

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

In re:	§	Chapter 11
	§	
BUFFETS, LLC, <i>et al.</i> ¹	§	Case No. 16–50557-rbk
	§	
Debtors.	§	(Jointly Administered)

**NOTICE OF FILING OF
SECOND AMENDED SUPPLEMENT TO DEBTORS' JOINT PLAN OF
REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

PLEASE TAKE NOTICE that on April 27, 2017, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed their Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (Doc. No. 2573) (the “Plan”) and the Court entered its Findings of Fact, Conclusions of Law, and Order Under Section 1129 of the Bankruptcy Code and Rule 3020 of the Bankruptcy Rules Confirming Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (Doc. No. 2576) (the “Confirmation Order”) confirming the Plan.

PLEASE TAKE FURTHER NOTICE that on March 21, 2017, the Debtors filed their *Notice of Filing of Supplement to Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (Doc. No. 2422).

PLEASE TAKE FURTHER NOTICE that on March 31, 2017, the Debtors filed their *Notice of Filing of Amended Supplement to Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (Doc. No. 2485).

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Buffets, LLC (2294); Hometown Buffet, Inc. (3002); OCB Restaurant Company, LLC (7607); OCB Purchasing, Co. (7610); Ryan's Restaurant Group, LLC (7895); Fire Mountain Restaurants, LLC (8003); and Tahoe Joe's, Inc. (7129). The address for all of the Debtors is 120 Chula Vista Drive, Hollywood Park, Texas 78232.

PLEASE TAKE FURTHER NOTICE that the Debtors hereby give notice of filing of final versions of the following exhibits, filed contemporaneously herewith, that comprise the Plan Supplement, including executed copies of same as applicable:

- Exhibit A: Schedule of Additional Rejected Contracts and Leases
- Exhibit B: Schedule of Additional Assumed Leases
- Exhibit C: Unsecured Creditors' Trust Agreement
- Exhibit D: List of members of the Trust Advisory Board
- Exhibit E: Trust Causes of Action
- Exhibit F: Alamo Buffets Advance Agreement
- Exhibit G: Secured Trust Note
- Exhibit H: Subordination Agreement
- Exhibit I: Assignment Agreement
- Exhibit J: Security Agreement
- Exhibit K: List of the Excluded Causes of Actions
- Exhibit L: List of the Excluded Insider Causes of Action
- Exhibit M: Collateral Assignment of Leases
- Exhibit N: Composite of Mortgages
- Exhibit O: Management Agreement

PLEASE TAKE FURTHER NOTICE that any holder of Claims or Equity Interest who would like to receive copies of any of the exhibits to the Plan Supplement may obtain a copy by visiting the website for Donlin, Recano & Company, Inc. at "<https://www.donlinrecano.com>".

In addition, the Plan Supplement may be inspected in the office of the Clerk of the Court during normal court hours and shall be available online at "<https://ecf.txwb.uscourts.gov>". The Clerk of Court is located at Hipolito F. Garcia Federal Building and United States Courthouse, 615 East Houston Street, Room 597, San Antonio, TX 78205.

Dated: June 6, 2017

Respectfully submitted,
AKERMAN LLP

/s/ David W. Parham

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DEBTORS-IN-POSSESSION

EXHIBIT A
Schedule of Additional Rejected Contracts and Leases

Buffets, LLC et al.

United States Bankruptcy Court for the Western District of Texas, San Antonio Division
Case No. 16-50557-rbk

Exhibit A to Plan Supplement: Schedule of Additional Rejected Contracts and Leases

	Party	Address	City	State	Zip	Contract Description
1	ADP, Inc.	5800 Windward Parkway	Alpharetta	GA	30005	Payroll Services Agreement
2	Affordable Sprinklers, Inc.	PO Box 851417	Westland	MI	48185	Sprinkler systems
3	AIG	300 Delaware Ave., Ste 1100	Wilmington	DE	19801	Prior bankruptcy contract
4	Baker Commodities, Inc.	5795 South 130th Place	Seattle	WA	98178	Rendering and grease removal services
5	BIG Business Impact Group	2411 Galpin Court, Suite 120	Chanhassen	MN	55317	Marketing consultants
6	Brinks Incorporated	7373 Solutions Center	Chicago	IL	60667	Armored car services and safe services
7	Bullseye Telecom	25925 Telegraph Rds, Ste 210	Southfield	MI	48033	Potz lines for restauransts-fire alarm, fax etc.
8	Bunch and Associates	PO Box 32037	Lakeland	FL	33802	Risk management services signed 9/1/2011
9	C&F Foods	15620 East Valley Blvd.	City of Industry	CA	91744	Purchasing agreement signed 1/1/2016
10	Caphehart Cutlery	11024 Balboa Blvd, Unit 1113	Granada Hills	CA	91344	Knife sharpner
11	Cardlytics	621 North Ave NE, Ste C30	Atlanta	GA	30308	Provides coupons to customer bank card users
12	CareerBuilder, LLC	2745 North Dallas Parkway, Ste 605	Plano	TX	75093	Employment applications
13	Carlos Martinez Landscaping	1256 W 2nd st.	Pomona	CA	91766	Landscaping services
14	CenturyLink	100 Centurylink Dr.	Monroe	LA	71203	Phone and internet services
15	CoalFire Systems, Inc	361 Centennial Parkway, Ste 150	Louisville	CO	80027	Provide PCI DSS 3.0 reporst on compliance
16	Cognizant Technology Solutions	500 Frank W. Buff Blvd., Ste 50	Teaneck	NJ	7666	Offshore support for accounting, HR and payroll
17	Commercial Sweeping Service	14038 W. Cornerstone Trail	Surprise	AZ	85374	Landscaping services
18	Commercial Upholstery	10645 N Tatum Blvd., Sute 200-639	Phoenix	AZ	85028	Upholstery services
19	Dan's Blown Away Power Wash	6961 Iris Ct.	Arvada	CO	80004	Power washing
20	Diamond Sharp	513 Mercury Lane	Brea	CA	92821	Knife sharpner
21	Direct Energy Business, LLC (Direct Energy)	1001 Liberty Avenue	Pittsburgh	PA	15222	Energy services for restaurants
22	DJM Realty Services, LLC	100 Crossways Park Drive West, Ste 207	Woodbury	NY	11979	Consulting service for lease negotiations
23	Earthlink	1170 Peachtree Street	Atlanta	GA	30309	Network communications provider
24	Edward Don & Company	2500 S. Harlem Avenue	North Riverside	IL	60546	Distributor
25	Enrique Sanchez Landscaping	533 E Washinton Ave. Ste 17	Santa Ana	CA	92701	Landscaping services
26	Enterprise Fleet Management	PO Box 800089	Kansas City	MO	64180	Car fleet mangaeement
27	Environmental Waste Solutions, LLC	950 S. Tamaiaim Trail, Ste 210	Sarasota	FL	32324	Trash services for restaurants
28	Figueroa Yard Company	2150 Anderson Lane	Yuba City	CA	95993	Landscaping services
29	Fishbowl	44 Canal Center Plaza, Suite 500	Alexandria	VA	22314	Email marketing vendor
30	Gager Distributing	2859 Kennedy Ave.	Chico	CA	95973	Knife sharpner
31	Garda CL West, Inc. fka AT Systems West, Inc.	700 S Federal Hwy, Ste 300	Boca Raton	CA	33432	Armored car services
32	General Mills	Number One General Mills Blvd	Golden Valley	MN	55426	Supplier
33	Goodwin Hospitality	11 South Main Street, Ste 200	Concord	NH	3301	Business management consultants
34	Ink Link	7950 NW 155th, Ste 101	Miami Lakes	FL	33016	PR/Marketing firm kept on retainer
35	InMoment, Inc. (Mindshare Technologies)	310 Est 4500 South, Ste 450	Salt Lake City	UT	84107	Internet based customer feedback service
36	Juicy Whip	1668 Curtiss Ct.	La Verne	CA	91750	Beverage distributor
37	Larson Records	2550 Walnut Street	Roseville	MN	55113	Offsite strorage for business records
38	Leepco Carpet	8341 Sangre DE Cristo Rd., Ste 110	Littleton	CO	80127	Carpet cleaning
39	Level 3 Communications (Broadwing)	1025 Eldorado Blvd.	Broomfield	CO	80021	Long distance phone services
40	Liquid Environmental Solutions of Texas, LLC	7651 Esters Blvd	Irving	TX	75063	Grease trap cleaning for all locations
41	Locklon Companies - St. Louis	3 Cityplace Drive, Suite 900	St. Louis	Mo	62141	Insurance broker
42	Mayflower	14121 Artesia Blvd	Cerritos	CA	90703	Ballon distributing company
43	Michael K. Brown Landscape	3541 Alken St.	Bakersfield	CA	93308	Landscaping services

16-50557-rbk Doc#2661-1 Filed 06/06/17 Entered 06/06/17 15:37:00 Exhibit A -
Schedule of Additional Rejected Contracts and Leases Pg 3 of 4

Buffets, LLC et al.

United States Bankruptcy Court for the Western District of Texas, San Antonio Division
Case No. 16-50557-rbk

Exhibit A to Plan Supplement: Schedule of Additional Rejected Contracts and Leases

	Party	Address	City	State	Zip	Contract Description
44	Microsoft EA Agreement	6100 Neil Rd.	Reno	NV	89510	Microsoft licensing agreement for restaurants
45	Midwest Complete Construction	3720 Blackhawk Road	Rock Island	IL	61201	Construction company used by various stores
46	Nationwide Electrical Construction & Maintenance	59 Jennifer Lane	Calumet City	IL	60409	Electrical maintenance and repairs
47	Nelbud	1202 Moss Mill Rd.	Eggs Harbor City	NJ	8215	Hood cleaning
48	Noble Americas Energy Solutions, LLC (Calpine Energy)	401 West A St., Ste 500	San Diego	CA	92101	Natural gas supplier for restaurants
49	Office Depot	6600 N. Military Trail	Boca Raton	FL	33496	Office supply agreement
50	Outfront Media	405 Lexington Ave., Ste 14	New York	NY	10174	Billboards
51	Personnel People	121 Central Street, Ste 201	Norwood	MN	2062	Temporary staffing services
52	Pro-Power Wash	PO Box 4092	Mesa	AZ	85201	Power washing
53	PWC (PricewaterhouseCoopers LLP)	1075 Peachtree St., Ste 2600	Atlanta	GA	30309	PWC Oracle cloud enterprise support for fusion
54	Real Time Outsource	7110 N Frsn St., Ste 230	Fresno	CA	93720	Manage and hosts THJ website and social media platforms
55	Richo	70 Valley Stream Parkway	Malvern	PA	19355	Printer at the Eagan office
56	RINIS Gardening	1550 Rose Ave	Ceres	CA	95307	Landscaping services
57	Risk Sciences Group, Inc.	1001 Summit Boulevard	Atlanta	GA	30319	Risk analytics
58	Roof Top Solutions	2019 Corporate Lane, Ste 119	Naperville	IL	60563	HVAC service
59	Salcido Gardening	507 Mary Dr.	Santa Maria	CA	93458	Landscaping services
60	Schneider Electric (Summit Engery Service Inc.)	10350 Ormsby Park Place, Suite 400	Louisville	KY	40223	Utility procurement and mangement services
61	Servicechannel.com	18 E 16th St.	New York	NY	10003	Database software - vendors and providers
62	Shamrock Foods	5199 Ivy	Commerce City	CO	80022	Purchasing agreement signed 2/7/1992
63	Sizzle Promotions, LLC	2019 N. Larmar Street, Ste 220	Dallas	TX	75202	Marketing company
64	SnapFinger	3025 Windward plaza	Alpharetta	GA	30005	Provides online ordering via web/app
65	Sokol and Company	5315 Dansher Road	Countryside	IL	60525	Food products supplier
66	Southwest Contruction, LLC	24654 N Lake Plesant Pkway, Ste 103-233	Peoria	AZ	85283	Landscaping services
67	Spencer's Landscape, LLC	PO Box 681	Higley	AZ	85236	Landscaping services
68	Sunburst Chemical	220 W. 86th Street	Bloomington	MN	55420	Chemical provider
69	Super Clean	2775 Forest Hill Dr	Corning	NY	14830	Carpet cleaning
70	TALX Corporation	11432 Lackland Road	St. Louis	MO	63146	Employment applications
71	Tammy Lynn Outdoor Advertising	160 Plaze Rd., Ste 7A	Bluefield	WV	24701	Billboards
72	TFS Leasing Program of De Lage Landen Financial	PO Box 41602	Philadelphia	PA	19101	Richo printer lease
73	Thomson CompuMark	500 Victory Rd.	North Quincy	MA	2171	Post service machine for Greer office
74	Top Gun	500 West 67th Street	Loveland	CO	80538	Power washing
75	Valassis Direct Main	19975 Victor Parkway	Livonia	MI	48152	Print coupon distributor
76	Valor Mechanical	416 S. Broadwway, Ste 2	Rochester	MN	55904	Facility maintenance to OCB in Rochester, MN
77	Verizon	500 Technology Dr., Ste 840	Weldon Springs	MO	63304	Verizon conferencing services
78	Verizon 4G	PO Box 4002	Atworth	GA	30101	4G failover services for restaurants
79	Verizon Business	500 Technology Dr., Ste 840	Weldon Springs	MO	63304	Internet circuit for main Eagan office
80	Vert Mobile, LLC	1075 Zonolite Road NE, Ste 6	Atlanta	GA	30306	Digital agency that mangaes websites
81	Welsh Facility Services, LLC	4350 Baker Rd., Ste 400	Minnetonka	MN	55343	Afterhours facilites maintenance for the corp office
82	Wilmington Trust	PO Box 8955	Wilmington	DE	19899	Tracking and Managing Letters of Credit
83	Windstream	13935 Bishops Dr.	Brookfield	WI	53005	new voice/data provider
84	Zeke Lima	1219 S Peppertree Ct.	Visalia	CA	93277	Unknown
85	Zephyr Solutions, Inc.	1050 Lear Industrial Parkway	Avon	OH	44011	Helium supplier for balloons

Buffets, LLC et al.

United States Bankruptcy Court for the Western District of Texas, San Antonio Division

Case No. 16-50557-rbk

Exhibit A to Plan Supplement: Schedule of Additional Rejected Contracts and Leases

	Party	Address	City	State	Zip	Contract Description
86	Blue Cross and Blue Shield of South Carolina	1-20 East @ Alpine Road	Columbia	SC	29219	Buffets, LLC fka Buffets, Inc. Employee Benefits
87	Discover Re	5 Batterson Park	Farmington	CT	6032	Buffets, LLC fka Buffets, Inc. WC
88	Discover Re	5 Batterson Park	Farmington	CT	6032	Buffets, LLC fka Buffets, Inc. WC
89	Discover Re	5 Batterson Park	Farmington	CT	6032	Buffets, LLC fka Buffets, Inc. WC
90	Discover Re	5 Batterson Park	Farmington	CT	6032	Buffets, LLC fka Buffets, Inc. WC
91	CNA	333 South Wabash Avenue	Chicago	IL	60604	Buffets, LLC fka Buffets, Inc. WC
92	CNA	333 South Wabash Avenue	Chicago	IL	60604	Buffets, LLC fka Buffets, Inc. WC
93	CNA	333 South Wabash Avenue	Chicago	IL	60604	Buffets, LLC fka Buffets, Inc. WC
94	AIG	180 Maiden Ln	New York	NY	10038	Buffets, LLC fka Buffets, Inc. WC
95	AIG	180 Maiden Ln	New York	NY	10038	Buffets, LLC fka Buffets, Inc. WC
96	AIG	180 Maiden Ln	New York	NY	10038	Buffets, LLC fka Buffets, Inc. WC
97	AIG	180 Maiden Ln	New York	NY	10038	Buffets, LLC fka Buffets, Inc. WC
98	Discover Re	5 Batterson Park	Farmington	CT	6032	Buffets, LLC fka Buffets, Inc. GL
99	Discover Re	5 Batterson Park	Farmington	CT	6032	Buffets, LLC fka Buffets, Inc. GL
100	Discover Re	5 Batterson Park	Farmington	CT	6032	Buffets, LLC fka Buffets, Inc. GL
101	Discover Re	5 Batterson Park	Farmington	CT	6032	Buffets, LLC fka Buffets, Inc. GL
102	CNA	333 South Wabash Avenue	Chicago	IL	60604	Buffets, LLC fka Buffets, Inc. GL
103	CNA	333 South Wabash Avenue	Chicago	IL	60604	Buffets, LLC fka Buffets, Inc. GL
104	CNA	333 South Wabash Avenue	Chicago	IL	60604	Buffets, LLC fka Buffets, Inc. GL
105	AIG	180 Maiden Ln	New York	NY	10038	Buffets, LLC fka Buffets, Inc. GL
106	AIG	180 Maiden Ln	New York	NY	10038	Buffets, LLC fka Buffets, Inc. GL
107	AIG	180 Maiden Ln	New York	NY	10038	Buffets, LLC fka Buffets, Inc. GL
108	AIG	180 Maiden Ln	New York	NY	10038	Buffets, LLC fka Buffets, Inc. GL
109	Zurich	1299 Zurich Way	Schaumburg	IL	60173	Ryan's Restaurant Group, LLC, and its affiliates GL/WC
110	Zurich	1299 Zurich Way	Schaumburg	IL	60173	Ryan's Restaurant Group, LLC, and its affiliates GL/WC
111	Zurich	1299 Zurich Way	Schaumburg	IL	60173	Ryan's Restaurant Group, LLC, and its affiliates GL/WC
112	Zurich	1299 Zurich Way	Schaumburg	IL	60173	Ryan's Restaurant Group, LLC, and its affiliates GL/WC
113	Zurich	1299 Zurich Way	Schaumburg	IL	60173	Ryan's Restaurant Group, LLC, and its affiliates GL/WC
114	Fireman's Fund	777 San Marin Dr.	Novato	CA	94945	Ryan's Restaurant Group, LLC, and its affiliates GL/WC
115	CNA	333 South Wabash Avenue	Chicago	IL	60604	Ryan's Restaurant Group, LLC, and its affiliates GL/WC
116	CNA	333 South Wabash Avenue	Chicago	IL	60604	Ryan's Restaurant Group, LLC, and its affiliates GL/WC
117	CNA	333 South Wabash Avenue	Chicago	IL	60604	Ryan's Restaurant Group, LLC, and its affiliates GL/WC
118	AIG	180 Maiden Ln	New York	NY	10038	Ryan's Restaurant Group, LLC, and its affiliates GL/WC
119	AIG	180 Maiden Ln	New York	NY	10038	Ryan's Restaurant Group, LLC, and its affiliates GL/WC
120	AIG	180 Maiden Ln	New York	NY	10038	Ryan's Restaurant Group, LLC, and its affiliates GL/WC
121	AIG	180 Maiden Ln	New York	NY	10038	Ryan's Restaurant Group, LLC, and its affiliates GL/WC
122	AIG	180 Maiden Ln	New York	NY	10038	Ryan's Restaurant Group, LLC, and its affiliates GL/WC
123	AIG	180 Maiden Ln	New York	NY	10038	Ryan's Restaurant Group, LLC, and its affiliates GL/WC
124	Liberty Mutual	175 Berkeley Street	Boston	MA	2116	Ryan's Restaurant Group, LLC, and its affiliates GL/WC

EXHIBIT B
Schedule of Additional Assumed Contracts and Leases

Buffets, LLC et al.
United States Bankruptcy Court for the Western District of Texas, San Antonio Division
Case No. 16-50557-rbk

Exhibit B to Plan Supplement: Schedule of Additional Assumed Contracts and Leases

	Counter Party	Address	City	State	Zip	Contract Description	Cure Amount
1	Accurate Background, Inc.	7515 Irvine Center Drive	Irvine	CA	92618	Background checks and e-verify	\$0.00
2	Airespring	6060 Sepulveda Blvd, 2nd Floor	Van Nuys	CA	91411	Internet services	\$0.00
3	Aramark Uniform Services	115 North First Street	Burbank	CA	91502	Uniform services agreement signed 6/18/2012	\$49.28
4	AT&T	3405 W. Dr. Martin Luther King	Tampa	FL	22507	Internet services signed 9/28/2012	\$0.00
5	Brookview Landscape, Inc.	320 Lindsey Drive	Martinez	CA	94553	Landscaping services	\$0.00
6	Coca-Cola North America	14185 Dallas Parkway, Suite 900	Dallas	TX	75254	Beverage purchasing agreement signed 1/1/2016	\$6,519.31
7	Cozzini Bros	350 Howard Ave	Des Plaines	IL	60018	Machine knife supplier	\$2,360.00
8	CrunchTime Inc.	129 Portland St.	Boston	MA	02114	Restaurant management software	\$0.00
9	Dr Pepper Snapple Group	5301 Legacy Drive	Plano	TX	75086	Beverage purchasing agreement	\$0.00
10	Dynamic Foods	1001 E. 33rd St	Lubbock	TX	79404	Distribution agreement for CO stores	\$0.00
11	Elite Landscaping	414 Meco Drive	Wilmington	DE	19804	Landscaping Agreement for OCB 794 Newark, DE	\$0.00
12	Everfi	3299 K Street NW 4th Floor	Washington	DC	20007	Harassment training for management	\$0.00
13	Fifth Third Bank - Vantiv	38 Fountain Square Plaza	Cincinnati	OH	45263	Bank Merchant Agreement	\$0.00
14	Florence Landscaping Service	72 Fayette Street, PO Box 1128	Perth Amboy	NJ	08862	Landscaping services HTB 750 Edison, NJ	\$0.00
15	Fresh Concepts	25109 Jefferson Avenue, Suite 305	Murrieta	CA	92562	Purchasing agreement signed 7/8/2013	\$0.00
16	George's Inc.	402 W. Robinson Avenue	Springdale	AR	72764	Purchasing agreement signed 1/14/2016	\$0.00
17	Global Food Exchange, LLC (Pictsweet)	P.O. Box 198233	Atlanta	GA	30384	Purchasing agreement signed 11/1/2015	\$0.00
18	Hilco Real Estate, LLC	5 Revere Drive, Suite 206	Northbrook	IL	60062	Real estate consulting agreement	\$0.00
19	ICCEE	1205 S. Dupont Avenue	Ontario	CA	91761	Frozen drink provider	\$0.00
20	JR Simplot Co	6360 S. Federal Way	Boise	ID	83716	Purchasing agreement signed 10/22/2015	\$0.00
21	Loomis Armored US, LLC	2500 City West Blvd., Ste 900	Houston	TX	77042	Cash delivery services	\$0.00
22	Multi Unit Group	2500 Cumberland Parkway, Suite 600	Atlanta	GA	30339	Purchase and Distribution Agreement	\$0.00
23	Multi Unit Group - Bassham	5409 Hemphill Street	Ft. Worth	TX	76115	Purchase and Distribution Agreement	\$0.00
24	Multi Unit Group - SGC	2415 West Battlefield	Springfield	MO	65807	Purchase and Distribution Agreement	\$0.00

Buffets, LLC et al.
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Case No. 16-50557-rbk

Exhibit B to Plan Supplement: Schedule of Additional Assumed Contracts and Leases

	Counter Party	Address	City	State	Zip	Contract Description	Cure Amount
25	Multi Unit Group - Upper Lakes Foods, Inc.	1720 Cannon Road	Northfield	MN	55087	Purchase and Distribution Agreement	\$0.00
26	Multi Unit Group - Van Eerden	650 Ionia SW	Grand Rapids	MI	49503	Purchase and Distribution Agreement	\$0.00
27	National Entertainment Network, LLC	325 Interlocken Pkwy	Broomfield	CO	80021	Entertainment vending games	\$0.00
28	Navex ELT	6000 Meadows Rd, Ste 200	Lake Oswego	OR	97035	Harassment training for all supervisors	\$0.00
29	NCR Corporation	3097 Satellite Blvd.	Duluth	GA	30096	Aloha System software and services agreement	\$0.00
30	New Carbon Company, LLC	4101 William Richardson Drive	South Bend	IN	46628	Waffle irons and waffle batter for restaurants	\$8,169.28
31	NUCO2	2800 SE Market Place	Stuart	FL	34997	CO2 agreement signed new	\$0.00
32	Pocono Pro Foods	Rt. 191 & Chipperfield Drive/PO Box 669	Stroudsburg	PA	18360	Purchasing distribution agreement signed 12/29/2010	\$0.00
33	Protection One	7255 Corporate Center Dr. Bldg 2 Bay F	Miami	FL	33126	Alarm systems agreement signed 5/24/2012	\$6,558.00
34	Redbook Solutions	4550 S Windermere	Englewood	CA	80110	Books for manager shift notes	\$817.88
35	Republic Services	18500 North Allied Way	Phoenix	AZ	85054	Waste services for Ryans 2278 Conroe, TX	\$0.00
36	Republic Services	18500 North Allied Way	Phoenix	AZ	85054	Waste services for OCB 794 Newark, DE	\$0.00
37	Republic Services	18500 North Allied Way	Phoenix	AZ	85054	Waste services for HTB 51 Bridgetown, MO	\$0.00
38	Royal Cup	160 Cleage Drive	Birmingham	AL	35217	Purchasing agreement signed 2/20/2014	\$0.00
39	Saladinos' Ontario	5400 E. Ontario Mills Parkway	Ontario	CA	91764	Purchasing agreement	\$0.00
40	Saladinos' West Sacramento	3045 Mulvany Place	West Sacramento	CA	95691	Purchasing agreement signed 7/8/2013	\$0.00
41	Sysco	1390 Enclave Parkway	Houston	TX	77077	Purchasing agreement signed 12/1/2014	\$0.00
42	Sysco Knoxville	900 Tennessee Ave	Knoxville	TN	37921	Purchasing agreement	\$0.00
43	Sysco Riverside	15750 Meridian Parkway	Riverside	CA	92518	Purchasing agreement	\$12,770.59
44	US Foods	6685 Crescent Drive	Norcross	GA	30071	Purchasing agreement	\$0.00
45	Ventura Foods, LLC	14307 S. Stoney Grove Loop	Houston	TX	77084	Purchasing agreement signed 1/28/2015	\$0.00

EXHIBIT C
Unsecured Creditors' Trust Agreement

UNSECURED CREDITORS' TRUST AGREEMENT

This Unsecured Creditors' Trust Agreement (the "Unsecured Creditors' Trust Agreement" or "Agreement") is made this 18th day of May, 2017, by and between Buffets, LLC, and certain of its affiliates, the debtors and debtors in possession in the Chapter 11 Cases (collectively, the "Debtors" and, as reorganized pursuant to the Plan (as defined below), the "Reorganized Debtors")¹, on the one hand, and META Advisors, LLC, not individually, but solely as the Unsecured Creditors' Trustee for Class 4 General Unsecured Claims, as well as Class 5 Convenience Claims (the "Unsecured Creditors' Trustee" and together with the Debtors, the "Parties"), on the other hand, executed in connection with the *Amended Joint Chapter 11 Plan of Reorganization of Buffets, LLC, et al., Under Chapter 11 of the Bankruptcy Code* (as amended from time to time, the "Plan") in the Chapter 11 Cases currently pending in the United States Bankruptcy Court for the Western District of Texas, San Antonio Division (the "Bankruptcy Court") with a caption of *In re Buffets, LLC, et al.*, Case No. 16-50557 (Jointly Administered) (the "Chapter 11 Cases"). Except with respect to the terms defined herein, all capitalized terms used herein shall have the meanings ascribed to them in the Plan.

WITNESSETH

WHEREAS, the Plan was confirmed by the Confirmation Order;

WHEREAS, this Agreement and the entity created hereunder is created pursuant to, and to effectuate, the Plan, and is effective on the Effective Date of the Plan;

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Buffets, LLC (2294); Hometown Buffet, Inc. (3002); OCB Restaurant Company, LLC (7607); OCB Purchasing, Co. (7610); Ryan's Restaurant Group, LLC (7895); Fire Mountain Restaurants, LLC (8003); and Tahoe Joe's, Inc. (7129). The address for all of the Debtors is 120 Chula Vista Drive, Hollywood Park, Texas 78232.

WHEREAS, the entity formed hereunder is created on behalf, and for the sole benefit, of the holders of General Unsecured Claims in Class 4 under the Plan, as well as holders of Convenience Claims in Class 5 under the Plan, as beneficiaries;

WHEREAS, the entity created hereunder is, subject to the treatment of the Disputed Claims Reserve (as defined below), intended to qualify as a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d) and as a “grantor trust” pursuant to the Internal Revenue Code sections 671-677 for United States federal income tax purposes, with the Beneficiaries treated as the grantors and owners of the Trust Assets;

WHEREAS, the entity created hereunder is established for the purpose of receiving, collecting, holding, and liquidating the Trust Assets and distributing the same and the proceeds thereof for the benefit of the beneficiaries in accordance with the terms of this Agreement and the Plan with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the entity created hereunder;

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein and in the Plan, the Parties agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATIONS

1.1 Definitions.

1.1.1 “Available Cash” shall mean Cash proceeds of the Trust Assets after paying, funding, reserving against, or satisfying the Convenience Claims Distribution and any and all fees incurred or reserved for operating and all administrative expenses, including, but not limited to, all taxes, costs, expenses, and obligations incurred by the Unsecured Creditors’

Trustee and all professionals who may be employed by the Unsecured Creditors' Trustee in enforcing and administering this Unsecured Creditors' Trust Agreement and the entity created hereunder, and otherwise carrying out the Unsecured Creditors' Trustee's responsibilities under this Agreement or the Plan, or in any manner connected, incidental, or related thereto and payment of such expenses.

1.1.3 "Beneficiaries" shall collectively mean holders of General Unsecured Claims in Class 4 under the Plan, or any successors to such holders.

1.1.4 "Convenience Beneficiaries" shall collectively mean holders of Convenience Claims in Class 5 under the Plan, or any successors to such holders.

1.1.5 "Convenience Claims Distribution" shall mean distributions to be made to the Convenience Beneficiaries pursuant to the Plan.

1.1.6 "Permitted Investments" shall include (a) short-term direct obligations of, or obligations guaranteed by, the United States of America, (b) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof, (c) such other investments as the Bankruptcy Court or United States Trustee may approve from time to time, or (d) demand deposits or certificates of deposit at any bank or trust company that has, at the time of the deposit, a capital stock and surplus aggregating at least \$1,000,000,000, provided, however, that the scope of any Permitted Investments shall be limited to include only those investments that, within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to be held, pursuant to Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise.

1.2 Interpretation. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the provisions of this Agreement. Words denoting the singular number shall include the plural number and vice versa, and words denoting one gender shall include the other gender.

1.3 Particular Words. Reference in this Agreement to any Section or Article is, unless otherwise specified, to that such Section or Article under this Agreement. The words “hereof,” “herein,” “hereinafter,” and similar terms shall refer to this Agreement and not to any particular Section or Article of this Agreement. The word “including” shall be construed to mean including without limitation.

ARTICLE II

PURPOSE, FUNDING AND APPOINTMENT OF UNSECURED CREDITORS’ TRUSTEE

2.1 Purpose. The Parties, pursuant to the Plan and in accordance with the Bankruptcy Code, hereby create the Unsecured Creditors’ Trust for the purpose of receiving, collecting, distributing, and liquidating the Trust Assets, in accordance with Treasury Regulations Section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business. The purpose of this Agreement is to implement certain provisions of the Plan on behalf, and for the benefit, of the Beneficiaries and Convenience Beneficiaries, to serve as a mechanism for liquidating and converting to Cash the Trust Assets and distributing the Available Cash and/or assets of the Trust Assets to the Beneficiaries and Convenience Beneficiaries. The entity created hereunder will not hold itself out as an investment company and will not conduct a trade or business. The Unsecured Creditors’ Trustee shall be the exclusive trustee of the Trust Assets for purposes of 31 U.S.C. § 3713(b) and Internal Revenue Code section 6012(b)(3). The Unsecured Creditors’ Trustee will distribute the Available Cash and/or assets of the Trust Assets to the

Beneficiaries and Convenience Beneficiaries in accordance with this Agreement, the Plan, and the Confirmation Order. For avoidance of doubt, the Trust must pay or reserve for all of its expenses before making any distribution.

2.3 Funding. On the Effective Date, the entity created hereunder shall be funded with the Trust Assets, which consist of: (a) Cash in the amount of \$6.5 million, (b) the Secured Trust Note provided for in the Plan, (c) Causes of Action to be assigned to the Unsecured Creditors' Trust pursuant to the Plan (including, without limitation, any right to recover excess proceeds of any letter of credit or any other collateral security held by the ACE Companies that secures the ACE Companies' Claim), together with any proceeds thereof, and (d) certain Assigned Non-Debtor Causes of Action and/or proceeds thereof to be assigned to the Unsecured Creditors' Trust pursuant to the Assigned Non-Debtor Causes of Action Agreement referenced in the Plan.

2.4 Securities Law. Under section 1145 of the Bankruptcy Code, the issuance of beneficial interests to the Beneficiaries and/or Convenience Beneficiaries under the Plan shall be exempt from, among other things, the registration under the Securities Act of 1933, as amended, and all applicable state and local laws requiring registration of securities. If the Unsecured Creditors' Trustee determines, with the advice of counsel, that it is required to comply with the registration and reporting requirements of the Securities and Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then the Unsecured Creditors' Trustee shall take any and all actions to comply with such reporting requirements and file necessary periodic reports with the Securities and Exchange Commission.

2.5 Appointment and Acceptance of Unsecured Creditors' Trustee. The Unsecured Creditors' Trustee shall be deemed to be appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and all other applicable sections of the Bankruptcy Code. The Unsecured

Creditors' Trustee accepts the entity created by this Agreement and the grant, assignment, transfer, conveyance, and delivery to the Unsecured Creditors' Trustee, on behalf, and for the benefit, of the Beneficiaries and the Convenience Beneficiaries, all of the Debtors' respective right, title, and interest in the Trust Assets, upon and subject to the terms and conditions set forth in this Agreement, the Plan, the Confirmation Order, and the Assigned Non-Debtor Causes of Action Agreement.

2.6 Name of Trust. The Unsecured Creditors' Trust created under the Plan and hereby shall officially be known as the "Buffets Unsecured Creditors' Trust".

2.7 Capacity of Trust. Notwithstanding any federal or state law to the contrary or anything herein, the Unsecured Creditors' Trust shall have the capacity, in its own right and name, to act or refrain from acting, including in the capacity to sue and be sued and to enter into contracts. The Unsecured Creditors' Trust alone may be the movant, respondent, party plaintiff or defendant, or the like, in any adversary proceedings, contested matters, and other state and federal proceedings brought by or against it, and may settle or compromise matters in its own name.

2.8 Transfer of Trust Assets.

2.8.1 Conveyance of Unsecured Creditors' Trust Assets. Pursuant to the Plan, the Debtors hereby grant, release, assign, transfer, convey and deliver, on behalf of the Beneficiaries and the Convenience Beneficiaries, the Trust Assets to the Unsecured Creditors' Trust as of the Effective Date in trust for the benefit of the Beneficiaries and the Convenience Beneficiaries to be administered and applied as specified in this Agreement and the Plan. Pursuant to the Plan and the Assigned Causes of Action Agreement, the Non-Debtor Parent Companies have effected the grant, release, assignment, transfer, conveyance and delivery, on behalf of the Beneficiaries

and the Convenience Beneficiaries, the Assigned Non-Debtor Causes of Action to the Unsecured Creditors' Trust as of the Effective Date in trust for the benefit of the Beneficiaries and the Convenience Beneficiaries to be administered and applied as specified in this Agreement and the Plan. The Reorganized Debtors shall, from time to time, as and when reasonably requested by the Unsecured Creditors' Trustee, execute and deliver or cause to be executed and delivered all such documents (in recordable form where necessary or appropriate) and the Reorganized Debtors shall take or cause to be taken such further action as the Unsecured Creditors' Trustee may reasonably deem necessary or appropriate, to vest or perfect in the Unsecured Creditors' Trust or confirm to the Unsecured Creditors' Trustee's title to and possession of the Trust Assets. The Unsecured Creditors' Trustee shall have no duty to arrange for any of the transfers contemplated under this Agreement, the Assigned Causes of Action Agreement or by the Plan or to ensure their compliance with the terms of the Plan, the Assigned Causes of Action Agreement or the Confirmation Order (as applicable), and shall be conclusively entitled to rely on the legality and validity of such transfers. Without the need for filing any motion for such relief, in connection with the Trust Assets, the Unsecured Creditors' Trust or the Unsecured Creditors' Trustee (as applicable) hereby shall be deemed substituted (i) for the Debtors (x) in all pending matters including but not limited to motions, contested matters and adversary proceedings in the Bankruptcy Court; and (y) any Causes of Action pending before the Bankruptcy Court or any other court; and (ii) for any plaintiffs, putative plaintiffs or claimants that are not Debtors in any Assigned Non-Debtor Causes of Action.

2.8.2 Title to Trust Assets. Pursuant to the Plan, all of the Debtors' right, title and interest in and to the Trust Assets, including all such assets held or controlled by third parties (which includes, but is not limited to, the Assigned Non-Debtor Causes of Action), are

automatically vested in the Unsecured Creditors' Trust on the Effective Date, free and clear of all liens, claims, encumbrances and other interests, except as specifically provided in the Plan or the other Transaction Documents, and such transfer is on behalf of the Beneficiaries and the Convenience Beneficiaries to establish the Unsecured Creditors' Trust. The Unsecured Creditors' Trust shall be authorized to obtain possession or control of, liquidate, and collect all of the Trust Assets in the possession or control of third parties, pursue all of the Causes of Action and Assigned Non-Debtor Causes of Action, and pursue, assert and/or exercise all rights of setoffs and recoupment and defenses of the Debtors or their Estates to any counterclaims that may be asserted by any and all defendants as to any Causes of Action, Assigned Non-Debtor Causes of Action and/or Holders of General Unsecured Claims or Convenience Claims. On the Effective Date, the Unsecured Creditors' Trust shall stand in the shoes of the Debtors and any third parties for all purposes with respect to the Trust Assets and administration of General Unsecured Claims and Convenience Claims. To the extent any law or regulation prohibits the transfer of ownership of any of the Trust Assets from the Debtors or any third parties to the Unsecured Creditors' Trust and such law is not superseded by the Bankruptcy Code, the Unsecured Creditors' Trust's interest shall be a lien upon and security interest in such Trust Assets, in trust, nevertheless, for the sole use and purposes set forth in this section 2.8, and this Agreement shall be deemed a security agreement granting such interest thereon without need to file financing statements or mortgages. By executing this Agreement, the Unsecured Creditors' Trustee on behalf of the Unsecured Creditors' Trust hereby accepts all of such property as Trust Assets, to be held in trust for the Beneficiaries and the Convenience Beneficiaries, subject to the terms of this Agreement and the Plan.

2.9 Preservation of Privileges and Defenses. The actions taken by the Debtors or the Reorganized Debtors in connection with the Plan, this Agreement and the Trust Assets shall not be (or deemed to be) a waiver of any privilege of any of the Debtors or the Reorganized Debtors, as applicable, including any attorney-client privilege or work-product privilege attaching to any document or communications (whether written or oral). Notwithstanding any Debtor or any party-in-interest in any Assigned Non-Debtor Causes of Action providing any privileged information to the Unsecured Creditors' Trust, Unsecured Creditors' Trustee, Trust Advisory Board or any member thereof, such privileged information shall be without waiver in recognition of the joint and/or successor interest in prosecuting the Causes of Action, Assigned Non-Debtor Causes of Action, and/or objections to General Unsecured Claims, Convenience Claims or Secured Claims, as applicable, and shall remain privileged.

