the Certificate of Incorporation provides otherwise, regular meetings of the Board of Directors may be held without notice of the date, time, place or purpose of the meeting at any date, time and place (if any) and/or means of remote

communication (if any) as shall from time to time be determined by the Board of Directors, and except as otherwise provided by the Stockholders Agreement, after the place and time of regular meetings of the Board of Directors shall have been determined and notice thereof shall have been once given to each member of the Board of Directors, regular meetings may be held without further notice being given. Unless waived by each of the directors entitled to notice thereof, special meetings of the Board of Directors shall be preceded by at least two (2) business days notice of the date, time and place (if any) and/or means of remote communication (if any) of such special meeting. Any notice of a special or regular meeting of the Board of Directors shall be given to each director orally (either in person or by telephone), in writing (either by hand delivery, mail, courier or facsimile), or by electronic or other means of remote communication, in each case, directed to each director at that director's address, telephone number, facsimile number or electronic mail address, as the case may be, as shown on the Corporation's records. Any oral notice may be communicated either to the director or to a person at the office of the director who the person giving notice has reason to believe will promptly communicate such notice to the director. If the notice is: (i) delivered personally by hand, by courier, or orally by telephone or otherwise, (ii) sent by facsimile or (iii) sent by electronic mail, it shall be delivered or sent at least twenty-four (24) hours before the time of the holding of the meeting. If the notice is sent by United States mail or courier service, it shall be deposited in the United States mail or with the courier at least three (3) business days before the time of the holding of the meeting.

(b) Whenever notice is required to be given under any provisions of the DGCL, the Certificate of Incorporation or these bylaws, a written waiver thereof, signed by the director entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any meeting of the Board of Directors or committee thereof need be specified in any waiver of notice of such meeting.

(c) Attendance of a director at a meeting of the Board of Directors shall constitute a waiver of notice of such meeting, except when the director attends for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Such director shall be conclusively presumed to have assented to any action taken at any such meeting unless his or her dissent shall be entered in the minutes of the meeting or unless his or her written dissent to such action shall be filed with the person acting as the secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the Secretary immediately after the adjournment of the meeting. Such right to dissent shall not apply to any member who voted in favor of such action. Participation by means of remote communication, including, without limitation, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, shall constitute attendance in person at the meeting.

Section 3.10. *Quorum and Manner of Acting.* Unless the Certificate of Incorporation, these bylaws or the Stockholders Agreement require a greater number, a majority of the total number of directors then in office shall constitute a quorum for the transaction of business at all meetings of the Board of Directors, and the affirmative vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the Chairman or a majority of the

directors present at the meeting shall adjourn the meeting to another date, time and place (if any) and/or means of remote communications (if any), without notice other than announcement at the meeting, until a quorum shall be present. When a meeting is adjourned to another time or place (whether or not a quorum is present), notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Board of Directors may transact any business which might have been transacted at the original meeting.

Section 3.11. *Minutes.* The Secretary shall act as secretary of all meetings of the Board of Directors but in the absence of the Secretary, the Chairman may appoint any other person present to act as secretary of the meeting. The secretary of the meeting shall keep the minutes thereof. Minutes of any regular or special meeting of the Board of Directors shall be prepared and distributed to each director.

Section 3.12. *Action by Consent.* Unless otherwise restricted by the Certificate of Incorporation, these bylaws or the Stockholders Agreement, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions, are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 3.13. *Committees.* The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matters: (a) approving or adopting, or recommending to the stockholders, any action or matter expressly required by the DGCL to be submitted to the stockholders for approval or (b) adopting, amending or repealing any bylaw of the Corporation. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when requested or required by the Board of Directors.

Section 3.14. *Compensation.* Unless otherwise restricted by the Certificate of Incorporation or these bylaws and subject to the Stockholders Agreement, the Board of Directors shall have authority to fix the compensation of directors, including fees and reimbursement of expenses.

#### ARTICLE 4 OFFICERS

Section 4.01. *Principal Officers.* The principal officers of the Corporation shall be a Chief Executive Officer and/or President, one or more Vice Presidents, a Treasurer and a Secretary who shall have the duty, among other things, to record the proceedings of the meetings of stockholders and directors in a book kept for that purpose. The Corporation may also have such other principal officers, including one or more Controllers, as the Board of Directors may in its discretion appoint. One person may hold the offices and perform the duties of any two or more of said offices, except that no one person shall hold the offices and perform the duties of Chief Executive Officer or President and Secretary. In its discretion, the Board of Directors may choose not to fill any office for any period as it may deem advisable, except as required by law.

Section 4.02. *Election, Term of Office and Remuneration.* The Board of Directors shall elect the officers of the Corporation, except such officers as may be elected in accordance with the provisions of Section 4.03 herein, and subject to the rights, if any, of an officer under any employment contract. Each such officer shall hold office until his or her successor is elected and qualified, or until his or her earlier death, resignation, retirement, disqualification, or removal. The remuneration of all officers of the Corporation shall be fixed by the Board of Directors. A failure to elect officers shall not dissolve or otherwise affect the Corporation. Vacancies may be filled or new offices created and filled by the Board of Directors.

Section 4.03. *Subordinate Officers.* In addition to the principal officers enumerated in Section 4.01 herein, the Corporation may have one or more Assistant Treasurers, Assistant Secretaries and Assistant Controllers and such other subordinate officers, agents and employees as the Board of Directors may deem necessary or appropriate, each of whom shall hold office for such period as the Board of Directors may from time to time determine. The Board of Directors may delegate to any principal officer the power to appoint and to remove any such subordinate officers, agents or employees.