ARTICLE III

ADMINISTRATION

3.1 Rights, Powers, Privileges and Duties. The Unsecured Creditors' Trustee shall have the rights, powers, privileges, and duties expressly provided in this Agreement and the Plan and any rights, powers, privileges, and duties reasonably incidental thereto, including, but not limited to:

A. Exercising all powers provided to the Unsecured Creditors' Trustee under this Agreement, the Plan, the Confirmation Order, and the Assigned Causes of Action Agreement and any documents ancillary thereto, including, but not limited to, the Secured Trust Note and other transaction documents included in the Plan Supplement;

B. Executing any documents and taking any other actions related to, or in connection with, the exercise of the Unsecured Creditors' Trustee's powers granted in this

Agreement, the Plan, the Confirmation Order, and the Assigned Non-Debtor Causes of Action Agreement;

C. Holding legal title to any and administering all rights of the Beneficiaries and the Convenience Beneficiaries in, to, or arising from the Trust Assets;

D. Protecting and enforcing the rights in and to and value of the Trust Assets vested in the Unsecured Creditors' Trust by this Agreement by any method consistent with the Plan, the Confirmation Order, and the Assigned Causes of Action Agreement reasonably determined by the Unsecured Creditors' Trustee to be appropriate, including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law and general principles of equity;

E. Liquidating the Trust Assets, including, without limitation, prosecuting, collecting, compromising and/or settling the Trust Causes of Action, as well as any rights under the Secured Trust Note and related security interests and documents;

F. Making distributions of the Trust Assets to or on behalf of the Beneficiaries, the Convenience Beneficiaries, and the substantial contribution claim of Value Extraction Services, LLC (as set forth in Article III., Section C. of the Plan) in accordance with this Agreement, the Plan, and the Confirmation Order and causing the Unsecured Creditors' Trust to withhold from the amount distributable to any Person the maximum amount needed to pay any tax or other charge the Unsecured Creditors' Trustee has determined, based on the advice of its professionals, may be required to be withheld from such distribution under applicable law;

G. Reconciliation and administration of General Unsecured Claims and Convenience Claims pursuant to the Plan;

H. Object to, settle or otherwise resolve objections to General Unsecured Claims and Convenience Claims;

I. Object to, settle or otherwise resolve objections to Secured Claims to the extent such Claims affect any potential recovery for the benefit of the Unsecured Creditors' Trust and/or the Beneficiaries, as well as to associated liens which may attach or be attached to any Trust Assets, including, without limitation, any Cash or other collateral in which the ACE Companies assert a security interest or other interest;

J. Retaining, as an expense, attorneys, advisors, other professionals and employees as may be appropriate in the Unsecured Creditors' Trustee's discretion to perform the duties required of the Unsecured Creditors' Trustee under this Agreement and/or the Plan;

J. Determining and satisfying any and all taxes and ordinary course liabilities associated with the Unsecured Creditors' Trust, including reasonable professional fees and expenses incurred with respect thereto;

K. Receiving reasonable compensation for performing services under this Agreement, provided that Reorganized Debtors shall not be responsible for paying any compensation to the Unsecured Creditors' Trustee and that such compensation shall be paid solely from the Trust Assets;

L. Filing any and all tax returns and paying taxes properly payable by the Unsecured Creditors' Trust, if any, as well as preparing, filing and issuing any and all necessary information returns, and taking any and all action necessary to obtain payment of any tax refund(s);

M. Complying with all applicable taxing laws and regulations and making distributions as and when may be required to ensure that the Unsecured Creditors' Trust created

hereunder shall be treated as “grantor trust” for tax purposes, with the Beneficiaries and/or Convenience Beneficiaries to be treated as the grantors and owners of the Trust Assets, and the Unsecured Creditors’ Trustee having the discretion to determine how and when to make distributions in the most efficient and cost-effective manner possible; provided, however, that its discretion may not be exercised in a manner inconsistent with any express requirements of the Plan or this Agreement, provided further that neither the Unsecured Creditors’ Trust nor the Unsecured Creditors’ Trustee shall have any responsibility whatsoever with respect to any of the Debtors’ or Reorganized Debtors’ tax returns due to be filed after the Effective Date or for any tax liability related thereto;

N. Making all necessary filings in accordance with any applicable law, statute, or regulation;

O. Investing the Trust Assets and any other assets or properties received by the Unsecured Creditors’ Trust created hereunder or the Unsecured Creditors’ Trustee or otherwise held by the Unsecured Creditors’ Trust created hereunder or the Unsecured Creditors’ Trustee in accordance with this Agreement;

P. In the event that the Unsecured Creditors’ Trustee determines that the Beneficiaries, Convenience Beneficiaries, or the Unsecured Creditors’ Trust created hereunder may, will or have become subject to different tax consequences than those described in this Agreement, taking such actions that will, or are intended to, address such different tax consequences;

Q. Creating sub-entities or title vehicles of which the Unsecured Creditors’ Trust created hereunder or the Beneficiaries or the Convenience Beneficiaries hold the beneficial or ownership interests, as applicable;

R. Opening and maintaining bank accounts on behalf of or in the name of the Unsecured Creditors' Trust created hereunder;

S. Maintaining on the Unsecured Creditors' Trust's books and records a register evidencing the beneficial interest in the entity created hereunder held by each Beneficiary or Convenience Beneficiary;

T. Being considered an estate representative under section 1123 of the Bankruptcy Code with respect to the Trust Assets;

U. Providing periodic reports and updates to the Reorganized Debtors upon reasonable request regarding all actions taken in furtherance of this Agreement, including, among other things, the status of the administration of the Trust Assets, liabilities incurred and distributions made pursuant to this Agreement and the Plan;

V. Having the right, but not the obligation, to provide periodic reports and updates to the Beneficiaries or Convenience Beneficiaries regarding, among other things, the status of the administration of the Trust Assets, liabilities incurred and distributions made pursuant to this Agreement and the Plan;

W. Performing such functions and taking such actions as are provided for, or permitted in, or are otherwise consistent with, this Agreement, the Plan, the Confirmation Order, or any other agreement executed pursuant to this Agreement, the Plan, or the Confirmation Order that the Unsecured Creditors' Trustee deems reasonably necessary or desirable to administer the Unsecured Creditors' Trust; and

X. Terminating the Unsecured Creditors' Trust created hereunder.

3.2 Claims Administration. Pursuant to the Plan, the Unsecured Creditors' Trustee's rights and duties with respect to claims administration are as follows:

A. The Unsecured Creditors' Trustee shall have standing and the exclusive right to reconcile, object to, settle, and make distribution decisions related to General Unsecured Claims (including, without limitation, Insured Claims) and Convenience Claims, and the Unsecured Creditors' Trustee may rely on the Debtors' schedules and/or the official claims register maintained in the Debtors' Bankruptcy Cases in reviewing, reconciling, or causing the Unsecured Creditors' Trust to allow, object to, settle or otherwise resolve any Claims;

B. The Unsecured Creditors' Trustee shall also have standing and the right to object to Secured Claims to the extent any such Claims affect any potential recovery for the benefit of the Unsecured Creditors' Trust and/or its beneficiaries, as well as to associated liens which may attach or be attached to any Trust Assets, including, without limitation, any Cash or other collateral in which the ACE Companies assert security interest or other interest;

C. The Unsecured Creditors' Trustee shall have standing and the right to litigate Causes of Action, Assigned Non-Debtor Causes of Action, and Claims objections filed prior to the Effective Date that remain pending as of the Effective Date;

D. The Unsecured Creditors' Trustee may assert any and all defenses, setoff and recoupment rights of any party related to all Claims, Causes of Action, and Non-Debtor Assigned Causes of Action; and

E. The Unsecured Creditors' Trustee may compromise and settle any and all Claims in its discretion without the need for approval by any court.

3.3 Agents and Professionals. The Unsecured Creditors' Trustee may, but shall not be required to, consult with and retain attorneys, financial advisors, accountants or other professionals and employees as the Unsecured Creditors' Trustee deems appropriate in the reasonable exercise of his, her or its discretion, and who the Unsecured Creditors' Trustee

reasonably determines to have qualifications necessary to assist the Unsecured Creditors' Trustee in the proper administration of the entity created hereunder. The Unsecured Creditors' Trustee shall pay the reasonable fees, costs and expenses of such persons out of the Trust Assets, on a first priority basis, in the ordinary course of business (with no other recourse to the Debtors, the Reorganized Debtors, or any property transferred pursuant to the Plan). The Reorganized Debtors shall not be responsible for paying any fees or expenses incurred by the Unsecured Creditors' Trustee.

3.4 Safekeeping of Trust Assets. The Trust Assets shall, until distributed or paid over as herein provided or as provided in the Plan, be held in trust for the benefit of the Beneficiaries, or the Convenience Beneficiaries, as applicable, in accordance with the Plan and this Agreement. The Unsecured Creditors' Trustee shall be under no liability for interest or producing income on any moneys received by him, her or it and held for distribution or payment to the Beneficiaries or Convenience Beneficiaries, except as such interest or income shall actually be received by the Unsecured Creditors' Trustee.

3.5 Limitations on Unsecured Creditors' Trustee. Neither the Unsecured Creditors' Trust nor the Unsecured Creditors' Trustee shall at any time enter into or engage in any trade or business, and no part of the Trust Assets or the proceeds, revenue, or income therefrom shall be used or disposed of by the Unsecured Creditors' Trust created hereunder in furtherance of any trade or business. Notwithstanding the foregoing, the Unsecured Creditors' Trustee is authorized and directed to perform obligations set forth herein and in the Plan.

3.6 Investment. The Unsecured Creditors' Trustee may only invest the Trust Assets or any proceeds, revenue, or income therefrom in Permitted Investments, in a manner consistent with the requirements of the Bankruptcy Code or any order of the Bankruptcy Court modifying

such requirements and, provided that the Unsecured Creditors' Trustee does so, he, she or it shall have no liability in the event of insolvency of any institution in which he, she or it has invested any of the Trust Assets or any proceeds, revenue, or income therefrom.

3.7 Unsecured Creditors' Trustee Action. The Unsecured Creditors' Trustee shall hold, collect, conserve, protect, and administer the Trust Assets in accordance with the provisions of this Agreement and the Plan, and pay and distribute amounts as set forth therein for the purposes set forth in the Plan and this Agreement. Any good faith determination by the Unsecured Creditors' Trustee as to what actions are in the best interests of the entity created hereunder and the Beneficiaries and/or the Convenience Beneficiaries shall be determinative.

3.8 Bankruptcy Court Approval of Unsecured Creditors' Trustee's Actions. Except as provided in the Plan or as otherwise specified in this Agreement, the Unsecured Creditors' Trustee need not obtain an order or approval of the Bankruptcy Court in the exercise of any power, rights, or discretion conferred hereunder, or account to the Bankruptcy Court. Except as provided in the Plan or otherwise specified in this Agreement, the Unsecured Creditors' Trustee shall exercise his, her or its business judgment for the benefit of the Beneficiaries in order to maximize the value of the Trust Assets and distributions, giving due regard to the cost, risk, and delay of any course of action. Notwithstanding the foregoing, the Unsecured Creditors' Trustee may submit to the Bankruptcy Court any question(s) for which the Unsecured Creditors' Trustee may desire to have explicit approval of the Bankruptcy Court for the taking of any specific action proposed to be taken by the Unsecured Creditors' Trustee with respect to the Trust Assets, the entity created hereunder, or the Beneficiaries or the Convenience Beneficiaries, and as provided in the Plan and this Agreement, including the administration and distribution of the Trust Assets. The Bankruptcy Court shall retain jurisdiction for such purposes and shall approve or disapprove

any such proposed action upon motion. Neither the Unsecured Creditors' Trust nor the Unsecured Creditors' Trustee shall have any liability whatsoever with respect to any act or omission that has been approved by the Bankruptcy Court.

3.9 The Trust Advisory Board

A. Subject to the provisions of the Unsecured Creditors' Trust Agreement, the Trust Advisory Board shall be comprised of up to three (3) members which shall be designated by the Creditors' Committee. The Unsecured Creditors' Trustee shall consult as the Unsecured Creditors' Trustee deems necessary or as reasonably requested by the Trust Advisory Board when carrying out the purpose and intent of the Unsecured Creditors' Trust. Members of the Trust Advisory Board shall be entitled to reimbursement of the reasonable and necessary expenses incurred by them in carrying out the purpose of the Trust Advisory Board, which shall be payable by the Unsecured Creditors' Trust.

B. In the case of an inability or unwillingness of any member of the Trust Advisory Board to serve, such member may (but is not required to be) be replaced by designation of the remaining members of the Trust Advisory Board.

C. Upon the distribution of the Unsecured Creditors' Trust Proceeds, and the completion of the Unsecured Creditors' Trustee's responsibilities, the members of the Trust Advisory Board shall be deemed to resign their positions, whereupon they shall be discharged from further duties and responsibilities.

D. Notwithstanding anything to the contrary in the Plan, neither the Trust Advisory Board nor any of its members, designees, counsel, financial advisors or any duly designated agent or representatives of any such party shall be liable for the act, default or

misconduct of any other member of the Trust Advisory Board, nor shall any member be liable for anything other than such members' own gross negligence or willful misconduct. The Trust Advisory Board may, in connection with the performance of its duties, and in its sole and absolute discretion, consult with its counsel, accountants or other professionals, and shall not be liable for anything done or omitted or suffered to be done in accordance with such advice or opinions. If the Trust Advisory Board determines not to consult with counsel, accountants or other professionals, such action or omission shall not be deemed to impose any liability on the Trust Advisory Board, or its members and/or designees.

E. The Trust Advisory Board may govern its proceedings through the adoption of bylaws, which the Trust Advisory Board may adopt by majority vote.

ARTICLE IV

DISTRIBUTIONS TO BENEFICIARIES

4.1 Convenience Claims Distribution. The Unsecured Creditors' Trustee shall make the Convenience Claims Distribution to the holders of Allowed Convenience Claims on or before the date that is 180 days after the Effective Date (the "Initial Distribution Date") or as soon thereafter as (1) all Convenience Class Claims have been either Allowed or disallowed or (2) is otherwise practicable. Each holder of an Allowed Convenience Claim shall receive, in full and final satisfaction of such Claim, either a distribution in Cash equal to ten percent (10%) of such holder's Allowed Convenience Claim or such holder's *pro rata* share of a maximum combined distribution in the amount of \$425,000 (the "Convenience Class Cash") to be funded out of the Unsecured Creditors' Trust proceeds to holders of Allowed Convenience Claims, whichever is less. Any portion of the Convenience Class Cash remaining after all distributions on account of Class 5 Claims shall be applied to fund distributions on account of Class 4 Claims.

4.2 Distributions to Holders of General Unsecured Claims. The Unsecured Creditors' Trustee shall make its first *pro rata* distributions to holders of Allowed General Unsecured Claims from Available Cash, less any Class 4 Disputed Claims Reserve, to the Beneficiaries on or before the date that is 180 days after the Effective Date (*i.e.*, the "Initial Distribution Date") or as soon thereafter as is practicable in the Unsecured Creditors' Trustee's discretion, and shall have the discretion to identify additional periodic distribution dates ("Periodic Distribution Dates") for purposes of making distributions pursuant to the Plan, as necessary. Periodic Distribution Dates shall occur at least annually, except that the Unsecured Creditors' Trustee may retain an amount of net income and other Trust Assets reasonably necessary to maintain the value of the Trust Assets or to meet expenses, claims and contingent liabilities of the trust and Unsecured Creditors' Trustee, and retention of such amount may preclude Distributions to Beneficiaries.

Upon the completion of the claims reconciliation process in accordance with the procedures set forth in the Plan, the Unsecured Creditors' Trustee shall distribute the Class 4 Disputed Claims Reserve to the holders of Allowed Class 4 General Unsecured Claims such that, after giving effect to such distribution, each holder of an Allowed General Unsecured Claim shall have received its *pro rata* share of the Trust Assets.

In order to receive a distribution, the Unsecured Creditors' Trustee shall require any Beneficiary to furnish to the Unsecured Creditors' Trustee an executed IRS Form W-9 or applicable IRS Form W-8, and the Unsecured Creditors' Trustee may condition any Distribution upon receipt of such document. Failure to supply such Form W-9 or applicable IRS Form W-8 shall relieve the Unsecured Creditors' Trustee from making any distribution to such non-complying Beneficiary. Any Beneficiary that does not provide his, her or its current executed

Form W-9, Form W-8, or similar tax form within thirty (30) days of the Unsecured Creditors' Trustee's written request for such form shall have his, her or its claim treated as an unclaimed property under the Plan without further order of the Bankruptcy Court or action by the Unsecured Creditors' Trustee.

4.3 Class 4 Disputed Claims Reserve. The Unsecured Creditors' Trustee shall reserve a portion of the Trust Assets for the benefit of the holders of Disputed Claims, in an amount equal to the Plan Distributions such holders of Disputed Claims would be entitled to receive on the Initial Distribution Date or other Periodic Distribution Date if such Disputed Claims were Allowed in their full amounts on such date (or, if applicable, the amounts of the Disputed Claims as estimated by the Bankruptcy Court pursuant to the Plan).

4.4 Distributions on Disputed Claims. Unless the Unsecured Creditors' Trustee otherwise agrees or determines, no partial distributions shall be made with respect to a Disputed Claim until all disputes in connection with such Disputed Claim have been resolved by Final Order of the Bankruptcy Court. Any holder of a Disputed Claim that ultimately becomes an Allowed General Unsecured Claim shall (i) receive no more from the Class 4 Disputed Claims Reserve than the amount reserved with respect to such Disputed Claim under the Plan and this Agreement, and (ii) not have recourse to the Debtors, the Reorganized Debtors, or any property transferred pursuant to the Plan (other than the Trust Assets and the Class 4 Disputed Claims Reserve).

4.4 Undeliverable Distributions. If a distribution is returned as undeliverable, or no address for such holder is found in the Debtors' records, such undeliverable distributions shall be governed by Article VII.G.1.(iii) of the Plan.

4.5 Withholding from Distributions. The Unsecured Creditors' Trustee may withhold from amounts distributable to any Beneficiary or Convenience Beneficiary any and all amounts, determined in the sole and reasonable discretion of the Unsecured Creditors' Trustee, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

4.6 De Minimis Distributions. The Unsecured Creditors' Trustee shall not be required to make distributions to any Beneficiary if the dollar amount of the distribution is less than \$10.00.

4.7 Payments Limited to Trust Assets. All payments to be made by the Unsecured Creditors' Trustee to or for the benefit of any Beneficiary or Convenience Beneficiary shall be made only from the Trust Assets or proceeds thereof.

4.8 Change of Address. A Beneficiary or Convenience Beneficiary may, after the Effective Date, select an alternative distribution address by filing a notice with the Bankruptcy Court or by submitting written notice under penalty of perjury to the Unsecured Creditors' Trustee identifying such alternative distribution address. Absent such notice or unless otherwise agreed to by the Unsecured Creditors' Trustee, the Unsecured Creditors' Trustee shall not recognize any such change of distribution address. Such notification shall be effective only upon written receipt by the Unsecured Creditors' Trustee satisfactory to the Unsecured Creditors' Trustee accompanied by sufficient evidence of a change of address.

ARTICLE V

BENEFICIARIES

5.1 Incidents of Ownership. The Beneficiaries and the Convenience Beneficiaries shall be the sole beneficiaries of the entity created hereunder and the Trust Assets (subject to the Reorganized Debtors' reversionary interest set forth in Section 10.4 below), and the Unsecured

Creditors' Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized in this Agreement, the Plan and the Confirmation Order.

5.2 Interest Beneficial Only. The ownership of a beneficial interest in the entity created hereunder shall not entitle any Beneficiary or Convenience Beneficiary to any title in or to the Trust Assets or to any right to call for a partition or division of such assets or to require an accounting.

5.3 Evidence of Beneficial Interest. Ownership of a beneficial interest in the Trust Assets shall not be evidenced by any certificate, security, or receipt, or in any other form or manner whatsoever, except as maintained on the books and records of the entity created hereunder by the Unsecured Creditors' Trustee.

5.4 Notice of Transfer of Beneficial Interest. Any notice of a change of beneficial interest ownership shall be provided in accordance with this Agreement. The notice shall be executed by both the transferee and the transferor with the transferee supplying an IRS Form W-9 or applicable IRS Form W-8 within ten (10) days of the aforementioned notice, and the signatures of the parties shall be acknowledged before a notary public under penalty of perjury and as required by Bankruptcy Rule 3001(e). The notice must clearly describe the interest to be transferred. The Unsecured Creditors' Trustee may rely upon such signatures and acknowledgments as evidence of such transfer without the requirement of any further investigation.

ARTICLE VI

THIRD PARTY RIGHTS AND LIMITATION OF LIABILITY

6.1 Reliance. Except as otherwise provided in this Agreement, the Plan, or the Confirmation Order, the Unsecured Creditors' Trustee may rely and shall be protected in acting

upon any resolution, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document reasonably believed to be genuine and to have been signed or presented to the Unsecured Creditors' Trustee.

6.2 Parties Dealing With the Unsecured Creditors' Trustee. In the absence of actual knowledge to the contrary, any person dealing with the Unsecured Creditors' Trust created hereunder or the Unsecured Creditors' Trustee shall be entitled to rely on the authority of the Unsecured Creditors' Trustee or any of the Unsecured Creditors' Trustee's agents to act in connection with the Trust Assets. There is no obligation on any Person dealing with the Unsecured Creditors' Trustee to inquire into the validity, expediency, or propriety of any transaction by the Unsecured Creditors' Trustee or any agent of the Unsecured Creditors' Trustee.

6.3 Limited Recourse. Persons (including any professionals retained by the Unsecured Creditors' Trustee in accordance with this Agreement) engaged in transactions with the Unsecured Creditors' Trust created hereunder or the Unsecured Creditors' Trustee shall look only to the Trust Assets to satisfy any liability incurred in connection with the carrying out the terms of this Agreement, the Plan, or the Confirmation Order.

6.4 Indemnification and Exculpation. The Unsecured Creditors' Trustee or the individuals comprising the Unsecured Creditors' Trustee, as the case may be, and the Unsecured Creditors' Trustee's agents and professionals, shall not be liable for actions taken or omitted in its capacity as, or on behalf of, the Unsecured Creditors' Trustee, except those acts arising out of its or their own willful misconduct or gross negligence, and each shall be entitled to indemnification and reimbursement for fees and expenses in defending any and all of its actions or inactions in its capacity as, or on behalf of, the Unsecured Creditors' Trustee, except for any

actions or inactions involving willful misconduct or gross negligence. Any indemnification claim of the Unsecured Creditors' Trustee (and the other parties entitled to indemnification under this subsection) shall be satisfied solely from the Trust Assets. The Unsecured Creditors' Trustee shall be entitled to rely, in good faith, on the advice of its retained professionals, and shall not be liable for any action taken, omitted, or suffered in reliance on the advice of such retained professionals, regardless of whether such advice or opinions are provided in writing. In no event shall the Unsecured Creditors' Trustee be liable for indirect, special, punitive, incidental or consequential damages (including, but not limited to, lost profits) even if Unsecured Creditors' Trustee has been informed of the likelihood of such damages.

6.5 Non-Liability for Acts of Others. Nothing contained in this Agreement, the Plan, or the Confirmation Order shall be deemed to be an assumption by the Unsecured Creditors' Trustee of any of the liabilities, obligations, or duties of the Debtors, Beneficiaries, or Convenience Beneficiaries and shall not be deemed to be or contain a covenant or agreement by the Unsecured Creditors' Trustee to assume or accept any such liability, obligation, or duty. Any successor Unsecured Creditors' Trustee may accept and rely upon any accounting made by or on behalf of any predecessor Unsecured Creditors' Trustee hereunder, and any statement or representation made by a predecessor Unsecured Creditors' Trustee or his, her, or its agents as to the Trust Assets or as to any other fact bearing upon the prior administration of the entity created hereunder, so long as he, she, or it has a good faith basis to do so. The Unsecured Creditors' Trustee or successor Unsecured Creditors' Trustee shall not be liable for having accepted and relied in good faith upon any such accounting, statement, or representation if it is later proved to be incomplete, inaccurate, or untrue. The Unsecured Creditors' Trustee or successor Unsecured Creditors' Trustee shall not be liable for any act or omission of any predecessor Unsecured

Creditors' Trustee, nor have a duty to enforce any claims against any predecessor Unsecured Creditors' Trustee on account of any such act or omission.

ARTICLE VII

REMOVAL AND COMPENSATION OF UNSECURED CREDITORS' TRUSTEE

7.1 Term of Service. The Unsecured Creditors' Trustee shall serve until (a) the completion of all the Unsecured Creditors' Trustee duties, responsibilities and obligations under this Agreement and the Plan; (b) termination of the Unsecured Creditors' Trust created hereunder in accordance with this Agreement; or (c) the Unsecured Creditors' Trustee's death, liquidation, dissolution, incapacitation, resignation, or removal, as set forth below or as provided for in the Plan. Without limiting in any way any provision of this Agreement, the provisions of Article VI of this Agreement shall survive the death, liquidation, dissolution, incapacitation, resignation, or removal of the Unsecured Creditors' Trustee or the termination of the Unsecured Creditors' Trust or this Agreement.

7.2 Removal of Unsecured Creditors' Trustee. The Trust Advisory Board may remove the Unsecured Creditors' Trustee in its discretion. The Unsecured Creditors' Trustee also may be removed by the Court for cause shown. If removal of the Unsecured Creditors' Trustee is sought from the Bankruptcy Court under such a motion for cause (or similar motion), then the Unsecured Creditors' Trustee is entitled to oppose such motion and to pay his, her or its reasonable attorneys' fees and expenses in connection with such objection from the Trust Assets.

7.3 Resignation of Unsecured Creditors' Trustee. The Unsecured Creditors' Trustee may resign at any time by giving the Trust Advisory Board at least thirty (30) days' written notice of the Unsecured Creditors' Trustee intention to do so. In the event of a resignation, the resigning Unsecured Creditors' Trustee shall render to the Trust Advisory Board a full and

complete accounting of monies and assets received, disbursed, and held during the term of office of that Unsecured Creditors' Trustee. The resignation shall be effective on the later of (a) the date specified in the notice; (b) the date that is thirty days (30) after the date the notice is delivered; or (c) the date the accounting described in the preceding sentence is delivered.

7.4 Appointment of Successor Unsecured Creditors' Trustee. Subject to the Plan, upon the resignation, death, incapacity, dissolution, liquidation, or removal of an Unsecured Creditors' Trustee the Trust Advisory Board shall, by majority vote, designate a person to serve as successor Unsecured Creditors' Trustee. The identity of any successor Unsecured Creditors' Trustee shall be promptly disclosed in a filing with the Court. Any successor Unsecured Creditors' Trustee so appointed shall consent to and accept in writing the terms of this Agreement and agree that the provisions of this Agreement shall be binding upon and inure to the benefit of the successor Unsecured Creditors' Trustee and all of the successor Unsecured Creditors' Trustee's heirs and legal and personal representatives, successors or assigns. Notwithstanding anything in this Agreement, in the event that a successor Unsecured Creditors' Trustee is not appointed within sixty (60) days of the occurrence or effectiveness, as applicable, of the prior Unsecured Creditors' Trustee's resignation, death, incapacity, or removal, the Bankruptcy Court shall appoint a successor Unsecured Creditors' Trustee upon motion of a party in interest or otherwise.

7.5 Powers and Duties of Successor Unsecured Creditors' Trustee. A successor Unsecured Creditors' Trustee shall have all the rights, privileges, powers, and duties of the predecessor Unsecured Creditors' Trustee under this Agreement and the Plan.

7.6 Continuance. The death, incapacity, resignation or removal of the Unsecured Creditors' Trustee shall not terminate the Unsecured Creditors' Trust created hereunder or

revoke any existing agency created pursuant to this Agreement or invalidate any action theretofore taken by the Unsecured Creditors' Trustee.

ARTICLE VIII

TAX TREATMENT

8.1 Tax Treatment. It is intended that the Unsecured Creditors' Trust created hereunder be classified for federal income tax purposes as a "liquidating trust" within the meaning of Treasury Regulations Section 301.7701-4(d) and as a "grantor trust" within the meaning of Sections 671 through 677 of the Internal Revenue Code. In furtherance of this objective, the Unsecured Creditors' Trustee shall, in its business judgment, make continuing best efforts not to unduly prolong the duration of the entity created hereunder. All assets, as described in Section 2.3 of this Agreement, held by the Unsecured Creditors' Trust shall be deemed for federal income tax purposes to have been distributed by the Debtors or Reorganized Debtors to holders of Allowed General Unsecured Claims in Class 4 and Allowed Convenience Claims in Class 5 under the Plan and then contributed by such holders to the Unsecured Creditors' Trust in exchange for their interest in the Unsecured Creditors' Trust. The deemed distribution and contribution of the assets shall take place in a manner as set forth in this Agreement. All holders shall use the valuation of the assets transferred to the Unsecured Creditors' Trust as established by the Unsecured Creditors' Trustee for all federal income tax purposes. The Beneficiaries and Convenience Beneficiaries will be treated as the grantor of the Unsecured Creditors' Trust created hereunder. The Unsecured Creditors' Trust created hereunder will be responsible for filing information on behalf of the Unsecured Creditors' Trust created hereunder as grantor trust pursuant to Treasury Regulation Section 1.671-4(a). The foregoing treatment shall also apply, to the extent permitted by applicable law, for all state, provincial,

territorial, non-U.S., and local income tax purposes. Further, the Unsecured Creditors' Trust is intended to comply with the conditions and the requirements set forth in Rev. Proc. 94-45, 1994-2 CB 684.

As soon as reasonably practicable following the Effective Date, (i) the Unsecured Creditors' Trustee will determine the fair market value of the Trust Assets (other than Cash) as of the Effective Date, based on a good faith determination and the advice of any professionals retained by the Unsecured Creditors' Trustee for such purpose, and (ii) the Unsecured Creditors' Trustee shall notify the Debtors, the Reorganized Debtors, the Convenience Beneficiaries, and the Beneficiaries of such valuation. Such valuation must be utilized by the Debtors, the Reorganized Debtors, the Unsecured Creditors' Trustee, and the Beneficiaries for all U.S. federal income tax purposes.

Other than with respect to the Disputed Claims Reserve, allocations of taxable income with respect to the Unsecured Creditors' Trust shall be determined by reference to the manner in which an amount of cash equal to such taxable income would be distributed (without regard to any restriction on distributions described herein) if, immediately prior to such deemed distribution, the Unsecured Creditors' Trust had distributed all of its other assets (valued for this purpose at their tax book value) to the Beneficiaries and Convenience Beneficiaries, taking into account all prior and concurrent distributions from the Unsecured Creditors' Trust. Similarly, taxable losses of the Unsecured Creditors' Trust will be allocated by reference to the manner in which an economic loss would be borne immediately after a liquidating distribution of the remaining assets. The tax book value of the assets for this purpose shall equal their fair market value on the Effective Date or, if later, the date such assets were acquired by the assets, adjusted in either case in accordance with tax accounting principles prescribed by the applicable Internal

Revenue Code provisions, the Treasury Regulations and other applicable administrative and judicial authorities and pronouncements.

To the extent any remaining proceeds (after full satisfaction of the Beneficiaries' Allowed Class 4 General Unsecured Claims, the Convenience Beneficiaries' Allowed Class 5 Claims, and resolution of all Disputed General Unsecured Claims and payment of all other amounts that may reasonably be required to satisfy unpaid costs or expenses of the Unsecured Creditors' Trustee entitled to be paid pursuant to this Agreement, including without limitation, any and all taxes and professionals' fees and costs) are distributed to the Reorganized Debtors, the Unsecured Creditors' Trust, the Unsecured Creditors' Trustee, Beneficiaries, and/or Convenience Beneficiaries shall not be responsible for paying any taxes on or associated with such remaining proceeds distributed to the Reorganized Debtors, and the Reorganized Debtors shall not look to the Trust Assets, the Unsecured Creditors' Trust, the Unsecured Creditors' Trustee, the Beneficiaries, or the Convenience Beneficiaries for payment or reimbursement of any such taxes.

The Unsecured Creditors' Trustee may, in its sole discretion, (i) timely elect to treat the Disputed Claims Reserve as a "disputed ownership fund" governed by Treasury Regulation section 1.468B-9, and (ii) to the extent permitted by applicable law, report consistently with the foregoing for applicable state, provincial, territorial, non-U.S., and local income tax purposes.

8.2 Tax Returns. In accordance with the Plan, the Unsecured Creditors' Trustee shall cause the filing of tax returns for the entity created hereunder, as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a); *provided, however*, that the Unsecured Creditors' Trustee shall take all appropriate steps to file separate returns required with respect to the

Disputed Claims Reserve to the extent that an election (if any) is made to report a reserve for disputed Claims as a disputed ownership fund.

8.3 Determination of Taxes. The Unsecured Creditors' Trustee may request an expedited determination of taxes of the Unsecured Creditors' Trust, under Bankruptcy Code Section 505(b) for all returns filed for, or on behalf of, the Unsecured Creditors' Trust for all taxable periods through the dissolution of the Unsecured Creditors' Trust, and to take any and all action necessary to obtain payment of any tax refund(s) due to the Unsecured Creditors' Trust.

8.4 Filing, Reporting, Withholding, Liability for Taxes. The Unsecured Creditors' Trustee shall be responsible for filing all federal, state, local and foreign tax returns for the Unsecured Creditors' Trust. The Unsecured Creditors' Trust shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions made by the Unsecured Creditors' Trust shall be subject to any such withholding and reporting requirements. Any amounts withheld pursuant to this Section 8.4 shall be treated as distributed to the Person or entity in respect of whom such withholding was made.

The Unsecured Creditors' Trust shall be responsible for payment, solely from the assets contributed to the Unsecured Creditors' Trust, for any Taxes imposed on the Unsecured Creditors' Trust, including the Disputed Claims Reserve.

ARTICLE IX

MAINTENANCE OF BOOKS AND RECORDS

9.1 The Unsecured Creditors' Trustee shall maintain books and records containing a description of all property from time to time constituting the Trust Assets and an accounting of all receipts and disbursements. Said books and records shall be open to inspection by any Beneficiary, Convenience Beneficiary, or the Reorganized Debtors at any reasonable time during

normal business hours. The Unsecured Creditors' Trustee shall furnish to any Beneficiary or Convenience Beneficiary upon written request an annual statement of receipts and disbursements, including a summary of all income and expenses of the entity created hereunder.

ARTICLE X

DURATION, BUDGET, AND COST RESERVE

10.1 Duration. The Unsecured Creditors' Trust shall become effective upon the Effective Date of the Plan and shall remain and continue in full force and effect until the entity created hereunder is terminated.

10.2 Termination. Subject to the Plan, the Unsecured Creditors' Trustee shall be discharged and the Unsecured Creditors' Trust shall be terminated, at such time as (1) all Disputed General Unsecured Claims, Convenience Claims or Secured Claims (as applicable) have been resolved, (2) all of the Trust Assets have been liquidated, (3) all duties and obligations of the Unsecured Creditors' Trustee hereunder and in the Plan have been fulfilled, and (4) all distributions required to be made to the Beneficiaries and Convenience Beneficiaries under the Plan and the Agreement have been made (including the reversion and distribution of amounts to the Reorganized Debtors in accordance with Section 10.4 below). In no event shall the entity created hereunder be dissolved later than five (5) years from the Effective Date unless (a) the Unsecured Creditors' Trustee and the Trust Advisory Board agree, or (b) the Bankruptcy Court, upon motion by the Unsecured Creditors' Trustee, determines that a fixed period extension is necessary to facilitate or complete the liquidation, recovery and distribution of the Trust Assets; provided however that any such extension shall not adversely affect the status of the entity created hereunder as a liquidating trust for federal income tax purposes.

10.3 Continuance for Winding Up. After the termination of the Unsecured Creditors' Trust and for the purpose of liquidating and winding up the affairs of the Unsecured Creditors' Trust, the Unsecured Creditors' Trustee shall continue to act as such until the Unsecured Creditors' Trustee's duties have been fully performed, including, without limitation, such post-distribution tasks as necessary to windup the affairs of the Unsecured Creditors' Trust. After the termination of the entity created hereunder, the Unsecured Creditors' Trustee shall retain for a period of six (6) months the books, records, beneficiary lists, and certificates and other documents and files which shall have been delivered to or created by the Unsecured Creditors' Trustee. At the Unsecured Creditors' Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after six (6) months from the completion and winding up of the affairs of the Unsecured Creditors' Trust. Except as otherwise specifically provided for herein, upon the final distribution and discharge of all liabilities of the Unsecured Creditors' Trust, the Unsecured Creditors' Trustee shall have no further duties or obligations hereunder.

10.4 Reversion to Debtors; Distribution of Remaining Assets. Notwithstanding anything to the contrary herein (a) under no circumstances shall any Beneficiary recover from the Trust Assets an amount greater than the Allowed amount of its General Unsecured Claim and (b) in the event that all Allowed General Unsecured Claims have been fully satisfied and all Disputed General Unsecured Claims have been resolved, any remaining amounts (other than such amounts that may reasonably be required to satisfy unpaid costs or expenses of the Unsecured Creditors' Trustee entitled to be paid pursuant to this Agreement, including without limitation, any and all taxes and professional fees and costs) shall revert and be distributed to the Reorganized Debtors.

ARTICLE XI

MISCELLANEOUS

11.1 Jurisdiction. The Bankruptcy Court shall have exclusive jurisdiction over (a) the Unsecured Creditors' Trust and the Unsecured Creditors' Trustee with respect to the administration of and activities relating to the Unsecured Creditors' Trust, as well as (b) any issues or disputes arising out of this Agreement.

11.2 Limitation on Transferability. An assignment or transfer of a Beneficiary's interest shall not be effective until appropriate notification and proof thereof is submitted to the Unsecured Creditors' Trustee and a new IRS Form W-9 or applicable IRS Form W-8 is received by the Unsecured Creditors' Trustee, and the Unsecured Creditors' Trustee may continue to pay all amounts to or for the benefit of the assigning or transferring Beneficiary until receipt of proper notification and proof of assignment or transfer. The Unsecured Creditors' Trustee may rely upon such proof without the requirement of any further investigation.

11.3 Notices. All notices to be given to Beneficiaries and Convenience Beneficiaries may be given by ordinary mail, or may be delivered personally, to the holders at the addresses appearing on the books kept by Unsecured Creditors' Trustee. Any notice or other communication which may be or is required to be given, served, or sent to the Unsecured Creditors' Trustee shall be in writing and shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, or transmitted by hand delivery or facsimile (if receipt is confirmed) addressed as follows:

If to the Unsecured Creditors' Trustee:

META Advisors, LLC
101 Park Avenue
New York, New York 10175
Attn.: James D. Hunt

with copies to:

David B. Kurzweil
Greenberg Traurig, LLP
Terminus 200
3333 Piedmont Road, NE, Suite 2500
Atlanta, Georgia 30305
Facsimile: 678-553-2681

or to such other address as may from time to time be provided in written notice by the Unsecured Creditors' Trustee.

11.4 No Bond. Notwithstanding any state law to the contrary, the Unsecured Creditors' Trustee (including any successor) shall be exempt from giving any bond or other security in any jurisdiction. The Unsecured Creditors' Trustee may, in his, her, or its discretion, obtain insurance coverage with respect to the liabilities and obligations of the Unsecured Creditors' Trustee and the Trust Advisory Board, which shall be an expense of the Unsecured Creditors' Trust and paid out of the Trust Assets.

11.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to conflicts of law principles.

11.6 Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto and their respective successors and assigns.

11.7 Headings. The various headings of this Agreement are inserted for convenience only and shall not affect the meaning or understanding of this Agreement or any provision hereof.

11.8 No Execution. All funds in the Unsecured Creditors' Trust shall be deemed *in custodia legis* until such times as the funds have actually been paid to or for the benefit of a Beneficiary or Convenience Beneficiary, and no Beneficiary or Convenience Beneficiary or any other person can bind, pledge, encumber, execute upon, garnish, or attach the Trust Assets or the Unsecured Creditors' Trustee in any manner or compel payment from the Unsecured Creditors' Trust except by Final Order of the Bankruptcy Court. Payment shall be governed solely by the Plan and this Agreement.

11.9 Plan and Confirmation Order. To the extent that the terms of this Agreement are inconsistent with the terms set forth in the Plan, then the terms of the Plan shall govern and control. To the extent that the terms of this Agreement are inconsistent with the terms set forth in the Confirmation Order, then the terms of the Confirmation Order shall govern and control.

11.10 Severability. If any term, provision, covenant, or restriction contained in this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable, or against its regulatory policy, the remainder of the terms, provisions, covenants, and restrictions contained in this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

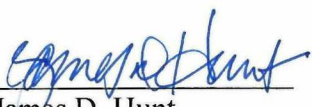
11.11 Counterparts. This Agreement may be executed simultaneously in counterparts and each such counterpart shall be deemed an original, all of which counterparts together shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement (or are
deemed to have so executed this Agreement) as of the day and year written above.

META Advisors LLC, not individually, but
solely in its capacity as Unsecured Creditors'
Trustee of the Buffets Unsecured Creditors'
Trust

By: _____


James D. Hunt
Chief Operating Officer

Buffets, LLC and its affiliated debtors and
debtors in possession

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, the Parties have executed this Agreement (or are
deemed to have so executed this Agreement) as of the day and year written above.

Unsecured Creditors' Trustee

By: _____
Name: _____
Title: Unsecured Creditors' Trustee

Buffets, LLC and its affiliated debtors and
debtors in possession

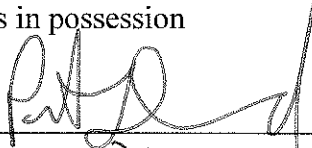
By: 
Name: Peter Donbavand
Title: vice president

EXHIBIT D
Members of the Trust Advisory Board

Trust Advisory Board:

Daniel Van Eerden
Kyle J. Long
Kirk R. Carson

Trustee:

META Advisors LLC

EXHIBIT E
Trust Causes of Action

Buffets, LLC et. al

United States Bankruptcy Court for the Western District of Texas, San Antonio Division

Case No. 16-50557

Exhibit E to Plan Supplement

Schedule of Trust Causes of Action

Pursuant to the terms of the Plan¹ (including, without limitation, Article VII.D.2. of the Plan) and 11 U.S.C. § 1123(b)(3)(B), on the Effective Date, all Claims, counterclaims, defenses, and Causes of Action of the Debtors or any of their Estates, as well as any and interests of the Debtors in any of the foregoing, whether or not previously asserted, are retained under the Plan and (excluding the Excluded Causes of Action to the extent provided by the Plan) transferred to and vest in the Unsecured Creditors' Trust, to be prosecuted exclusively by the Unsecured Creditors' Trustee for the benefit of the beneficiaries of the Unsecured Creditors' Trust, including, without limitation, the following Claims, counterclaims, defenses, and Causes of Action:

1. All actual and potential Claims, counterclaims, defenses, Causes of Action held by any of the Debtors or any of their Estates as of the Effective Date, as well as any and interests of the Debtors in any of the foregoing, whether or not previously asserted, are preserved under the Plan for the benefit of the Unsecured Creditors' Trust.

2. All Claims, counterclaims, defenses, and Causes of Action for, without limitation, Avoidance Actions, commercial torts, tortious interference with contractual or business relations, unfair competition, breach of contract, unjust enrichment, money had and received, embezzlement, loss of income, setoff, recoupment, fraud, fraudulent inducement, misrepresentation, fraudulent or negligent omission, fraudulent or preferential transfers arising other than under the Bankruptcy Code, conversion, replevin, lender liability, challenges as to the extent, priority, and validity of any purported claims, liens and/or security interests, injury to property and/or title to property, negligence, gross negligence, recklessness, willful misconduct, conspiracy, aiding and abetting, breach of fiduciary duty, breach of confidential relationship, mismanagement, violation of securities laws, self-dealing, usurpation of corporate opportunity, insolvent trading, breach of duty of loyalty, allowing, authorizing and/or receiving unlawful or improper distributions, unreasonable related party transactions, uncommercial transactions, improper redemption of equity interests, breach of duty of good faith, breach of duty to provide information, breach of duties of care and/or diligence, failure to make informed decisions, improper use of information to gain improper advantage, and actions seeking affirmative recoveries, and other, similarly grounded Claims, counterclaims, defenses, and Causes of Action.

¹ Unless otherwise defined herein, capitalized terms shall have the meanings set forth in the Debtors' Amended Plan (the "Plan") [Doc. 2244] filed on February 24, 2017, as subsequently amended and confirmed by the Bankruptcy Court.

3. All other counterclaims and defenses, including, without limitation, rights of setoff and recoupment, and all defenses of the estate under 11 U.S.C. § 558 as it relates to Class 4 and Class 5 Creditors.

4. All Claims and Causes of Action alleging generalized harm to the Estates, as referred to in judicial precedents such as *Schimmelpenninck v. Byrne (In re Schimmelpenninck)*, 183 F.3d 347 (5th Cir. 1999).

5. All Claims and Causes of Action asserting equitable, declaratory, or injunctive relief.

6. All Claims and Causes of Action asserting alter ego, corporate veil piercing, or reverse veil piercing as a means to recover on a Claim or Cause of Action transferred to the Unsecured Creditors Trust.

7. All Claims, counterclaims, defenses, and Causes of Action comprising or related to the Excluded Insider Causes of Action, subject to the injunction and release provisions in the Plan.

8. All Claims, counterclaims, defenses, Causes of Action, and associated rights assigned to the Unsecured Creditors' Trust pursuant to the Assigned Causes of Action Agreement.

9. All claims, rights, causes of action, and remedies arising from, flowing from, or related to the negotiation, execution, performance, and/or breach of that certain Agreement and Plan of Merger dated July 20, 2015 and all related agreements (the "**Merger Agreement**"), including without limitation the following:

- a. All Claims, Causes of Action, and proceeds thereof stemming from any contractual breach of the Merger Agreement including without limitation any inaccuracy of any representations or any breach of any covenants or warranties;
- b. All Claims and rights to all funds held in any escrow account pursuant to the Merger Agreement;
- c. All rights of indemnification under the Merger Agreement;
- d. All Claims, Causes of Action, and proceeds thereof stemming from any fraudulent misrepresentation or any other tort committed by any person; and
- e. All other rights, Claims, Causes of Action, and proceeds arising from, flowing from, or related to the Merger Agreement or the negotiation, execution, and/or performance thereof.

10. All Claims and Causes of Action arising under or related to any policy of insurance against any insurer, such insurer's agents, affiliates, related entities, principals, officers and employees, or any other person or entity related to any policy of insurance that is not assumed under the Plan and/or does not relate to a claim for which the Reorganized Debtor would be responsible under the Plan.

11. All interests, Claims, Causes of Action, rights, and remedies, including without limitation all rights to coverage for losses and costs or indemnification therefor as relates to Class 4 and Class 5 Claims, to recover any collateral, refunds, or insurance proceeds, or to assert and recover for any breach or for any violation of any applicable law, of, under, or related to any of the following insurance policies and all related ancillary agreements or related applicable law:

a. All directors and officers insurance policies or similar policies providing any coverage or indemnification for or related to any breach of any duty by any director, officer, governor, manager, or other agent of any of the Debtors;

b. All insurance policies and related agreements (including without limitation any agreements providing for or related to any collateral) related to the ACE Insurance Program or any other insurance coverage by ACE American Insurance Company, ACE Property and Casualty Insurance Company, ACE Fire Underwriters Insurance Company, Affiliate FM Insurance Company, Illinois Union Insurance Company, Pacific Employers Insurance Company, or Westchester Surplus Lines Insurance Company; and

c. All other insurance policies that have provided any coverage to any or all of the Debtors and that are not assumed under the Plan.

12. All Claims and Causes of Action for legal or professional malpractice by any attorney or other professional engaged by any person or entity for the purpose of providing any services that would in any way benefit, detriment, or affect any of the Debtors.

13. All Avoidance Actions (as that term is defined in the Plan) against any person or entity, including, without limitation, (i) for all payments made by the Debtors to creditors within 90 days prior to the filing of the bankruptcy petition, including but not limited to, all persons and entities identified in Part 2 of the Debtors' respective statements of financial affairs filed in the chapter 11 cases, (ii) for all payments made by the Debtors to "insiders" within one year prior to the filing of the bankruptcy petition, including but not limited to, those persons and entities identified in Part 2 of the Debtors' respective statements of financial affairs, and (iii) arising under Sections 544, 545, 547, 548, 550, 551, 552(b) or 553 (with respect to Class 4 and Class 5 Claims only) of the Bankruptcy Code, or arising under similar state or federal statutes and common law, including the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act, the Uniform Voidable Transactions Act, or similar state laws.

14. All Claims and Causes of Action, including, without limitation, all Avoidance Actions, against any person or entity listed on **Annex 1** attached hereto, as well as all

related entities, principals, officers, and employees of any of the foregoing, and any mediate or immediate transferees. For the avoidance of doubt, the persons and entities listed in Annex 1 constitute a non-exclusive list those against whom Claims and Causes of Action may be asserted, and under no circumstances should the list contained in Annex 1 be construed to limit the Claims or Causes of Action hereby designated as Trust Causes of Action and reserved for the Unsecured Creditors' Trust.

The Debtors, Creditors' Committee and/or the Unsecured Creditors' Trustee, as the case may be, expressly reserve and preserve all rights to supplement at any time any and all retained Claims, counterclaims, defenses, and Causes of Action, including, without limitation, those described hereinafter, whether based on the results of prior, ongoing, or future investigations or otherwise.

By filing the Plan Supplement to which this exhibit is attached, as well as any prior versions thereof, the Debtors, the Creditors' Committee and the Unsecured Creditors' Trust do not waive any Claims, counterclaims, defenses, or Causes of Action that may exist. Nor shall any confirmation of the Plan prejudice the rights of the Creditors' Committee or the Unsecured Creditors' Trust, as applicable, to assert any claims and causes of action not identified herein, and all such claims and causes of action are expressly reserved and preserved.

Notwithstanding the above, and for the avoidance of doubt, no Claim or Cause of Action (i) against persons or entities listed on the Debtor's Schedule of Excluded Causes of Action, (ii) to recover critical vendor, PACA or 503(b)(9) payments made by the Debtors (iii) against counter-parties to assumed executory contracts or leases or (iv) against taxing authorities are being transferred to the Unsecured Creditors' Trust. Further, nothing in this assignment shall be deemed to have modified or limited the injunctions and releases provided in the Plan with respect to Excluded Insider Causes of Action.

ANNEX 1

LIST OF TRANSFEREES

Buffets, LLC et. al

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Transferee

1	#1 ALL SEASONS LAWN SERVICE LLC
2	3 SQUARE FLOOR CARE LLC
3	5 POINT FABRICATION LLC
4	5 STAR JANITORIAL INC
5	5 STAR LAWNS LLC
6	911 CARPET CARE
7	A & M STEAM CLEANING INC
8	A 1 HANEY PLUMBING
9	A 1 WINDOW WASHING
10	A CENTRAL LOCKSMITHS INC
11	A COMPARATO REALTY & MANAGEMEN
12	A PLUS AIR LLC
13	A TO Z PLUMBING & DRAIN SERVICE
14	A&B CARPET CLEANING
15	A&E KITCHEN SERVICE LLC
16	A+ UPHOLSTERY & BOOTH
17	A-1 GLASS CO INC
18	AAA ACCURATE BACKFLOW TESTING
19	AAA PARADISE PLUMBING & ROOTER
20	AAA QUALITY APPLIANCE CARE
21	AAA WATER SYSTEMS INC
22	ABBIE J BURTON TRUST FOR KATHL
23	ABE LINCOLN PLUMBING
24	ABILITY ACCESS PLUMBING & ROOT
25	ABRAHAMS CARPET AND FLOOR CLEA
26	AC JANITORIAL
27	ACCELERATED SERVICE
28	ACCUTEMP PRODUCTS INC
29	ACE AIR CONTROL EXPERTS
30	ACE LAWN & LANDSCAPE
31	ACE PLUMBING & HEATING REPAIR
32	ACE PLUMBING HEATING & AIR
33	ACR AIR CONDITIONING & HEATING
34	ACTION PLUMBING & MECHANICAL I
35	ADAME LANDSCAPE INC
36	ADI INC
37	ADP, INC
38	ADR SERVICES INC
39	ADVANCE BEVERAGE CO
40	ADVANCE TABCO
41	ADVANCED BUILDING SERVICES
42	ADVANCED CARPET CA
43	ADVANCED MAINTENAN
44	ADVANCED MAINTENANCE SOLUTIONS
45	ADVANCED MECHANICA
46	ADVANCED MECHANICAL PLUS INC
47	ADVANCED PLUMBING AND ROOTER S

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48	ADVANCED POWER TECHNOLOGIES
49	ADVANCED PRESSURE WASHING
50	ADVANCED RECORDS MANAGEMENT
51	ADVANTAGE PLUMBING & SEPTIC
52	AEROTEK INC
53	AFFORDABLE SPRINKLERS, INC
54	AFX LOGISTICS INC
55	AG COMMERCIAL MAINTENANCE
56	AIG
57	AIR COMFORT REFRIGERATION
58	AIRE MASTER
59	AIRE MASTER LEHIGH VALLEY
60	AIRE MASTER OF BERKS COUNTY
61	AIRE MASTER OF CENTRAL NEW JER
62	AIRE MASTER OF DELMARVA
63	AIRE MASTER OF JERSEY SHORE
64	AIRE MASTER OF PHILADELPHIA
65	AIRE MASTER OF WES
66	AIRE MASTER OF WESTERN NEW YOR
67	AIRGAS USA LLC
68	AIRKO
69	AKIN DOHERTY KLEIN FEUGE PC
70	ALABAMA LANDSCAPE MAINTENANCE
71	ALL AMERICAN TREE CARE
72	ALL AMERICAN WASTER
73	ALL BRIGHT ELECTRIC COMPANY IN
74	ALL CLEAN JANITORIAL SERVICES
75	ALL DONE LAWN CARE LLC
76	ALL OUT LANDSCAPING INC
77	ALL PURPOSE CLEANING SERVICES
78	ALL TIME CUTTERS LAWN CARE & L
79	ALL VALLEY ENVIRONMENTAL INC
80	ALL VALLEY REFRIGERATION
81	ALLENS KENTUCKY MECHANICAL
82	ALLIANCE MECHANICAL SERVICES INC
83	ALLSTAR WATER SYSTEMS INC
84	ALLSTATE BENEFITS
85	ALLTECH SERVICE CO
86	ALLUNISYSTEMS INC
87	ALLWEINS COMMERCIAL SERVICE
88	ALOTTA FUN 4U2 ENTERTAINMENT
89	ALPHA BAKING COMPANY INC
90	ALPINE PLYWOOD CORPORATION
91	ALPINE REFRIGERATION HEATING & AIR
92	ALPINE WASTE & RECYCLING
93	ALS APPLIANCE REPAIR INC
94	ALTER PROPERTY
95	AMBROSI BROS CUTLERY CO
96	AMERICAN EXCELSIOR

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97	AMERICAN FOODSERVICE EQUIP
98	AMERICAN INSTALLATIONS INC
99	AMERICAN MAINTENANCE
100	AMERICAN PACIFIC DISTRIBUTION
101	AMERICAN PLUMBING
102	AMERICAN REFRIGERATION & AIR C
103	AMRON MECHANICAL INC
104	ANAHEIM TOWN SQUARE
105	ANALYTICAL FOOD LABORATORIES
106	ANDON BALLOONS
107	ANETS
108	ANHEUSER BUSCH WHOLESALER
109	APEX AIR COMPANY
110	APOLLO DRAIN ROOTER SERVICE
111	APPLIANCE REPAIR SERVICE
112	APPLIED REFRIGERATION TECHNOLOGY
113	AQUA QUALITY
114	AQUA SERVE
115	ARC WELD INC
116	ARIES VINYL REPAIR
117	ARIZONA CUTLERY & SHARPENING SVC
118	ARM SERVICES
119	ARMSTRONGS LOCK & KEY
120	ASAP FOOD EQUIPMENT SERVICES
121	ASAP MAINTENANCE INC
122	ASI PRECISION SOLUTIONS
123	ASPHALT AND CONCRETE MAINTENANCE
124	ATLAS SIGNS
125	ATOM MATIC REFRIGERATION INC
126	ATOMIC HEATING & AIR
127	AUNT MILLIES BAKERIES
128	AUTHORIZED COMMERCIAL EQUIPMENT
129	AVERUS INC
130	AVERUS USA INC
131	AVERY SEPTIC TANK SERVICE
132	AVIS RENT A CAR
133	B&D PLUMBING INC
134	B&G RESTAURANT SUPPLY INC
135	BAGAT INC
136	BAGAT SOUTH
137	BAI CONSUMER SQUARE WEST LLC
138	BAKER COMMODITIES
139	BANK DIRECT CAPITAL FINANCE
140	BANKSTON TERRY
141	BARGREEN ELLINGSON
142	BARNES, JAMES W
143	BARNETT, CAROL
144	BARRAGAN MENDEZ ELIZABETH A
145	BARRONS 4 SEASON LAWN SERVICE

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146 BARRY AND SEWALL INDUSTRIAL SU
147 BASIC BACKFLOW
148 BAXTER, LARRY D.
149 BAY VERTE MACHINERY INC
150 BEATTY MECHANICAL SERVICES
151 BEAVER FALLS MUNICIPAL AUTHORITY
152 BEBE AND TOM DUNNICLIFFE CHARI
153 BELTRAM SHARPENING SERVICE
154 BELZINIS EDGE OF KNIFE
155 BENEFITFOCUS.COM INC
156 BENITEZS CLEANING
157 BENNETT BRICKLIN & SALTZBURG LLP
158 BENNETT X-STREAM CLEAN
159 BENNETT, MARLENE J.
160 BERKSHIRE CROSSING RETAIL LLC
161 BERKSHIRE GAS CO
162 BERKSHIRE MALL LLC
163 BERKSHIRE WEST LLC
164 BERRY COFFEE COMPANY
165 BEST WAY UPHOLSTERY
166 BESTWAY BREAD DISTRIBUTION
167 BETTER BEVERAGES
168 BETTER LAWNS & GARDENS
169 BIANCO LANDSCAPE MANAGEMENT
170 BICHLER, JOSHUA
171 BICS PLUMBING SERVICE CO
172 BIG BUSINESS IMPACT GROUP
173 BIG DOLPHIN LLC
174 BILL'S LAWN SERVICE
175 BIOTEC INC
176 BLANKENBAKER MAINTENANCE ASSOC
177 BLANKS PRINTING & IMAGING INC
178 BLAZIN REPAIR COMPANY
179 BLODGETT OVEN CO
180 BLOOMINGDALE, ILLINOIS
181 BLUE CROSS BLUE SHIELD
182 BLUE CROSS BLUE SHIELD OF SOUTH CAROLINA
183 BLUELINX CORPORATION
184 BOBBY BLUE PLUMBING INC
185 BOYDS LAWN SERVICE
186 BRADYS RUN SANITARY AUTHORITY
187 BRANDYWINE SQUARE LLC
188 BRASHEAR ELECTRIC INC
189 BRENNER FAMILY MAGIC SHOWS
190 BRETTS LANDSCAPING
191 BRIDGETON, MISSOURI
192 BRIGHT BEGINNINGS WELCOMING
193 BRINKS INC
194 BRITE WAY WINDOW ONALASKA

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195	BROADCAST COMPANY OF THE AMERICAS
196	BRODIE BOBBINS CUSTOM UPHOLSTERY
197	BROTHERS CUTLERY INC
198	BROWN CARBONIC SALES CO
199	B-SKEE LLC GATEWAY PLAZA
200	BUDS PLUMBING SERVICE INC
201	BUENO BEVERAGE COMPANY
202	BULLSEYE TELECOM
203	BUNCH AND ASSOCIATES
204	BUNCH CARESOLUTIONS LLC
205	BUNCOMBE COUNTY NORTH CAROLINA
206	BUNN O MATIC CORP
207	BURROWS REFRIGERATION INC
208	BUTLER CHEMICALS INC
209	BUTLER WIRE & METAL PRODUCTS INC
210	BYRON F WHITE TRUSTEE
211	C&F FOODS
212	CANNON SERVICES INC
213	CANO LUCIANO
214	CANTY ANTHONY
215	CAPEHART CUTLERY
216	CAPITAL STONE & LANDSCAPE LLC
217	CAPITOL CORPORATE SERVICES INC
218	CAPITOL SQUARE MERCHANTS ASSOC
219	CAPITOL SWEEPING SERVICES INC
220	CAPITOL WASTE INC
221	CAPONE GRINDING
222	CAPTAIN SQUEEGEE
223	CAPTIVE AIRE SYSTE
224	CARBONS GOLDEN MALTED
225	CARDINAL MANUFACTURING INC
226	CARDLYTICS INC
227	CARE SERVICES
228	CAREERBUILDER LLC
229	CARLOS LAWN MAINTENANCE AND LANDSCAPING
230	CARLOS MARTINEZ LANDSCAPING
231	CARLSON SYSTEMS
232	CAROLINA CUTLERY SERVICE INC
233	CAROLINA KITCHENS INC
234	CARPET DOCTOR
235	CASH POWER WASHING
236	CATHEY DENNIS
237	CCC FACILITY SOLUTIONS LLC
238	CD CARPET CLEANING CO
239	CEGA SERVICE
240	CEN CAL MECHANICAL INC
241	CENTRAL COAST DISTRIBUTING
242	CENTRAL MCGOWAN INC
243	CENTRAL PARK PROP OWNER ASSOC

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244	CENTRAL STATES SERVICES INC
245	CENTRAL STEEL & WIRE
246	CENTRAL VALLEY CULLIGAN
247	CENTRE AT FORESTVILLE LLC
248	CENTURY EXECUTONE
249	CENTURY LINK
250	CHANDLERS PARTS & SERVICE INC
251	CHAVEZ, GABRIEL
252	CHEADLE SIGN WORK
253	CHEROKEE COMMERCIAL SERVICES
254	CHEROKEE GROUP LLC
255	CHERRY LOGISTICS CORPORATION
256	CHICO CROSSROADS LP
257	CHRISTENSEN GROUP INC
258	CIII JPM06-CIBC14 WEST MASON
259	CINDYS CUSTOM INTERIORS LLC
260	CINTAS CORP
261	CINTAS FIRST AID & SAFETY
262	CIRCLE A MAINTENANCE
263	CITY WIDE WINDOW SERVICES INC
264	CITYWIDE WINDOW SERVICES INC
265	CISCO'S UPHOLSTERY
266	CJSPT LLC
267	CLAIREMONT VILLAGE QUAD LLC
268	CLARITYSOFT LLC
269	CLARKS SEPTIC SERVICE INC
270	CLASS A LAWN & LANDSCAPE INC
271	CLASSIC COFFEE SERVICE
272	CLAYS REFRIGERATION
273	CLEAN DES MOINES
274	CLOVER LEAF I LLC
275	COALFIRE SYSTEMS, INC
276	COAST TO COAST FAC
277	COASTAL LAWN CARE SERVICE
278	COFFEY REFRIGERATION
279	COGNIZANT TECHNOLOGY SOLUTIONS
280	COLLIERS INTERNATIONAL MINNEAPOLIS
281	COLLINS AND WALTON INC
282	COLLINS PLUMBING & JETTING INC
283	COLUMBIA MARKING PRODUCTS LLC
284	COMMERCIAL AIR AND REFRIGERATION
285	COMMERCIAL FIRE INC
286	COMMERCIAL KITCHEN SERVICE CO
287	COMMERCIAL SERVICE CO
288	COMMERCIAL SERVICES INC
289	COMMERCIAL SWEEPING SERVICE
290	COMMERCIAL UPHOLSTERY
291	COMM-WORKS LLC
292	COMPLETE FACILITY SOLUTIONS IN

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293	COMPONENT HARDWARE
294	COMPREHENSIVE LAWN & TREE SERV
295	COMPUTEX TECHNOLOGY SOLUTIONS
296	CONCORD PUBLISHING HOUSE INC
297	CONNEXUS ENERGY
298	CONNEY SAFETY PRODUCTS LLC
299	CONTINENTAL INC
300	CONTINENTAL STOCK TRANSFER
301	CORE MECHANICAL
302	CORPORATION SERVICE COMPANY
303	CORSOS FLOWER & GARDEN CENTER
304	COUNTRY CLUB PLAZA INVESTORS LLC
305	COZZINI BROS
306	CPT Group - Disbursing Agent for Del Campo
307	CR&R INC
308	CRAWFORD & COMPANY
309	CREATION GARDENS OF LOUISVILLE
310	CRI OUTPARCELS LLC
311	CRR INC
312	CRYSTAL GALLERY DEVELOPERS
313	CSTAR INTERNATIONAL HOLDINGS INC
314	CULINARY TECHNICIANS CORPORATION
315	CUMBEES ULTIMATE CARPET & TILE
316	CURTIS RESTAURANT EQUIPMENT IN
317	CUSTOMIZED CUSTODIAL SERVICES
318	CVB INC
319	CWA TRANSPORT INC
320	D JOSEPH SONS ASSOCIATES
321	D&H EQUIPMENT CONCEPTS
322	DANS BLOWN AWAY POWERWASH
323	DARLING INGREDIENTS BLUE ISLAND
324	DARTMOUTH MARKET PLACE ASSOC
325	DATE LABEL CORP
326	DAVID L FAYMAN TRUST
327	DAY & NITE REFRIGERATION
328	DAYCARE CENTER INVESTORS LLC
329	DAYSTAR DISTRIBUTING INC
330	DC AIR HEATING AND COOLING LLC
331	DDRM HIGHLAND GROVE LLC
332	DE VORE LIGHTING INC
333	DEARCO DISTRIBUTING INC
334	DEBORAH B MILLER REVOCABLE TRUST
335	DEBRA KUEMPEL INC
336	DECATUR UTILITIES
337	DEHART PLUMBING HEATING & AIR
338	DEKALB CHEROKEE COUNTIES GAS
339	DEL AMO FASHION CTR OPERATING
340	DEL PASO MANOR WATER DISTRICT
341	DELL MARKETING LP

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342 DELTA CHARTER TOWNSHIP, MICHIGAN
343 DELTA CLEANING SERVICES
344 DELTA LIGHTING PRODUCTS INC
345 DELTA NATURAL GAS CO INC
346 DELTA SIERRA BEVERAGE LLC
347 DEMARS SIGNS INC
348 DEMOOEI, HORMOZ
349 DENVER CUTLERY INC
350 DEPENDABLE PLUMBING & WATER CO
351 DEPENDABLE SEWER CLEANERS
352 DESERT FOUNTAIN GAS SUPPLY
353 DIAMOND SHARP PRO EDGE KNIFE
354 DIAMOND WINDOW CLEANING - HAUG
355 DIRECT ENERGY BUSINESS, LLC
356 DISCOVERY BENEFITS INC
357 DISCOVERY LAND CARE INC
358 DJM Realty Services, LLC
359 DKA NINE LLC
360 DLS WORLDWIDE
361 DMO FOOD EQUIPMENT SERVICE INC
362 DON STEVENS INC
363 DONAGHY SALES LLC
364 DONALD J MILLER REVOCABLE TRUST
365 DONALD TATE ELECTRIC
366 DOUG DELEO WELDING INC
367 DOUGLAS CHRISTOPHER LOVE CONST
368 DR ALF BOMAN ROBERTA BOMAN
369 DR VINYL WESTERN MASSACHUSETTS
370 DRAXLER TRANSPORT INC
371 DREAMSCAPES
372 DREW AND ROGERS INC
373 DURABLE ROOFING NATIONAL CORPORATION
374 DYNAMIC NETWORK SERVICES INC
375 E & A LAWN CARE
376 EARTH BIO TECHNOLOGIES
377 EARTHGRAINS BAKING COMPANIES I
378 EARTHLINK
379 EAST COAST FOOD EQUIPMENT
380 EAST SIDE GLASS COMPANY
381 ECOGREEN LANDSCAPES
382 ECOTECH REFRIGERATION & HVAC I
383 EICHENAUER SERVICES INC
384 EL WALTERS A/C HEATING & COMMERCIAL
385 ELECTRO FREEZE DIST OF TX INC
386 ELECTRO FREEZE OF NOR CAL, LLC
387 ELEKTRON ELECTRIC
388 ELITE CONTRACTORS
389 ELITE HVAC SERVICES LLC
390 ELIZABETH ANN BRANDOM CHARITABLE

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391 EMERALD COAST CUTLERY
392 EMERGENCY RETAIL SERVICES
393 EMPIRE NATURAL GAS CORPORATION
394 ENGELS COMMERCIAL APPLIANCE
395 ENRIQUE SANCHEZ LANDSCAPING
396 ENTERPRISE FLEET MANAGEMENT
397 ENTERPRISE ROOFING SERVICE INC
398 ENTERPRISE WATER WORKS BOARD
399 ENVIRONMENTAL WASTE SOLUTIONS, LLC
400 ENVIRO-VAC
401 ERIC HARTLEY LAWN & LANDSCAPE
402 ERIE COUNTY, NEW YORK
403 ESKEW LAWN CARE
404 ESMERALDA GARDENING
405 ESSENTIAL RETAIL SERVICES INC
406 ETS PLUMBING
407 EUROFINS QC INC
408 EVERCLEAR HYDROJETTING
409 EVERSOF
410 EVERSOURCE ENERGY GAS
411 EXCEL MECHANICAL CO INC
412 EXCEL MECHANICAL SYSTEMS INC
413 EXECUTIVE SAFE AND SECURITY CO
414 EXPRESS INFORMATION SYSTEMS IN
415 EXPRESS REFRIGERATION INC
416 EXPRESS RESTAURANT EQUIPMENT
417 EYE DO WINDOWS
418 F M SORCI LAND CO INC
419 FACCHINO LABARBERA HACIENDA GA
420 FACE ODYSSEY LLC
421 FACILITEC WEST
422 FACILITIES MANAGEMENT LLC
423 FACILITY SOLUTIONS GROUP
424 FAITH FAYMAN STRONG AMENDED
425 FAITH MECHANICAL
426 FAKE FOODS
427 FARR, DEBBIE
428 FASTENAL CO
429 FAYMAN, SARAH C
430 FC DADSON INC
431 FEDERAL SAFETY SUPPLIES
432 FEMINO, JAMES J AND SUE
433 FI MENTOR I LLC
434 FIDELITY BUILDING SERVICES LLC
435 FIGEUROA YARD COMPANY
436 FIGUEROAS YARD CARE
437 FIKES OF OREGON INC
438 FIKES OF SOUTHWEST OREGON
439 FIKES PUGET SOUND INC

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440 FILTER MAN INC
441 FINE LINE SERVICES INC
442 FINGER LAKES HVAC&R INC
443 FINISHING TOUCH HOME IMPROVEMENT
444 FIRE KING COMMERCIAL SERVICES
445 FISH WINDOW CLEANING - WARMIN'S
446 FISH WINDOW CLEANING #634
447 FISHBOWL INC
448 FLOOD BROTHERS DISPOSAL
449 FLOOR FORCE LLC
450 FLORIDA LOGOS INC
451 FLUORESCO LIGHTING
452 FMW GROUP INC
453 FOOD AUTOMATION SERVICE TECHNICIANS
454 FOOD WARMING EQUIPMENT COMPANY
455 FORESTWOOD FARM INC
456 FORSONS INVESTMENTS LLC
457 FORT PAYNE IMPROVEMENT AUTHORITIES
458 FORWARD JANESVILLE INC
459 FOURNIER, JACQUES
460 FOX & THOMPSON INC
461 FRANK MISSION MARKETPLACE LLC
462 FRANKS SEPTIC SERVICE INC
463 FRASSICA INC
464 FREEDOM LAWN SERVICE & LANDSCAPING
465 FRESH SCENTS OF IOWA
466 FRESNO PLUMBING & HEATING INC
467 FRITZ BROTHERS INC
468 FRONT LINE SALES INC
469 FUN 4U2 ENTERTAINMENT
470 G&G COMMERCIAL SYSTEMS INC
471 G&R MECHANICAL INC
472 GAGER DISTRIBUTING INC
473 GALLAGHER BASSETT SERVICES INC
474 GALLO SALES COMPANY
475 GARDA CL WEST INC
476 GARTNER REFRIGERATION
477 GATE CITY BEVERAGE DISTRIBUTOR
478 GATEWAY COURTYARD LLC
479 GATEWAY MALL PARTNERS
480 GAYLORD, ANDREA
481 GE CAPITAL C/O RICOH USA PROGR
482 GEER GAS CORP
483 GENERAL MILLS
484 GEODIS WILSON USA INC
485 GEORGE H CHARNO TRUST
486 GEORGE HOWE CO
487 GHSC ASSOCIATES LP
488 GILBERT WINDOW CLEANING INC

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489 GILLESPIE, J C
490 GLASS AMERICA COMMERCIAL SERVICES
491 GLOBAL MARKET SL PROPERTY LLC
492 GLOBAL MEDIA GROUP
493 Global Media Systems
494 GODSHALL & GODSHALL PERSONNEL
495 GODSON YARD MAINTENANCE
496 GOLDEN VALLEY SUPPLY CO
497 GOODNOE, AUBRIE J
498 GORDON FOOD SERVICE INC
499 GOODWIN HOSPITALITY & ASSOCIATES
500 GOT SAFETY PROVISION FIRST AID
501 GOVDOCS INC
502 GRAHAM HEATING & AIR CONDITIONING
503 GRAINGER INC
504 GRANT THORNTON LLP
505 GRANTS LAWN SERVICE
506 GRASSE, WILLIAM D
507 GREAT LAKES SERVICE
508 GREATER MANKATO GROWTH INC
509 GREATER OMAHA REFRIGERATION
510 GREEN VALLEY CARPET CARE
511 GREENER GRASS
512 GREENLEAF ENTERPRISES
513 GREENSWAY LANDSCAPING
514 GREGGS COMPLETE GARDENING SERV
515 GRINDING COMPANY OF AMERICA
516 GROUND MAINTENANCE
517 GROVE SQUARE LIMITED PARTNERSHIP
518 GUARANTEE SERVICES LLC
519 GUARDIAN SAFETY AND SUPPLY LLC
520 HAAG FOOD SERVICE INC
521 HALLMARK BUILDING SUPPLIES INC
522 HANDY HANKS REPAIR SERVICE
523 HANDYMAN EDDIE
524 HANGAR 24 CRAFT DISTRIBUTION
525 HARDWARE DISTRIBUTORS
526 HARRIS CONSTRUCTION COMPANY LLC
527 HARRY T ABERNATHY AMENDED AND
528 HARTFORD CONCRETE CONSTRUCTION
529 HARTFORD FIRE INSURANCE CO
530 HATCO CORP
531 HAUSMAN DEODORIZING LLC
532 HAWTHORNE REAL ESTATE PARTNERS
533 HAYWARD CALIFORNIA
534 HEADDEN SEPTIC ENVIRONMENTAL
535 HEADLEY PLUMBING COMPANY INC
536 HEALTH IMPACT ASSOCIATES (HEALTH E(FX))
537 HELIX WATER DISTRICT

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538	HERITAGE FOOD SERVICE EQUIPMEN
539	HERITAGE LAWN CARE
540	HERRERAS LANDSCAPING MAINT
541	HHH FAIR CITY LLC
542	HICKORY POINT PLAZA LLC
543	HILLBILLY LAWN CARE
544	HILLERS TRUE VALUE HARDWARE
545	HIMCO WASTEAWAY SERVICE INC
546	HIPCRICKET INC
547	HOBART CORP
548	HOBART SALES SERVICE MI
549	HOBART SERVICE
550	HOELTING FOOD SERVICE
551	HOLDAHL INC
552	HOLT PLUMBING LLC
553	HOMEFIELD ENERGY
554	HOMETOWN LAWNCARE
555	HORIZON MANAGEMENT LLC
556	HORIZON PRODUCTS
557	HORN INDUSTRIAL & RESIDENTIAL
558	HORN LAKE WATER ASSOCIATION
559	HOT WATER PRODUCTS INC
560	HOWARTH, RANDOLF
561	HP HOOD INC
562	HUB GRINDING SERVICE
563	HUMIDITY CONTROL SYSTEMS INC
564	HURTADO MIGUEL
565	HVAC AIR COMMAND
566	HYBLA CENTER LTD PARTNERSHIP
567	HYDRO BLAST PLUS PROPERTY MAIN
568	HYDRO PRO IRRIGATION INC
569	IA CHICAGO LINCOLN LLC
570	IA MANAGEMENT LLC
571	IAM MOWING
572	IDEAL SERVICES
573	ILLINOIS AMERICAN WATER CO
574	IMAGE SERVICES INC
575	IMPACT GROUP
576	IMPACT PAPER INK LTD
577	INCOMM DIGITAL SOLUTIONS
578	INDIANA AMERICAN WATER CO
579	INDIANA UTILITIES CORP
580	INFINITY AIR CONDITIONING & EL
581	INK LINK MARKETING LLC
582	INMOMENT INC
583	INNOVATIVE FACILITY SOLUTIONS
584	INNOVATIVE MACHINE
585	INNOVATIVE WASTE SYSTEMS
586	INTEGRA TELECOM

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587 INTERMETRO INDUSTRIES CORPORAT
588 IOWA STATE
589 IRON MOUNTAIN RECORDS MANAGEMENT
590 IRVIN LAWN SERVICE
591 J BERRY CO INC
592 J S WEST PROPANE GAS - MODESTO
593 JAC SERVICES LLC
594 JACKNOB CORP #95168
595 JACKSON PLUMBING INC
596 JACQUELINE B CHARNO CHARITABLE
597 JACQUES REMODELING
598 JAECKLE WHOLESale
599 JAMES FERRARI SONS INC
600 JANI-KING OF MICHIGAN INC
601 JAVENS ELECTRIC INC
602 JAVENS MECHANICAL CONTRACTING
603 JAVIERS MAINTENANCE SERVICE
604 JC PAINTING LLC
605 JERRY PALDINO MECHANICAL SERVICE
606 JK LANDSCAPING INC
607 JMJ PLUMBING LTD
608 JN JOHNSON FIRE AND SAFETY
609 JOAN H FAYMAN AMENDED AND REST
610 JOE AMATO EAST END CENTRE LP
611 JOHNNYS WINDOW CLEANING INC
612 JOHNSON PLUMBING INC
613 JONES SIGN CO INC
614 JONES WALKER LLP
615 JONES, LINDA B
616 JORGENSEN CO
617 JOSEPH J BRUNNER INC
618 JR. JOHNSON, ROBERT E.
619 JUAN SUAREZ TILE REMODELING
620 JUICY WHIP INC
621 JUST RESTAURANT MAINTENANCE
622 JUST WINDOWS ST LOUIS
623 JV MECHANICAL
624 K & G COFFEE COMPANY
625 K R LAWNCARE LLC
626 K&D FACTORY SERVIC
627 KAEMMERLEN PARTS SERVICE
628 KANAWHA CHARLESTON, WEST VIRGINIA
629 KASCO/ATLANTA SHARPTECH
630 KAUFFMAN LAWN SERVICE
631 KAUFFMANS COMMERCIAL REFRIGERATION
632 KDS SERVICES INC
633 KE DURASOL AWNINGS
634 KEI WINDOW CLEANING #4
635 KEN EICK LANDSCAPING