Section 4.04. *Removal.* Notwithstanding the provisions of any employment agreement and except as otherwise permitted with respect to subordinate officers, any officer may be removed, with or without cause, at any time, by resolution adopted by the Board of Directors. No elected officer shall have any contractual rights against the Corporation for compensation by virtue of such election beyond the date of the election of his successor, his death, his resignation or his removal from office, whichever event shall first occur, except as otherwise provided in an employment contract or under an employee deferred compensation plan or as otherwise required by law.

Section 4.05. *Resignations.* Any officer may resign at any time by giving written notice to the Board of Directors (or to a principal officer if the Board of Directors has delegated to such principal officer the power to appoint and to remove such officer). The resignation of any officer shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.06. *Vacancies.* Any vacancy occurring in any office because of death, resignation, retirement, disqualification, removal or otherwise may be filled as provided in Section 4.02 and/or Section 4.03 herein.

Section 4.07. *Powers and Duties.* The officers of the Corporation shall have such powers and perform such duties incident to each of their respective offices and such other duties as may from time to time be conferred upon or assigned to them by the Board of Directors. In the absence, disability or refusal of any officer of the Corporation to exercise and perform his or her duties, the Board of Directors may by resolution delegate the powers and duties of such officer to any other officer or to any director, or to any other person whom it may select.

## ARTICLE 5 CAPITAL STOCK

Section 5.01. *Certificates For Stock.* The shares of the Corporation shall be represented by certificates; *provided*, that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated and not represented by certificates. Any such resolution by the Board of Directors shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of the Corporation by the Chairman, President or Vice President, and by the Treasurer or an assistant Treasurer, or the Secretary or an assistant Secretary of such Corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. The Corporation shall not have power to issue a certificate in bearer form. The Corporation shall hold any such certificate for the benefit of the holder thereof unless otherwise requested by such holder, in which event the Corporation shall mail such certificate to such requesting holder by registered or certified mail, return receipt requested, postage prepaid.

Section 5.02. *Special Designations of Shares.* If the Corporation is authorized to issue more than one class of stock or more than one series of any class, (a) to the extent the shares are represented by certificates, the powers, designations, preferences, and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock; *provided, however*, that, except as otherwise required by law (including, without limitation, section 202 of the DGCL), in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences, and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights and (b) to the extent the shares are uncertificated, within a reasonable time after the issuance or transfer of uncertificated shares, the Corporation shall send or cause to be sent to the registered owner

thereof a written notice containing the information required to be set forth or stated on certificates pursuant to applicable provisions of the DGCL or a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences, and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 5.03. *Transfer Of Shares.* Subject to the restrictions set forth in the Stockholders Agreement, shares of the stock of the Corporation may be transferred on the record of stockholders of the Corporation by the holder thereof or by such holder's duly authorized attorney upon surrender of a certificate therefor properly endorsed or upon receipt of proper transfer instructions from the registered holder of uncertificated shares or by such holder's duly authorized attorney and upon compliance with appropriate procedures for transferring shares in uncertificated form, unless waived by the Corporation. Subject to the Stockholders Agreement, the Board of Directors shall have the power and authority to make all such rules and regulations as they may deem expedient concerning the issue, transfer and registration of certificated or uncertificated shares of the stock of the Corporation.

Section 5.04. *Lost, Stolen or Destroyed Certificates.* The Board of Directors may direct a new certificate or certificates representing one or more shares of capital stock of the Corporation or uncertificated shares to be issued in place of any certificate or certificates previously issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person or entity claiming the certificate of stock to be lost, stolen or destroyed or may otherwise require production of such evidence of such loss, theft or destruction as the Board of Directors may in its discretion require. Without limiting the generality of the foregoing, when authorizing such issue of a new certificate or certificates or such uncertificated shares, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or such owner's duly authorized attorney or legal representative, to indemnify the Corporation against any claim that may be made against the Corporation on account of the loss, theft or destruction of any such certificate or the issuance of such new certificate.

## ARTICLE 6 GENERAL PROVISIONS

Section 6.01. *Reliance on Books and Records.* Each director of the Corporation, each member of any committee of the Board of Directors and each officer of the Corporation shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or documents presented to the Corporation by any of its officers or employees, or committees of the Board of Directors so designated, or by any other person or entity as to matters which such director or committee member reasonably believes are within such other person's or entity's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 6.02. *Fixing the Record Date.* (a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not

precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided*, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by the DGCL, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by the DGCL, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 6.03. *Loans.* The Corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the Corporation or of its subsidiary, including any officer or employee who is a director of the Corporation or its subsidiary, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the Corporation. The loan, guaranty or other assistance may be with or without interest, and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the Corporation. Nothing in this Section 6.03 contained shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the Corporation at common law or under any statute.



Section 6.04. *Dividends.* Subject to limitations contained in the DGCL and the Certificate of Incorporation (including any Certificate of Designation), the Board of Directors may declare and pay dividends upon the shares of capital stock of the Corporation, which dividends may be paid either in cash, in property or in shares of the capital stock of the Corporation, or in any combination thereof. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for purchasing any of the shares of capital stock, warrants, rights, options, bonds, debentures, notes, scrip or other securities or evidences of indebtedness of the Corporation, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any other proper purpose. The Board of Directors may modify or abolish any such reserve in the manner in which it was created.

Section 6.05. *Corporate Funds; Checks, Drafts or Orders; Deposits.* The funds of the Corporation shall be kept in such depositories as shall from time to time be prescribed by the Board of Directors. All checks, drafts or other orders for the payment of money by or to the Corporation and all notes and other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer, officers, agent or agents of the Corporation, and in such manner, as shall be determined by resolution of the Board of Directors from time to time. All funds of the Corporation shall be deposited to the credit of the Corporation under such conditions and in such banks, trust companies or other depositories as the Board of Directors may designate or as may be designated by an officer or officers or agent or agents of the Corporation to whom such power may, from time to time, be determined by the Board of Directors.