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636 KENDELL DOORS & HARDWARE INC
637 KERKSTRA SEPTIC TANK CLEANING
638 KERN E KENYON TRUST
639 KERN E KENYON TRUST FOR DOUGLAS
640 KERN E KENYON TRUST FOR PAMELA
641 KETER ENVIRONMENTAL SERVICES I
642 KHP LIMITED PARTNERSHIP
643 KIM R BLACKSETH INTERESTS INC
644 KIMBER PALLETS & FIREWOOD
645 KIMSCOTT FACTORIA MALL LLC
646 KINETICO INCORPORATED
647 KLINES READY ROOTER LLC
648 KLOSTERMAN BAKING CO
649 KMG HAULING
650 KNOTT MECHANICAL INC
651 KORBE BRIAN
652 KOVACEVICH MAINTENANCE
653 KRUUK REFRIGERATION
654 KS DEVELOPERS INC
655 LA RANCHERA TAGIERIA
656 LABRADOR GROUP LLC
657 LACKAWANNA RIVER BASIN SEWER A
658 LAGREW, JEFFREY F
659 LAGUNA WOODS CANYON LLC
660 LAKELAND FACILITY SERVICES LLC
661 LAN TING II LP
662 LANDSCAPE MAINTENANCE UNLIMITED
663 LANDSCAPE PLUS LLC
664 LANOTTE REFRIGERATION INC
665 LARRY CHYNCE'S BUILDING CONTRACTORS
666 LATTIMER LAWNS
667 LAURA E COUCH REVOCABLE TRUST
668 LAURA MARTIN GUNN AMENDED AND
669 LAUREL CREST LANDSCAPES INC
670 LAUREL LANDSCAPES INC
671 LAWN DIVA
672 LAWN RANGERS
673 LAYAOU LANDSCAPING INC
674 LEAPS PROPERTY MAINTENANCE.
675 LEE, HELEN YOUNG
676 LEE, JOHN S
677 LEEPCO CARPET AND UPHOLSTERY CO
678 LEESE LAWN AND LANDSCAPING
679 LEGACY ONE PUBLICATIONS LLC
680 LEPAGE BAKERIES PARK STREET LLC
681 LEVEL 3 COMMUNICATIONS
682 LIBERTY CALL
683 LIMA, ZEKE
684 LINCOLN CENTER

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685 LINCOLN LAWCARE INC 2007
686 LINEBARGER, SONNY E
687 LIQUID ENVIRONMENTAL SOLUTIONS OF TEXAS, LLC
688 LITTLE COUPON BOOK INC
689 LIVINGSTON PARISH LOUISIANA
690 LOCKLON COMPANITES - ST. LOUIS
691 LONG RANGE SYSTEMS INC
692 LOOMIS ARMORED INC
693 LOPEZ, GUILLERMO
694 LOYALTY JANITORIAL SERVICES LLC
695 LUKEHARTS LAWN CARE & SNOW REMOVAL
696 LUMBER DEALER SERV
697 LWL LAND COMPANY LLC
698 LYNN C LUMBARD REVOCABLE TRUST
699 M & M CARPET & UPHOLSTERY CLEANING
700 M & N HEATING AND COOLING
701 M H CONSTRUCTION
702 M&S SERVICE
703 M3 MECHANICAL INC
704 MACEWEN, MICHAEL J
705 MACON COUNTY ILLINOIS
706 MAD MAINTENANCE
707 MADA / FASTSIGNS
708 MAESTRANZIS KNIFE SERVICE
709 MAGIC MIKES CARPET CLEANING
710 MAGNUM POWER WASH ORIGINAL
711 MAHONEY ENVIRONMEN
712 MAILFINANCE
713 MAINTENX MANAGEMENT INC
714 MANNING & KASS ELLROD RAMIREZ
715 MANPOWER TEMPORARY SERVICES
716 MANPOWER US INC
717 MARK B LUMBARD REVOCABLE TRUST
718 MARKET FORCE INFORMATION INC
719 MARKET GRINDING INC
720 MARKS HOT WATER PR
721 MARKS REDDI ROOTER & PLUMBING
722 MARKSTEIN BEVERAGE COMPANY
723 MARRS ELECTRIC SERVICE
724 MARTELLO KNIFE SERVICE INC.
725 MARTINEZ, CARLOS
726 MARTINS LAWN CARE
727 MARV'S PLUMBING INC
728 MATRIX ABSENCE MAN
729 MAYFLOWER DISTRIBUTING COMPANY
730 MC SIGN COMPANY
731 MCC CARPET CLEANING
732 MCCracken County, Kentucky
733 MCDONOUGH'S WATERJETTING

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734 MCELMOYL REFRIGERATION INC
735 MCGUFFIN MECHANICAL INC
736 MCL MECHANICAL SERVICES INC
737 MCMASTER CARR SUPPLY CO
738 MEDFORD ASSOCIATES LMTD PTNSHP
739 MEDRANO ROOFING INC
740 MELTON ELECTRIC CO INC
741 MERCED MALL LTD
742 MERCY CORPORATE HEALTH
743 METLIFE
744 METRO FOODS LITTLE ROCK
745 METRO HARDWOODS
746 MICHAEL K BROWN LANDSCAPE
747 MICHEL, ANDREA H
748 MICHIGAN ELECTRO FREEZE
749 MICROBAC LABORATORIES INC
750 MICROSOFT CORPORATION
751 MICROSOFT EA AGREEMENT
752 MIDTOWN SQUARE MALL
753 MIDWEST COMPLETE CONSTRUCTION
754 MIDWEST FIBRE SALES CORPORATION
755 MILFORD ASSOCIATES
756 MILUS D SCRUGGS AMENDED AND RE
757 MINGES CREEK LLC
758 MIRA MESA SHOPPING CENTER WEST
759 MISSION LINEN UNIFORM SERVICE
760 MISSISSIPPI WELDERS SUPPLY CO
761 MISSOURI LOGOS PARTNERSHIP
762 MITTELBERG LISA
763 MJ MAC INC
764 MJ REIDER ASSOCIATES INC
765 MJS LANDSCAPING
766 MODERN PLUMBING COMPANY
767 MODERN SUPPLY COMPANY INC
768 MODESTO A-1 GLASS CO INC
769 MOHRMAN & KAARDAL PA
770 MOISES MANZANO PLU
771 MONIGHAN LAWN CARE
772 MONROE MOXNESS BERG PA
773 MONSTER CLEAN
774 MONSTER MARKETING GROUP
775 MONTS INVESTMENT PROPERTIES
776 MOORE DAVID
777 MORRELL ASSOCIATES
778 MOSS FAMILY MOWING SERVICE
779 MR MISTYS
780 MR ROOTER PLUMBING - CAMARILLO
781 MSF EQUIPMENT SERVICE INC
782 MUDGE, SCOTT

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783	NAP GLADU
784	NATES HANDY SERVICE
785	NATIONAL FILTER SE
786	NATIONAL FILTER SERVICE
787	NATIONAL HOT WATER
788	NATIONAL RECOVERY SERVICES LLC
789	NATIONWIDE ELECTRICAL CONSTURCTION & MAINTENANCE
790	NEGRI PLUMBING LLC
791	NELBUD SERVICES GROUP INC
792	NELCO CORP
793	NELLA CUTLERY INC
794	NELMAR SECURITY PACKAGING SYST
795	NEW AGE KALEIDOSCOPE LLC
796	NEW ENGLAND COFFEE COMPANY
797	NEW GROUP GARDENA LLC
798	NEW MILLENIUM UPHOLSTERY INC
799	NICOTRI ELECTRIC INC
800	NIEBUHR PLUMBING HEATING CO
801	NII NORTHERN INTERNATIONAL INC
802	NIKI HOLDING LP
803	NILES STREET FIREWOOD
804	NOBLE AMERICAS ENERGY SOLUTIONS, LLC
805	NORCIA CONTRACTING
806	NORTH STATE PRESSURE CLEAN
807	NORTHEAST CUTLERY INC
808	NORTHRIDGE OWNER LP
809	NORTHSOUND REFRIGERATION
810	NORTHSTAR ENVIRONMENTAL SERVIC
811	NRG & ASSOCIATES LLC
812	NUZZO LANDSCAPING AND MAINT LLC
813	NW SOFT SERVE & SALES LLC
814	ODDS & ENDS
815	OEHRLEINS LAWN SNOW
816	OFFICE DEPOT
817	OFFICE MAX
818	OGLETREE DEAKINS N
819	OHIO WINDOW CLEANING INC
820	OHMSTEAD PLUMBING COMPANY LLC
821	OMEGA SERVICES
822	ONSITE ENVIRONMENTAL
823	ONSITE TECHNOLOGY SERVICES LLC
824	OPPENHEIMER WOLFF & DONNELLY
825	ORLANDO BAKING CO
826	OTS ENTERPRISES LLC
827	OTTERBASE INC
828	OUTDOOR SOLUTIONS
829	OUTFRONT MEDIA
830	OUTSIDE MAINTENANCE
831	OUZTS JEFF

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832 OVER THE TOP ENTERTAINMENT
833 OWEN REFRIGERATION & AIR
834 OXFORD VALLEY ROAD ASSOCIATES
835 PACIFIC BEVERAGE CO
836 PACIFIC BREEZE PRODUCTS INC
837 PACIFIC PRIDE BAKERY
838 PADUCAH WATER
839 PANHANDLE RESTAURANT SERVICES
840 PAPER SYSTEMS INC
841 PARK CENTER SQUARE LLC
842 PARK DISPOSAL INC
843 PARRIS, KITTY
844 PARTY BUSINESS
845 PATCH OF HEAVEN LAWN & HOME CA
846 PAUL THOMAS MARTIN TRUST
847 PEACOCK WATER
848 PEADEN LLC
849 PEARSON, LEE
850 PEBBLE CREEK PROPERTIES LLC
851 PEEPERS INC
852 PENNSYLVANIA AMERICAN WATER
853 PERFECTION LANDSCAPING
854 PERMA VAULT SAFE CO
855 PERRY, DRAKE
856 PERSONNEL PEOPLE
857 PICASSO PLUMBING INC
858 PICKETTS LAWN SERVICE
859 PIKE PARK ASSOCIATES LLLP
860 PINE TREE FOOD EQUIPMENT INC
861 PINE VALLEY LANDSCAPING LLC
862 PINNACLE ROCK FACILITY SOLUTIO
863 PIONEER ORCHARD CO INC
864 PITHER PLUMBING CO INC
865 PLAMEX INVESTMENT LLC
866 PLAZA 3000 PARTNERSHIP
867 PLEASANT HILL, CALIFORNIA
868 POCONO MOUNTAIN DAIRIES
869 POES QUALITY PLUMBING
870 POINSETT LLC
871 POLAR REFRIGERATION
872 PORTLAND MECHANICAL CONTRACTOR
873 POS REMARKETING GROUP INC
874 POVINELLI CUTLERY & SHARPENING
875 POWER, KAREN
876 PR VALLEY VIEW LIMITED PARTNER
877 PR WARRINGTON LP
878 PRATTVILLE LAWN CARE
879 PREIT RUBIN INC AGENT
880 PRESSURE WASH THIS INC

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881	PRICKETTS DISTRIBUTING INC
882	PRINCIPAL LIFE INSURANCE CO
883	PRISTINE GROUNDS
884	PRO CAL PLUMBING
885	PRO CLEAN CARPET CLEANING
886	PRO POWER WASH
887	PROFESSIONAL KITCHEN SERVICES
888	PROFESSIONAL PAVEMENT
889	PROFESSIONAL REFRIGERATION &
890	PROFESSIONAL TEMPERATURE
891	PROFIT SOLUTIONS GROUP
892	PROGRESSIVE FLOORING
893	PROTECTIVE LIFE INSURANCE COMP
894	PRICE WATERHOUSE COOPERS LLP
895	QUAD CITY WINDOW CLEANING INC
896	QUALIFIED PLUMBING & AIR CONDITIONING
897	QUEENS CARPET CARE COMPANY
898	QUICKSILVER EXPRESS COURIER
899	R&D CONSTRUCTION
900	RAAB SERVICE INC
901	RAMCO PLUMBING & RESTORATION
902	RANDALLS INTEGRITY CONTRACTING
903	RAY'S TRASH SERVICE INC
904	RBI GENERAL CONTRACTORS LLC
905	RBS CITIZENS NA AGENT FOR TRAC
906	RDB EFFICIENCY PRODUCTS & SERV
907	REA LANDSCAPE MANAGEMENT
908	READY CONSTRUCTION
909	READY CONSTRUCTION LLC
910	READY ROOTER & CHAPMAN PLUMBIN
911	REAL TIME OUTSOURCE
912	RECOVER MAINTENANCE INC
913	RED BALL OXYGEN COMPANY INC
914	RED BOOK SOLUTIONS
915	RED CIRCLE SAFETY SURVEYS
916	RED ROSE COMMONS ASSOC LP
917	REDCO FOODSERVICE EQUIPMENT LL
918	REED RESTAURANT REPAIR LLC
919	REGAL WINE CO
920	REGALIS MARTIN H
921	RELIABLE LANDSCAPING DEVELOPME
922	RELIABLE MECHANICAL SERVICES I
923	RELIABLE REFRIGERATION SERVICE
924	REMCO
925	REMCO INC
926	RENN UPHOLSTERY
927	RESCUE ROOTER CORP
928	RESOURCE RECOVERY TEAM LLC
929	RESTAURANT EQUIPMENT SERVICE I

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930	RESTAURANT MANAGEMENT CAREERS
931	RESTAURANT SERVICES WI
932	RETAIL TECH INC
933	REX LOCK & SAFE INC
934	REXROAT LAWN CARE
935	RICE EQUIPMENT SERVICE INC
936	RICH COAST CORPORATION
937	RICHARD MELLOW CORP
938	RICHARD, SHAUN
939	RICHFIELD SHOPPES
940	RICHO
941	RIDGE ELECTRIC MOTOR COMPANY
942	RINIS GARDENING SERVICE
943	RISK SCIENCES GROUP, INC
944	RIVER PARISH DISPOSAL INC
945	RIVERSIDE RESTAURANT REPAIR
946	RJ MASE INC
947	RK HALLANDALE LP
948	ROBERT J BRANDOM REVOCABLE TRU
949	ROBERT MARTINEZ DBA M&M FIREWO
950	ROBINSON, DANIEL
951	ROBS WINDOW CLEANING
952	ROCKY MOUNTAIN PROPERTIES LP
953	ROGERS ELECTRIC
954	ROHN INDUSTRIES INC
955	ROMEY, ARNOLD BUTCH
956	RON'S CARPET & AIR DUCT CLEANER
957	RON'S REFRIGERATION & AIR CONDITIONING
958	RON'S SERVICE INC
959	ROOF CONNECT
960	ROOFTOP SOLUTIONS
961	ROSEDALE COMMONS LP
962	ROTHBART DEVELOPMENT CORP
963	ROTHSCHILD, EDWARD
964	ROTO ROOTER
965	ROTO ROOTER PLUMBERS - HUNTSVILLE
966	ROYAL UNLIMITED SERVICES CORP
967	RR DONNELLEY & SONS COMPANY
968	RSM MAINTENANCE
969	RUMORES NEWSPAPER
970	RUSTY NAIL RENOVATORS
971	RYANS LAWN SERVICE
972	RYANS MORRISTOWN LLC
973	RYANS OF DENHAM LLC
974	SAAVEDRA ELIZABETH
975	SACCANI DISTRIBUTING CO
976	SAFARI II LLC
977	SALCIDOS GARDENING & LANDSCAPING
978	SAMCO FACILITIES

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979	SAN LUIS OBISPO CHAMBER OF COMMERCE
980	SAN MARCOS MIDDLE SCHOOL ASB
981	SANFORD SEMCHAK & SPEIGHTS INC
982	SANTA MARIA NEON SIGN COMPANY
983	SANTIAGO HYDRO JETTING CLEANING
984	SB ADVISORS INC
985	SCAPES PROFESSIONAL LANDSCAPING
986	SCENIC CITY PLUMBING
987	SCENIC GROUNDS MAINTENANCE LLC
988	SCHMOYER REINHARD LLP
989	SCHNIEDER ELECTRIC (SUMMIT ENERGY SERVICE INC)
990	SCHOMBURG REFRIGERATION
991	SCOTTIE'S OUTDOOR VISIONS
992	SEARCY ARKANSAS
993	SEARCY REGIONAL CHAMBER OF COMMERCE
994	SECURITY SOLUTIONS
995	SEEWALD LABORATORIES
996	SELBY FAMILY TRUST AMENDED AND
997	SELECT ELECTRIC
998	SENTRY EQUIPMENT
999	SEQUOIA BEVERAGE COMPANY
1000	SEQUOIA LANDSCAPE SPECIALTIES
1001	SERVE COMMERCIAL DIV TEPEC INC
1002	SERVER PRODUCTS INC
1003	SERVICE 1ST
1004	SERVICE CEOS LLC
1005	SERVICE PLUS LLC - BRANDON
1006	SERVICE REPAIR SPECIALISTS INC
1007	SERVICE WET GRINDING CO
1008	SERVICECHANNEL.COM INC
1009	SERVICES UNLIMITED
1010	SFI FORD CITY - CHICAGO LLC
1011	SHAMROCK FOODS CO
1012	SHARP KNIFE CO
1013	SHELBY CHARLES ROA
1014	SHERWIN WILLIAMS
1015	SHORTERS CARPET CARE
1016	SIDNEY P ABERNATHY
1017	SIDNEY P ABERNATHY TRUST
1018	SIGN DESIGNS
1019	SIGNATURE LANDSCAPE AND MAINTENANCE
1020	SIZZLE PROMOTIONS, LLC
1021	SKAL BEVERAGES EAST INC
1022	SLADE, BRETT ALAN
1023	SLATER PLUMBING & MECHANICAL INC
1024	SMART TECH
1025	SNAPFINGER
1026	SNAPPY REFRIGERATION LLC
1027	SNOWMEN INC

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1028	SOBIERAJ, GREGORY
1029	SOKOL AND COMPANY
1030	SOLUTIONS WINDOW CLEANING
1031	SOURCE RITE LLC
1032	SOUTH CAROLINA LOGOS INC
1033	SOUTH COAST AQMD
1034	SOUTH EAST CUTLERY
1035	SOUTH HILL MALL
1036	SOUTHEAST MECHANICAL INC
1037	SOUTHERN CALIFORNIA RESTAURANT
1038	SOUTHERN EQUIPMENT DISTRIBUTOR
1039	SOUTHERN OAK SERVICES LLC
1040	SOUTHERN WASTE DISPOSAL INC
1041	SOUTHERN WINE SPIRITS
1042	SOUTHPOINT BUSINESS PARK ASSOC
1043	SOUTHWEST CONSTRUCTION, LLC
1044	SPARTAN SERVICES INC
1045	SPARTAN STAMP & SIGN COMPANY
1046	SPECIAL T WATER SYSTEMS INC
1047	SPENCERS LANDSCAPE LLC
1048	SPORTSMAN LAWN & LANDSCAPING
1049	ST PAUL PIONEER PRESS
1050	STACKPOLE FOOD SERVICE REPAIR
1051	STAFFING PARTNERS
1052	STAN THE HOT WATER MAN
1053	STANDARD SECURITY LIFE INSURANCE
1054	STANISLAUS DISTRIBUTING CO INC
1055	STAPLES BUSINESS ADVANTAGE
1056	STATESBORO HERALD
1057	STATEWIDE CUSTOM POWDER COATIN
1058	STATEWIDE SERVICE
1059	STEFANELLI DISTRIBUTING CO INC
1060	STEPHEN JAMES ASSOCIATES
1061	STEWART & STEWART RENTALS LLC
1062	STONE BREWING COMPANY
1063	STONECREEK VILLAGE SHOPPING CE
1064	STOTHERT PROPERTIES LLC
1065	STRAUGHAN HARDWARE INC
1066	STROEHMANN BAKERIES LLC
1067	STRONG LAWN SERVICE
1068	SUBURBAN DISPOSAL
1069	SUITS LAWN CARE INC
1070	SUMMIT TOWNE CENTRE INC
1071	SUMMIT TOWNSHIP SEWER AUTHORITY
1072	SUMMIT TOWNSHIP WATER AUTHORITY
1073	SUNBURST CHEMICALS INC
1074	SUNBURY GARDENS REALTY CO
1075	SUNNY SKY PRODUCTS OF NORTH AMERICA
1076	SUPERCLEAN SERVICE COMPANY INC

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1077	SUPERIOR FREEZERS
1078	SUPERIOR KNIFE INC
1079	SUTTLE LANDSCAPING
1080	SYMETRA LIFE INSURANCE COMPANY
1081	SYNTROL PLUMBING ELECTRICAL HEAT
1082	TALX CORPORATION
1083	TAMMY LYNN OUTDOOR ADVERTISING
1084	TAURUS CARPET CLEANING & MAINTENANCE
1085	TAYLOR FREEZERS SOUTHERN CALIFORNIA
1086	TECH 24
1087	TECTA AMERICA CORPORATION
1088	TELE SENSE
1089	TEMPERATURE CONTROL SPECIALTIES
1090	TEMPERATURE PROS INC
1091	TFS LEASING
1092	THE 2010 FAITH CHARITABLE TRUS
1093	THE FAITH FAMILY TRUST
1094	THE GENECOV GROUP INC
1095	THE GROUNDSMEN
1096	THE MARKETING WORKSHOP INC
1097	THF CLARKSBURG DEVELOPMENT ONE
1098	THOMAS MITCHELL SCRUGGS JR TRU
1099	THOMAS MITCHELL SCRUGGS TRUST
1100	THOMLEYS VAC U SWEEP INC
1101	THOMPSON, CONNIE G
1102	THOMPSON, NED M
1103	THOMSON COMPUMARK
1104	TIB INCORPORATED
1105	TIGER NATURAL GAS INC
1106	TIM HAYS VINYL REPAIR SERVICE
1107	TIME WARNER CABLE
1108	TIMOTHY S BRANDOM
1109	TIMOTHY S BRANDOM FAMILY TRUST
1110	TO BACKFLOW LLC
1111	TOGNAZZINI BEVERAGE SERVICE
1112	TOLL GAS WELDING SUPPLY
1113	TOMBIGBEE ELECTRIC POWER ASSOC
1114	TOMS LAWN AND LANDSCAPING
1115	TOP GUN PRESSURE WASHING
1116	TORKE COFFEE
1117	TOTAL MECHANICAL SYSTEMS
1118	TOTAL OUTDOOR SERVICES
1119	TOWN OF FALLS AUTHORITY
1120	TOWNE CENTRE LAGUNA WOODS ASSOCIATION
1121	TRANSOURCE
1122	TRAUST GROUP INC
1123	TRI CITY FIRE SPRINKLERS
1124	TRI CITY LANDSCAPING
1125	TRI-DIM FILTER CORP

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1126	TRIM AND SHAPE LANDSCAPING
1127	TRINITY LANDSCAPING OF SOUTH C
1128	TRINITY WARRANTY SOLUTIONS LLC
1129	TRITON IMAGING SYSTEMS
1130	TROUTMAN PARKWAY LLC
1131	TRU HONE CORP
1132	TRUCUT LANDSCAPE SERVICES LLC
1133	TRUVIZION MECHANICAL SERVICES
1134	TSBL DISTRIBUTING
1135	TUNDRA SPECIALTIES INC
1136	TUPELO WATER & LIGHT
1137	TURF SCAPE
1138	TURF TECH
1139	UL LLC
1140	ULINE INC
1141	ULTRA BRITE CARPET
1142	UNION BANK CA WALTER W RALPHS
1143	UNIROYAL ENGINEERED PRODUCTS LLC
1144	UNITED PARCEL SERV
1145	UNIVERSAL CARPET CARE
1146	UPS FREIGHT
1147	URQUHART, SHARON M
1148	US GRINDING INC
1149	US LAWNS OF ATHENS FAYETTEVILLE
1150	US LAWNS OF HARRISON COUNTY
1151	US LAWNS OF NORTHEAST MISSISSIPPI
1152	US POSTAL SERVICE
1153	US SIGNS
1154	USA FACT INC
1155	USA PROTECTION
1156	VALASSIS DIRECT MAIL INC
1157	VALLEY LANDSCAPING SERVICE
1158	VALLEY ROOTER AND PLUMBING INC
1159	VALLEY SEPTIC
1160	VALLEY WIDE BEVERAGE CO
1161	VALOR MECHANICAL
1162	VAN HOOK SERVICE CO INC
1163	VASILE'S CUSTOM UPHOLSTERY
1164	VAUGHNS LAWNS INC
1165	VBS
1166	VELAZQUEZ, RAMON RIVERA
1167	VENTIMIGLIA CO LLC
1168	VER DANE GARDENS & LANDSCAPING
1169	VERIZON
1170	VERIZON 4G
1171	VERIZON BUSINESS
1172	VERT MOBILE LLC
1173	VESTAR ARIZONA XXVI LLC
1174	VETERANS WORLDWIDE MAINTENANCE

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1175	VIDI CUTLERY INC
1176	VIEIRA, BATISTA S & DOLORES
1177	VIRGINIA LOGOS LLC
1178	VISALIA PROPERTY
1179	VISION SERVICE PLAN
1180	VISIT ST PAUL
1181	VITRO SEATING PRODUCTS INC
1182	VMC FACILITIES LLC
1183	VOLLRATH CO
1184	VORTEX
1185	VOSS LIGHTING
1186	W PT ARVADA VII LLC ARVADA CON
1187	W&R QUALITY LAWN SERVICE
1188	WAIT STUFF
1189	WALK, ALICIA
1190	WALL PROTEX
1191	WALNUT SQUARE ASSOCIATES LP
1192	WALTON SIGNAGE
1193	WARE DISPOSAL INC
1194	WASH-ALL - WEST MONROE
1195	WASHINGTON RE INVESTMENT TRUST
1196	WASTE RESOURCES GARDENA
1197	WASTE SERVICES OF GEORGIA LLC
1198	WATERTOWN MALL MERCHANTS
1199	WE DO IT SERVICE
1200	WEDO, ANTHONY
1201	WEINSTEIN ENTERPRISES INC
1202	WELDERS SUPPLY COMPANY OF LOUISIANA
1203	WELSH FACILITY SERVICES
1204	WESCO AIR
1205	WEWERS, LINDA CHARLENE V
1206	WH GRIFFITH, TRUSTEE
1207	WHALEY FOODSERVICE REPAIRS INC
1208	WHITE COFFEE CORP
1209	WHOLESALE TELECOM INC
1210	WIBBY, BENJAMIN J
1211	WIEDENBACH BROWN C
1212	WIERSGALLA CO
1213	WILHITE LANDSCAPING & LAWN CARE
1214	WILLIAM L ABERNATH
1215	WILLIAM L ABERNATHY 2003 CHARI
1216	WILLIAM L ABERNATHY CHARITABLE
1217	WILLIAM L ABERNATHY TESTAMENTARY
1218	WILLIAM S BRANDOM
1219	WILLIAM S BRANDOM JR REVOCABLE
1220	WILMINGTON TRUST
1221	WINDSTREAM
1222	WINE WAREHOUSE
1223	WINTERS BROTHERS HAULING

Buffets, LLC et. al

United States Bankruptcy Court for the Western District of Texas, San Antonio Division

Case no. 16-50557

Amended Annex to Exhibit E to Plan Supplement - Schedule of Transferees

1224	WISCONSIN LIFT TRUCK CORP
1225	WISCONSIN LOGOS LLC
1226	WKCT
1227	WOODBIDGE PLUMBING INC
1228	WOODS LANDSCAPE
1229	WORD CARPET CLEAN LLC
1230	WRI GREENHOUSE LP
1231	WRI URS CLACKAMAS LLC
1232	WRIGHT WAY ENERGY INC
1233	WRIGHT, ALAN
1234	YAKIMA MECHANICAL INC
1235	YAKIMA WELDERS SUPPLY INC
1236	YAM AND SUE LEE LIVING TRUST
1237	YARBROUGH, BILLY D
1238	YES DISTRIBUTING I
1239	YESCO LLC
1240	YOUNGSTOWN OXYGEN AND WELDING
1241	YUBA SUTTER DISPOSAL INC
1242	YUKON REFRIGERATION
1243	ZEE MEDICAL SERVICES
1244	ZEKE LIMA
1245	ZEPHYR SOLUTIONS INC

EXHIBIT F
Alamo Buffets Advance Agreement

Alamo Buffets Advance Agreement
dated May 18, 2017

WHEREAS, On or about March 8, 2016, Buffets LLC and affiliated subsidiary Debtors (collectively with Buffets LLC, the "Debtors") sought relief under Chapter 11 of the Bankruptcy Code, Title 11 of the U.S. Code (the "Code") in case number 16-50557 rbk-11 in the U.S. Bankruptcy Court for the Western District of Texas, San Antonio Division (the "Case");

WHEREAS, thereafter, the U.S. Trustee appointed an Official Committee of Unsecured Creditors (the "Committee") in the Case;

WHEREAS On or about November 30, 2016, the Debtors, the Committee, and certain Insiders (as defined in the Plan and the Code) met and mediated a settlement of the claims and causes of action asserted by the Committee and the group agreed to pursue a consensual reorganization plan, resulting in the Debtors Second Amended Joint Plan of Reorganization dated April 4, 2017 (the "Plan");

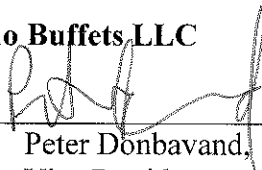
WHEREAS In furtherance of such mediated settlement and Plan, and in further consideration of the issuance to Alamo Buffets LLC, a Texas limited liability company ("Alamo Buffets"), of 100% of the equity of the Reorganized Debtors (as defined in the Plan), Alamo Buffets has agreed to fund the Debtors with \$6,500,000 in cash on the Effective Date of the Plan;

NOW THEREFORE in consideration of the foregoing,

1. Alamo Buffets hereby confirms this its commitment and agreement, in exchange for an agreement by the Reorganized Debtor to transfer new equity in the Reorganized Debtor and for certain releases, to advance cash funding of \$6,500,000 to Buffets, LLC, the direct or indirect parent company of all other Reorganized Debtors, and on behalf of all such Reorganized Debtors pursuant to and subject to the conditions provided in the Plan, with such funding to occur on or before the Effective Date of the Plan;
2. Reorganized Debtors will in turn pay over as, and Alamo Buffets as the sole owner of the Reorganized Debtors at such point will cause the Reorganized Debtors to pay over, as of the Effective Date of the Plan such \$ 6,500,000 to the Unsecured Creditors Trust (the "Trust"), which is being established pursuant to the Plan for distribution in accordance with the Plan; and
3. Alamo Buffets further hereby agrees that the \$6,500,000 to be paid by Alamo Buffet to Buffets, LLC, will be paid, contributed and carried on the Buffets, LLC's books as \$3,250,000 in the form of equity membership interests in Buffets, LLC, the direct or indirect parent company of all other Debtors, and \$3,250,000 in the form of subordinated debt, which shall be subordinated in the same fashion as all other Subordinated Claims are provided for in the Plan.

Executed this 18th day of May, 2017.

Alamo Buffets LLC

By: 

Peter Donbavand,
Vice President

EXHIBIT G
Secured Trust Note

PROMISSORY NOTE

\$5,250,000.00

May 18, 2017

FOR VALUE RECEIVED, Buffets, LLC, a Minnesota limited liability company, Hometown Buffet, Inc., a Minnesota corporation, OCB Restaurant Company, LLC, a Minnesota limited liability company, OCB Purchasing Co., a Minnesota corporation, Ryan's Restaurant Group, LLC, a South Carolina limited liability company, Fire Mountain Restaurants, LLC, an Ohio limited liability company, and Tahoe Joe's, Inc., a Minnesota corporation (individually, a "**Maker**", and collectively the "**Makers**"), having their principal places of business at the address as shown on their respective signature pages, jointly and severally promise to pay to the Unsecured Creditors' Trust, by and through META Advisors LLC, a Delaware limited liability company, the Unsecured Creditors' Trustee ("**Payee**"), as Administrator, for its own benefit and for the benefit of the holders of Allowed General Unsecured Claims (each, as defined in the Plan defined below), at Payee's offices c/o Kelley Drye & Warren LLP, 101 Park Avenue, New York, New York 10178 (the "**Payment Address**"), or at such other place as Payee designates in writing from time to time, the principal sum of FIVE MILLION TWO-HUNDRED AND FIFTY THOUSAND DOLLARS (\$5,250,000.00) (the principal sum or so much of the principal sum as may be outstanding from time to time hereunder, the "**Principal**"), in lawful money of the United States of America, with interest ("**Interest**") on the Principal as set forth in this Promissory Note (this "**Note**"), which Interest and Principal shall be due and payable in the amounts and at the times as are set forth in this Note.

This Note is delivered pursuant to that certain Debtors' Second Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code, dated as of April 4, 2017 (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the "**Plan**"), and is secured by the collateral described in that certain Security Agreement dated as of the date hereof and the Plan (such collateral, the "**Collateral**"; such Security Agreement, as the same may be amended, restated, supplemented, or otherwise modified from time to time, the "**Security Agreement**"; this Note, the Security Agreement, the Subordination Agreement (as defined in the Security Agreement), the Plan, and any other document, contract, or agreement executed and delivered in connection therewith or pursuant thereto collectively, in each case, as the same may be amended, restated, supplemented, or otherwise modified from time to time, the "**Transaction Documents**" and, each, a "**Transaction Document**"), by and among the Makers and the Payee, as Administrator for its own benefit and for the benefit of the holders of Allowed General Unsecured Claims. All capitalized terms not expressly defined in this Note have the meanings assigned to them in the Plan.

Section 1. Accrual of Interest.

(a) Subject to Section 4, the Principal shall bear interest at a rate equal to five and a half percent (5.5%) per annum (the "**Interest Rate**"). All Interest shall be computed based on a presumed year of 360 days for the actual number of days elapsed and shall be due and payable as provided in Section 2.

Section 2. **Payments.**

(a) Makers shall make the following payments on this Note:

(i) Beginning on August 1, 2017, the anticipated first Business Day of the third calendar month following the Effective Date of the Plan and thereafter on a quarterly basis in accordance with the payment schedule attached hereto as **Schedule A**, Makers will make a payment in an amount equal to Six-Hundred and Fifty-Six Thousand Two-Hundred and Fifty Dollars (\$656,250.00) plus then accrued and unpaid Interest in accordance with such **Schedule A**.

(ii) Within three (3) business days after Makers' receipt of any proceeds of any Collateral (other than proceeds arising from the sale of inventory in the ordinary course of business and the related ordinary course cycle of receivables collections), the Makers shall make a payment under this Note with all of such proceeds, less customary and reasonable costs of disposition; provided that, with respect to proceeds from the sale or disposition of obsolete or worn-out furniture, fixtures or equipment consistent with past practice, Makers may use up to \$15,000 from the sale of such items from a single store location to pay costs associated with closing the such store, further provided, however, that the foregoing exception may be applied to the sale of worn-out furniture, fixtures or equipment from not more than 10 store locations in the total.

(iii) On or before the Business Day which is on or immediately follows the second anniversary of the Effective Date of the Plan (the "**Maturity Date**") or upon any earlier Acceleration (as defined below), Makers shall make a payment in an amount equal to the sum of all then outstanding Principal, all accrued and unpaid Interest, and all other accrued and unpaid amounts under this Note and the other Transaction Documents.

(iv) Except to the extent otherwise paid, all accrued and unpaid Interest shall be due and payable, in arrears, on the first Business Day of each third calendar month.

(b) All payments made by or on behalf of the Makers under or on account of this Note shall be paid directly to the Payee for its own benefit and for the benefit of the holders of Allowed General Unsecured Claims, and shall be applied by the Payee at the times, in the amounts, and in the manner set forth in the Plan, or, at the Payee's discretion, in the following order, first, to all fees, expenses, costs, and indemnities of the Payee (whether as Payee or as Administrator) which are then due and payable, second, to all accrued and unpaid Interest, and, third, to Principal; provided, however, to the extent Payee recharacterizes any payment designated by Makers as a payment of Principal or Interest for other purposes, Makers' cure period to remedy any such resulting payment deficiency shall be subject to treatment as an Event of Default under Section 3(a)(ii) hereunder rather than Section 3(a)(i).

Section 3. **Events of Default.**

(a) It is an "**Event of Default**" under this Note if:

(i) Any Maker or any other Person obligated on the Note fails to pay any amount of Principal or Interest as and when required under this Note; provided that with

respect to no more than three failures to pay any amount of Principal or Interest as and when required under this Note, Makers shall have two (2) business days to cure such Event of Default after written notice of such failure;

(ii) Any Maker or any other Person obligated on this Note fails to pay any amount other than Principal or Interest due to Payee, as and when required under this Note or any other Transaction Documents, or fails to perform any other obligations under any Transaction Documents, and such failure continues for a period of thirty (30) calendar days after written notice of such failure (but only a fifteen (15) calendar day cure period shall be allowed as to any failure to provide any periodic report required by any Transaction Document);

(iii) Any Maker or any other Person obligated on this Note (A) executes an assignment for the benefit of its creditors, (B) becomes or is adjudicated bankrupt or insolvent, (C) admits in writing its inability to pay its debts generally as they become due, (D) applies for or consents to the appointment of a conservator, receiver, trustee, or liquidator of that Maker or of all or any substantial part of its assets, (E) files a voluntary petition seeking reorganization or an arrangement with creditors or to seek any other relief under any Debtor Relief Laws, (F) files an answer admitting the material allegations of or consenting to, or defaults in, a petition filed against it in any proceeding under any Debtor Relief Laws, or (G) institutes or voluntarily becomes a party to any other judicial proceedings intended to effect a discharge of its debts, in whole or in part, or seeking to postpone the maturity or the collection of any of its debts or to suspend any of the rights of Payee or any holders of Allowed General Unsecured Claims under any Transaction Document;

(iv) Any Person files a petition seeking reorganization of any Maker or any other Person obligated on this Note or appointing a conservator, receiver, trustee or liquidator of any Maker or any other Person obligated on this Note or of a substantial part of such Maker's or such other Person's assets and the petition is not discharged within 60 days after its filing;

(v) A court of competent jurisdiction enters an order (other than the order confirming the Plan), judgment or decree approving the reorganization of any Maker or any other Person obligated on this Note or appointing a conservator, receiver, trustee or liquidator of any Maker or any other Person obligated on this Note or of a substantial part of such Maker's or such other Person's assets, and the order, judgment or decree is not permanently stayed, vacated or reversed within 60 days after its entry;

(vi) Any certification or representation of any Maker or any other Person obligated on this Note or the Security Agreement shall be determined by Payee to have been untrue or incorrect in any respect when made or deemed made that would reasonably be expected to be material to the Maker's ability to repay this Note in accordance with its terms or material with respect to the aggregate value of Collateral securing the obligations under the Note or otherwise of a similarly material nature (or, in the case of any certification or representation which is subject to a similar materiality qualifier, such certification or representation shall be determined by Payee to have been untrue or incorrect in any respect when made or deemed made);

(vii) The Payee shall cease to have a first-priority security interest in any of the Collateral except for any Permitted Liens and except for any such failures to maintain a first-priority security interest as would not reasonably be expected to have any material adverse effect on the aggregate value of Collateral securing the obligations under the Note in relation to the outstanding amount of the Note;

(viii) Any Maker, or any other Person obligated on this Note, or any of their respective affiliates, officers, directors, managers, or equity holders asserts or alleges (i) that a Transaction Document is void, voidable, unenforceable or has otherwise ceased to be in full force and effect (except in accordance with its terms), (ii) any Maker or any other Person obligated on this Note ceases to be bound by each Transaction Document to which it is a party in accordance with their terms, or (iii) any Lien contemplated by any of the Transaction Documents with respect to any material portion of the Collateral is void, voidable, unenforceable or has ceased to be perfected and/or to have the priority required by the Transaction Documents except for any such failures to maintain a perfected enforceable security interest on any portion of the Collateral as would not reasonably be expected to have any material adverse effect on the aggregate value of Collateral securing the obligations under the Note in relation to the outstanding amount of the Note; or

(ix) Any holder of any Subordinated Claim shall fail to comply with any term of, or otherwise fails to perform any other covenants under, the Subordination Agreement and such failure continues for a period of thirty (30) calendar days after written notice of such failure.