Section 6.06. *Execution of Contracts and Other Instruments.* The Board of Directors, except as otherwise required by law, may authorize from time to time any officer or agent of the Corporation to enter into any contract or to execute and deliver any other instrument in the name of and on behalf of the Corporation. Such authority may be general or confined to specific instances. Unless otherwise specifically determined by the Board of Directors or otherwise required by law, formal contracts, promissory notes and other evidences of indebtedness, deeds of trust, mortgages and corporate instruments or documents requiring the corporate seal, and certificates for shares of stock owned by the Corporation shall be executed, signed or endorsed by any President (or any Vice President) and by the Secretary (or any Assistant Secretary) or the Treasurer (or any Assistant Treasurer). The Board of Directors may, however, authorize any one of these officers to sign any of such instruments, for and on behalf of the Corporation, without necessity of countersignature; may designate officers or employees of the Corporation, other than those named above, who may, in the name of the Corporation, sign such instruments; and may authorize the use of facsimile signatures for any of such persons. No officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for damages, whether monetary or otherwise, for any purpose or for any amount except as specifically authorized in these bylaws or by the Board of Directors or an officer or committee with the power to grant such authority.

Section 6.07. *Signatures.* In addition to the provisions for use of facsimile signatures elsewhere specifically authorized in these bylaws, facsimile or electronic signatures of any director or officer of the Corporation may be used whenever the signature of a director or officer

of the Corporation shall be required, except as otherwise required by law or as directed by the Board of Directors from time to time.

Section 6.08. *Fiscal Year.* The fiscal year of the Corporation shall be fixed, and shall be subject to change from time to time, by the Board of Directors.

Section 6.09. *Corporate Seal.* The Board of Directors may provide a corporate seal which shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware". The seal may be used by causing it or a facsimile thereof to be impressed, affixed or otherwise reproduced.

Section 6.10. *Voting of Stock Owned by the Corporation.* The Board of Directors may authorize any person, on behalf of the Corporation, to attend, vote at and grant proxies to be used at any meeting of stockholders of any corporation (except this Corporation) in which the Corporation may hold stock.

Section 6.11. *Amendments.* These bylaws or any of them, may be altered, amended or repealed, or new bylaws may be made, by the vote of the holders of a majority of the outstanding capital stock of the Corporation then entitled to vote at any annual or special meeting of the stockholders or by the Board of Directors, except that no provision of these bylaws may be altered, amended or repealed, and no new bylaws made, if as a result any provision of these bylaws would conflict with any provision of the Stockholders Agreement.

Section 6.12. *Inconsistent Provisions.* In the event that any provision of these bylaws conflicts or becomes inconsistent with any provision in the Stockholders Agreement, the Certificate of Incorporation (including any Certificate of Designation), the DGCL or any other applicable law, such provision of these bylaws shall not be given any effect to the extent of such inconsistency or conflict but shall otherwise be given full force and effect.

**Exhibit G**

**Members of the New Board**

[To Come]

**Exhibit H**

**Transaction Steps to Establish New Franchising Entity**

## **SBARRO LLC – TRANSACTION STEPS TO ESTABLISH NEW FRANCHISING ENTITY**

Capitalized terms not defined herein have the meanings given to them in the proposed joint prepackaged plan of reorganization filed on March 10, 2014 (as may be amended or modified from time to time), to be confirmed in the pending bankruptcy cases of the Debtors, and the related disclosure statement.

### **STEP 1:** Form New Franchising Entity

- New Sbarro Intermediate Holdings, Inc. files a certificate of formation with the Secretary of State of the State of Delaware in substantially the form attached hereto as Exhibit 1

### **STEP 2:** Enter into LLC Agreement

- New Sbarro Intermediate Holdings, Inc. as the sole member of the New Franchising Entity enters into a single member, member-managed limited liability company agreement in substantially the form attached hereto as Exhibit 2

### **STEP 3:** Qualify New Franchising Entity with appropriate regulators/agencies

### **STEP 4:** Assign/Transfer to New Franchising Entity and have New Franchising Entity assume all assumed franchise agreements

- Debtors and New Franchising Entity enter into an assignment and assumption agreement in substantially the form attached hereto as Exhibit 3

### **STEP 5:** License the Debtors' intellectual property to New Franchising Entity from Sbarro LLC

- Sbarro LLC and New Franchising Entity enter into a licensing agreement in substantially the form attached hereto as Exhibit 4

**EXHIBIT 1**

New Franchising Entity Certificate of Formation

*[To be attached]*

**EXHIBIT 2**

New Franchising Entity Limited Liability Company Agreement

**LIMITED LIABILITY COMPANY AGREEMENT  
OF  
[FRANCHISECO], LLC**

This LIMITED LIABILITY COMPANY AGREEMENT (this “Agreement”) of [FRANCHISECO], LLC (the “Company”) is made and entered into as of [\_\_\_\_], 2014, by New Sbarro Intermediate Holdings, Inc. (the “Sole Member”).

1. Name. The name of the Company is “[FranchiseCo], LLC.”
2. Business of the Company. The purpose and business of the Company shall be the conduct of any business or activity that may be conducted by a limited liability company organized pursuant to the Delaware Limited Liability Company Act, as amended from time to time (the “Act”).
3. Principal Office; Registered Agent and Office.
  - (a) Principal Office. The location of the principal office of the Company shall be [401 Broadhollow Road, Melville, New York 11747], or such other location as the Sole Member may from time to time designate.
  - (b) Registered Agent and Office. The registered agent of the Company for service of process in the State of Delaware and the registered office of the Company in the State of Delaware shall be that person and location reflected in the Certificate of Formation. In the event the registered agent ceases to act as such for any reason or the registered office shall change, the Sole Member shall promptly designate a replacement registered agent or file a notice of change of address, as the case may be, in the manner provided by law.
4. Authority. The Sole Member shall have exclusive and complete authority and discretion to manage the operations and affairs of the Company and to make all decisions regarding the business of the Company. Any action taken by the Sole Member shall constitute the act of and serve to bind the Company. Persons dealing with the Company are entitled to rely conclusively on the power and authority of the Sole Member as set forth in this Agreement. The Sole Member shall have all rights and powers of a manager under the Act, and shall have such authority, rights and powers in the management of the Company to do any and all other acts and things necessary, proper, convenient or advisable to effectuate the purposes of this Agreement.
5. Election of Officers; Delegation of Authority. The Sole Member may, from time to time, designate one or more officers with such titles as may be designated by the Sole Member to act in the name of the Company with such authority as may be delegated to such officer(s) by the Sole Member. Any such officer shall act pursuant to such delegated authority until such officer is removed by the Sole Member. Any action taken by an officer designated by the Sole Member shall constitute the act of and serve to bind the Company. In dealing with the officers acting on behalf of the Company, no person or entity shall be required to inquire into the authority of the officers to bind the Company. Persons and entities dealing with the Company are entitled to rely conclusively on the power and authority of any officer set forth in this



Agreement and any instrument designating such officer and the authority delegated to him or her.

6. Initial Capital Contributions. The Sole Member shall make an initial contribution of cash or property to the Company at such time and in such amounts as the Sole Member shall determine.

7. Additional Contributions. The Sole Member may make additional contributions of cash or property to the Company at such times and in such amounts as the Sole Member shall determine.

8. Tax Status; Income and Deductions.

(a) Tax Status. As long as the Company has only one member, it is the intention of the Company and the Sole Member that the Company be treated as a disregarded entity for federal and all relevant state tax purposes and neither the Company nor the Sole Member shall take any action or make any election which is inconsistent with such tax treatment. All provisions of this Agreement are to be construed so as to preserve the Company's tax status as a disregarded entity.

(b) Income and Deductions. All items of income, gain, loss, deduction and credit of the Company (including, without limitation, items not subject to federal or state income tax) shall be treated for federal and all relevant state income tax purposes as items of income, gain, loss, deduction and credit of the Sole Member.

9. Distributions. Distributions shall be made to the Sole Member at the times and in the amounts determined by the Sole Member.

10. Fiscal Year. The fiscal year of the Company shall be the calendar year.

11. Dissolution. The Company shall dissolve, and its affairs shall be wound up, upon the earliest to occur of (a) the decision of the Sole Member, or (b) an event of dissolution of the Company under the Act; provided, however, that ninety (90) days following any event terminating the continued membership of the Sole Member, if the Personal Representative (as defined in the Act) of the Sole Member agrees in writing to continue the Company and to admit itself or some other person as a member of the Company effective as of the date of the occurrence of the event that terminated the continued membership of the Sole Member, then the Company shall not be dissolved and its affairs shall not be wound up.

12. Distributions upon Dissolution. Upon the occurrence of an event set forth in Section 11 hereof, the Sole Member shall be entitled to receive, after paying or making reasonable provision for all of the Company's creditors to the extent required by Section 18-804 of the Act, the remaining funds of the Company.

13. Amendments. Amendments to this Agreement may be made only if embodied in an instrument signed by the Sole Member.

14. Amendment of Certificate. In the event this Agreement shall be amended pursuant to Section 13 hereof, the Sole Member shall amend the Certificate of Formation of the Company to reflect such change if it deems such amendment of the Certificate of Formation of the Company to be necessary or appropriate.

15. Indemnification.

(a) The Company shall indemnify and hold harmless the Sole Member and its affiliates and their respective stockholders, members, managers, directors, officers, employees and agents (each, an “Indemnified Party”) from and against any loss, expense, damage or injury suffered or sustained by them, by reason of any acts, omissions or alleged acts or omissions arising out of their activities on behalf of the Company or in furtherance of the interests of the Company, including any judgment, award, settlement, reasonable attorneys’ fees and other costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim if the acts, omissions or alleged acts or omissions upon which such actual or threatened action, proceeding or claims are based were not a result of fraud or willful misconduct by such Indemnified Party. Any indemnification pursuant to this Section 15 shall only be from the assets of the Company.

(b) Expenses (including attorneys’ fees) incurred by an Indemnified Party in a civil or criminal action, suit or proceeding shall be paid by the Company in advance of the final disposition of such action, suit or proceeding; provided that if an Indemnified Party is advanced such expenses and it is later determined that such Indemnified Party was not entitled to indemnification with respect to such action, suit or proceeding, then such Indemnified Party shall reimburse the Company for such advances.

(c) No amendment, modification or deletion of this Section 15 shall apply to or have any effect on the right of any Indemnified Party to indemnification for or with respect to any acts or omissions of such Indemnified Party occurring prior to such amendment, modification or deletion.

16. Exculpation. No Indemnified Party shall be liable, responsible or accountable in damages or otherwise to the Company or any member of the Company for any loss incurred as a result of any act or failure to act by such Indemnified Party on behalf of the Company unless such loss is finally determined by a court of competent jurisdiction to have resulted solely from such Indemnified Party’s fraud or willful misconduct. No amendment, modification or deletion of this Section 16 shall apply to or have any effect on the liability or alleged liability of any Indemnified Party for or with respect to any acts or omissions of such Indemnified Party occurring prior to such amendment, modification or deletion.

15. Liability. The Sole Member shall not be liable for the repayment, satisfaction or discharge of any Company liabilities.

16. Expenses. The Company shall pay for all expenses incurred in connection with the operation of the Company’s business. The Sole Member and the officers, employees and agents of the Company shall be entitled to receive out of Company funds reimbursement of all Company expenses expended by such persons.