(b) If an Event of Default occurs, Payee may do any or all of the following:

(i) Declare all or any portion of the Note and any obligations arising hereunder immediately due and payable ("**Acceleration**") (provided, however, this Note and all obligations arising hereunder shall immediately and automatically become due and payable in full, without notice or demand, upon the occurrence of any Event of Default described in the foregoing Sections 3(a)(iii), (iv), and (v));

(ii) Foreclose upon the Collateral; and

(iii) Exercise any rights and remedies under the Transaction Documents or as otherwise provided by law or equity.

(c) For purposes of this section, "**Debtor Relief Laws**" means Title 11 of the United States Code (as amended from time to time) and all other applicable liquidation, conservatorship, bankruptcy, insolvency, rearrangement, moratorium, reorganization, fraudulent transfer or conveyance or similar debtor relief laws affecting the rights of creditors generally from time to time in effect.

Section 4. **Default Rate.** As used herein, the term "Default Interest Rate" shall mean the lesser (a) of the Interest Rate plus three percent (3.0%) and (b) the applicable maximum lawful rate. At the election of the Payee while an Event of Default exists and automatically (and without notice to any Person) in the case of any Event of Default described in Sections

3(a)(i), (iii), (iv), or (v), Interest on the Principal will accrue at the Default Interest Rate until such Event of Default is cured or waived.

Section 5. **Waivers And Amendments.** (a) No waivers, amendments or modifications of this Note shall be valid unless in writing and signed by an officer of the Payee and each Maker.

(b) MAKERS WAIVE PRESENTMENT FOR PAYMENT, DEMAND, DISHONOR, NOTICE OF INTENTION TO ACCELERATE, NOTICE OF ACCELERATION, AND, EXCEPT AS EXPRESSLY SET FORTH IN THE PLAN OR IN SECTION 3(a) ABOVE, NOTICE OF ANY OF THE FOREGOING OR NOTICE OF DEFAULT. MAKERS FURTHER WAIVE ANY PROTEST, LACK OF DILIGENCE OR DELAY IN COLLECTION OF THE DEBT OR ENFORCEMENT OF ANY OF THE DEBT DESCRIBED HEREIN OR IN THE PLAN. MAKERS AND ALL ENDORSERS, SURETIES AND GUARANTORS OF THE OBLIGATIONS, IF ANY, CONSENT TO ANY EXTENSIONS OF TIME, RENEWALS, WAIVERS AND MODIFICATIONS THAT PAYEE MAY GRANT WITH RESPECT TO THE OBLIGATIONS AND TO THE RELEASE OF ANY SECURITY FOR THIS NOTE AND AGREE THAT ADDITIONAL MAKERS MAY BECOME PARTIES TO THIS NOTE AND ADDITIONAL ENDORSERS, GUARANTORS OR SURETIES MAY BE ADDED WITHOUT NOTICE AND WITHOUT AFFECTING THE LIABILITY OF ANY ORIGINAL MAKER OR ANY ORIGINAL ENDORSER, SURETY OR GUARANTOR.

(c) No waiver by Payee of any default shall operate as a waiver of any other default or the same default on a future occasion. Neither the failure nor any delay on the part of Payee in exercising any right, power, or remedy under a Transaction Document shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Section 6. **Usury Limitations.** It is the intent of Makers and Payee in the execution and acceptance of this Note to contract in strict compliance with applicable usury law. In furtherance thereof, Makers and, by accepting this Note, Payee stipulate and agree that none of the terms and provisions contained in this Note, or in any other instrument now or hereafter executed in connection herewith, shall ever be construed to create a contract to pay for the use, forbearance or detention of money, interest at a rate in excess of the maximum interest rate permitted to be charged by applicable law; Makers shall never be obligated or required to pay interest on this Note at a rate in excess of the maximum interest that may be lawfully charged under applicable law; and that the provisions of this paragraph shall control over all other provisions of this Note, and any other instruments now or hereafter executed in connection herewith or any other oral or written agreement which may be in apparent conflict herewith. Payee expressly disavows any intention to charge or collect excessive unearned interest or finance charges. If the maturity of this Note shall be accelerated for any reason, or if this Note is paid prior to the end of the term thereof, the actual period from the date of initial advance of this Note through the date payment exceeds the applicable maximum lawful rate applicable law, Payee shall, at its option, either refund to Makers the amount of such excess or credit the amount of such excess against the Principal then outstanding and thereby shall render inapplicable any and all penalties of any kind provided by applicable law as a result of such excess interest. If Payee shall contract for, charge or receive any amount or amounts and/or any

other thing of value from Makers which are determined to constitute interest which would increase the effective interest rate on this Note to a rate in excess of that permitted to be charged by applicable law, all such amounts determined to constitute interest in excess of the lawful rate shall, upon such determination, at the option of Payee, be either immediately returned to Makers or credited against the principal balance of this Note then outstanding, in which event any and all penalties of any kind under applicable law as a result of such excess interest shall be inapplicable. By execution of this Note, Makers acknowledge that Makers believe this Note to be non-usurious and agree that if, at any time, any Maker should have reason to believe that this Note is in fact usurious, such Maker will give Payee notice of such condition and each Maker agrees that Payee shall have ninety (90) days in which to make appropriate refund or other adjustment in order to correct such condition if in fact such condition exists.

Section 7. **Fees, Costs and Expenses.** Without limiting any rights of the Payee, and subject to the terms provided in the Plan, the Makers additionally agree, jointly and severally, to promptly pay all costs and expenses incurred by the Payee in connection with preparing and negotiating the Transaction Documents.

Section 8. **Applicable Law.** This Note is governed by and will be construed in accordance with the laws of the State of Texas without regard to its conflicts of laws principles.

Section 9. **Venue; Waiver of Jury Trial/Dispute Resolution**

(a) Makers and, by accepting this Note, Payee irrevocably consent and submit to the non-exclusive jurisdiction of the United States Bankruptcy Court for the Western District of Texas, San Antonio Division and waive any objection based on venue or *forum non conveniens* with respect to any action instituted therein arising under this Note or in any way connected with or related or incidental to the dealings of the parties hereto in respect of this Note or any of the documents or the transactions related hereto or thereto, in each case whether now existing or hereafter arising, and whether in contract, tort, equity or otherwise, and agree that any dispute with respect to any such matters shall be heard only in the courts described above (except that Payee shall have the right to bring any action or proceeding against any Maker or its property in the courts of any other jurisdiction which Payee deems necessary or appropriate in order to realize on the Collateral or to otherwise enforce its rights against any Maker or its property).

(b) MAKERS AND, BY ACCEPTING THIS NOTE, PAYEE HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (i) ARISING UNDER THIS NOTE, OR (ii) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS NOTE OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE. MAKERS AND, BY ACCEPTING THIS NOTE, PAYEE HEREBY AGREE AND CONSENT THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT MAKERS OR PAYEE MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS NOTE WITH ANY COURT AS

WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

Section 10. **Notices.** All notices and communications hereunder shall be in writing and may be transmitted to the party or parties to which such notice or communication is directed via (a) e-mail or electronic transmission, (b) hand delivery, (c) registered mail, postage prepaid, or (d) standard overnight delivery, in each case, to the applicable electronic mail and/or physical address(es) listed in Schedule 10 attached hereto (as may be amended from time to time by the parties to this Note), and shall be deemed effective and sufficient when transmitted; provided that, specifically with respect to any notice of default under Section 3(a)(i) of this Note notice shall be deemed effective and sufficient upon transmission by the Payee of notice of such default, without more, to the following electronic mail address(es):

pdonbavand@foodmps.com AND awang@foodmps.com, with a copy to pryan@dykema.com

Section 11. **Time of the Essence.** Time is of the essence with respect to the payment and performance of the Makers' obligations hereunder.

Section 12. **Headings.** All titles or headings to articles, sections, subsections or other divisions of this Note are only for convenience and shall not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreement of the Makers hereunder.

Section 13. **Joint and Several Liability; Successors and Assigns.** The obligations and liabilities of each Maker under this Note will be joint and several. This Note binds each Maker and its successors, assigns, heirs, administrators, executors, agents and representatives and inures to the benefit of Payee and its successors, assigns, heirs, administrators, executors, agents and representatives. The Payee's interests in and rights under this Note and the Security Agreement are freely assignable, in whole or in part, by Payee. Nothing in this Note or the Security Agreement shall prohibit Payee from pledging or assigning this Note or the Security Agreement or any interest therein. No Maker shall assign its rights and interests hereunder without the prior written consent of Payee, and any attempt by a Maker to assign without Payee's prior written consent is null and void.

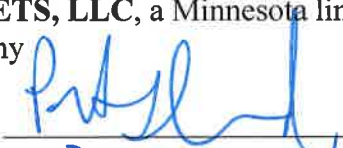
Section 14. **Severability.** If any provision of this Note is determined by the final, non-appealable judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable, it will not impair, invalidate or nullify the remainder of this Note.

Section 15. **Absolute Obligation.** Except for the Section of this Note entitled "Usury Limitations," no reference in this Note to any other Transaction Document and no other provision of this Note or of any other Transaction Document will impair or alter the obligation of any Maker, which are absolute and unconditional, to pay the Principal, Interest and any other amounts due and payable under this Note, as and when required.

IN WITNESS WHEREOF, Makers have executed and delivered this Note as of the date first set forth above.

MAKERS:

BUFFETS, LLC, a Minnesota limited liability company

By: 

Name:

Title:

*Peter Donbavand
vice president*

Address for Notice:

BUFFETS, LLC

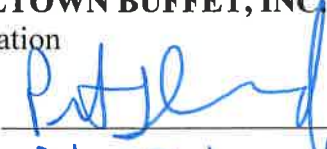
c/o FMP SA Management Group, LLC

120 Chula Vista

San Antonio, Texas 78232

Attention: Peter Donbavand, Vice President for
Real Estate and Business Development

HOMETOWN BUFFET, INC., a Minnesota
Corporation

By: 

Name:

Title:

*Peter Donbavand
vice president*

Address for Notice:

HOMETOWN BUFFET, INC.

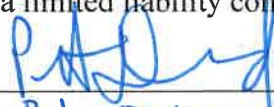
c/o FMP SA Management Group, LLC

120 Chula Vista

San Antonio, Texas 78232

Attention: Peter Donbavand, Vice President for
Real Estate and Business Development

OCB RESTAURANT COMPANY, LLC, a
Minnesota limited liability company

By: 

Name:

Title:

Peter Donbavand
vice president

Address for Notice:

OCB RESTAURANT COMPANY, LLC

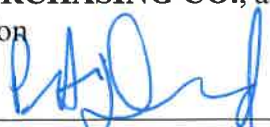
c/o FMP SA Management Group, LLC

120 Chula Vista

San Antonio, Texas 78232

Attention: Peter Donbavand, Vice President for
Real Estate and Business Development

OCB PURCHASING CO., a Minnesota
corporation

By: 

Name:

Title:

Peter Donbavand
Vice president

Address for Notice:

OCB PURCHASING CO.

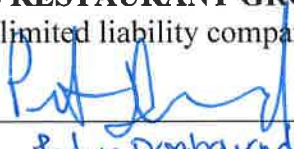
c/o FMP SA Management Group, LLC

120 Chula Vista

San Antonio, Texas 78232

Attention: Peter Donbavand, Vice President for
Real Estate and Business Development

RYAN'S RESTAURANT GROUP, LLC, a South
Carolina limited liability company

By: 

Name:

Title:

Peter Donbavand
Vice president

Address for Notice:

RYAN'S RESTAURANT GROUP, LLC

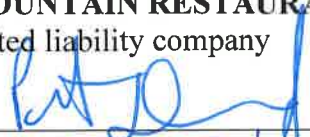
c/o FMP SA Management Group, LLC

120 Chula Vista

San Antonio, Texas 78232

Attention: Peter Donbavand, Vice President for
Real Estate and Business Development

FIRE MOUNTAIN RESTAURANTS, LLC, an
Ohio limited liability company

By: 

Name:

Title:

Peter Donbavand
vice president

Address for Notice:

FIRE MOUNTAIN RESTAURANTS, LLC

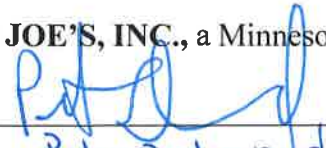
c/o FMP SA Management Group, LLC

120 Chula Vista

San Antonio, Texas 78232

Attention: Peter Donbavand, Vice President for
Real Estate and Business Development

TAHOE JOE'S, INC., a Minnesota corporation

By: 

Name:

Title:

*Peter Donbavand
Vice president*

Address for Notice:

TAHOE JOE'S, INC.

c/o FMP SA Management Group, LLC

120 Chula Vista

San Antonio, Texas 78232

Attention: Peter Donbavand, Vice President for
Real Estate and Business Development

SCHEDULE 10

Notice Addresses

**Buffets, LLC,
Hometown Buffet, Inc.,
OCB Restaurant Company, LLC,
OCB Purchasing Co.,
Ryan's Restaurant Group, LLC,
Fire Mountain Restaurants, LLC, and
Tahoe Joe's, Inc.**

Each of the foregoing entities to be addressed:

c/o FMP SA Management Group, LLC
120 Chula Vista
San Antonio, Texas 78232
Attention: Peter Donbavand, Vice President for
Real Estate and Business Development

Schedule A - Principal and Interest Payments

Issue Date 5/1/2017
Original Principal Amount \$ 5,250,000
Quarterly Payment Amount 656,250
Interest Rate (Annual) 5.5%

	<u>Beginning Balance</u>	<u>Principal</u>	<u>Interest</u>	<u>Ending Balance</u>	<u>Total Payment</u>
5/1/2017				\$ 5,250,000.00	
8/1/2017	\$ 5,250,000.00	\$(656,250.00)	\$(72,187.50)	4,593,750.00	\$(728,437.50)
11/1/2017	4,593,750.00	(656,250.00)	(63,164.06)	3,937,500.00	(719,414.06)
2/1/2018	3,937,500.00	(656,250.00)	(54,140.63)	3,281,250.00	(710,390.63)
5/1/2018	3,281,250.00	(656,250.00)	(45,117.19)	2,625,000.00	(701,367.19)
8/1/2018	2,625,000.00	(656,250.00)	(36,093.75)	1,968,750.00	(692,343.75)
11/1/2018	1,968,750.00	(656,250.00)	(27,070.31)	1,312,500.00	(683,320.31)
2/1/2019	1,312,500.00	(656,250.00)	(18,046.88)	656,250.00	(674,296.88)
5/1/2019	\$ 656,250.00	\$(656,250.00)	\$(9,023.44)	\$ -	\$(665,273.44)

EXHIBIT H
Subordination Agreement

SUBORDINATION AGREEMENT

THIS AGREEMENT, dated as of May 18, 2017, is made by BUFFETS, LLC, a Minnesota limited liability company, HOMETOWN BUFFET, INC., a Minnesota corporation, OCB RESTAURANT COMPANY, LLC, a Minnesota limited liability company, OCB PURCHASING CO., a Minnesota corporation, RYAN'S RESTAURANT GROUP, LLC, a South Carolina limited liability company, FIRE MOUNTAIN RESTAURANTS, LLC, an Ohio limited liability company, TAHOE JOE'S, INC., a Minnesota corporation, (each of the foregoing, a "**Debtor**", and collectively, the "**Debtors**"), ALAMO CRG, LLC, a limited liability company organized under the laws of the state of Texas, FMP SA MANAGEMENT GROUP, LLC ("**FMP**"), a limited liability company organized under the laws of the state of Texas, TXFMP MANAGEMENT, LLC ("**TXFMP**"), a limited liability company organized under the laws of the state of Texas, ALL JONES LLC, a limited liability company organized under the laws of the state of Texas, BPTX HOLDINGS, LLC, a limited liability company organized under the laws of the state of Texas, LARRAC INV., LLC SERIES L, a limited liability company organized under the laws of the state of Texas, and DAYSPRING OPERATING COMPANY, LLC, limited liability company organized under the laws of the state of Texas (each of the foregoing, including each Debtor, together with any and all affiliates of any of the foregoing, a "**Subordinated Creditor**", and collectively, the "**Subordinated Creditors**"), for the benefit of META ADVISORS LLC, a Delaware limited liability company, as the Unsecured Creditors' Trustee for the Unsecured Creditors' Trust (each, as defined in the Plan, as defined below) (together with its successors and assigns in such capacity as Trustee, the "**Trustee**"; together with the Unsecured Creditors' Trust, the "**Unsecured Claimants**").

Each of the Debtors is now or hereafter may be indebted to the Unsecured Creditors Trust and the Trustee pursuant to the terms of the Plan and the Secured Trust Note (each, as defined below).

The Subordinated Creditors have made or may make loans or grant other financial accommodations to the Debtors, or certain of them.

Pursuant to the Plan, the Subordinated Creditors are required to subordinate the payment of the Subordinated Creditor's loans and other financial accommodations to the payment of any and all indebtedness of the Debtors owed to the Unsecured Claimants pursuant to the Secured Trust Note or the Plan.

ACCORDINGLY, in consideration of \$10.00 and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Subordinated Creditor hereby agrees as follows:

1. **Definitions.** All capitalized terms used herein (including the preamble and recitals hereto) and not otherwise defined herein shall have the meanings ascribed thereto in the Plan. As used herein, the following terms have the meanings set forth below:

"Bankruptcy Case" means collectively, the Chapter 11 Bankruptcy Cases filed by each of the Debtors in the Bankruptcy Court, jointly administered under Case No. 16-50557 *In re Buffets, LLC*.

"Bankruptcy Court" means the United States Bankruptcy Court for the Western District of Texas.

"Debtor Default" means an Event of Default as defined in any Transaction Document, including, but not limited to, the Secured Trust Note, or any default under or breach of any such agreement or instrument.

“Collateral” means all collateral, including all proceeds thereof, now or hereafter securing payment of the Secured Trust Note and any other obligations to the Unsecured Claimants arising under the Secured Trust Note or other Transaction Documents.

“Lien” means any security interest, mortgage, deed of trust, pledge, lien, charge, encumbrance, title retention agreement or analogous instrument or device, including the interest of each lessor under any capitalized lease and the interest of any bondsman under any payment or performance bond, in, of or on any assets or properties of a Person, whether now owned or hereafter acquired and whether arising by agreement or operation of law.

“Plan” means that certain Debtors’ Second Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code dated as of April 4, 2017, filed by the Debtors in the Bankruptcy Case.

“Secured Trust Note” shall have the meaning ascribed thereto in the Plan.

“Security Agreement” means that certain Security Agreement dated as of the date hereof and executed by the Debtors in favor of the Trustee.

“Subordinated Indebtedness” means each and every debt, liability and obligation of every type and description which Debtors, or any of them, may now or at any time hereafter owe to the Subordinated Creditors, or any of them, whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several or joint and several, including without limitation, all obligations arising under or consisting of (a) DIP Financing Claim, (b) the FMP Cure Claim, (c) the Alamo CRG Secured Claim, (d) the Pre-Petition Secured Credit Claims, (e) any other Claims of the Pre-Petition Secured Creditors and their principals and affiliates, (f) any other Claims of FMP, TXFMP, Alamo CRG, Alamo Ovation, LLC, non-debtor parent companies of the Debtors, and the respective principals and affiliates of any of the foregoing listed in items (a)-(f), (g) Intercompany Claims, and (h) any obligations relating to the Alamo Buffets Advance (in each case, as defined in the Plan); provided, however, that the Subordinated Indebtedness shall not include certain post-Effective Date management fees of TXFMP as provided in Section 3 hereof.

“Transaction Documents” means shall means the Secured Trust Note, the Plan, the Security Agreement, this Agreement, and each and every document executed in connection therewith, including, without limitation any mortgages, deeds of trust, deeds to secure debt, or similar instruments respecting the Debtors’ interests in real property.

“Trust Indebtedness” means all obligations owed to the Unsecured Claimants arising under the Secured Trust Note or other Transaction Documents.

2. **Subordination.** The payment of all of the Subordinated Indebtedness is hereby expressly subordinated to the extent and in the manner hereinafter set forth to the payment in full of all Trust Indebtedness, and, regardless of any priority otherwise available to any Subordinated Creditor by law or by agreement, the Trustee (for the benefit of the Unsecured Claimants) shall hold a first priority Lien in the Collateral, and any Lien claimed therein by any Subordinated Creditor shall be and remain fully subordinate for all purposes to the Lien of the Trustee therein for all purposes whatsoever. The Subordinated Indebtedness shall continue to be subordinated to the Trust Indebtedness even if the Trust Indebtedness is deemed unsecured, under-secured, subordinated, avoided or disallowed under the Bankruptcy Code or other applicable law.

3. No Payments Except Permitted Payments. Until all of the Trust Indebtedness has been paid in full and the Trustee has released its Lien in the Collateral, no Debtor shall make, and no Subordinated Creditor shall, without the Trustee's prior written consent, demand, receive or accept any payment (whether of principal, interest or otherwise) from any Debtor in respect of any Subordinated Indebtedness, or exercise any right of setoff, or permit any setoff, in respect of any Subordinated Indebtedness. As set forth in the Plan, TXFMP shall continue to manage the Reorganized Debtors pursuant to the TXFMP Management Agreement (as defined in the Plan) and shall be entitled to receive management fees for post-Effective Date management services as provided for in the TXFMP Management Agreement; provided, however, that, unless and until the Secured Trust Note is satisfied in full, the TXFMP Management Agreement may not be amended and the calculation of management fees shall not be altered without the written consent of the Unsecured Creditors' Trustee, and further provided that, in the event of an Event of Default under the Secured Trust Note, no unpaid pre-Event of Default management fees shall be paid.

4. Receipt of Prohibited Payments. If any Subordinated Creditor receives any payment on any Subordinated Indebtedness, such Subordinated Creditor will hold the amount so received in trust for the Unsecured Claimants and will forthwith turn over such payment to the Trustee (for the benefit of the Unsecured Claimants) in the form received (except for the endorsement of such Subordinated Creditor where necessary) for application to then-existing Trust Indebtedness (whether or not due), in such manner of application as the Trustee may deem appropriate under the terms of the Plan. If any Subordinated Creditor exercises any right of setoff which such Subordinated Creditor is not permitted to exercise under the provisions of this Agreement, such Subordinated Creditor will promptly pay over to the Trustee (for the benefit of the Unsecured Claimants), in immediately available funds, an amount equal to the amount of the claims or obligations offset. If any Subordinated Creditor fails to make any endorsement required under this Agreement, the Trustee, or any of its officers or employees or agents on behalf of the Trustee, is hereby irrevocably appointed as the attorney-in-fact (which appointment is coupled with an interest) for such Subordinated Creditor to make such endorsement in such Subordinated Creditor's name.

5. Action on Subordinated Indebtedness. No Subordinated Creditor will commence any action or proceeding against any Debtor to recover all or any part of the Subordinated Indebtedness, or join with any creditor (unless the Trustee shall so join on behalf of the Unsecured Claimants) in bringing any proceeding against such Debtor under any bankruptcy, reorganization, readjustment of debt, arrangement of debt receivership, liquidation or insolvency law or statute of the federal or any state government, or take possession of (other than receipt of management fees paid from Debtor's cash Collateral to the extent permitted under Section 3 hereof), sell, or dispose of any Collateral, or exercise or enforce any right or remedy available to such Subordinated Creditor with respect to any such Collateral, unless and until the Trust Indebtedness has been paid in full and the Trustee has released its Lien in the Collateral.

6. Action Concerning Collateral.

(a) Notwithstanding any Lien now held or hereafter acquired by any Subordinated Creditor, the Trustee may take possession of, sell, dispose of, and otherwise deal with all or any part of the Collateral, and may enforce any right or remedy available to it with respect to any Debtor or the Collateral, all without notice to or consent of any Subordinated Creditor except as specifically required by applicable law.

(b) The Unsecured Claimants shall have no duty to preserve, protect, care for, insure, take possession of, collect, dispose of, or otherwise realize upon any of the Collateral, and in no event shall any Unsecured Claimant be deemed to be any Subordinated Creditor's agent with respect to the Collateral. All proceeds received by any Unsecured Claimant with respect to any Collateral may be

applied, first, to pay or reimburse the Trustee for all costs and expenses (including reasonable attorneys' fees) incurred by the Trustee in connection with the collection of such proceeds, and, second, to any Trust Indebtedness secured by the Trustee's Lien in that Collateral in any order that the Trustee may choose so long as such election is in accordance with the terms of the Plan.

7. Bankruptcy and Insolvency. In the event of any receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization or arrangement with creditors, whether or not pursuant to bankruptcy law, the sale of all or substantially all of the assets of any Debtor, dissolution, liquidation or any other marshalling of the assets or liabilities of any Debtor, the Subordinated Creditor will file all claims, proofs of claim or other instruments of similar character necessary to enforce the obligations of such Debtor in respect of the Subordinated Indebtedness and will hold in trust for the Unsecured Claimants and promptly pay over to the Trustee in the form received (except for the endorsement of such Subordinated Creditor where necessary) for application to the then-existing Trust Indebtedness, any and all moneys, dividends or other assets received in any such proceedings on account of the Subordinated Indebtedness, unless and until the Trust Indebtedness has been paid in full and the Trustee's Lien in the Collateral has been terminated. If any Subordinated Creditor shall fail to take any such action, the Trustee, as attorney-in-fact for such Subordinated Creditor, may take such action on such Subordinated Creditor's behalf. Each Subordinated Creditor hereby irrevocably appoints the Trustee, or any of its officers or employees on behalf of the Trustee, as the attorney-in-fact for such Subordinated Creditor (which appointment is coupled with an interest) with the power but not the duty to demand, sue for, collect and receive any and all such moneys, dividends or other assets and give acquittance therefor and to file any claim, proof of claim or other instrument of similar character, to vote claims comprising Subordinated Indebtedness, to accept or reject any plan of partial or complete liquidation, reorganization, arrangement, composition or extension and to take such other action in the Unsecured Claimants' own name or in the name of the Subordinated Creditor as the Trustee may deem necessary or advisable for the enforcement of the agreements contained herein; and each Subordinated Creditor will execute and deliver to the Trustee such other and further powers-of-attorney or instruments as the Trustee may request in order to accomplish the foregoing. If in such event the Unsecured Claimants desire to permit the use of cash collateral or to provide post-petition financing to any Debtor, the Subordinated Creditors shall not object to the same or assert that its interests are not being adequately protected.

8. Restrictive Legend; Transfer of Subordinated Indebtedness. Each Subordinated Creditor will cause any notes, bonds, debentures or other instruments evidencing the Subordinated Indebtedness or any part thereof executed after the date hereof to contain a specific statement thereon to the effect that the indebtedness thereby evidenced is subject to the provisions of this Agreement, and such Subordinated Creditor will mark its books conspicuously to evidence the subordination effected hereby. Each Subordinated Creditor represents and warrants to the Unsecured Claimants that it is the lawful holder of its portion of the Subordinated Indebtedness and has not transferred any interest therein to any other person or entity. Without the prior written consent of the Trustee, the Subordinated Creditors will not assign, transfer or pledge to any other person any of the Subordinated Indebtedness or agree to a discharge or forgiveness of the same.

9. Continuing Effect. This Agreement shall constitute a continuing agreement of subordination, and the Trustee may, without notice to or consent by any Subordinated Creditor, modify any term of the Transaction Documents and the Trust Indebtedness in reliance upon this Agreement. Without limiting the generality of the foregoing, the Unsecured Claimants may, at any time and from time to time, without the consent of or notice to the Subordinated Creditors and without incurring responsibility to the Subordinated Creditors or impairing or releasing any of Unsecured Claimants' rights or any of the Subordinated Creditors' obligations hereunder:

(a) change the interest rate or change the amount of payment or extend the time for payment or renew or otherwise alter the terms of any Trust Indebtedness or any instrument evidencing the same in any manner;

(b) sell, exchange, release or otherwise deal with any property at any time securing payment of the Trust Indebtedness or any part thereof;

(c) release anyone liable in any manner for the payment or collection of the Trust Indebtedness or any part thereof;

(d) exercise or refrain from exercising any right against any Debtor or any other person (including the Subordinated Creditors); and

(e) apply any sums received by the Unsecured Claimants, by whomsoever paid and however realized, to the Trust Indebtedness in such manner as the Trustee shall deem appropriate under the terms of the Plan.

10. No Marshalling. Each Subordinated Creditor hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of Unsecured Claimants' remedies permitted by applicable law or agreement.

11. Notice. All notices and other communications hereunder shall be in writing and shall be (a) personally delivered, (b) transmitted by registered mail, postage prepaid, or (c) transmitted by telecopy, in each case addressed to the party to whom notice is being given at its address as set forth below:

If to the Unsecured Claimants:

META Advisors LLC
c/o Kelley Drye & Warren LLP
101 Park Avenue
New York, New York 10178
Attention: _____
Fax No.: _____

If to any Subordinated Creditor:

at the address for such Subordinated Creditor shown on
Exhibit A attached hereto.

or at such other address as may hereafter be designated in writing by that party. All such notices or other communications shall be deemed to have been given on (i) the date received if delivered personally, (ii) three business days after the date of posting if delivered by mail, (iii) the date of transmission if delivered by telecopy, or (iv) the date of acknowledged receipt if delivered by express delivery service.

12. Conflict in Agreements. If the subordination provisions of any instrument evidencing any Subordinated Indebtedness conflict with the terms of this Agreement, the terms of this Agreement shall govern the relationship between the Unsecured Claimants and the Subordinated Creditors.

13. No Waiver. No waiver shall be deemed to be made by any Unsecured Claimant of any of its rights hereunder unless the same shall be in writing signed by the Trustee on behalf of the Unsecured

Claimants, and each such waiver, if any, shall be a waiver only with respect to the specific matter or matters to which the waiver relates and shall in no way impair the rights of any Unsecured Claimant or the obligations of the Subordinated Creditors to the Unsecured Claimants in any other respect at any time.

14. Binding Effect; Acceptance. This Agreement shall be binding upon each Subordinated Creditor and such Subordinated Creditor's respective heirs, legal representatives, successors and assigns and shall inure to the benefit of each Unsecured Claimant and its participants, successors and assigns irrespective of whether this or any similar agreement is executed by any other creditor of Company. Notice of acceptance by the Unsecured Claimants of this Agreement or of reliance by the Unsecured Claimants upon this Agreement is hereby waived by each Subordinated Creditor.

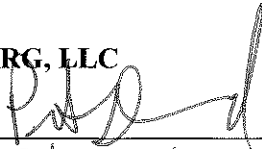
15. Miscellaneous. The paragraph headings herein are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

16. Governing Law; Consent to Jurisdiction and Venue; Waiver of Jury Trial. This Agreement shall be governed by and construed in accordance with the substantive laws (other than conflict laws) of the State of Texas. Each party consents to the personal jurisdiction of the Bankruptcy Court with respect to any controversy related to this Agreement, waives any argument that venue in any such forum is not convenient, and agrees that any litigation initiated by any of them in connection with this Agreement may be venued in the Bankruptcy Court. **THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON OR PERTAINING TO THIS AGREEMENT.**

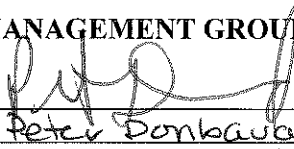
[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, each Subordinated Creditor has executed this Subordination Agreement as of the date and year first above-written.

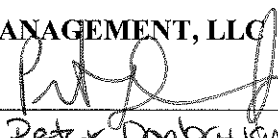
ALAMO CRG, LLC

By: 
Name: Peter Donbavand
Title: Vice president

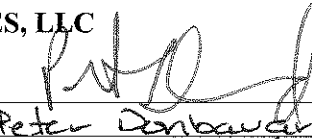
FMP SA MANAGEMENT GROUP, LLC

By: 
Name: Peter Donbavand
Title: vice president

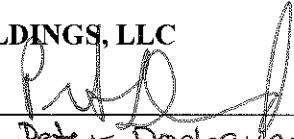
TXFMP MANAGEMENT, LLC

By: 
Name: Peter Donbavand
Title: vice president

ALL JONES, LLC

By: 
Name: Peter Donbavand
Title: vice president

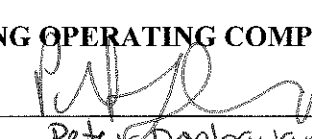
BPTX HOLDINGS, LLC

By: 
Name: Peter Donbavand
Title: vice president

LARRAC INV., LLC SERIES L

By: 
Name: Peter Donbavand
Title: vice president

DAYSPRING OPERATING COMPANY, LLC

By: 
Name: Peter Donbavand
Title: vice president

Acknowledgment by Debtors

The undersigned, each being a Debtor referred to in the foregoing Agreement, hereby (a) acknowledges receipt of a copy thereof, (b) agrees to all of the terms and provisions thereof, (c) agrees to and with the Trustee that it shall not make payment on the Subordinated Indebtedness except as expressly permitted by the foregoing Agreement, (d) agrees that any such payment that is not expressly permitted will constitute an Event of Default under, and as defined in, the Transaction Documents, and (e) agrees to mark its books conspicuously to evidence the subordination of the Subordinated Indebtedness effected hereby.

RYAN'S RESTAURANT COMPANY, LLC

By: 
Name: Peter Donbaund
Title: vice president

BUFFETS, LLC

By: 
Name: Peter Donbaund
Title: vice president

FIRE MOUNTAIN RESTAURANTS, LLC

By: 
Name: Peter Donbaund
Title: vice president

HOME BUFFET, INC.

By: 
Name: Peter Donbaund
Title: vice president

TAHOE JOE'S, INC.

By: 
Name: Peter Donbaund
Title: vice president

OCB RESTAURANT COMPANY, LLC

By: 
Name: Peter Donbaund
Title: vice president

OCB PURCHASING CO.,

By: 
Name: Peter Donbaund
Title: Vice president

EXHIBIT A

Each Subordinated Creditor may be provided any notice required or provided for hereunder at:

c/o FMP SA Management Group, LLC
120 Chula Vista
San Antonio, Texas 78232
Attention: Peter Donbavand, Vice President for Real
Estate and Business Development

EXHIBIT I
Assignment Agreement

ASSIGNMENT AGREEMENT

This ASSIGNMENT AGREEMENT (this “**Assignment**”), is entered into as of this 18th day of May, 2017 (the “**Assignment Date**”), by and between Alamo Ovation, LLC, Buffets Restaurants Holdings, Inc., and Buffets Holdings, LLC (collectively, the “**Non-Debtor Parents**” or the “**Assignors**”) and META Advisors LLC, as Trustee and on behalf of the Unsecured Creditors’ Trust (the “**Trust**” or the “**Assignee**”).

RECITALS:

A. Alamo Ovation, LLC owns 100% of the stock of Buffets Restaurants Holdings, Inc., which holds 100% of the membership interests in Buffets Holdings, LLC, which holds 100% of the membership interests in Buffets, LLC.

B. On March 7, 2016 (the “**Petition Date**”), Buffets, LLC, along with its direct and indirect subsidiaries Hometown Buffet, Inc., OCB Restaurant Company, LLC, OCB Purchasing Co., Ryan’s Restaurant Group, LLC, Fire Mountain Restaurants, LLC, and Tahoe Joe’s, Inc. (collectively the “**Debtors**”), filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Western District of Texas, San Antonio Division (the “**Bankruptcy Court**”). The Debtors’ bankruptcy cases are being jointly administered under the case styled Buffets, LLC, *et. al.*, Case No. 16-50557-RBK (the “**Bankruptcy Case**”).

C. The Non-Debtor Parents have not filed for bankruptcy protection at any time between the Petition Date and the Assignment Date.

D. On September 30, 2016, the Debtors filed a proposed plan of reorganization in the Bankruptcy Case [Doc. 1118]. Then on February 10, 2017, the Debtors filed an amended plan of reorganization (the “**Amended Plan**”) [Doc. 2168-2].

E. The Amended Plan provides for the establishment of the Trust to enable the Debtors’ general unsecured creditors to recover on their claims and receive distributions related thereto. The Unsecured Creditors’ Trust is governed by the Unsecured Creditors Trust Agreement dated concurrently herewith (the “**Trust Agreement**”). Pursuant to the Amended Plan and the Trust Agreement, the Trust is to be administered by an Unsecured Creditors Trustee (the “**Trustee**”).

F. The Amended Plan does not provide for payment in full to all creditors, yet allows the Debtors’ ultimate prepetition equity holders (the “**Equity Sponsors**”), through a commonly-owned affiliate of the Debtors and the Non-Debtor Parents, to retain their interests in the Debtors by contributing new value and effectively purchasing new equity in the post-confirmation Debtor entities (the “**Reorganized Debtors**”).

G. The new value to be contributed under the Amended Plan includes the following:

- i. \$6.5 million in cash to be contributed by Alamo Buffets, LLC, an entity owned and controlled by some or all of the Equity Sponsors; and

- ii. The causes of action, claims, and rights previously held by the Non-Debtor Parents that are being assigned by virtue of this Assignment, and which are set forth in more detail below (the “**Assigned Claims, Contracts, and Causes of Action**”).

H. Pursuant to the Amended Plan, the Trust will also receive (1) a secured note payable by the Reorganized Debtors to the Trust in the amount of \$5.25 million in principal, plus interest; and (2) certain causes of action held by and/or accruing to the Debtors.

I. Following negotiations between the Official Committee of Unsecured Creditors (the “**Committee**”) and representatives of the Debtors, the Non-Debtor Parents, and the Equity Sponsors, the Committee agreed to support confirmation of the Amended Plan on certain conditions, among which are the contribution of the aforementioned new value to the Trust, including without limitation assignment of the Assigned Claims, Contracts, and Causes of Action by the Non-Debtor Parents.

J. Accordingly, the Non-Debtor Parents are required to execute this Assignment as part of the consideration for their equity interests in the Reorganized Debtors. Likewise, the Non-Debtor Parents will receive such equity interests as consideration for this Assignment and for the other new value to be contributed to the Trust as set forth above.