17. Governing Law. This Agreement shall be governed by and interpreted in accordance with the law of the State of Delaware.

18. Severability. In the event that any provision of this Agreement shall be declared to be invalid, illegal or unenforceable, such provision shall survive to the extent it is not so declared, and the validity, legality and enforceability of the other provisions hereof shall not in any way be affected or impaired thereby, unless such action would substantially impair the benefits to any party of the remaining provisions of this Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date set forth above.

**NEW SBARRO INTERMEDIATE HOLDINGS,  
INC.**

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT 3**

Assignment and Assumption Agreement

*[To be attached]*

**EXHIBIT 4**

Licensing Agreement

*[To be attached]*

**Exhibit I**

**Form Indemnification Agreement**

## INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (the “Agreement”) is made and entered into as of [\_\_\_\_], 2014, between Sbarro Holdings, Inc., a Delaware corporation (the “Company”), and [\_\_\_\_] (“Indemnitee”). Capitalized terms not defined elsewhere in this Agreement are used as defined in Section 13.

WHEREAS, highly competent persons have become more reluctant to serve corporations as directors or officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the board of directors of the Company (the “Board”) has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers, and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The certificate of incorporation of the Company (as amended, the “Charter”) requires indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (“DGCL”). The Charter and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the Board, officers and other persons with respect to indemnification;

WHEREAS, the uncertainties relating to such insurance and to indemnification have increased the difficulty of attracting and retaining such persons;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company’s stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

WHEREAS, this Agreement is a supplement to and in furtherance of the Charter and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder; and



WHEREAS, Indemnatee does not regard the protection available under the Charter and insurance as adequate in the present circumstances, and may not be willing to serve as a director without adequate protection, and the Company desires Indemnatee to serve in such capacity. Indemnatee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he be so indemnified.

NOW, THEREFORE, in consideration of Indemnatee's agreement to serve as a director from and after the date hereof, the parties hereto agree as follows:

1. Indemnity of Indemnatee. The Company hereby agrees to hold harmless and indemnify Indemnatee to the fullest extent permitted by law, as such may be amended from time to time. In furtherance of the foregoing indemnification, and without limiting the generality thereof:

(a) Proceedings Other Than Proceedings by or in the Right of the Company. Indemnatee shall be entitled to the rights of indemnification provided in this Section 1(a) if, by reason of his Corporate Status, Indemnatee is, or is threatened to be made, a party to or participant in any Proceeding other than a Proceeding by or in the right of the Company. Pursuant to this Section 1(a), Indemnatee shall be indemnified against all Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him, or on his behalf, in connection with such Proceeding or any claim, issue or matter therein, if Indemnatee acted in good faith and in a manner Indemnatee reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, had no reasonable cause to believe Indemnatee's conduct was unlawful.

(b) Proceedings by or in the Right of the Company. Indemnatee shall be entitled to the rights of indemnification provided in this Section 1(b) if, by reason of his Corporate Status, Indemnatee is, or is threatened to be made, a party to or participant in any Proceeding brought by or in the right of the Company. Pursuant to this Section 1(b), Indemnatee shall be indemnified against all Expenses actually and reasonably incurred by Indemnatee, or on Indemnatee's behalf, in connection with such Proceeding if Indemnatee acted in good faith and in a manner Indemnatee reasonably believed to be in or not opposed to the best interests of the Company; provided, however, if applicable law so provides, no indemnification against such Expenses shall be made in respect of any claim, issue or matter in such Proceeding as to which Indemnatee shall have been adjudged to be liable to the Company unless and to the extent that the Court of Chancery of the State of Delaware shall determine that such indemnification may be made.

(c) Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provision of this Agreement, to the extent that Indemnatee is, by reason of his Corporate Status, a party to and is successful, on the merits or otherwise, in any Proceeding, he shall be indemnified to the maximum extent permitted by law, as such may be amended from time to time, against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnatee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnatee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully

resolved claim, issue or matter. For purposes of this Section 1(c) and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

2. Additional Indemnity. In addition to, and without regard to any limitations on, the indemnification provided for in Section 1 of this Agreement, the Company shall and hereby does indemnify and hold harmless Indemnitee against all Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him or on his behalf if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or participant in any Proceeding (including a Proceeding by or in the right of the Company), including, without limitation, all liability arising out of the negligence or active or passive wrongdoing of Indemnitee. The only limitation that shall exist upon the Company's obligations pursuant to this Agreement shall be that the Company shall not be obligated to make any payment to Indemnitee that is finally determined (under the procedures, and subject to the presumptions, set forth in Sections 6 and 7 hereof) to be unlawful.

3. Contribution.

(a) Whether or not the indemnification provided in Sections 1 and 2 hereof is available, in respect of any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), the Company shall pay, in the first instance, the entire amount of any judgment or settlement of such action, suit or proceeding without requiring Indemnitee to contribute to such payment and the Company hereby waives and relinquishes any right of contribution it may have against Indemnitee. The Company shall not, without Indemnitee's prior written consent, enter into any such settlement of any action, suit or proceeding (in whole or in part) unless such settlement (i) provides for a full and final release of all claims asserted against Indemnitee and (ii) does not impose any Expense, judgment, fine, penalty or limitation on Indemnitee.

(b) Without diminishing or impairing the obligations of the Company set forth in the preceding subparagraph, if, for any reason, Indemnitee shall elect or be required to pay all or any portion of any judgment or settlement in any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), the Company shall contribute to the amount of Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Indemnitee in proportion to the relative benefits received by the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, from the transaction from which such action, suit or proceeding arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of the Company and all officers, directors or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other equitable considerations which the Law may require to be considered. The relative fault of the Company and all officers, directors or employees of the Company, other than Indemnitee, who

are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary and the degree to which their conduct is active or passive.

(c) The Company hereby agrees to fully indemnify and hold Indemnitee harmless from any claims of contribution which may be brought by officers, directors or employees of the Company, other than Indemnitee, who may be jointly liable with Indemnitee.

(d) To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

4. Indemnification for Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his Corporate Status, a witness, or is made (or asked to) respond to discovery requests, in any Proceeding to which Indemnitee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith.

5. Advancement of Expenses. Notwithstanding any other provision of this Agreement, the Company shall advance all Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding by reason of Indemnitee's Corporate Status within thirty (30) days after the receipt by the Company of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee and shall include or be preceded or accompanied by a written undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it shall ultimately be determined that Indemnitee is not entitled to be indemnified against such Expenses. Any advances and undertakings to repay pursuant to this Section 5 shall be unsecured and interest free. In addition, if a Change in Control has occurred, the Company shall, upon the request of Indemnitee, deposit in an escrow account, with a financial institution reasonably satisfactory to Indemnitee, an amount equal to the Expenses reasonably projected by legal counsel to Indemnitee to be incurred over the next six months in connection with defending, or investigating or preparing to defend, any Proceeding with respect to which Indemnitee is entitled to indemnification or advancement of Expenses, and shall, from time to time upon request of Indemnitee replenish the amount of such escrow deposit so that, after the date of such additional deposit, the amount of such escrow account is at least equal to such reasonably projected Expenses over the ensuing six month period.

6. Procedures and Presumptions for Determination of Entitlement to Indemnification. It is the intent of this Agreement to secure for Indemnitee rights of indemnity that are as favorable as may be permitted under the DGCL and public policy of the State of Delaware. Accordingly, the parties agree that the following procedures and presumptions shall apply in the event of any question as to whether Indemnitee is entitled to indemnification under this Agreement:

(a) To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification. Notwithstanding the foregoing, any failure of Indemnitee to provide such a request to the Company, or to provide such a request in a timely fashion, shall not relieve the Company of any liability that it may have to Indemnitee unless, and to the extent that, such failure actually and materially prejudices the interests of the Company.

(b) Upon written request by Indemnitee for indemnification pursuant to the first sentence of Section 6(a) hereof, a determination with respect to Indemnitee's entitlement thereto shall be made in the specific case by one of the following four methods, which shall be at the election of the Board: (1) by a majority vote of the Disinterested Directors, even though less than a quorum, (2) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum, (3) if there are no Disinterested Directors, or if the Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee, or (4) if so directed by the Board, by the stockholders of the Company; provided, however, that if a Change in Control has occurred, the determination with respect to Indemnitee's entitlement to indemnification shall be made by Independent Counsel.

(c) In the event the determination of entitlement to indemnification is to be made by Independent Counsel, the Independent Counsel shall be selected as provided in this Section 6(c). If a Change in Control has not occurred, the Independent Counsel shall be selected by the Board (including a vote of a majority of the Disinterested Directors if obtainable), and the Company shall give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. Indemnitee may, within 10 days after such written notice of selection shall have been given, deliver to the Company a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 13 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If a written objection is made and substantiated, the Independent Counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If a Change in Control has occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board, in which event the preceding sentence shall apply), and

approved by the Board (which approval shall not be unreasonably withheld). If (i) an Independent Counsel is to make the determination of entitlement pursuant to this Section 6, and (ii) within 20 days after submission by Indemnitee of a written request for indemnification pursuant to Section 6(a) hereof, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition the Court of Chancery of the State of Delaware or other court of competent jurisdiction for resolution of any objection which shall have been made by Indemnitee to the Company's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 6(b) hereof. The Company shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to Section 6(b) hereof, and the Company shall pay all reasonable fees and expenses incident to the procedures of this Section 6(c), regardless of the manner in which such Independent Counsel was selected or appointed.

(d) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement. Neither the failure of the Company (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall create a presumption in any action that Indemnitee has not met the applicable standard of conduct.

(e) Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert where Indemnitee reasonably believes such matters are within such person's professional or expert competence and who has been selected with reasonable care by the Enterprise. In addition, the knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement. Whether or not the foregoing provisions of this Section 6(e) are satisfied, it shall in any event be presumed that Indemnitee has at all times acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company.

(f) If the person, persons or entity empowered or selected under this Section 6 to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and Indemnitee shall be entitled to such indemnification absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not



materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such 60-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making such determination with respect to entitlement to indemnification in good faith requires such additional time to obtain or evaluate documentation and/or information relating thereto; and provided, further, that the foregoing provisions of this Section 6(f) shall not apply if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 6(b) of this Agreement and if (A) within fifteen (15) days after receipt by the Company of the request for such determination, the Board or the Disinterested Directors, if appropriate, resolve to submit such determination to the stockholders for their consideration at an annual meeting thereof to be held within seventy-five (75) days after such receipt and such determination is made thereat, or (B) a special meeting of stockholders is called within fifteen (15) days after such receipt for the purpose of making such determination, such meeting is held for such purpose within sixty (60) days after having been so called and such determination is made thereat.

(g) Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Independent Counsel, member of the Board or stockholder of the Company shall act reasonably and in good faith in making a determination regarding Indemnitee's entitlement to indemnification under this Agreement. Any costs or expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(h) The Company acknowledges that a settlement or other disposition short of final judgment may be successful if it permits a party to avoid expense, delay, distraction, disruption and uncertainty. In the event that any action, claim or proceeding to which Indemnitee is a party is resolved in any manner other than by adverse judgment against Indemnitee (including, without limitation, settlement of such action, claim or proceeding with or without payment of money or other consideration) it shall be presumed that Indemnitee has been successful on the merits or otherwise in such action, suit or proceeding.

(i) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his conduct was unlawful.