NOW, THEREFORE, for 10 dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Assignors and the Assignee hereby agree as follows:

1. Assigned Claims, Contracts, and Causes of Action. The Assignors hereby presently, absolutely, irrevocably, finally, and permanently transfer, convey, and assign to the Assignee all of the Assignor’s right, title, interest, and privileges in, to, under, or in connection with, and all claims and rights arising from, flowing from, or related to, and all damages, awards, and other monies resulting from, but not any obligations under or related to, the following Assigned Claims, Contracts, and Causes of Action:
 - a. All claims, rights, causes of action, and remedies arising from, flowing from, or related to the negotiation, execution, performance, and/or breach of that certain Agreement and Plan of Merger dated July 20, 2015 and all related agreements (the “**Merger Agreement**”), a true and correct copy of which is attached hereto as **Exhibit A** (the parties thereto being listed in **Exhibit B** hereto), excluding however any such claims, rights, causes of action, and remedies that could be asserted against Alamo Ovation, LLC by the other Non-Debtor Parents, but including without limitation the following:
 - i. All claims, causes of action, and proceeds thereof stemming from any contractual breach of the Merger Agreement including without limitation any inaccuracy of any representations or any breach of any covenants or warranties;
 - ii. All claims and rights, if any, to funds held in any escrow account pursuant to the Merger Agreement and the related Escrow Agreement dated August 19, 2015

with Wells Fargo Bank, National Association as Escrow Agent (the “**Escrow Agreement**”);

- iii. All rights of indemnification under the Merger Agreement;
 - iv. All claims, causes of action, and proceeds thereof stemming from any fraudulent misrepresentation or any other tort committed by any party related thereto; and
 - v. All other rights, claims and causes of action remaining on the Effective Date of the Amended Plan arising from, flowing from, or related to the Merger Agreement or the negotiation, execution, and/or performance thereof, as well as any future proceeds thereof.
- b. All claims, causes of action, remedies, and proceeds thereof arising from, flowing from, or related to any rights of recovery of damages resulting from any breach of any duty by any director, officer, governor, manager, or other person with any fiduciary duty to any or all of the Non-Debtor Parents, except those claims specifically released pursuant to the Amended Plan. A list of all known persons who may be potential defendants to any such cause(s) of action is attached hereto as **Exhibit C**, which list is not exclusive, and the Trust and the Trustee may assert claims against any person regardless of whether or not they are included on such list.
- c. All interests, claims, rights, and remedies, including without limitation all rights to coverage for losses and costs or indemnification therefor, to recover any collateral, refunds, or insurance proceeds, or to assert and recover for any breach or for any violation of any applicable law, of, under, or related to any of the following insurance policies and all related ancillary agreements or related applicable law:
- i. All directors and officers insurance policies or similar policies providing any coverage or indemnification for or related to any breach of any duty by any director, officer, governor, manager, or other agent of any of the Non-Debtor Parents and/or the Debtors, including but not limited to those policies identified in **Exhibit D** attached hereto;
 - ii. All insurance policies and related agreements (including without limitation any agreements providing for or related to any collateral) related to any insurance coverage by ACE American Insurance Company, ACE Property and Casualty Insurance Company, ACE Fire Underwriters Insurance Company, Affiliate FM Insurance Company, Illinois Union Insurance Company, Pacific Employers Insurance Company, or Westchester Surplus Lines Insurance Company (collectively, the “**ACE Insurance Agreements**”), a non-exclusive list of all known ACE Insurance Agreements being attached hereto as **Exhibit E**; and
 - iii. All other insurance policies that have provided any coverage to any or all of the Non-Debtor Parents and/or the Debtors and which are not specifically assumed under the Amended Plan.

- d. All claims and causes of action for legal malpractice by any attorney engaged by any of the Non-Debtor Parents or any affiliated person or entity for the purpose of providing any services that would in any way benefit, detriment, or affect any of the Debtors.
 - e. Any and all claims to any refunds, indemnification, damages, attorneys' fees, cost reimbursements, or other proceeds related to any of the foregoing.
2. All Proceeds to Assignee; Claims Assigned "As Is" and Without Warranty. The Assignors agree that all collections and other proceeds of any of the Assigned Claims, Contracts, and Causes of Action shall be paid directly to the Assignee. **All of the Assigned Claims, Contracts, and Causes of Action are assigned hereunder on an "as is" basis and without representation or warranty as to the value of any such Assigned Claims, Contracts, and Causes of Action or as to the collectability thereof.** Nothing herein is intended to waive, modify, alter or narrow any claim, defense or setoff, including among others any rights of any party under the Merger Agreement, that may be asserted against any Assigned Claims, Contracts, and Causes of Action. For clarity, the Parties hereto acknowledge that any applicable conditions or limitations under Sections 8.04 and 8.09 of the Merger Agreement are not altered by this Assignment with respect to Assigned Claims, Contracts, and Causes of Action that may be asserted by the Assignee.
3. Rights Retained. The Assignors shall retain no further rights, titles, interests, or privileges in, to, or under to any of the Assigned Claims, Contracts, and Causes of Action, or to any proceeds thereof; except that, with respect to any claims asserted against Alamo Ovation, LLC by the former equity holders and/or pre-merger officers and directors of the other Non-Debtor Parents or Debtors which arise under the Agreement and Plan of Merger dated July 20, 2015 (pursuant to which Alamo Ovation, LLC acquired directly or indirectly the other Non-Debtor Parent Companies and Debtors (the "Merger Agreement")), Alamo Ovation, LLC reserves and retains the right to assert solely as a set off or defense against such asserted claims (including without limitation as a setoff to both the Deferred Purchase Price Payment and the Deductible, to the extent that claims against Alamo Ovation LLC have not been previously or contemporaneously resolved by a separate settlement agreement) any "Direct Claims" or "Third Party Claims" of Alamo Ovation, LLC that arise under the Merger Agreement or which could be asserted by Alamo Ovation, LLC against the "Escrow Fund" (as such terms are defined under the Merger Agreement). Alamo Ovation, LLC further reserves and retains any rights to assert solely as a set off or defense against any claims or causes of action that may be asserted against any of the Assignors by any pre-merger officers and directors of the other Non-Debtor Parents or Debtors any and all claims, causes of action, remedies, and proceeds thereof arising from, flowing from, or related to any rights of recovery of damages resulting from any breach of any duty by the director, officer, governor, or manager of the Debtors and/or Non-Debtor Parents asserting such claims or causes of action and who held such position(s) prior to the closing of transactions contemplated by and related to the Merger. Alamo Ovation LCC further reserves any rights to assert claims under the directors and officers insurance policies identified in Exhibit D in connection with any such setoff or defense. All of the foregoing reserved rights shall be superior to any assigned right hereunder related to the Merger Agreement or such directors and officers liability policies. Moreover, nothing in this Assignment shall modify, alter or abridge any rights of

the Stakeholders or the Stakeholder Representative to satisfy any Direct Claims or Third Party Claims assigned hereunder from amounts available in the Escrow Fund or as a set off to the Unpaid Deferred Purchase Price Amount otherwise due to Stakeholders. The Assignors shall not waive, amend, alter, or modify any of its rights or remedies under any of the Assigned Claims, Contracts, and Causes of Action in any material respect without the Assignee's prior express written consent.

4. No Assumption of Liabilities or Obligations. The Assignors shall retain all debts, liabilities, and obligations associated with any of the Assigned Claims, Contracts, and Causes of Action, and the Assignee shall assume no responsibility for any debts, liabilities, or obligations of any of the Non-Debtor Parents. The Assignors shall comply with and observe in all material respects its obligations under all contracts assigned herein, and the Assignors warrant that neither this Assignment nor any action taken pursuant to it shall cause the Assignee to be under any obligation or liability in any respect whatsoever to any party to any of the contracts assigned herein or for the observance or performance of any representations, warranties, conditions, covenants, agreements, or terms contained therein.
5. No Other Assignments. The Assignors may not and shall not assign or pledge any of the Assigned Claims, Contracts, and Causes of Action or any rights therein, except to the Assignee. The Assignors represent and warrant that none of the Assigned Claims, Contracts, and Causes of Action have been previously assigned, transferred, or pledged to any other person or entity by the Assignors.
6. Authorization for Assignee to Pursue Claims. The Assignors hereby authorize the Assignee to take all necessary legal measures to investigate, prosecute, settle, and/or collect the proceeds of all of the Assigned Claims, Contracts, and Causes of Action to the fullest extent permitted under applicable law. The Assignee and its agents may (but shall not be obligated to) discuss any matters relating to the Assigned Claims, Contracts, and Causes of Action with any parties thereto or affected thereby, proceed immediately to exercise each and all of the powers, rights and privileges of the Assignors and take such action as the law may allow, at law or in equity, with respect to the Assigned Claims, Contracts, and Causes of Action to manage, direct, control, and deal with the parties thereto or affected thereby to the same extent as the Assignors; provided, however, with respect to any Assigned Claims, Contracts, and Causes of Action arising under Section 1(a) hereof, the Assignee shall permit any Assignor to take such actions on its own behalf, as may be reasonably necessary or appropriate to effectuate the provisions of Section 3 hereof with respect to rights retained thereunder by the Assignors and for such purpose Assignee shall provide Assignors at least five (5) business days prior written notice prior to Assignee initiating action to prosecute, settle, and/or collect the proceeds of any of the Assigned Claims, Contracts, and Causes of Action arising under Section 1.a. hereof. The Assignee may enforce, either in its own name or in the name of the Assignors, all rights of the Assignors under or related to any of the Assigned Claims, Contracts, and Causes of Action, including, without limitation, the Assignors' right to (a) bring suit to enforce any rights or seek any remedies (b) compromise or settle any disputed claims as to any rights, (c) give releases of rights under any of the Assigned Claims, Contracts, and Causes of Action and/or (d) do any and all things necessary, convenient, desirable, or proper to fully and completely effectuate the intent of this Assignment.

7. Power of Attorney. The Assignors hereby irrevocably make, constitute, and appoint the Assignee (including without limitation the Trustee and any other agents designated by the Trust) as the Assignors' true and lawful attorney, agent-in-fact, and proxy, with full authority and power in the place and stead of the Assignors and in the name of the Assignors or otherwise, to take any action that the Assignee may deem reasonably necessary in its sole discretion for the purposes of enabling the Assignee to assert all rights, privileges, and claims related to this Assignment and the Assigned Claims, Contracts, and Causes of Action, or to collect any proceeds thereof, subject to the five day notice provision contained in the second sentence of Section 6 hereof. The Assignors hereby authorize, ratify, and approve all such acts of the Assignee as their attorney-in-fact, other than those constituting acts of gross negligence or willful misconduct. The aforementioned power of attorney shall be a power of attorney coupled with an interest and irrevocable. The Trustee shall be deemed a trustee with respect to the Assigned Claims, Contracts, and Causes of Action and shall have the same rights, authority, and powers as a receiver, liquidator, trustee, or similar official of the Non-Debtor Parents and the Debtors.
8. Assignors' Cooperation. The Assignors covenant and agree that they will expend reasonable efforts to cooperate with the Assignee in the enforcement of this Assignment and any investigation, prosecution, and/or collection action related to any of the Assigned Claims, Contracts, and Causes of Action, including without limitation keeping the Assignee informed of all facts bearing upon any rights and remedies assigned herein, providing requested documents, making any parties within their control available for interviews, executing any necessary documents, agreeing to be named as plaintiffs in any litigation commenced by the Trust or the Trustee, and all other actions that the Assignee may deem reasonably necessary in its sole discretion to effectuate the intent of this Assignment.
9. Effectiveness of Assignment. The Assignors represent and warrant that they have capacity and authority acting on behalf of each such Assignor to effectively convey the Assigned Claims, Contracts, and Causes of Action to the Assignee and that they have taken or will take all actions necessary to execute, deliver, and perform all obligations under this Assignment; provided, however, the assignment of such Assigned Claims, Contracts, and Causes of Action hereunder is made without warranty or representation as to the existence or nonexistence of restrictions on assignability or as to the necessity of consents of counterparties to such assignment of Assigned Claims, Contracts, and Causes of Action and no representation or warranty is made as to the Assignors' right, title or interest as to any escrow funds deposited pursuant to Section 2.12(c) of the Merger Agreement.
10. Further Assurances. To the extent any further actions may ever be necessary, the Assignors shall take any and all further actions necessary to effectuate and/or support the complete transfer of all Assigned Claims, Contracts, and Causes of Action, and any proceeds thereof, to the Assignee, including without limitation executing any further assignments, conveyances, or transfers that could under any circumstances become necessary to fully convey all of the Assigned Claims, Contracts, and Causes of Action, and any proceeds thereof, to the Assignee, or otherwise to effectuate the intent of this Assignment.
11. Consent to Appoint Receiver. Upon at least 10 days prior written notice to the affected Non-Debtor Parents, the Non-Debtor Parents hereby irrevocably consent to the appointment of a

receiver for each and all of them, should any such appointment ever be necessary in the sole discretion of the Trustee, for the purpose of administering the Non-Debtor Parents' assets and enabling the Trust and the Trustee to enforce their rights to any of the Assigned Claims, Contracts, and Causes of Action and all other rights related to this Assignment.

12. Severability. The unenforceability or invalidity of any provisions of this Assignment shall not render any other provision or provisions contained herein unenforceable or invalid. In case any provision contained in this Assignment should be held invalid, illegal, or unenforceable in any respect, the Assignors shall take all necessary actions to effectuate the intent of the invalid, illegal, or unenforceable provisions, the economic effect of which shall be substantially equivalent to that of the invalid, illegal, or unenforceable provisions.
13. Specific Performance. The Assignors recognize that the Assignee and its affiliates and beneficiaries have provided significant consideration for this Assignment and have substantially performed all of the Assignee's obligations related to this Assignment, that the rights granted to the Assignee in this Assignment are unique, and that any breach of the covenants contained herein by the Assignors would result in irreparable harm to the Assignee for which money damages would be inadequate. Accordingly, the Assignee shall be entitled to specific performance of all of the Assignors' covenants contained in this Assignment.
14. Indemnification for Assignee. The Assignors shall indemnify the Assignee for any losses and costs resulting from any breach by the Assignors of any of the representations, warranties, and covenants contained herein.
15. Assignee Entitled to All Proceeds. The Assignors agree that in the event the Assignors shall receive any funds, property, award of damages, or other proceeds from any of the Assigned Claims, Contracts, and Causes of Action after the Assignment Date (other than the value of any offsets under Section 3 hereof), the Assignors shall promptly deliver the same forthwith to the Assignee in the same form received.
16. Assignee to Pay All Collection Costs. The Trust shall be responsible for all out-of-pocket expenses, costs, and fees associated with any such investigation, enforcement, prosecution, or collection action, and shall indemnify the Assignors for any out-of-pocket expenses, costs, and fees incurred related to any investigation, enforcement, prosecution, or collection of the Assigned Claims, Contracts, and Causes of Action.
17. No Revocation, Modification, or Waiver. This Assignment cannot be revoked, modified, amended, or waived without the express written consent of the Assignee.
18. Jurisdiction. The Bankruptcy Court shall retain jurisdiction to resolve any disputes arising under or related to this Assignment.
19. Survival. This Agreement shall survive and be in full force and effect so long as any of the Assigned Claims, Contracts, and Causes of Action are outstanding and have not been fully settled, terminated, reduced to a final non-appealable judgment, and indefeasibly paid in full in cash.

20. Successors and Assigns. This Assignment shall be binding upon the Assignors and upon their successors and assigns and shall inure to the benefit of the Assignee and its successors and assigns.
21. Effective Date. This Assignment shall effectively transfer all of the Assigned Claims, Contracts, and Causes of Action to the Assignee on the later of (i) the Assignment Date, or (ii) entry of an order by the Bankruptcy Court in the Bankruptcy Case confirming the Amended Plan.
22. Entire Agreement. This Assignment constitutes the final and entire agreement with respect to the assignment of the Assigned Claims, Contracts, and Causes of Action from the Assignors to the Assignee.
23. Copies and Counterparts. A facsimile copy of this executed Assignment shall constitute an original and shall bear the same binding effect as any original signatures. This Assignment may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one and the same document.
24. Notice of Assignment. In addition to the Assignors, the Assignee, and all parties entitled to receive notice of the terms of the Amended Plan in the Bankruptcy Case, notice of this Assignment has been provided to all persons and entities identified in **Exhibit F** hereto.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Assignment of interests on the date first above written.

ASSIGNORS:

ALAMO OVATION, LLC

By: Peter Donbaurand

Name: Peter Donbaurand

Title: vice president

BUFFETS RESTAURANTS HOLDINGS, INC.

By: Peter Donbaurand

Name: Peter Donbaurand

Title: vice president

BUFFETS HOLDINGS, LLC

By: Peter Donbaurand

Name: Peter Donbaurand

Title: vice president

ASSIGNEE:

META ADVISORS LLC, AS TRUSTEE AND
ON BEHALF OF UNSECURED CREDITORS'
TRUST

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, the parties hereto have executed and delivered this
Assignment of interests on the date first above written.

ASSIGNORS:

ALAMO OVATION, LLC

By: _____

Name: _____

Title: _____

BUFFETS RESTAURANTS HOLDINGS, INC.

By: _____

Name: _____

Title: _____

BUFFETS HOLDINGS, LLC

By: _____

Name: _____

Title: _____

ASSIGNEE:

META Advisors LLC, not individually, but solely
in its capacity as Unsecured Creditors' Trustee of
the Buffets Unsecured Creditors' Trust

By: _____


James D. Hunt
Chief Operating Officer

Exhibit A

[Merger Agreement]



Ovation_Merger
Agreement (Executed)

AGREEMENT AND PLAN OF MERGER

BETWEEN

ALAMO OVATION, LLC, A TEXAS LIMITED LIABILITY COMPANY

AND

ALAMO OVATION ACQUISITION, INC., A DELAWARE CORPORATION

AND

BUFFETS RESTAURANTS HOLDINGS, INC., A DELAWARE CORPORATION

AND

THE STAKEHOLDER REPRESENTATIVE

DATED AS OF

JULY 20, 2015

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Exhibits:

Exhibit A: Form of Certificate of Incorporation

Exhibit B: Form of Bylaws

Exhibit C: Form of Written Consent

Exhibit D: Illustrative Closing Statement

Exhibit E: Form of Guarantee

AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger (this “**Agreement**”), dated as of July 20, 2015, is entered into among ALAMO OVATION, LLC, a Texas limited liability company (“**Parent**”), affiliated with FMP SA Management Group, LLC, a Texas limited liability company (“**FMP**”), ALAMO OVATION ACQUISITION, INC., a Delaware corporation and wholly owned subsidiary of Parent (“**Merger Sub**”), BUFFETS RESTAURANTS HOLDINGS, INC., a Delaware corporation (“**Company**”), and at or prior to Closing, the Stakeholder Representative, solely in its capacity as Stakeholder Representative.

RECITALS

WHEREAS, the parties intend that Merger Sub be merged with and into the Company, with the Company surviving that merger on the terms and subject to the conditions set forth herein (the “**Merger**”);

WHEREAS, the board of directors of the Company (the “**Company Board**”) has unanimously (a) determined that this Agreement and the transactions contemplated hereby, including the Merger, are in the best interests of the Company and its stockholders, (b) approved and declared advisable this Agreement and the transactions contemplated hereby, including the Merger, and (c) resolved to recommend adoption of this Agreement by the Stockholders of the Company in accordance with the General Corporation Law of the State of Delaware (the “**DGCL**”);

WHEREAS, following the execution of this Agreement, the Company shall seek to obtain the adoption of this Agreement by its stockholders, the Merger and the transactions contemplated hereby in accordance with Sections 228 and 251 of the DGCL;

WHEREAS, the respective boards of directors of Parent and Merger Sub have unanimously (a) determined that this Agreement and the transactions contemplated hereby, including the Merger, are in the best interests of Parent, Merger Sub and their respective shareholders, and (b) approved and declared advisable this Agreement and the transactions contemplated hereby, including the Merger;

WHEREAS, a portion of the Deferred Purchase Price Amount payable by Parent in connection with the Merger shall be placed in escrow by Parent, the release of which

shall be contingent upon certain events and conditions, all as set forth in this Agreement and the Escrow Agreement (as defined herein);

WHEREAS, concurrently with the execution of this Agreement, and as an inducement to the Company's willingness to enter into this Agreement, Parent is delivering the Guarantee of the Guarantors (as defined herein) in favor of the Company and the Stakeholders with respect to the performance by Parent and Merger Sub of certain of their obligations hereunder, duly executed by the Guarantors and dated as of the date hereof;

WHEREAS, concurrently with the execution of this Agreement, and as an inducement to the Company's willingness to enter into this Agreement, Parent is delivering to the Company the Deposit (as defined herein);

WHEREAS, as of the date hereof, the Company has approximately \$61.8 million principal amount of Secured Debt (as defined herein) outstanding, which amount exceeds the Purchase Price; and

WHEREAS, in connection with Closing, the lenders in respect of the Secured Debt are agreeing to accept the Available Payoff Proceeds in satisfaction of such Secured Debt and release their liens with respect to the Company and its Subsidiaries in accordance with the payoff letter in respect thereof.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

The following terms have the meanings specified or referred to in this **Article I**:

"Accounting Principles" means, with respect to any item, the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in respect thereof in the preparation of the Audited Financial Statements for the most recent fiscal year ended as of the date of this Agreement as if such were being prepared and audited as of a fiscal year end.

"Acquisition Proposal" has the meaning set forth in **Section 5.03(a)**.

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**The Affordable Care Act**” means, collectively, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010.

“**Agreement**” has the meaning set forth in the preamble.

“**Ancillary Documents**” means the Escrow Agreement and the Guarantee.

“**Audited Financial Statements**” has the meaning set forth in **Section 3.06**.

“**Available Payoff Proceeds**” means the Closing Purchase Price Amount, (a) plus (or minus, as applicable) the Estimated Closing Adjustment, (b) minus the Deposit, (c) minus the Stakeholder Representative Expense Amount, and (d) minus the amount of accrued and unpaid Transaction Expenses.

“**Balance Sheet**” has the meaning set forth in **Section 3.06**.

“**Balance Sheet Date**” has the meaning set forth in **Section 3.06**.

“**Benefit Plan**” has the meaning set forth in **Section 3.20(a)**.

“**Business Day**” means any day except Saturday, Sunday or any other day on which commercial banks located in San Antonio, Texas, Greer, South Carolina, or Eagan, Minnesota are authorized or required by Law to be closed for business.

“**BWW APA**” means that certain Asset Purchase Agreement, as in effect as of the date hereof and dated as of July 10, 2015, entered into between Alamowing Development, LLC; B III Wing, LLC; RioWing Development, LLC; AlamoWing NM Partners, LLC; AlamoWing NM Partners II, LLC; SOUTHSEAS WINGS, LLC; the subsidiary and affiliate operating entities listed on the attached Schedule A-1 thereto and the individual principal beneficial owners listed on the attached Schedule A-2 thereto of one or more of such entities, FMP SA Management Group, LLC, solely in its capacity as the Seller Representative, and Blazin Wings, Inc., a Minnesota corporation.

“BWW Sale” means the sale by entities affiliated with FMP SA Management Group, LLC d/b/a Food Management Partners, including Alamowing Development, LLC, of all of their Buffalo Wild Wings franchised restaurants pursuant to the BWW APA.

“BWW Sale Payment” means Five Million Dollars (\$5,000,000).

“Cap” has the meaning set forth in **Section 8.04(a)**.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.

“Certificate of Merger” has the meaning set forth in **Section 2.04**.

“Closing” has the meaning set forth in **Section 2.02**.

“Closing Bonus Certificate” means a certificate executed by the Chief Financial Officer of the Company certifying on behalf of the Company (a) an itemized list of the Sale Bonus Escrow Amount and an aggregate total of the Sale Bonus Escrow Amount and (b) an itemized list of the Retention Bonus Escrow Amount and an aggregate total of the Retention Bonus Escrow Amount.

“Closing Cash and Cash Equivalents” means, as of the Reference Time and on a consolidated basis, all cash, cash equivalents and marketable securities.

“Closing Date” has the meaning set forth in **Section 2.02**.

“Closing Indebtedness Certificate” means a certificate executed by the Chief Financial Officer of the Company certifying on behalf of the Company an itemized list of the Closing Payoff Amount and an aggregate total of the Closing Payoff Amount.

“Closing Payoff Amount” means the lesser of (a) the Secured Debt and (b) the Available Payoff Proceeds.

“Closing Prepaid Rent” means, as of the Reference Time and on a consolidated basis, prepaid base rent of the Company (e.g., account 130400).

“Closing Purchase Price Amount” means Forty-Five Million Dollars (\$45,000,000).

“Closing Statement” has the meaning set forth in **Section 2.15(b)(i)**.

“Closing Transaction Expenses Certificate” means a certificate executed by the Chief Financial Officer of the Company, certifying the amount of Transaction

Expenses remaining unpaid as of the close of business on the Closing Date (including an itemized list of each such unpaid Transaction Expense with a description of the nature of such expense and the Person to whom such expense is owed).

“Closing Working Capital” means: (a) the Current Assets of the Company, less (b) the Current Liabilities of the Company, determined on a consolidated basis as of the Reference Time and in a manner consistent with the Closing Statement. For illustrative purposes only, **Exhibit D** sets forth a sample calculation of Closing Working Capital.

“COBRA” means the provisions for the continuation of health care enacted by the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, as set forth in Section 4980B of the Code (and any predecessor or successor provisions, including Section 162(k) of the Code) and Sections 601 through 608 of ERISA, and any amendments thereto and successor provisions thereof, including any regulations promulgated under the applicable provisions of the Code and ERISA.

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

“Company” has the meaning set forth in the preamble.

“Company Board” has the meaning set forth in the recitals.

“Company Board Recommendation” has the meaning set forth in **Section 3.03(b)**.

“Company Charter Documents” has the meaning set forth in **Section 3.04**.

“Company Common Stock” means the common stock, par value \$0.01 per share, of the Company.

“Company Intellectual Property” means all Intellectual Property that is owned by the Company.

“Company IP Agreements” means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, permissions and other Contracts (including any right to receive or obligation to pay royalties or any other consideration), whether written or oral, conveying Intellectual Property rights to which the Company is a party, beneficiary or otherwise bound.

“Company IP Registrations” means all Company Intellectual Property that is registered, through application or other filing, by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including registered trademarks, domain names and copyrights, issued and reissued patents, and pending applications for any of the foregoing.

“Confidentiality Agreement” has the meaning set forth in **Section 5.02(c)**.

“Contracts” means all contracts, leases, deeds, mortgages, licenses, franchise agreements, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral.

“Current Assets” means, as of the Reference Time and on a consolidated basis: (i) accounts receivable; (ii) inventory; (iii) prepaid expenses; (iv) and other current assets, but excluding, in each case, (a) Closing Cash and Cash Equivalents; (b) Closing Prepaid Rent; (c) income tax receivables; (d) deferred income taxes; (e) Excluded Bonus Amount and (f) workers compensation excess claims receivables, in each case, determined in accordance with GAAP applied using the Accounting Principles except as provided herein. Restricted cash held by insurance companies as reflected on **Section 1.01(c)** of the Disclosure Schedule will remain in place to cover workers compensation reserves required by current carriers but such restricted cash amounts will not be included within Current Assets for purposes of determining Closing Working Capital, Estimated Closing Working Capital, Target Working Capital or other working capital amounts for purposes hereof.

“Current Liabilities” means, as of the Reference Time and on a consolidated basis: (i) accounts payable; (ii) other accrued current liabilities; and (iii) income taxes payable; but excluding, in each case, (a) Transaction Expenses, (b) Indebtedness (including the Secured Debt); (c) workers compensation excess claims; (d) Transfer Taxes; and (e) workers compensation payables, in each case, determined in accordance with GAAP applied using the same Accounting Principles except as provided herein.

“D&O Indemnified Party” has the meaning set forth in **Section 5.08(a)**.

“D&O Indemnifying Parties” has the meaning set forth in **Section 5.08(b)**.

“D&O Tail Policy” has the meaning set forth in **Section 5.08(c)**.

“De Minimis” has the meaning set forth in **Section 8.04(a)**.

“Debt Financing” has the meaning set forth in **Section 4.06(a)**.

“Debt Financing Sources” has the meaning set forth in **Section 4.06(a)**.

“Debt Support Letters” has the meaning set forth in **Section 4.06(a)**.

“Deductible” has the meaning set forth in **Section 8.04(a)**.

“Deferred Purchase Price Amount” means Ten Million Dollars (\$10,000,000), payable in the manner prescribed in **Section 2.16**.

“Deferred Purchase Price Payment” has the meaning set forth in **Section 2.16(a)**.

“Deposit” means has the meaning set forth in **Section 2.17**.

“DGCL” has the meaning set forth in the recitals.

“Direct Claim” has the meaning set forth in **Section 8.05(c)**.

“Disclosure Schedules” means the Disclosure Schedules delivered by the Company and Parent concurrently with the execution and delivery of this Agreement.

“Disputed Amounts” has the meaning set forth in **Section 2.15(c)(iii)**.

“Dissenting Shares” has the meaning set forth in **Section 2.10**.

“Dollars” or “\$” means the lawful currency of the United States.

“Effective Time” has the meaning set forth in **Section 2.04**.

“Encumbrance” means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“Environmental Claim” means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

“Environmental Law” means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term “Environmental Law” includes, without limitation, the following (including their implementing regulations and any state

analogs); the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

“Environmental Notice” means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

“Environmental Permit” means any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

“Equity Financing” has the meaning set forth in **Section 4.06(a)**.

“Equity Financing Sources” has the meaning set forth in **Section 4.06(a)**.

“Equity Support Letters” has the meaning set forth in **Section 4.06(a)**.

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

“ERISA Affiliate” means all employers (whether or not incorporated) that would be treated together with the Company or any of its Affiliates as a “single employer” within the meaning of Section 414 of the Code.

“Escrow Agent” means a commercial bank or trust company or other agent, reasonably acceptable to Parent and the Company, who Parent shall appoint to act as escrow agent prior to the Effective Time.

“Escrow Agreement” means an Escrow Agreement to be negotiated in good faith by the parties hereto implementing the escrow provisions hereof and otherwise in customary form to be entered into by Parent, Stakeholder Representative and the Escrow Agent at the Closing.

“Escrow Amount” means Five Million Dollars (\$5,000,000).

“**Escrow Fund**” has the meaning set forth in **Section 2.12(a)**.

“**Estimated Closing Adjustment**” has the meaning set forth in **Section 2.15(a)(ii)**.

“**Estimated Closing Cash and Cash Equivalents**” has the meaning set forth in **Section 2.15(a)(i)**.

“**Estimated Closing Prepaid Rent**” has the meaning set forth in **Section 2.15(a)(i)**.

“**Estimated Closing Statement**” has the meaning set forth in **Section 2.15(a)(i)**.

“**Estimated Closing Working Capital**” has the meaning set forth in **Section 2.15(a)(i)**.

“**Excluded Bonus Amount**” means the sum of the amounts of the Sale Bonuses and the Retention Bonuses.

“**Financial Statements**” has the meaning set forth in **Section 3.06**.

“**Financing**” has the meaning set forth in **Section 4.06(a)**.

“**Financing Sources**” has the meaning set forth in **Section 4.06(a)**.

“**Financing Support Letters**” has the meaning set forth in **Section 4.06(a)**.

“**FIRPTA Statement**” has the meaning set forth in **Section 6.07**.

“**FMP**” has the meaning set forth in the preamble.

“**Franchising Net Proceeds**” shall mean with respect to any fiscal quarter 50% of any net proceeds realized by the Surviving Corporation from the sale of franchises for any of its existing restaurants, which net proceeds shall be calculated based on the amount by which the sum of (i) initial franchise, license or area development fees, plus (ii) net profits in excess of the Surviving Corporation’s tax basis in any restaurant assets sold in association with such franchising activities, exceeds all brokers’ fees, legal fees, and other reasonable transaction expenses associated with such franchising activities, including without limitation expenses of preparing and registering any franchise disclosure documents or of obtaining any available exemption therefrom.

“**GAAP**” means United States generally accepted accounting principles in effect from time to time.

“**Government Contracts**” has the meaning set forth in **Section 3.09(a)(vii)**.

“Governmental Authority” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“Governmental Order” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“Guarantee” means the guarantee of the Guarantors, in the form attached hereto as **Exhibit E**.

“Guarantors” mean Larry Harris, Allen Jones and Jason Kemp.

“Hazardous Materials” means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, and polychlorinated biphenyls.

“HIPAA” means Health Insurance Portability and Accountability Act, Public Law 104-191, as amended.

“HITECH” means the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009.

“Indebtedness” means, as of the Reference Time, without duplication and with respect to the Company, all (a) unpaid principal amount of, and accrued interest on, indebtedness for borrowed money; (b) obligations for the deferred purchase price of property or services (other than Current Liabilities taken into account in the calculation of Closing Working Capital), (c) long or short-term obligations evidenced by notes, bonds, debentures or other similar instruments; (d) obligations under any interest rate, currency swap or other hedging agreement or arrangement; (e) capital lease obligations; (f) reimbursement obligations under any letter of credit, banker’s acceptance or similar credit transactions (but only to the extent drawn); (g) guarantees made by the Company on behalf of any third party in respect of obligations of the kind referred to in the foregoing clauses (a) through (f); and (h) any unpaid interest, prepayment penalties, premiums, costs and fees that would arise or become due as a result of the prepayment of any of the obligations referred to in the foregoing clauses (a) through (g).

“Indemnified Party” has the meaning set forth in **Section 8.05**.

“Indemnifying Party” has the meaning set forth in **Section 8.05**.

“Independent Accountant” has the meaning set forth in **Section 2.16(c)(iii)**.

“Insurance Policies” has the meaning set forth in **Section 3.16**.

“Intellectual Property” means all intellectual property and industrial property rights and assets, and all rights, interests and protections that are associated with or required for the exercise of, any of the foregoing, however arising, pursuant to the Laws of any jurisdiction throughout the world, whether registered or unregistered, including any and all: (a) trademarks, service marks, trade names, brand names, logos, trade dress, design rights and other similar designations of source, sponsorship, association or origin, together with the goodwill connected with the use of and symbolized by, and all registrations, applications and renewals for, any of the foregoing; (b) internet domain names, whether or not trademarks, registered in any top-level domain by any authorized private registrar or Governmental Authority, web addresses, web pages, and rights in websites and related content, accounts with Twitter, Facebook and other social media companies and the content found thereon and related thereto, and URLs; (c) rights in works of authorship, expressions, designs and design registrations, whether or not copyrightable, including copyrights, author, performer, moral and neighboring rights, and all registrations, applications for registration and renewals of such copyrights; (d) inventions, discoveries, trade secrets, business and technical information and know-how, databases, data collections and other confidential and proprietary information and all rights therein; (e) patents (including all reissues, divisionals, provisionals, continuations and continuations-in-part, re-examinations, renewals, substitutions and extensions thereof), patent applications, and other patent rights and any other Governmental Authority-issued indicia of invention ownership (including inventor’s certificates, petty patents and patent utility models); and (f) rights in software and firmware, including data files, source code, object code, application programming interfaces, architecture, files, records, schematics, computerized databases and other related specifications and documentation.

“Interim Balance Sheet” has the meaning set forth in **Section 3.06**.

“Interim Balance Sheet Date” has the meaning set forth in **Section 3.06**.

“Interim Financial Statements” has the meaning set forth in **Section 3.06**.

“Knowledge” means, when used with respect to the Company, the actual or constructive knowledge of Greg Graber, Keith Kravcik, Keith Wall, Richard Wykes and Jackson Walker, after due inquiry of direct reports.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

“**Leased Real Property**” has the meaning set forth in **Section 3.10**.

“**Liabilities**” has the meaning set forth in **Section 3.07**.

“**Losses**” means actual losses, damages, liabilities, deficiencies, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder; *provided, however*, that “**Losses**” shall not include (i) punitive damages, except to the extent actually awarded to a Governmental Authority or other third party or (ii) to the extent not reasonably foreseeable, any consequential, special or incidental damages.

“**Majority Holders**” has the meaning set forth in **Section 10.01(b)**.

“**Material Adverse Effect**” means any event, occurrence, fact, condition or change that has had, or would reasonably be expected to have, individually or in the aggregate, materially adverse effect to (a) the business, results of operations, condition (financial or otherwise) or assets of the Company, or (b) the ability of the Company to consummate the transactions contemplated hereby; *provided, however*, that “**Material Adverse Effect**” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) global, national or regional economic, business or political conditions or any stoppage or shutdown of any Governmental Authority (including any default by a Governmental Authority or delays in payments or delays or failures to act by any Governmental Authority); (ii) conditions generally affecting the industries in which the Company operates; (iii) any changes in financial or securities markets generally; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof, sabotage or terrorism or military actions existing or underway; (v) any action required by this Agreement; (vi) any changes in applicable Laws or the interpretation thereof or other legal or regulatory conditions or changes in accounting rules or principles, including GAAP; (vii) the public announcement, pendency or completion of the transactions contemplated by this Agreement (viii) actions required to be taken under applicable Laws or Contracts; (ix) the failure of the Company to meet or achieve the results set forth in any internal projection; (x) any of the matters disclosed or referenced on the Disclosure Schedules; *provided further, however*, that any event, occurrence, fact, condition or change referred to in clauses (i) through (iv) or (vi) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a disproportionate effect on the Company compared to other participants in the industries in which the Company conducts its businesses.

“Material Contracts” has the meaning set forth in **Section 3.09(a)**.

“Material Suppliers” has the meaning set forth in **Section 3.15**.

“Merger” has the meaning set forth in the recitals.

“Merger Sub” has the meaning set forth in the preamble.

“Minimum Cash Total to Surviving Corporation” means \$7,400,000.

“Operational Effective Time” has the meaning set forth in **Section 2.04**.

“Option” means any option to purchase Company Common Stock granted under the Stock Option Plan and still outstanding as of immediately prior to the Effective Time.

“Optionholder” means a holder of an Option.

“Original Credit Facility” means the Credit Agreement, dated as of July 18, 2012, as previously amended by Amendment No. 1 thereto dated September 24, 2013, Amendment No. 2 thereto dated October 15, 2013, Amendment No. 3 thereto dated May 27, 2014, Amendment No. 4 thereto dated June 26, 2014, Amendment No. 5 thereto dated September 29, 2014, Amendment No. 6 thereto dated December 5, 2014 and Amendment No. 7 dated as of April 8, 2015, Amendment No. 8, dated May 29, 2015 (and as may be further amended from time to time, consistent with the provisions hereof), entered into by and among Buffets, Inc. (which has been administratively converted to Buffets, LLC), the Company, Buffets Holdings, Inc. (which has been administratively converted to Buffets Holdings, LLC), the Lenders and other persons from time to time parties thereto and Credit Suisse AG, Cayman Islands Branch, as administrative agent and collateral agent.

“Out-of-Money Options” means Options having an exercise price in excess of the amount payable in respect of the shares of common stock underlying such option pursuant to this Agreement.

“Outside Termination Date” has the meaning set forth in **Section 9.01(b)(ii)**.

“Owned Real Property” has the meaning set forth in **Section 3.10(a)**.

“Parent” has the meaning set forth in the preamble.

“Parent Indemnitees” has the meaning set forth in **Section 8.02**.

“Permits” means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

“Permitted Encumbrances” has the meaning set forth in **Section 3.10(a)**.

“Person” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“Post-Closing Adjustment” has the meaning set forth in **Section 2.15(b)(ii)**.

“Post-Closing Tax Period” means any taxable period beginning after the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period beginning after the Closing Date.

“Pre-Closing Tax Period” means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date.

“Pre-Closing Taxes” means Taxes of the Company for any Pre-Closing Tax Period, but does not include any Taxes resulting from actions taken outside the ordinary course of business in respect of the Company on the Closing Date after the Closing.

“Priming Facility” means the Credit Agreement, dated as of December 5, 2014, as amended by the Limited Waiver of and Extension of Deadline to Deliver Control Agreements dated January 16, 2015, Amendment No. 1 dated April 8, 2015, and Amendment No. 2 dated May 29, 2015 (and as may be further amended from time to time, consistent with the provisions hereof), among Buffets, Inc. (which has been administratively converted to Buffets, LLC), the Company, Buffets Holdings, Inc. (which has been administratively converted to Buffets Holdings, LLC), the Lenders named therein and Cortland Capital Market Services LLC as administrative and collateral agent.

“Purchase Price” means Fifty-Five Million Dollars (\$55,000,000).

“Qualified Benefit Plan” has the meaning set forth in **Section 3.20(c)**.

“Real Property” means the Owned Real Property and the Leased Real Property.

“Reference Time” means the Effective Time, but before taking into account the consummation of the transactions contemplated hereby.

“Release” means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

“Release Date” has the meaning set forth in **Section 8.01**.

“Representative” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“Representative Losses” has the meaning set forth in **Section 10.01(c)**.

“Requisite Company Vote” has the meaning set forth in **Section 3.03(a)**.

“Resolution Period” has the meaning set forth in **Section 2.15(c)(ii)**.

“Retention Bonus” means any retention bonus payable by the Company six (6) months after Closing (or, subject to the terms of the applicable Sale and Retention Bonus Letter set forth in Section 3.20 of the Disclosure Schedules, prior thereto) pursuant to the Sale and Retention Bonus Letters set forth in **Section 3.20** of the Disclosure Schedules.

“Retention Bonus Escrow Amount” means the maximum amount of Retention Bonuses that may become payable six (6) months after Closing (or, subject to the terms of the applicable Sale and Retention Bonus Letter set forth in Section 3.20 of the Disclosure Schedules, prior thereto) pursuant to the Sale and Retention Bonus Letters set forth in **Section 3.20** of the Disclosure Schedules, which amount shall be set forth on the Closing Bonus Certificate.

“Retention Bonus Escrow Fund” has the meaning set forth in **Section 2.12(b)**.

“Retention Bonus Forfeited Amount” has the meaning set forth in **Section 2.12(b)**.

“Review Period” has the meaning set forth in **Section 2.15(c)(i)**.

“Sale Bonus” means any sale bonus payable by the Company as a result of the Closing pursuant to the Sale Bonus Letters set forth in **Section 3.20** of the Disclosure Schedules, if any.

“Sale Bonus Escrow Amount” means the maximum amount of Sale Bonuses, if any, that may become payable as a result of the Closing pursuant to the Sale Bonus Letters set forth in **Section 3.20** of the Disclosure Schedules, which amount shall be set forth on the Closing Bonus Certificate.

“Sale Bonus Escrow Fund” has the meaning set forth in **Section 2.12(c)**.

“Secured Debt” means the outstanding principal amount, including all accrued but unpaid interest thereon and outstanding fees or expenses in connection therewith,

under each of the Original Credit Facility and the Priming Facility. The Secured Debt as of the date hereof is set forth in **Section 1.01(a)** of the Disclosure Schedule.

“**Shares**” has the meaning set forth in **Section 2.08(a)**.

“**Stakeholder**” means each of the lenders under the Original Credit Facility, each such lender as of the date hereof is listed on **Section 1.01(b)** of the Disclosure Schedule, which schedule may be updated by the Company prior to Closing.

“**Stakeholder Indemnitees**” has the meaning set forth in **Section 8.03**.

“**Stakeholder Initial Deferred Payment Amount**” means \$5,000,000 minus (x) the Retention Bonus Escrow Amount and (y) the Sale Bonus Escrow Amount.

“**Stakeholder Representative**” means Cortland Capital Market Services LLC or such other Person appointed by a majority of the Stakeholders to act as Stakeholder Representative hereunder that executes and delivers a signature page hereto at or prior to Closing.

“**Stakeholder Representative Expense Amount**” means \$250,000.

“**Stakeholder Sale Bonus Release Trigger**” has the meaning set forth in **Section 2.12(c)**.

“**Statement of Objections**” has the meaning set forth in **Section 2.15(c)(ii)**.

“**Stock Option Plan**” means the Buffets Restaurants Holdings, Inc. Non-Qualified Stock Option Plan dated March 3, 2014.

“**Stockholder**” means a holder of Company Common Stock.

“**Stockholder Notice**” has the meaning set forth in **Section 5.04(b)**.

“**Stockholders Agreement**” means the Stockholders and Registration Rights Agreement, dated as of July 18, 2012, by and among the Company and the stockholders listed therein.

“**Straddle Period**” has the meaning set forth in **Section 6.04**.

“**Subsidiary**” has the meaning set forth in **Section 3.02**.

“**Surviving Corporation**” has the meaning set forth in **Section 2.01**.

“**Target Working Capital**” means negative \$52,849,000.

“**Tax Claim**” has the meaning set forth in **Section 6.05**.

“**Tax Return**” means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“**Taxes**” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

“**Third Party Claim**” has the meaning set forth in **Section 8.05(a)**.

“**Transaction Expenses**” means all fees and expenses incurred by the Company and any Affiliate at or prior to the Closing in connection with the preparation, negotiation and execution of this Agreement and the Ancillary Documents, and the performance and consummation of the Merger and the other transactions contemplated hereby and thereby, including any unpaid costs of the D&O Tail Policy referenced in **Section 5.08(c)**, one half of the Transfer Taxes, and including the amount of any retention bonuses payable as of, and paid at, Closing pursuant to the Sale and Retention Bonus Letters set forth in **Section 3.20** of the Disclosure Schedules (but excluding the Excluded Bonus Amount).

“**Transfer Taxes**” has the meaning set forth in **Section 6.01**.

“**Undisputed Amounts**” has the meaning set forth in **Section 2.15(c)(iii)**.

“**Union**” has the meaning set forth in **Section 3.21(b)**.

“**Unpaid Deferred Purchase Price Amount**” means the Deferred Purchase Price Amount minus the aggregate amount of Deferred Purchase Price Payments previously paid by Parent prior to the one year anniversary of the Closing Date.

“**WARN Act**” means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign laws related to plant closings, relocations, mass layoffs and employment losses.

“**Willkie Farr**” has the meaning set forth in **Section 10.14(a)**.

“**Willkie Farr Client Parties**” has the meaning set forth in **Section 10.14(a)**.

“**Willkie Farr Engagement**” has the meaning set forth in **Section 10.14(a)**.

“**Written Consent**” has the meaning set forth in **Section 5.04(a)**.

“YCST” has the meaning set forth in **Section 10.14(b)**.

“YCST Client Parties” has the meaning set forth in **Section 10.14(b)**.

“YCST Engagement” has the meaning set forth in **Section 10.14(b)**.

ARTICLE II

THE MERGER

Section 2.01 The Merger. On the terms and subject to the conditions set forth in this Agreement, and in accordance with the DGCL, at the Effective Time, (a) Merger Sub will merge with and into the Company, and (b) the separate corporate existence of Merger Sub will cease and the Company will continue its corporate existence under the DGCL as the surviving corporation in the Merger (sometimes referred to herein as the “**Surviving Corporation**”).

Section 2.02 Closing. Subject to the terms and conditions of this Agreement, the closing of the Merger (the “**Closing**”) shall take place at 10:00 a.m., Central Time, on August 19, 2015, subject to the conditions to Closing set forth in **Article VII** having been satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), at the offices of Dykema Cox Smith, 112 E. Pecan St., Suite 1800, San Antonio, Texas, or at such other time or on such other date or at such other place as the Company and Parent may mutually agree upon in writing (the day on which the Closing takes place being the “**Closing Date**”).

Section 2.03 Closing Deliverables.

(a) At or prior to the Closing, the Company shall deliver to Parent the following:

- (i) the Escrow Agreement duly executed by Stakeholder Representative;
- (ii) resignations of the directors of the Company pursuant to **Section 5.06**;
- (iii) a certificate, dated the Closing Date and signed by a duly authorized officer of the Company, that each of the conditions set forth in **Section 7.02(a)** and **Section 7.02(b)** have been satisfied;
- (iv) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of the Company certifying that (A) attached thereto are true and complete copies of (1) all resolutions adopted by the Company Board authorizing the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby and (2)

resolutions of the Stockholders adopting this Agreement, and (B) all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby;

(v) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of the Company certifying the names and signatures of the officers of the Company authorized to sign this Agreement, the Ancillary Documents and the other documents to be delivered hereunder and thereunder;

(vi) a good standing certificate (or its equivalent) from the Delaware Secretary of State with respect to the Company;

(vii) at least two Business Days prior to the Closing, the Closing Transaction Expenses Certificate;

(viii) at least two Business Days prior to the Closing, the Closing Indebtedness Certificate;

(ix) at least two Business Days prior to the Closing, the Closing Bonus Certificate; and

(x) the Estimated Closing Statement contemplated in **Section 2.16(a)**;

(xi) the FIRPTA Statement;

(xii) pay-off letters confirming the payment, satisfaction and release with respect to all Secured Debt and releases of all Encumbrances securing such Secured Debt, all in form reasonably satisfactory to Parent (in each case, such form to be consistent with the reasonable and customary form of the respective administrative agent);

(xiii) such other documents or instruments as Parent reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

(b) At the Closing, Parent shall deliver to the Company (or such other Person as may be specified herein) the following:

(i) the Escrow Agreement duly executed by Parent;

(ii) payments to the following Persons:

(A) payment to the Stakeholder Representative on behalf of the Stakeholders by wire transfer of immediately available funds an amount equal to the Stakeholder Representative Expense Amount;

(B) payment to third parties by wire transfer of immediately available funds of that amount of money due and owing from the Company to such third parties as Transaction

Expenses as set forth on the Closing Transaction Expenses Certificate;

- (C) payment to the administrative agent under the Priming Facility by wire transfer of immediately available funds of the amount equal to the principal amount, including all accrued but unpaid interest thereon and outstanding fees or expenses in connection therewith, under the Priming Facility, as set forth in the Closing Indebtedness Certificate;
- (D) payment to the administrative agent under the Original Credit Facility by wire transfer of immediately available funds of the amount as set forth in the Closing Indebtedness Certificate;

(iii) a certificate, dated the Closing Date and signed by a duly authorized officer of Parent, that each of the conditions set forth in **Section 7.03(a)** and **Section 7.03(b)** have been satisfied;

(iv) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Parent and Merger Sub certifying that (A) attached thereto are true and complete copies of (1) all resolutions adopted by the board of directors of Parent and Merger Sub authorizing the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby and (2) resolutions of the sole stockholder of Merger Sub adopting this Agreement, and (B) all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby;

(v) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Parent and Merger Sub certifying the names and signatures of the officers of Parent and Merger Sub authorized to sign this Agreement, the Ancillary Documents and the other documents to be delivered hereunder and thereunder; and

(vi) such other documents or instruments as the Company reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

Section 2.04 Effective Time. Subject to the provisions of this Agreement, at the Closing, the Company, Parent and Merger Sub shall cause a certificate of merger (the “**Certificate of Merger**”) to be executed, acknowledged and filed with the Secretary of State of the State of Delaware in accordance with the relevant provisions of the DGCL and shall make all other filings or recordings required under the DGCL. The Merger shall become effective at such time as the Certificate of Merger has been duly filed with the Secretary of State of the State of Delaware or at such later date or time as may be agreed by the Company and Parent in writing and specified in the Certificate of Merger in

accordance with the DGCL (the effective time of the Merger being hereinafter referred to as the “**Effective Time**”). For purposes of prorating expenses and allocating the benefits and responsibilities for daily revenues and expenses on the Closing Date for accounting and other purposes, and assuming the transaction contemplated hereby does close on such Closing Date, the effective time of the transaction shall be deemed to be 11:59 p.m. Eastern Time on the Closing Date (the “**Operational Effective Time**”).

Section 2.05 Effects of the Merger. The Merger shall have the effects set forth herein and in the applicable provisions of the DGCL. Without limiting the generality of the foregoing, and subject thereto, from and after the Effective Time, all property, rights, privileges, immunities, powers, franchises, licenses and authority of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities, obligations, restrictions and duties of each of the Company and Merger Sub shall become the debts, liabilities, obligations, restrictions and duties of the Surviving Corporation.

Section 2.06 Certificate of Incorporation; By-laws. At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub or the Company (a) the certificate of incorporation of the Company as in effect immediately prior to the Effective Time shall be amended and restated in its entirety to read as set forth in the certificate of incorporation substantially in the form attached hereto as **Exhibit A** and, as so amended and restated, shall be the certificate of incorporation of the Surviving Corporation until thereafter amended in accordance with the terms thereof or as provided by applicable Law, and (b) the by-laws of the Company as in effect immediately prior to the Effective Time shall be amended and restated in its entirety to read as set forth in the by-laws substantially in the form attached hereto as **Exhibit B** and, as so amended and restated, shall be the by-laws of the Surviving Corporation until thereafter amended in accordance with the terms thereof, the certificate of incorporation of the Surviving Corporation or as provided by applicable Law.

Section 2.07 Directors and Officers. The directors and officers of Merger Sub, in each case, immediately prior to the Effective Time shall, from and after the Effective Time, be the directors and officers, respectively, of the Surviving Corporation until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the certificate of incorporation and by-laws of the Surviving Corporation.

Section 2.08 Effect of the Merger on Common Stock. At the Effective Time, as a result of the Merger and without any action on the part of Parent, Merger Sub, the Company or any Stockholder:

(a) **Cancellation of Certain Company Common Stock.** Shares of Company Common Stock (the “**Shares**”) that are owned by the Company (as treasury stock or

otherwise) or any of their respective direct or indirect wholly owned Subsidiaries shall automatically be cancelled and retired and shall cease to exist, and no payment shall be delivered in exchange therefor.

(b) **Conversion of Company Common Stock.** Each Share issued and outstanding immediately prior to the Effective Time (other than (i) Shares to be cancelled and retired in accordance with **Section 2.08(a)**, and (ii) Dissenting Shares) shall be automatically be cancelled and retired and shall cease to exist, and no payment shall be delivered in exchange therefor.

(c) **Conversion of Merger Sub Capital Stock.** Each share of common stock, par value \$0.01 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one newly issued, fully paid and non-assessable share of common stock of the Surviving Corporation.

Section 2.09 Treatment of Options and Related Corporate Actions.

(a) At the Effective Time, each Option that is outstanding and unexercised immediately prior to the Effective Time, whether or not then vested or exercisable, shall be, by virtue of the Merger and without any action on the part of Parent, Merger Sub, the Company, the Optionholder or any other Person, cancelled and each Optionholder shall cease to have any rights with respect thereto.

(b) At or prior to the Effective Time, the Company, the Company Board and the compensation committee of the Company Board, as applicable, shall adopt any resolutions and take any actions necessary to (i) effectuate the provisions of **Section 2.09(a)** and (ii) cause the Stock Option Plan to terminate at or prior to the Effective Time.

Section 2.10 Dissenting Shares. Notwithstanding any provision of this Agreement to the contrary, including **Section 2.08**, Shares issued and outstanding immediately prior to the Effective Time (other than Shares cancelled in accordance with **Section 2.08(a)**) and held by a holder who has not voted in favor of adoption of this Agreement or consented thereto in writing and who has properly exercised appraisal rights in respect of such Shares in accordance with Section 262 of the DGCL (such Shares being referred to collectively as the “**Dissenting Shares**” until such time as such holder fails to perfect or otherwise loses such holder’s appraisal rights under the DGCL with respect to such Shares) shall not be cancelled and retired, but instead shall be entitled to only such rights as are granted by Section 262 of the DGCL; *provided, however*, that if, after the Effective Time, such holder fails to perfect, withdraws or loses such holder’s right to appraisal pursuant to Section 262 of the DGCL or if a court of competent jurisdiction shall determine that such holder is not entitled to the relief provided by Section 262 of the DGCL, such Shares shall be treated as if they had been cancelled and retired as of the Effective Time. The Company shall provide Parent prompt written notice of any demands received by the Company for appraisal of Shares, any

withdrawal of any such demand and any other demand, notice or instrument delivered to the Company prior to the Effective Time pursuant to the DGCL that relates to such demand, and Parent shall have the opportunity to participate in all negotiations and proceedings with respect to such demands. Except with the prior written consent of Parent (which consents shall not be unreasonably conditioned, withheld or delayed), the Company shall not voluntarily make any payment with respect to, or settle or offer to settle, any such demands. For the avoidance of doubt, the parties acknowledge and agree that the provisions hereof shall not override nor represent a waiver of the obligations of such Stockholders pursuant to the Stockholders Agreement, including obligations pursuant to the exercise and invocation of the Drag-Along Rights in such Stockholders Agreement by Stockholders pursuant to the Written Consent, which include, among other things, the agreement by the Stockholders subject to the Stockholders Agreement to waive and not demand or exercise appraisal rights with respect to their Shares under Section 262 of the DGCL in connection with the Merger.

Section 2.11 Surrender. At the Effective Time, all Shares and all Options outstanding immediately prior to the Effective Time shall automatically be cancelled and retired and shall cease to exist, and, subject to **Section 2.10**, each holder of a book-entry share formerly representing any Shares and each holder of record of an Option shall cease to have any rights as a stockholder of the Company or a holder of Options.

Section 2.12 Escrow Funds. In accordance with the Escrow Agreement, Parent shall deposit or cause to be deposited with the Escrow Agent:

(a) in accordance with **Section 2.16**, the Escrow Amount (such amount, including any interest or other amounts earned thereon and less any disbursements therefrom in accordance with the Escrow Agreement, the “**Escrow Fund**”), to be held for the purpose of securing the indemnification obligations set forth in this Agreement and the obligations pursuant to **Section 2.15(d)**;

(b) in accordance with **Section 2.16**, the Retention Bonus Escrow Amount (such amount, including any interest or other amounts earned thereon and less any disbursements therefrom in accordance with the Escrow Agreement, the “**Retention Bonus Escrow Fund**”), to be held by the Escrow Agent separately from the Escrow Fund and the Sale Bonus Escrow Fund for the purpose of funding any Retention Bonuses actually paid by the Company as a result of the Closing pursuant to the Retention and Sale Bonus Letters set forth in **Section 3.20** of the Disclosure Schedules. Amounts in the Retention Bonus Escrow Fund shall be released in accordance with the terms of the Escrow Agreement (1) in the event that, and to the extent that, any condition to payment of any Retention Bonus is no longer satisfied or capable of being satisfied, to Stakeholders Representative (for distribution to the Stakeholders) in an amount equal to such Retention Bonus (the “**Retention Bonus Forfeited Amount**”) and (2) in the event

that all conditions to payment of any Retention Bonus pursuant to the Retention and Sale Bonus Letters are satisfied and such Retention Bonus is actually paid, to Parent.

(c) in accordance with **Section 2.16**, the Sale Bonus Escrow Amount (such amount, including any interest or other amounts earned thereon and less any disbursements therefrom in accordance with the Escrow Agreement, the “**Sale Bonus Escrow Fund**”), to be held by the Escrow Agent separately from the Escrow Fund and the Retention Bonus Escrow Fund for the purpose of funding any Sale Bonuses paid by the Company as a result of the Closing pursuant to the Sale Bonus Letters set forth in **Section 3.20** of the Disclosure Schedules. The Sale Bonus Escrow Fund shall be released in accordance with the terms of the Escrow Agreement (1) in the event that, and to the extent that, any condition to payment of any Sale Bonus is not satisfied or capable of being satisfied (the “**Stakeholder Sale Bonus Release Trigger**”), to the Stakeholder Representative (for distribution to the Stakeholders) and (2) in the event that all conditions to payment of the Sale Bonuses pursuant to the Sale Bonus Letters are satisfied and such Sale Bonuses are paid by the Company, to Parent.

Section 2.13 No Further Ownership Rights in Company Common Stock. From and after the Effective Time, there shall be no further registration of transfers of Shares on the stock transfer books of the Surviving Corporation. If, after the Effective Time, book-entry shares are presented to the Surviving Corporation, they shall be cancelled in accordance with the procedures set forth, in this **Article II** and elsewhere in this Agreement.

Section 2.14 Withholding Rights. Each of the Exchange Agent, Parent, Merger Sub and the Surviving Corporation shall be entitled to deduct and withhold from the consideration otherwise payable to any Person pursuant to this **Article II** such amounts as may be required to be deducted and withheld with respect to the making of such payment under any provision of Tax Law. Parent, Merger Sub and the Surviving Corporation, as applicable, shall notify any Person for which a payment may be required to be withheld and shall reasonably cooperate with such Person to minimize any applicable withholding. To the extent that amounts are so deducted and withheld by Parent, Merger Sub or the Surviving Corporation, as the case may be, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which Parent, Merger Sub or the Surviving Corporation, as the case may be, made such deduction and withholding.

Section 2.15 Working Capital Adjustment.

(a) **Closing Adjustment.**

(i) At least two Business Days before the Closing, the Company shall prepare and deliver to Parent a statement setting forth its good faith estimate of (i) Closing Working Capital (the “**Estimated Closing Working Capital**”), (ii) Closing

Cash and Cash Equivalents (“**Estimated Closing Cash and Cash Equivalents**”) and (iii) Closing Prepaid Rent (“**Estimated Closing Prepaid Rent**”), which statement shall contain an estimated balance sheet of the Company as of the Reference Time and a calculation of Estimated Closing Working Capital (the “**Estimated Closing Statement**”), and a certificate of the Chief Financial Officer of the Company that the Estimated Closing Statement was prepared in accordance with GAAP applied using the Accounting Principles except as provided herein.

(ii) “**Estimated Closing Adjustment**” shall be an amount equal to the sum of (i) the Estimated Closing Working Capital minus the Target Working Capital, (ii) the Estimated Closing Cash and Cash Equivalents minus the Minimum Cash Total to Surviving Corporation and (iii) the Estimated Closing Prepaid Rent.

(b) **Post-Closing Adjustment.**

(i) Within 90 days after the Closing Date or as soon as reasonably practicable, Parent shall prepare and deliver to Stakeholder Representative a statement setting forth its calculation of (i) Closing Working Capital, (ii) Closing Cash and Cash Equivalents and (iii) Closing Prepaid Rent, which statement shall contain a balance sheet of the Company as of the Reference Time and a calculation of Closing Working Capital (the “**Closing Statement**”) and a certificate of the Chief Financial Officer of Parent that the Closing Statement was prepared in accordance with the Accounting Principles as if such Closing Statement was prepared in accordance with GAAP applied using the Accounting Principles except as provided herein.

(ii) “**Post-Closing Adjustment**” means an amount equal to the sum of (i) the Closing Working Capital minus the Estimated Closing Working Capital, (ii) the Closing Cash and Cash Equivalents minus the Estimated Closing Cash and Cash Equivalents and (iii) the Closing Prepaid Rent minus the Estimated Closing Prepaid Rent, which amount shall be payable subject to, and in the manner specified in, **Section 2.15(d)**.

(iii) No fact or event including any market or business development, occurring after the Closing Date and no change in GAAP or applicable Law after the date hereof, shall be taken into consideration in the calculations to be made pursuant to **Section 2.15(b)**.

(c) **Examination and Review.**

(i) Examination. After receipt of the Closing Statement, Stakeholder Representative shall have 45 days (the “**Review Period**”) to review the Closing Statement. During the Review Period, Stakeholder Representative, its Representatives and its accountants shall have full access to the books and records of the Surviving Corporation, the personnel of, and work papers prepared by, Parent and/or its accountants to the extent that they relate to the Closing Statement and to such historical financial information (to the extent in Parent’s possession) relating to the Closing Statement as Stakeholder Representative may reasonably request for the purpose of

reviewing the Closing Statement and to prepare a Statement of Objections (defined below), *provided, that* such access shall be in a manner that does not unreasonably interfere with the normal business operations of Parent or the Surviving Corporation.

(ii) Objection. On or prior to the last day of the Review Period, Stakeholder Representative may object to the Closing Statement by delivering to Parent a written statement setting forth its objections in reasonable detail, indicating each disputed item or amount and the basis for its disagreement therewith (the “**Statement of Objections**”). If Stakeholder Representative fails to deliver the Statement of Objections before the expiration of the Review Period, the Closing Statement and the Post-Closing Adjustment, as the case may be, reflected in the Closing Statement shall be deemed to have been accepted by Stakeholder Representative. If Stakeholder Representative delivers the Statement of Objections before the expiration of the Review Period, Parent and Stakeholder Representative shall negotiate in good faith to resolve such objections within 45 days after the delivery of the Statement of Objections (the “**Resolution Period**”), and, if the same are so resolved within the Resolution Period, the Post-Closing Adjustment and the Closing Statement with such changes as may have been previously agreed in writing by Parent and Stakeholder Representative, shall be final and binding.

(iii) Resolution of Disputes. If Stakeholder Representative and Parent fail to reach an agreement with respect to all of the matters set forth in the Statement of Objections before expiration of the Resolution Period, then any amounts remaining in dispute (“**Disputed Amounts**” and any amounts not so disputed, the “**Undisputed Amounts**”) shall be submitted in writing for resolution to the office of an impartial nationally recognized firm of independent certified public accountants appointed by mutual agreement of Parent and Stakeholder Representative (the “**Independent Accountant**”) who, acting as experts and not arbitrators, shall resolve the Disputed Amounts only and make any adjustments to the Post-Closing Adjustment, as the case may be, and the Closing Statement. The parties hereto agree that all adjustments shall be made without regard to materiality. The Independent Accountant shall only decide the specific items under dispute by the parties and their decision for each Disputed Amount must be within the range of values assigned to each such item in the Closing Statement and the Statement of Objections, respectively. Any submissions to the Independent Accountant must be in writing and delivered to each party to the dispute. The Independent Accountant’s determination will be based solely on the definition of Closing Working Capital and the other terms contained herein and the Accounting Principles. The Independent Accountant’s determination shall be based solely on the presentations by Parent and the Stakeholder Representative which are in accordance with the terms and procedures set forth in this Agreement (i.e., not on the basis of independent review).

(iv) Fees of the Independent Accountant. The fees and expenses of the Independent Accountant shall be paid by the Stakeholder Representative (on behalf of the Stakeholders), on the one hand, and by Parent, on the other hand, based upon the percentage that the amount actually contested but not awarded to the Stakeholder

Representative or Parent, respectively, bears to the aggregate amount actually contested by the Stakeholder Representative and Parent. Any such fees and expenses payable by the Stakeholder Representative shall be paid from the Stakeholder Representative Expense Amount and to the extent such amount exceeds the amounts available in the Stakeholder Representative Expense Amount, then from amounts that would otherwise be payable to the Stakeholder Representative (for distribution to the Stakeholders) from the Escrow Fund.

(v) Determination by Independent Accountant. The Independent Accountant shall make a determination as soon as practicable within 45 days (or such other time as the parties hereto shall agree in writing) after their engagement, and their resolution of the Disputed Amounts and their adjustments to the Closing Statement and/or the Post-Closing Adjustment shall be conclusive and binding upon the parties hereto.

(d) **Payment of Post-Closing Adjustment.**

(i) If the Post-Closing Adjustment is a negative amount, Stakeholder Representative and Parent shall, within three Business Days after the final determination of the Post-Closing Adjustment, jointly instruct the Escrow Agent to disburse from the Escrow Fund by wire transfer of immediately available funds to Parent, the amount of such Post-Closing Adjustment; in the event there are inadequate funds in the Escrow Account to satisfy such obligation, the balance of such Post-Closing Adjustment shall be satisfied by offsets to the Deferred Purchase Price Payments next becoming due pursuant to **Section 2.16** until the amount of such offsets have equaled the balance of the Post-Closing Adjustment.

(ii) If the Post-Closing Adjustment is a positive amount, Parent shall, within three Business Days after the final determination of the Post-Closing Adjustment, deposit with the Stakeholder Representative, for distribution to the Stakeholders, the amount of such Post-Closing Adjustment.

(e) **Adjustments for Tax Purposes.** Any payments made pursuant to **Sections 2.12(b)(2), 2.12(c)(2) and 2.15** shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law.

Section 2.16 Deferred Purchase Price Amount.

(a) In accordance with **Section 2.16(b)**, Parent shall pay the Deferred Purchase Price Amount as follows (each of the following, a “**Deferred Purchase Price Payment**”):

(i) First Anniversary Payment. On the first anniversary of the Closing Date, Parent shall either cause the Surviving Corporation to pay, or Parent shall itself pay, the Unpaid Deferred Purchase Price Amount.

(ii) Quarterly Payments. On or before the 90th day following the Closing for the first such quarterly payment and thereafter on the 20th Business Day following the end of each fiscal quarter beginning with the fiscal quarter ended December 23, 2015, Parent shall either cause the Surviving Corporation to pay, or Parent shall itself pay, in accordance herewith an amount equal to the Franchising Net Proceeds realized during the immediately prior post-Closing period or fiscal quarter, as the case may be.

(iii) BWW Sale Payment. Within 10 Business Days following the closing of the BWW Sale, Parent shall either cause the Surviving Corporation to pay, or Parent shall itself pay, the BWW Sale Payment; provided, however, \$500,000 of such BWW Sale Payment shall be deposited to the Escrow Fund as a deposit to the Escrow Amount; *provided further however* in the event the BWW Sale closing occurs before the Closing Date hereunder, the BWW Sale Payment shall instead be paid at Closing by increasing the Closing Purchase Price Amount by an amount equal to the Stakeholder Initial Deferred Payment Amount less \$500,000, above the amount otherwise payable under **Section 2.03(b)** and (x) \$500,000 of such BWW Sale Payment shall be deposited by Parent to the Escrow Fund as an initial deposit to the Escrow Amount, (y) an amount equal to the Retention Bonus Escrow Amount of such BWW Sale Payment shall be deposited by Parent to the Retention Bonus Escrow Fund and (z) an amount equal to the Sale Bonus Escrow Amount of such BWW Sale Payment shall be deposited by Parent to the Sale Bonus Escrow Fund.

(b) The Deferred Purchase Price Payments shall be payable as follows:

(i) First (but subject to the provisions of **Section 2.16(a)(iii)** in the event of a BWW Sale), to the Stakeholder Representative (to be distributed to the Stakeholders) until the cumulative amount paid to the Stakeholder Representative pursuant to this **Section 2.16(b)(i)** equals the Stakeholder Initial Deferred Payment Amount;

(ii) Solely if the BWW Sale closing does not occur before the Closing Date, then (x) to the Stakeholder Representative (to be distributed to the Stakeholders) any Retention Bonus Forfeited Amounts and (y) to the Escrow Agent for deposit into the Retention Bonus Escrow Fund (to be distributed in accordance with the Escrow Agreement) an amount up to the Retention Bonus Escrow Amount, until the cumulative amount paid and funded pursuant to this **Section 2.16(b)(ii)** equals the Retention Bonus Escrow Amount, if any;

(iii) Solely if the BWW Sale closing does not occur before the Closing Date, then (x) if the Stakeholder Sale Bonus Release Trigger has not occurred, to the Escrow Agent for deposit into the Sale Bonus Escrow Fund (to be distributed in accordance with the Escrow Agreement) or (y) if the Stakeholder Sale Bonus Release Trigger has occurred, to the Stakeholder Representative (to be distributed to the Stakeholders), until the cumulative amount paid pursuant to this **Section 2.16(b)(iii)** equals the Sale Bonus Escrow Amount; and

(iv) then, to the Escrow Agent for deposit into the Escrow Fund (to be distributed in accordance with the Escrow Agreement) the remaining amount of the aggregate Deferred Purchase Price Payments (after taking into account any offsets provided for in **Section 2.15(d)(i)**) to be deposited into the Escrow Fund.

(c) All amounts of Franchising Net Proceeds shall be calculated in accordance with GAAP applied using the Accounting Principles. Stakeholder Representative shall have an opportunity to review any statement setting forth the Franchising Net Proceeds and object to any amounts therein in accordance with **Section 2.15(c)**, *mutatis mutandis*.

Section 2.17 Deposit. Simultaneously with the execution of this Agreement, Parent shall deliver to the Company a deposit in the amount of One Million Dollars (\$1,000,000) (together with any interest or other earnings thereon, the “**Deposit**”). If this Agreement is terminated pursuant to **Section 9.01(b), (c)(ii)** or **(d)**, the Company shall refund to Parent, within five Business Days after such termination in immediately available funds, the Deposit (which obligation to refund the Deposit shall survive the termination of this Agreement). If this Agreement is terminated for any other reason, the Company shall be entitled to retain the Deposit.

Section 2.18 Stakeholder Representative Expense Amount. At Closing, in accordance with **Section 2.03(b)(ii)**, Parent shall deliver to the Stakeholder Representative, on behalf of the Stakeholders, the Stakeholder Representative Expense Amount by wire transfer of immediately available funds to a segregated account designated by the Stakeholder Representative, to satisfy potential future obligations of the Stakeholders to the Stakeholder Representative, including expenses arising out of this Agreement.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the Disclosure Schedules, the Company represents and warrants to Parent that the statements contained in this **Article III** are true and correct as of the date hereof.

Section 3.01 Organization and Qualification of the Company. The Company is a corporation duly organized, validly existing and in good standing under the Laws of the state of Delaware and has all requisite corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as is currently conducted. **Section 3.01** of the Disclosure Schedules sets forth each jurisdiction in which the Company is licensed or qualified to do business, and the Company is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business

as currently conducted makes such licensing or qualification necessary, except where the failure to be so licensed or qualified would not have a Material Adverse Effect.

Section 3.02 Subsidiaries. Except as set forth on **Section 3.02** of the Disclosure Schedules, the Company does not own, or have any interest in any shares or have an ownership interest in any other Person. Each subsidiary identified on **Section 3.02** of the Disclosure Schedules (each a “**Subsidiary**”) is an entity of the type identified on **Section 3.02** of the Disclosure Schedules that is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation indicated on **Section 3.02** of the Disclosure Schedules and has full corporate or other power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as currently conducted. **Section 3.02** of the Disclosure Schedules sets forth each jurisdiction in which each such Subsidiary is licensed or qualified to do business, and each such Subsidiary is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business as currently conducted makes such licensing or qualification necessary, except where the failure to be so licensed or qualified would not have a Material Adverse Effect. Except as otherwise indicated on **Section 3.02** of the Disclosure Schedules, each such Subsidiary is a direct or indirect wholly owned subsidiary of the Company and there are no subscription, warrant, option, convertible or exchangeable security, or other rights (contingent or otherwise) to purchase or otherwise acquire equity securities of any such Subsidiary authorized or outstanding, and there is no commitment by any such Subsidiary to issue shares, subscriptions, warrants, options, convertible or exchangeable securities, or other such rights or to distribute to holders of any of its equity securities any evidence of indebtedness or asset, or to repurchase or redeem any securities of such Subsidiary.

Section 3.03 Authority; Board Approval.

(a) The Company has all requisite corporate power and authority to enter into and perform its obligations under this Agreement and the Ancillary Documents to which it is a party and, subject to, in the case of the consummation of the Merger, adoption of this Agreement by the affirmative vote or consent of Stockholders representing a majority of the outstanding Shares (“**Requisite Company Vote**”), to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by the Company of this Agreement and any Ancillary Document to which it is a party and the consummation by the Company of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of the Company and no other corporate proceedings on the part of the Company are necessary to authorize the execution, delivery and performance of this Agreement or to consummate the Merger and the other transactions contemplated hereby and thereby, subject only, in the case of consummation of the Merger, to the receipt of the Requisite Company Vote. The Requisite Company Vote is the only vote or consent of the holders of any class or series

of the Company's capital stock required to adopt this Agreement and the Ancillary Documents, approve the Merger and consummate the Merger and the other transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by the Company and, assuming that this Agreement is a valid and binding obligation of the other parties hereto, constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except to the extent that its enforceability may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforcement of creditors' rights generally and by general equitable principles. When each Ancillary Document to which the Company is or will be a party has been duly executed and delivered by the Company, assuming that each Ancillary Document is a valid and binding obligation of the other parties thereto, such Ancillary Document will constitute a legal and binding obligation of the Company enforceable against it in accordance with its terms.

(b) The Company Board, by resolutions duly adopted by unanimous vote or consent and, as of the date hereof, not subsequently rescinded or modified in any way, has, as of the date hereof (i) determined that this Agreement and the transactions contemplated hereby, including the Merger, are fair to, and in the best interests of, the Stockholders, (ii) approved and declared advisable this Agreement and the transactions contemplated by this Agreement, including the Merger, in accordance with the DGCL upon the terms and subject to the conditions set forth herein, (iii) directed that this Agreement be submitted to the Stockholders for adoption, and (iv) resolved to recommend that the Stockholders adopt this Agreement (collectively, the **"Company Board Recommendation"**).

Section 3.04 No Conflicts; Consents. Except for the filing of the Certificate of Merger with the Secretary of State of the State of Delaware and the Requisite Company Vote, the execution, delivery and performance by the Company of this Agreement and the Ancillary Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, including the Merger, do not and will not: (i) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation or by-laws of the Company (**"Company Charter Documents"**); (ii) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to the Company or any Subsidiary; (iii) except as set forth in **Section 3.04** of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of, or create in any party the right to accelerate, terminate, modify or cancel any Material Contract or any Permit affecting the properties, assets or business of the Company or any Subsidiary; or (iv) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on any properties or assets of the Company or any Subsidiary, except where the failure of any of the representations and warranties contained in clauses (iii) through (iv) above to be true

would not have a Material Adverse Effect. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to the Company or any Subsidiary in connection with the execution, delivery or performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, except for the filing of the Certificate of Merger with the Secretary of State of the State of Delaware or as set forth in **Section 3.04** of the Disclosure Schedules.

Section 3.05 Capitalization.

(a) The authorized capital stock of the Company consists of 11,869,565 Shares, consisting of 10,869,565 shares authorized as common stock, of which 10,000,000 Shares are issued and outstanding as of the close of business on the date of this Agreement, and 1,000,000 shares authorized as preferred stock, of which no shares are issued and outstanding as of the close of business of the date of this Agreement.

(b) **Section 3.05(b)** of the Disclosure Schedules sets forth, as of the date hereof, (i) the name of each Person that is the registered owner of any Shares and the number of Shares owned by such Person, each of which Persons is a subject to the Stockholders Agreement (as an Initial Stockholder or otherwise pursuant to Section 9 of such Stockholders Agreement), and (ii) a list of all holders of outstanding Options. Each Option is an Out-of-Money Option.

(c) Except as disclosed on **Section 3.05(c)** of the Disclosure Schedules, (i) no subscription, warrant, option, convertible or exchangeable security, or other right (contingent or otherwise) to purchase or otherwise acquire equity securities of the Company is authorized or outstanding, and (ii) there is no commitment by the Company to issue shares, subscriptions, warrants, options, convertible or exchangeable securities, or other such rights or to distribute to holders of any of its equity securities any evidence of indebtedness or asset, to repurchase or redeem any securities of the Company or to grant, extend, accelerate the vesting of, change the price of, or otherwise amend any warrant, option, convertible or exchangeable security or other such right. There are no declared or accrued unpaid dividends with respect to any shares of Company Common Stock.

(d) All issued and outstanding shares of Company Common Stock are (i) duly authorized, validly issued, fully paid and non-assessable; (ii) not subject to any preemptive rights created by statute, the Company Charter Documents or any agreement to which the Company is a party that would survive the Closing; and (iii) free of any Encumbrances created by the Company in respect thereof. All issued and outstanding shares of Company Common Stock were issued in compliance with applicable Law.

(e) No outstanding Company Common Stock is subject to vesting or forfeiture rights or repurchase rights by the Company. There are no outstanding or

authorized stock appreciation, dividend equivalent, phantom stock, profit participation or other similar rights with respect to the Company or any of its securities.

Section 3.06 Financial Statements. Complete copies of the Company's audited financial statements consisting of the balance sheet of the Company as of July 3, 2013 and July 2, 2014 and the related statements of income and retained earnings, stockholders' equity and cash flow for the fiscal years then ended (the "**Audited Financial Statements**"), and unaudited financial statements consisting of the balance sheet of the Company as of June 3, 2015 and the related statements of income and retained earnings, stockholders' equity and cash flow for the fiscal period then ended (the "**Interim Financial Statements**" and together with the Audited Financial Statements, the "**Financial Statements**") have been delivered to Parent. The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved except as otherwise noted therein and subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments and the absence of notes. The Financial Statements are based on the books and records of the Company, and fairly present, in all material respects, the financial condition of the Company as of the respective dates they were prepared and the results of the operations of the Company for the periods indicated therein. The balance sheet of the Company as of July 2, 2014 is referred to herein as the "**Balance Sheet**" and the date thereof as the "**Balance Sheet Date**" and the balance sheet of the Company as of April 8, 2015 is referred to herein as the "**Interim Balance Sheet**" and the date thereof as the "**Interim Balance Sheet Date**". The Company maintains a standard system of accounting established and administered in accordance with GAAP.