7. Remedies of Indemnitee.

(a) In the event that (i) a determination is made pursuant to Section 6 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 5 of this Agreement, (iii) no determination of entitlement to indemnification is made pursuant to Section 6(b) of this Agreement within 90 days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to this Agreement within ten (10) days after receipt by the Company of a written request therefor or (v) payment of indemnification is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification or such determination is deemed to have been made pursuant to Section 6 of this Agreement, Indemnitee shall be entitled to seek an adjudication in an appropriate court of the State of Delaware, or in any other court of competent jurisdiction, of Indemnitee's entitlement to such indemnification, contribution or advancement of Expenses. Alternatively, Indemnitee, at his option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Except as set forth herein, the provisions of Delaware law (without regard to its conflict of law rules) shall apply to any such arbitration. The Company shall not oppose Indemnitee's choice of forum to seek any such adjudication or award in arbitration, as the case may be.

(b) In the event that a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding commenced pursuant to this Section 7 shall be conducted in all respects as a de novo trial, or arbitration, on the merits, and Indemnitee shall not be prejudiced by reason of the adverse determination under Section 6(b). In any judicial proceeding or arbitration commenced pursuant to this Section 7, Indemnitee shall be presumed to be entitled to indemnification under this Agreement and the Company shall have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be, and the Company may not refer to or introduce into evidence any determination pursuant to Section 6(b) of this Agreement adverse to Indemnitee for any purpose. If Indemnitee commences a judicial proceeding or arbitration pursuant to this Section 7, Indemnitee shall not be required to reimburse the Company for any advances pursuant to Section 5 until a final determination is made with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).

(c) If a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 7, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's misstatement not materially misleading in connection with the application for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) In the event that Indemnitee, pursuant to this Section 7, seeks a judicial adjudication of his rights under, or to recover damages for breach of, this Agreement, or to recover under any directors' and officers' liability insurance policies maintained by the Company, the Company shall pay on his behalf, in advance, any and all expenses (of the types described in the definition of Expenses in Section 13 of this Agreement) actually and reasonably

incurred by him in such judicial adjudication, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of expenses or insurance recovery.

(e) The Company shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 7 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court that the Company is bound by all the provisions of this Agreement. The Company shall indemnify Indemnitee against any and all Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Company of a written request therefore) advance, to the extent not prohibited by law, such expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advance of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of Expenses or insurance recovery, as the case may be.

(f) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding.

8. Non-Exclusivity; Survival of Rights; Insurance; Primacy of Indemnification; Subrogation.

(a) The rights of indemnification and to receive advancement of expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Charter, the bylaws of the Company ("Bylaws"), any agreement, a vote of stockholders, a resolution of directors or otherwise, of the Company. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in the DGCL, whether by statute or judicial decision, permits greater indemnification than would be afforded currently under the Charter, Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) The Company shall obtain and maintain in effect during the entire period for which the Company is obligated to indemnify Indemnitee under this Agreement, one or more policies of insurance with reputable insurance companies to provide the directors of the Company with coverage for losses from wrongful acts and omissions and to ensure the Company's performance of its indemnification obligations under this Agreement. Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum



extent of the coverage available for any such officer or director under such policy or policies. In all such insurance policies, Indemnatee shall be named as an insured in such a manner as to provide Indemnatee with the same rights and benefits as are accorded to the other directors and officers of the Company. At the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnatee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

(c) In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnatee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(d) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder if and to the extent that Indemnatee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(e) The Company's obligation to indemnify or advance Expenses hereunder to Indemnatee who is or was serving at the request of the Company as a director, officer, employee or agent of any other corporation, partnership, joint venture, trust, employee benefit plan or other Enterprise shall be reduced by any amount Indemnatee has actually received as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, employee benefit plan or other Enterprise.

9. Exception to Right of Indemnification. Notwithstanding any provision in this Agreement and unless Indemnatee ultimately is successful on the merits with respect to any such claim, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnatee:

(a) for which payment has actually been made to or on behalf of Indemnatee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision; provided, that the foregoing shall not affect the rights of Indemnatee; or

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnatee of securities of the Company within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law; or

(c) for reimbursement to the Company of any bonus or other incentive-based or equity-based compensation or of any profits realized by Indemnatee from the sale of securities of the Company in each case as required under the Exchange Act (or any tax liabilities incurred by Indemnatee in respect of such compensation or profits); or

(d) in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Company has joined in or the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation, (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law, or (iii) the Proceeding is one to enforce Indemnitee's rights under this Agreement; or

(e) to the extent that indemnification is determined by a final and non-appealable court order to be unlawful or against public policy; or

(f) relates to liability incurred by Indemnitee where Indemnitee's conduct was determined by a final and non-appealable court order to be (i) a breach of the duty of loyalty to the Company or (ii) not in good faith or which involved intentional misconduct or a knowing violation of law.

10. Non-Disclosure of Payments. Except as expressly required by the securities laws of the United States of America or other applicable law, neither party shall disclose any payments under this Agreement unless prior approval of the other party is obtained. If any payment information must be disclosed, the Company shall afford Indemnitee an opportunity to review all such disclosures and, if requested, to explain in such statement any mitigating circumstances regarding the events to be reported.

11. Duration of Agreement. All agreements and obligations of the Company contained herein shall continue upon the later of (a) ten (10) years after the date that Indemnitee shall have ceased to serve as a director of the Company or a director, officer, trustee, partner, managing member, fiduciary, employee or agent of any other corporation, partnership, joint venture, trust, employee benefit plan or other Enterprise which Indemnitee served at the request of the Company; or (b) one (1) year after the final termination of any Proceeding (including any rights of appeal thereto) in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder and of any Proceeding commenced by Indemnitee pursuant to Section 7 of this Agreement relating thereto (including any rights of appeal of any Section 7 Proceeding). This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), assigns, spouses, heirs, executors and personal and legal representatives.