Section 3.07 Undisclosed Liabilities. Neither the Company nor any of its Subsidiaries has any material liabilities or obligations, absolute or contingent, accrued or unaccrued, or otherwise ("**Liabilities**"), except (a) those which are adequately reflected or reserved against in the Interim Balance Sheet as of the Interim Balance Sheet Date, (b) those which have been incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date, or (c) as set forth on **Section 3.07** of the Disclosure Schedules.

Section 3.08 Absence of Certain Changes, Events and Conditions. Since the Interim Balance Sheet Date through the date of this Agreement, except as disclosed on **Section 3.08** of the Disclosure Schedules and other than in the ordinary course of business consistent with past practice or pursuant to the terms of a Benefit Plan disclosed pursuant to **Section 3.20**, there has not been, with respect to the Company or any Subsidiary, any:

(a) event, occurrence or development that has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) amendment of the charter, by-laws or equivalent organizational documents of the Company or any Subsidiary;

(c) split, combination or reclassification of any shares of its capital stock or any other equity interest;

(d) issuance, sale or other disposition of any of its capital stock or other equity interests (other than in connection with the exercise of Options outstanding on the date of this Agreement as required by the terms of such Options), or grant of any options, warrants or other rights to purchase or obtain (other than upon conversion, exchange or exercise) any of its capital stock;

(e) declaration or payment of any dividends or distributions on or in respect of any of its capital stock (other than intercompany dividends or distributions payable to the Company or other Subsidiaries) or redemption, purchase or acquisition of its capital stock or other equity interests;

(f) material change in any method of accounting or accounting practice of the Company or any Subsidiary, except as required by GAAP or as disclosed in the notes to the Financial Statements;

(g) material change in the Company's or any Subsidiary's cash management practices and its policies, practices and procedures with respect to collection of accounts receivable, establishment of reserves for uncollectible accounts, accrual of accounts receivable, inventory control, prepayment of expenses, payment of trade accounts payable, accrual of other expenses and deferral of revenue;

(h) entry into any Contract that would constitute a Material Contract, other than in the ordinary course of business;

(i) incurrence, assumption or guarantee of any indebtedness for borrowed money except unsecured current obligations and Liabilities incurred in the ordinary course of business consistent with past practice;

(j) transfer, assignment, sale or other disposition of any material amount of the assets shown or reflected in the Balance Sheet or cancellation of any material debts or entitlements, other than in the ordinary course of business;

(k) transfer, assignment or grant of any license or sublicense of any material rights under or with respect to any Company Intellectual Property or Company IP Agreements, except licenses granted in the ordinary course of business;

(l) damage, destruction or loss (whether or not covered by insurance) to the property of the Company or any Subsidiary in which the value of property lost or destroyed or the cost of replacement or repair exceeded \$50,000 with respect to any individual casualty event;

(m) any capital investment in, or any loan to, any other Person (other than to a direct or indirect Subsidiary and other than loans to Persons addressed by **Section 3.08(t)**), other than intercompany transactions in the ordinary course of business;

(n) acceleration, termination, material modification to or cancellation of any Material Contract to which the Company or any Subsidiary is a party or by which it is bound, other than in the ordinary course of business;

(o) any capital expenditures individually in excess of \$50,000;

(p) imposition of any Encumbrance upon any of the properties, capital stock or assets, tangible or intangible, of the Company or any Subsidiary, other than in the ordinary course of business;

(q) (i) grant of any bonuses, whether monetary or otherwise, or increase in any wages, salary, or other compensation or benefits in respect of its current or former employees, officers, directors, independent contractors or consultants, other than as provided for in any written agreements otherwise scheduled herein or as required by applicable Law, (ii) change in the terms of employment for any employee or any termination of any employees for which the aggregate costs and expenses exceed \$50,000, or (iii) action to accelerate the vesting or payment of any compensation or benefit for any current or former employee, officer, director, independent contractor or consultant except as contemplated by this Agreement;

(r) hiring or promoting any person as or to (as the case may be) an officer or hiring or promoting any headquarters or field managerial employee (other than store managerial employees) below officer level except to fill a vacancy in the ordinary course of business;

(s) adoption, modification or termination of any: (i) employment, severance or retention agreement with any current or former executive officer, (ii) Benefit Plan or (iii) collective bargaining or other agreement with a Union, in each case whether written or oral;

(t) any loan to (or forgiveness of any loan to), or entry into any other transaction with, any of its current or former directors, officers and employees, other than expense advances or reimbursements in the ordinary course of business;

(u) entry into a new line of business or abandonment or discontinuance of existing lines of business;

(v) except for the Merger, adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;

(w) purchase, lease or other acquisition of the right to own, use or lease any property or assets for an amount in excess of \$50,000, individually (in the case of a lease, per annum) or \$250,000 in the aggregate (in the case of a lease, for the entire term of the

lease, not including any option term), except for purchases of inventory or supplies or capital expenditures, in each case, in the ordinary course of business consistent with past practice;

(x) acquisition by merger or consolidation with, or by purchase of a substantial portion of the assets or stock of, or by any other manner, any business or any Person or any division thereof;

(y) action by the Company or any Subsidiary to make, change or rescind any Tax election, amend any Tax Return or take any position on any Tax Return, take any action, or enter into any other transaction that would have the effect of increasing the Tax liability or reducing any Tax asset of Parent in respect of any Post-Closing Tax Period, other than in the ordinary course of business; or

(z) any Contract to do any of the foregoing, or any action that would result in any of the foregoing.

Section 3.09 Material Contracts.

(a) **Section 3.09(a)** of the Disclosure Schedules lists each of the following Contracts to which the Company or any Subsidiary is a party (such Contracts, together with all Contracts listed in **Section 3.10(b)** of the Disclosure Schedules and all Company IP Agreements set forth in **Section 3.12(b)** of the Disclosure Schedules, being “**Material Contracts**”):

(i) each Contract of the Company or any Subsidiary involving aggregate consideration in excess of \$100,000 and which, in each case, cannot be cancelled by the Company or such Subsidiary without penalty or without more than 60 days’ notice;

(ii) all Contracts that require the Company or any Subsidiary to purchase its total requirements of any product or service from a third party or that contain “take or pay” provisions;

(iii) all Contracts that provide for indemnification obligations by the Company or any Subsidiary of any Person that would reasonably be expected to exceed \$10,000 (excluding (x) indemnification provisions in the organizational documents of the Company or any Subsidiary, (y) indemnification provisions in favor of landlords under the Leases, and (z) customary indemnification provisions under vehicle leases and vendor contracts with respect to liabilities that are covered by insurance, subject to any applicable deductible or self-insured retention, copies of which documents in clauses (x) and (y) have been provided to Parent);

(iv) all Contracts that relate to the acquisition or disposition of any business, a material amount of stock or assets of any other Person or any material real property (whether by merger, sale of stock, sale of assets or otherwise);

(v) all employment agreements and Contracts with independent contractors or consultants (or similar arrangements) to which the Company or any Subsidiary is a party and which are not cancellable without material penalty or without more than 60 days' notice;

(vi) except for Contracts relating to trade receivables, all Contracts relating to indebtedness in an amount exceeding \$50,000 (including, without limitation, guarantees) of the Company or any Subsidiary;

(vii) all material Contracts with any Governmental Authority to which the Company or any Subsidiary is a party ("**Government Contracts**");

(viii) all Contracts that limit or purport to limit the ability of the Company or any Subsidiary to compete in any line of business or with any Person or in any geographic area or during any period of time;

(ix) any Contracts to which the Company or any Subsidiary is a party that provide for any joint venture, partnership or similar arrangement by the Company or such Subsidiary; and

(x) all collective bargaining agreements or Contracts with any Union to which the Company or any Subsidiary is a party.

(b) Notwithstanding anything in this **Section 3.09** to the contrary, "Material Contracts" shall not include any Contract that (x) will be fully and irrevocably performed or satisfied as of or prior to Closing; (y) is solely between the Company and one or more Subsidiaries or is solely between Subsidiaries; or (z) is a Benefit Plan that is disclosed pursuant to **Section 3.20**.

(c) Each Material Contract is valid and binding on the Company or Subsidiary, as the case may be, in accordance with its terms (assuming due power and authority of and due execution by the other parties or party thereto) and is in full force and effect, except to the extent that its enforceability may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforcement of creditors' rights generally and by general equitable principles. None of the Company or any Subsidiary or, to the Company's Knowledge, any other party thereto is in breach of or default under, or has provided or received any written notice of any intention to terminate, any Material Contract, except as would not, individually or in the aggregate, be expected to have a Material Adverse Effect. To the Company's Knowledge, no event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any material right or obligation or the loss of any material benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Parent.

Section 3.10 Title to Assets; Real Property.

(a) The Company or a Subsidiary thereof owns fee simple title to each of the real properties identified as being “owned property” on **Section 3.10(b)** of the Disclosure Schedules (the “**Owned Real Property**”) and a valid leasehold estate to each of the real properties subject to a lease described in **Section 3.10(b)** of the Disclosure Schedules (collectively, the “**Leased Real Property**” and together with the Owned Real Property, the “**Real Property**”). Except as would not, individually or in the aggregate, have a Material Adverse Effect, the interest of the Company or the Subsidiaries in such Real Property and any personal property owned by the Company and such Subsidiaries are good and marketable, and such Real Property and personal property is free and clear of Encumbrances except for the following (collectively referred to as “**Permitted Encumbrances**”):

- (i) those items set forth in **Section 3.10(a)** of the Disclosure Schedules;
- (ii) liens for utilities and Taxes not yet due and payable;
- (iii) liens for Taxes being contested in good faith by appropriate proceedings or for which appropriate reserves have been included on the balance sheet of the Company or applicable Subsidiary;
- (iv) mechanics, carriers’, workmen’s, repairmen’s or other like liens arising or incurred in the ordinary course of business consistent with past practice or amounts that are not delinquent and which would not, individually or in the aggregate, have a Material Adverse Effect;
- (v) easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property which do not, individually or in the aggregate, materially interfere with the business of the Company or the applicable Subsidiary;
- (vi) minor irregularities and defects of title which do not materially interfere with the business of the Company and its Subsidiaries;
- (vii) trade payables current in accordance with their terms and incurred in the ordinary course of business;
- (viii) landlords’ liens in favor of landlords under the leases with respect to the Leased Real Property; and
- (ix) liens arising under original purchase price conditional sales contracts (other than with respect to Owned Real Property) and equipment leases with third parties entered into in the ordinary course of business consistent with past practice which do not, individually or in the aggregate, have a Material Adverse Effect.

(b) **Section 3.10(b)** of the Disclosure Schedules lists (i) the street address of each parcel of Real Property; and (ii) if such property is Leased Real Property, the landlord under the lease. With respect to Owned Real Property, the Company has

delivered or made available to Parent true, complete and correct copies of all title insurance policies in the possession of the Company or such Subsidiary and relating to the Owned Real Property. With respect to Leased Real Property, the Company has delivered or made available to Parent true, complete and correct copies of any leases affecting the Real Property. Except as set forth on **Section 3.10(b)** of the Disclosure Schedules, neither the Company nor any Subsidiary is a sublessor or grantor under any sublease or other instrument granting to any other Person any right to the possession, lease, occupancy or enjoyment of any leased Real Property. Except as would not have a Material Adverse Effect, the use and operation of the Real Property in the conduct of the Company's business do not violate in any material respect any Law, covenant, condition, restriction, easement, license, permit or agreement. There are no Actions pending nor, to the Company's Knowledge, threatened against the Real Property or any portion thereof or interest therein in the nature or in lieu of condemnation or eminent domain proceedings.

Section 3.11 Condition And Sufficiency of Assets. Except as set forth in **Section 3.11** of the Disclosure Schedules, the buildings, plants, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property of the Company and its Subsidiaries that are material to the business of the Company and its Subsidiaries, individually or in the aggregate, are in good operating condition and repair, ordinary wear and tear excepted, and are adequate for the uses to which they are being put, and none of such buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property currently owned or leased by the Company or any Subsidiary, together with all other properties and assets of the Company and its Subsidiaries, in the aggregate, are sufficient for the continued conduct of the Company's business on a consolidated basis after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the business of the Company on a consolidated basis as currently conducted.

Section 3.12 Intellectual Property.

(a) **Section 3.12(a)** of the Disclosure Schedules lists all (i) Company IP Registrations and (ii) Company Intellectual Property, including software, that are not registered but that are material to the Company's business or operations on a consolidated basis. All required filings and fees related to the Company IP Registrations have been timely filed with and paid to the relevant Governmental Authorities and authorized registrars, and all Company IP Registrations are otherwise in good standing. The Company is the sole and exclusive legal and beneficial, and with respect to the Company IP Registrations, record, owner of all right, title and interest in and to the Company Intellectual Property listed on Section 3.12(a) of the Disclosure Schedules. The Company

has provided Parent with true and complete copies of file histories, documents, certificates, office actions, correspondence and other materials related to all Company IP Registrations.

(b) **Section 3.12(b)** of the Disclosure Schedules lists all material Company IP Agreements. The Company has provided Parent with true and complete copies of all such Company IP Agreements, including all modifications, amendments and supplements thereto and waivers thereunder. To the Company's Knowledge, each such Company IP Agreement is valid and binding on the Company or the Subsidiaries that are party thereto in accordance with its terms and is in full force and effect. Neither the Company, nor any Subsidiary, nor, to the Company's Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of breach or default of or any intention to terminate, any such Company IP Agreement.

(c) Except as set forth in **Section 3.12(c)** of the Disclosure Schedules, to the Company's Knowledge, the Company has a valid right to use all Intellectual Property necessary for the conduct of the Company's current business or operations on a consolidated basis, in each case, free and clear of Encumbrances other than Permitted Encumbrances.

(d) The consummation of the transactions contemplated hereunder will not result in the loss or impairment of or payment of any additional amounts with respect to, nor require the consent of any other Person in respect of, the Company's or its Subsidiaries', as the case may be, right to own, use or hold for use any Intellectual Property as owned, used or held for use in the conduct of the Company's business or operations as currently conducted on a consolidated basis.

(e) The Company's rights in the Company Intellectual Property are valid and subsisting. The Company has taken commercially reasonable steps to maintain the Company Intellectual Property and to protect and preserve the confidentiality of all trade secrets included in the Company Intellectual Property, including requiring all Persons having access thereto to execute written non-disclosure agreements.

(f) To the Company's Knowledge, the conduct of the Company's business as conducted currently and within the prior four (4) years, and the products, processes and services provided by the Company and its Subsidiaries during that period, have not infringed, misappropriated, diluted or otherwise violated, and do not and will not infringe, dilute, misappropriate or otherwise violate the Intellectual Property or other rights of any Person. To the Company's Knowledge, no Person has infringed, misappropriated, diluted or otherwise violated, or is currently infringing, misappropriating, diluting or otherwise violating, any Company Intellectual Property.

(g) There are no Actions (including any oppositions, interferences or re-examinations) settled, pending or, to the Company's Knowledge, threatened (including in the form of offers to obtain a license): (i) alleging any infringement, misappropriation,

dilution or violation of the Intellectual Property of any Person by the Company or any of its Subsidiaries; (ii) challenging the validity, enforceability, registrability or ownership of any Company Intellectual Property or the Company's rights with respect to any Company Intellectual Property; or (iii) by the Company or any other Person alleging any infringement, misappropriation, dilution or violation by any Person of the Company Intellectual Property. Neither the Company nor any Subsidiary is subject to any outstanding or prospective Governmental Order (including any motion or petition therefor) that does or would restrict or impair the use of any Company Intellectual Property.

Section 3.13 Inventory. All inventory of the Company and its Subsidiaries consists in all material respects of a quality and quantity usable and salable in the ordinary course of business consistent with past practice, except for obsolete, damaged, defective or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established. All such inventory is owned by the Company and its Subsidiaries free and clear of all Encumbrances, and no inventory is held on a consignment basis. The quantities of each item of inventory (whether raw materials, work-in-process or finished goods) are reasonable and consistent with past practice.

Section 3.14 Accounts Receivable. The accounts receivable reflected on the Interim Balance Sheet and the accounts receivable arising after the date thereof (a) have arisen from bona fide transactions entered into by the Company and its Subsidiaries involving the sale of goods or the rendering of services in the ordinary course of business consistent with past practice; and (b) constitute only valid, undisputed claims of the Company and its Subsidiaries not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the ordinary course of business consistent with past practice.

Section 3.15 Suppliers. **Section 3.15** of the Disclosure Schedules sets forth (i) each supplier to whom the Company on a consolidated basis has paid consideration for goods or services rendered in an amount greater than or equal to \$150,000 for the twelve months ending on the Interim Balance Sheet Date (collectively, the "**Material Suppliers**"); and (ii) the dollar value of purchases from each Material Supplier during such periods. Except as set forth in **Section 3.15** of the Disclosure Schedules, the Company has not received any written notice that any of its Material Suppliers has ceased, or intends to cease, to supply goods or services to the Company and its Subsidiaries or to otherwise terminate or materially reduce its relationship with the Company and its Subsidiaries.

Section 3.16 Insurance. **Section 3.16** of the Disclosure Schedules sets forth, as of the date hereof, a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers' compensation, vehicular, directors and officers' liability, fiduciary liability and other casualty and property insurance maintained by Company or its Subsidiaries and relating to the assets, business, operations, employees, officers and directors of the Company and its Subsidiaries (collectively, the "**Insurance Policies**") and true and complete copies of such Insurance Policies have been made available to Parent. Such Insurance Policies are in full force and effect and, except as set forth in **Section 3.16** of the Disclosure Schedules, the execution, delivery and performance by the Company of this Agreement does not result in the right of any insurance provider under any such Insurance Policy to terminate or cancel such Insurance Policy. Neither the Company nor any of its Subsidiaries has received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such Insurance Policies, other than as part of the annual insurance renewal process. To the Company's Knowledge, all such Insurance Policies are valid and binding in accordance with their terms. Except as set forth on **Section 3.16** of the Disclosure Schedules, there are no material claims related to the business of the Company or its Subsidiaries pending under any such Insurance Policies as to which coverage has been questioned, denied or disputed in writing or in respect of which there is an outstanding reservation of rights. Neither the Company nor any of its Subsidiaries is in material default under, or has otherwise failed to comply with, in any material respect, any provision contained in any such Insurance Policy. The Insurance Policies are of the type and in the amounts customarily carried by Persons conducting a business similar to the Company on a consolidated basis.

Section 3.17 Legal Proceedings; Governmental Orders.

(a) Except as set forth in **Section 3.17(a)** of the Disclosure Schedules, there are no Actions pending or, to the Company's Knowledge, threatened in writing (a) against or by the Company or any Subsidiary affecting any of its properties or assets involving an amount in controversy or claim exceeding \$250,000; or (b) against or by the Company or any Subsidiary that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. To the Company's Knowledge, no event has occurred or circumstances exist that would reasonably be expected to give rise to any such Action.

(b) Except as set forth in **Section 3.17(b)** of the Disclosure Schedules, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting the Company or any Subsidiary or any of their respective properties or assets.

Section 3.18 Compliance With Laws; Permits.

(a) Except as set forth in **Section 3.18(a)** of the Disclosure Schedules, since July 18, 2012, the Company and its Subsidiaries have complied, and are now complying, with all Laws applicable to it or their business, properties or assets, except where the failure to comply would not be material to the Company.

(b) All Permits required for the Company and its Subsidiaries to conduct their business as presently conducted have been obtained by it and are valid and in full force and effect, except for such Permits the failure of which to be in the possession or compliance with would not have a Material Adverse Effect. **Section 3.18(b)** of the Disclosure Schedules lists all material Permits issued to the Company or any of its Subsidiaries, including the names of the Permits and their respective dates of issuance and expiration. To the Company's Knowledge, no event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any material Permit set forth in **Section 3.18(b)** of the Disclosure Schedules.

Section 3.19 Environmental Matters.

(a) The Company and its Subsidiaries are currently and have been in material compliance with all Environmental Laws and have not during the preceding three years received from any Person any: (i) Environmental Notice or Environmental Claim; or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.

(b) The Company and its Subsidiaries have obtained and are in material compliance with all Environmental Permits (each of which is disclosed in **Section 3.19(b)** of the Disclosure Schedules) necessary for the ownership, lease, operation or use of the business or assets of the Company or any of its Subsidiaries and all such Environmental Permits are in full force and effect and shall be maintained in full force and effect by the Company and such Subsidiaries through the Closing Date in accordance with Environmental Law.

(c) Except as set forth in **Section 3.19(c)** of the Disclosure Schedules, to the Knowledge of the Company, no real property currently or formerly owned, operated or leased by the Company or any Subsidiary is listed on, or has been proposed for listing on, the National Priorities List (or CERCLIS) under CERCLA, or any similar state list.

(d) To the Knowledge of the Company, there has been no material Release of Hazardous Materials in contravention of Environmental Law with respect to the business or assets of the Company or its Subsidiaries or any real property currently or formerly owned, operated or leased by the Company or any Subsidiary, and no real property currently or formerly owned, operated or leased in connection with the business of the Company or any such Subsidiary (including soils, groundwater, surface water, buildings

and other structure located on any such real property) has been contaminated with any Hazardous Material in material violation of Environmental Law.

(e) **Section 3.19(e)** of the Disclosure Schedules contains a complete and accurate list of all active or abandoned aboveground or underground storage tanks owned or operated by the Company or any Subsidiary, to the Knowledge of the Company.

(f) **Section 3.19(f)** of the Disclosure Schedules contains a complete and accurate list of all off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by the Company or any Subsidiary as to which the Company or any such Subsidiary may retain any material liability, and none of these facilities or locations has been placed on or, to the Knowledge of the Company, proposed for placement on the National Priorities List (or CERCLIS) under CERCLA, or any similar state list.

(g) Neither the Company nor any Subsidiary has retained or assumed, by contract or operation of Law, any material liabilities or obligations of third parties under Environmental Law.

(h) The Company has provided or otherwise made available to Parent any and all material environmental reports, studies, audits, records, sampling data, site assessments, risk assessments, economic models and other similar documents with respect to the business or assets of the Company or any Subsidiary or any currently or formerly owned, operated or leased real property which are in the possession or control of the Company or any Subsidiary related to compliance with Environmental Laws, Environmental Claims or an Environmental Notice or the Release of Hazardous Materials, in the past three years.

Section 3.20 Employee Benefit Matters.

(a) **Section 3.20(a)** of the Disclosure Schedules contains a true and complete list of each pension, benefit, retirement, compensation, profit-sharing, deferred compensation, incentive, bonus, performance award, phantom equity, stock or stock-based, change in control, retention, severance, vacation, paid time off, welfare, fringe-benefit and other similar material benefit agreement, plan, policy, program or arrangement (and any amendments thereto), in each case whether or not reduced to writing and whether funded or unfunded, including each “employee benefit plan” within the meaning of Section 3(3) of ERISA, whether or not tax-qualified and whether or not subject to ERISA, which is maintained, sponsored, contributed to, or required to be contributed to by the Company or any Subsidiary for the benefit of any current or former employee, officer, director, retiree, independent contractor or consultant of the Company or any Subsidiary or any spouse or dependent of such individual, or under which the Company or any Subsidiary has or may have any Liability, contingent or otherwise (as listed on **Section 3.20(a)** of the Disclosure Schedules, each, a “**Benefit Plan**”).

(b) With respect to each Benefit Plan, the Company has made available to Parent (or such information is otherwise publicly available to Parent) accurate, current

and complete copies of each of the following: (i) where the Benefit Plan has been reduced to writing, the plan document together with all amendments; (ii) where the Benefit Plan has not been reduced to writing, a written summary of all material plan terms; (iii) where applicable, copies of any material trust agreements or other material funding arrangements, custodial agreements, insurance policies and contracts, administration agreements and similar agreements, and investment management or investment advisory agreements, now in effect; (iv) copies of any summary plan descriptions, summaries of material modifications of such Benefit Plans, employee handbooks and any other written communications (or a description of any oral communications) relating to any Benefit Plan and other material written communications relating to any Benefit Plan; (v) in the case of any Benefit Plan that is intended to be qualified under Section 401(a) of the Code, a copy of the most recent determination, opinion or advisory letter from the Internal Revenue Service; (vi) in the case of any Benefit Plan for which a Form 5500 is required to be filed, a copy of the two most recently filed Form 5500, with schedules and financial statements attached; (vii) to the extent the Company possesses them, actuarial valuations and reports related to any Benefit Plans with respect to the two most recently completed plan years; and (viii) copies of material notices, letters or other correspondence from the Internal Revenue Service, Department of Labor, Pension Benefit Guaranty Corporation or other Governmental Authority relating to the Benefit Plan.

(c) Each Benefit Plan and any related trust has been established, administered and maintained, in all material respects, in accordance with its terms and, in all material respects, in compliance with all applicable Laws (including ERISA, the Code and HIPAA). Each Benefit Plan that is intended to be qualified within the meaning of Section 401(a) of the Code (a “**Qualified Benefit Plan**”) has received a favorable and current determination letter from the Internal Revenue Service, or with respect to a prototype plan, can rely on an opinion letter from the Internal Revenue Service to the prototype plan sponsor, to the effect that such Qualified Benefit Plan is so qualified and that the plan and the trust related thereto are exempt from federal income taxes under Sections 401(a) and 501(a), respectively, of the Code, and, to the Knowledge of the Company, nothing has occurred that would reasonably be expected to adversely affect the qualified status of any Qualified Benefit Plan.

(d) No Benefit Plan is (i) subject to Title IV or Section 302 of ERISA or Section 412 or 4971 of the Code, (ii) a “multiemployer plan” as defined in Section 3(37) of ERISA, or (iii) a plan that has two or more contributing sponsors at least two of whom are not under common control, within the meaning of Section 4063 of ERISA, and none of the Company, or any ERISA Affiliate has withdrawn at any time within the preceding six years from any multiemployer plan, or incurred any withdrawal liability which remains unsatisfied, and no events have occurred and no circumstances exist that would reasonably be expected to result in any such liability to the Company or any of its Subsidiaries.

(e) Other than as required under COBRA or other applicable Law, no Benefit Plan provides post-termination or retiree welfare benefits to any individual for any reason.

(f) There is no pending or, to the Company's Knowledge, threatened Action relating to a Benefit Plan (other than routine claims for benefits), and no Benefit Plan is, to the Knowledge of the Company, the subject of an examination or audit by a Governmental Authority.

(g) Except as set forth in **Section 3.20(g)** of the Disclosure Schedules or pursuant to applicable Law, neither the execution of this Agreement nor the consummation of any of the transactions contemplated by this Agreement will:

(i) accelerate the time of payment, funding or vesting, or increase the amount of compensation due to any such individual; (ii) increase the amount payable under or result in any other material obligation pursuant to any Benefit Plan; or (iii) result in "excess parachute payments" within the meaning of Section 280G(b) of the Code.

Section 3.21 Employment Matters.

(a) As of the date hereof, all compensation, including wages, commissions and bonuses, payable to all employees, independent contractors or consultants of the Company or any Subsidiary required to have been paid prior to the date hereof for services performed on or prior to the date hereof have been paid in full (or accrued in full on the audited balance sheet contained in the Closing Statement).

(b) Neither the Company nor any Subsidiary is a party to, bound by, or negotiating any collective bargaining agreement or other Contract with a union, works council or labor organization (collectively, "**Union**"), and there is not, and has not been for the past five years, any Union representing or purporting to represent any employee of the Company or any Subsidiary, and, to the Knowledge of the Company, no Union or group of employees is seeking or has sought to organize employees for the purpose of collective bargaining. There has not in the past three (3) years been, nor, to the Knowledge of the Company, has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor disruption or dispute affecting the Company or any of its employees.

(c) The Company and each Subsidiary are and have been during the preceding five years in compliance in all material respects with all applicable Laws pertaining to employment and employment practices, including all Laws relating to labor relations, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers' compensation, leaves of absence and unemployment insurance. Except as set forth in **Section 3.21(c)**, there are no material Actions against the Company

or any Subsidiary pending, or to the Company's Knowledge, threatened to be brought or filed, by or with any Governmental Authority or arbitrator in connection with the employment of any current or former applicant, employee, consultant or independent contractor of the Company or any Subsidiary.

(d) The Company has complied with the WARN Act.

Section 3.22 Taxes. Except as set forth in **Section 3.22** of the Disclosure Schedules:

(a) All Tax Returns required to be filed on or before the Closing Date by the Company or any Subsidiary have been, or will be, timely filed. Such Tax Returns are, or will be, true, complete and correct in all material respects. All Taxes due and owing by the Company or any Subsidiary (whether or not shown on any Tax Return) have been, or will be, timely paid.

(b) The Company and each Subsidiary have withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, shareholder or other party, and complied with all information reporting and backup withholding provisions of applicable Law.

(c) No claim has been made in writing by any taxing authority in any jurisdiction where the Company or any Subsidiary does not file Tax Returns that such entity is, or may be, subject to Taxes or Tax reporting obligations by that jurisdiction, which claim remains unresolved and outstanding.

(d) No extensions or waivers of statutes of limitations are currently outstanding with respect to any Taxes of the Company or any Subsidiary.

(e) The amount of accruals for Taxes (excluding reserves for deferred Taxes) reflected on the Financial Statements represents the Company's good faith estimate of the amount of the Company's and its Subsidiary's Liability for unpaid Taxes for all periods ending on or before June 3, 2015. The amount of the Company's consolidated Liability for unpaid Taxes for all periods following the end of the recent period covered by the Financial Statements as set forth in **Section 3.22(e)** of the Disclosure Schedules, shall not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes) as adjusted for the passage of time in accordance with the past custom and practice and level of business activity (excluding any extraordinary transactions) of the Company (and which accruals shall not exceed comparable amounts incurred in similar periods in prior years).

(f) All deficiencies asserted, or assessments made, against the Company or any Subsidiary as a result of any examinations by any taxing authority have been fully paid, or will be paid in the ordinary course of business.

(g) Neither the Company nor any Subsidiary is a party to any Action by any taxing authority. There are no pending or threatened Actions by any taxing authority.

(h) The Company has delivered to Parent copies of all federal, state, local and foreign income, franchise and similar Tax Returns, examination reports, and statements of deficiencies assessed against, or agreed to by, the Company for all Tax periods ending after June 30, 2012.

(i) There are no Encumbrances for Taxes (other than for current Taxes not yet due and payable) upon the assets of the Company or any Subsidiary.

(j) Neither the Company nor any Subsidiary is a party to, or bound by, any Tax indemnity, Tax sharing or Tax allocation agreement other than among the Company and its Subsidiaries.

(k) Except for the consolidated returns filed by the Company and its Subsidiaries identified in **Section 3.02** of the Disclosure Schedules, the Company has not been a member of an affiliated, combined, consolidated or unitary Tax group for Tax purposes. The Company has no Liability for Taxes of any Person (other than the Company and its Subsidiaries identified in **Section 3.02** herein) under Treasury Regulations Section 1.1502-6 (or any corresponding provision of state, local or foreign Law), as transferee or successor, by contract or otherwise.

(l) Neither the Company nor any Subsidiary will be required to include any item of income in, or exclude any item or deduction from, taxable income for any taxable period or portion thereof ending after the Closing Date as a result of:

(i) any change in a method of accounting under Section 481 of the Code (or any comparable provision of state, local or foreign Tax Laws), or use of an improper method of accounting, for a taxable period ending on or prior to the Closing Date;

(ii) an installment sale or open transaction occurring on or prior to the Closing Date;

(iii) a prepaid amount received on or before the Closing Date;

(iv) any closing agreement under Section 7121 of the Code, or similar provision of state, local or foreign Law; or

(v) any election under Section 108(i) of the Code.

(m) Neither the Company nor any Subsidiary is, or has been, a United States real property holding corporation (as defined in Section 897(c)(2) of the Code) during the applicable period specified in Section 897(c)(1)(a) of the Code.

(n) Neither the Company nor any Subsidiary has been a “distributing corporation” or a “controlled corporation” in connection with a distribution described in Section 355 of the Code.

(o) Neither the Company nor any Subsidiary is, or has been, a party to, or a promoter of, a “reportable transaction” within the meaning of Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011-4(b) other than a Loss Transaction within the meaning of Treasury Regulations Section 1.6011-4(c)(3)(i)(D).

(p) There is currently no limitation on the utilization of net operating losses, capital losses, built-in losses, tax credits or similar items of the Company that were generated after July 18, 2012 under Sections 269, 382, 383, 384 or 1502 (in respect of the separate Return Limitation Year rules under Treasury Regulations Section 1.1502-15) of the Code and the Treasury Regulations thereunder (or comparable provisions of state, local or foreign Law).

(q) No property owned by the Company or any Subsidiary is (i) required to be treated as being owned by another person pursuant to the so-called “safe harbor lease” provisions of former Section 168(f)(8) of the Internal Revenue Code of 1954, as amended, (ii) subject to Section 168(g)(1)(A) of the Code, or (iii) subject to a disqualified leaseback or long-term agreement as defined in Section 467 of the Code.

Section 3.23 Books and Records. The minute books and stock record books of the Company have been made available to Parent and are complete and correct in all material respects and have been maintained in accordance with sound business practices. At the Closing, all of those books and records will be in the possession of the Company.

Section 3.24 Related Party Transactions. Except as expressly contemplated by this Agreement or the Ancillary Documents, to the Company’s Knowledge, no executive officer or director of the Company or of any Subsidiary or any person owning 5% or more of the Shares (or any of such person’s immediate family members or Affiliates or associates) is a party to any Contract with or binding upon the Company or any Subsidiary or has any interest in any property owned by the Company or any Subsidiary or has engaged in any transaction with any of the foregoing within the last twelve (12) months.

Section 3.25 Brokers. Except for Duff & Phelps Securities, LLC, no broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission in connection with the transactions contemplated by this Agreement or any Ancillary Document based upon arrangements made by or on behalf of the Company. All fees payable to Duff & Phelps Securities, LLC as a result of the transactions contemplated by this Agreement or any Ancillary Document will be treated as Transaction Expenses for the purposes hereof and will be satisfied on or before Closing.

Section 3.26 No Other Representations and Warranties.
NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES

EXPRESSLY MADE BY THE COMPANY IN THIS **ARTICLE III**, NONE OF THE COMPANY OR AFFILIATE THEREOF OR ANY OTHER PERSON MAKES ANY REPRESENTATION OR WARRANTY WITH RESPECT TO THE COMPANY OR ANY OTHER PERSON OR THEIR RESPECTIVE BUSINESSES, OPERATIONS, ASSETS, LIABILITIES, CONDITION (FINANCIAL OR OTHERWISE) OR PROSPECTS, NOTWITHSTANDING THE DELIVERY OR DISCLOSURE TO PARENT OR ANY OF ITS AFFILIATES OR REPRESENTATIVES OF ANY DOCUMENTATION, FORECASTS, PROJECTIONS OR OTHER INFORMATION WITH RESPECT TO ANY ONE OR MORE OF THE FOREGOING. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY MADE BY THE COMPANY IN THIS **ARTICLE III**, ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARE EXPRESSLY DISCLAIMED BY THE COMPANY.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Except as set forth in the Disclosure Schedules, Parent and Merger Sub represent and warrant to the Company that the statements contained in this **Article IV** are true and correct as of the date hereof.

Section 4.01 Organization and Authority of Parent and Merger Sub. Each of Parent and Merger Sub is a corporation duly organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation. Each of Parent and Merger Sub has all requisite corporate power and authority to enter into and perform its obligations under this Agreement and the Ancillary Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Parent and Merger Sub of this Agreement and any Ancillary Document to which they are a party and the consummation by Parent and Merger Sub of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Parent and Merger Sub and no other corporate proceedings on the part of Parent and Merger Sub are necessary to authorize the execution, delivery and performance of this Agreement or to consummate the Merger and the other transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Parent and Merger Sub, and, assuming that this Agreement is a valid and binding obligation of the other parties hereto, this Agreement constitutes a legal, valid and binding obligation of Parent and Merger Sub enforceable against Parent and Merger Sub in accordance with its terms, except to the extent that its enforceability may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforcement of creditors' rights generally and by general equitable principles. When each Ancillary Document to which Parent or Merger Sub is or will be a party has been duly executed and delivered by Parent or Merger Sub, assuming

that such Ancillary Document is a valid and binding obligation of the other parties thereto, such Ancillary Document will constitute a legal and binding obligation of Parent or Merger Sub enforceable against it in accordance with its terms.

Section 4.02 No Conflicts; Consents. Except for the filing of the Certificate of Merger with the Secretary of State of the State of Delaware, the execution, delivery and performance by Parent and Merger Sub of this Agreement and the Ancillary Documents to which they are a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of Parent or Merger Sub; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Parent or Merger Sub; (c) require the consent, notice or other action by any Person under any Contract to which Parent or Merger Sub is a party; or (iv) require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, any material Contract or Permit. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Parent or Merger Sub in connection with the execution or delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby or thereby, except for the filing of the Certificate of Merger with the Secretary of State of Delaware.

Section 4.03 No Prior Merger Sub Operations. Merger Sub was formed solely for the purpose of effecting the Merger and has not engaged in any business activities or conducted any operations other than in connection with the transactions contemplated hereby. Merger Sub has no, and prior to the Effective Time will have no, assets, liabilities or obligations of any nature other than those incident to its formation and pursuant to this Agreement and the Ancillary Documents and the transactions contemplated hereby and thereby. Merger Sub is a wholly owned subsidiary of Parent.

Section 4.04 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any Ancillary Document based upon arrangements made by or on behalf of Parent or Merger Sub.

Section 4.05 Legal Proceedings. There are no Actions pending or, to Parent's or Merger Sub's knowledge, threatened in writing against or by Parent, Merger Sub or any of their respective Affiliates that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. To Parent and Merger Sub's

Knowledge, no event has occurred or circumstances exist that would reasonably be expected to give rise to any such Action.

Section 4.06 Availability of Funds.

(a) Parent does not have cash currently available that is sufficient to enable it to consummate the Merger, but Parent has delivered to the Company (i) complete and accurate copies of any equity support letters (the “**Equity Support Letters**”) from Lone Star State Bank on behalf of Larry Lee and/or SJL Partners (the “**Equity Financing Sources**”) pursuant to which the Equity Financing Sources have indicated their interest in providing, subject to the terms and conditions therein, equity financing for the transactions contemplated by this Agreement in the aggregate amount set forth therein (the “**Equity Financing**”) and (ii) complete and accurate copies of debt support letters from Morgan Stanley Bank, N.A. addressed to Parent (collectively, the “**Debt Support Letters**” and, together with the Equity Support Letters, the “**Financing Support Letters**” and each a “**Financing Support Letter**”) from Morgan Stanley Bank, N.A. (“**Debt Financing Sources**” and, together with the Equity Financing Sources, the “**Financing Sources**”) addressed to Parent pursuant to which the Debt Financing Sources have indicated their interest in providing, subject to the terms and conditions therein, debt financing for the transactions contemplated by this Agreement in the aggregate amount set forth therein (the “**Debt Financing**” and, together with the Equity Financing, the “**Financing**”). In addition, subject to the terms thereof, the Guarantors anticipate the closing of the BWW Sale on or before the scheduled Closing Date hereof and on that basis have provided the Guarantee attached hereto