12. Security. To the extent requested by Indemnitee and approved by the Board, the Company may at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of Indemnitee.

13. Definitions. For purposes of this Agreement:

(a) "Beneficial Owner" shall have the meaning given to such term in Rule 13d-3 under the Exchange Act; provided, however, that Beneficial Owner shall exclude any

Person otherwise becoming a Beneficial Owner by reason of the stockholders of the Company approving a merger of the Company with another entity.

(b) “Change in Control” shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

(i) *Acquisition of Stock by Third Party.* Any Person, other than a trustee or other fiduciary holding securities under an employee benefit plan of the Company or a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company, is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company’s then outstanding securities;

(ii) *Change in Board.* During any period of two (2) consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constitute the Board, and any new director (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in Section 13(a)(i), 13(a)(iii) or 13(a)(iv)) whose election by the Board or nomination for election by the Company’s stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of the members of the Board;

(iii) *Corporate Transactions.* The effective date of a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than fifty percent (50%) of the combined voting power of the voting securities of the surviving entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving entity; and

(iv) *Liquidation.* The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement or series of agreements for the sale or disposition by the Company of all or substantially all of the Company’s assets, or, if such approval is not required, the decision by the Board to proceed

with such a liquidation, sale, or disposition in one transaction or a series of related transactions.

(c) “Corporate Status” describes the status of a person who is or was a director, officer, employee, agent or fiduciary of the Company, any direct or indirect subsidiary of the Company, or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that such person is or was serving at the request of the Company.

(d) “Disinterested Director” means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(e) “Enterprise” shall mean the Company and any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that Indemnitee is or was serving at the request of the Company as a director, officer, employee, agent or fiduciary.

(f) “Exchange Act” shall mean the Securities Exchange Act of 1934, as amended.

(g) “Expenses” shall include all reasonable attorneys’ fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, participating, or being or preparing to be a witness in a Proceeding, or responding to, or objecting to, a request to provide discovery in any Proceeding. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding and any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, including without limitation the premium, security for, and other costs relating to any cost bond, supersede as bond, or other appeal bond or its equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(h) “Independent Counsel” means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement. The Company agrees to pay the reasonable fees of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(i) “Person” shall have the meaning as set forth in Sections 13(d) and 14(d) of the Exchange Act; provided, however, that Person shall exclude (i) the Company, (ii) any trustee or other fiduciary holding securities under an employee benefit plan of the Company, and (iii) any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(j) “Proceeding” includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Company or otherwise and whether civil, criminal, administrative or investigative, in which Indemnitee was, is or will be involved as a party or otherwise, by reason of the fact that Indemnitee is or was a director of the Company, by reason of any action taken by him or of any inaction on his part while acting as a director of the Company, or by reason of the fact that he is or was serving at the request of the Company as a director, officer, employee, agent or fiduciary of another corporation, partnership, joint venture, trust or other Enterprise; in each case whether or not he is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement; including one pending on or before the date of this Agreement, but excluding one initiated by an Indemnitee pursuant to Section 7 of this Agreement to enforce his rights under this Agreement.

14. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality, and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the fullest extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby. Without limiting the generality of the foregoing, this Agreement is intended to confer upon Indemnitee indemnification rights to the fullest extent permitted by applicable laws.

15. Enforcement and Binding Effect.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director of the Company.

(b) Without limiting any of the rights of Indemnitee under the Charter or Bylaws as they may be amended from time to time, this Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

(c) The indemnification and advancement of expenses provided by, or granted pursuant to, this Agreement shall be binding upon and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), shall continue as to an Indemnitee who has ceased to be a director, officer, employee or agent of the Company or of any other Enterprise at the Company's request, and shall inure to the benefit of Indemnitee and his or her spouse, assigns, heirs, devisees, executors and administrators and other legal representatives.

(d) The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(e) The Company and Indemnitee agree herein that a monetary remedy for breach of this Agreement, at some later date, may be inadequate, impracticable and difficult of proof, and further agree that such breach may cause Indemnitee irreparable harm. Accordingly, the parties hereto agree that Indemnitee may enforce this Agreement by seeking injunctive relief and/or specific performance hereof, without any necessity of showing actual damage or irreparable harm and that by seeking injunctive relief and/or specific performance, Indemnitee shall not be precluded from seeking or obtaining any other relief to which he may be entitled. The Company and Indemnitee further agree that Indemnitee shall be entitled to such specific performance and injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of posting bonds or other undertaking in connection therewith. The Company acknowledges that in the absence of a waiver, a bond or undertaking may be required of Indemnitee by the Court, and the Company hereby waives any such requirement of such a bond or undertaking.

16. Modification and Waiver. No supplement, modification, termination or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

17. Notice By Indemnitee. Indemnitee agrees promptly to notify the Company in writing upon being served with or otherwise receiving any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification covered hereunder. The failure to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement or otherwise.

18. Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested,



postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent:

(a) To Indemnitee at the address set forth below Indemnitee's signature hereto.

(b) To the Company at:

[Sbarro Holdings, Inc.  
401 Broadhollow Road  
Melville, NY 11747  
Attention: President and Chief Executive Officer]

or to such other address as may have been furnished to Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

19. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. This Agreement may also be executed and delivered by facsimile signature and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

20. Headings. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

21. Usage of Pronouns. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate.

22. Governing Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. The Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the "Delaware Court"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) generally and unconditionally consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum. The foregoing consent to jurisdiction shall not constitute general consent to service of process in the state for any purpose except as provided above, and shall not be deemed to confer rights on any person other than the parties to this Agreement.

***[SIGNATURE PAGE TO FOLLOW]***

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

**SBARRO HOLDINGS, INC.**

By: \_\_\_\_\_  
Name:  
Title:

INDEMNITEE

\_\_\_\_\_  
Address: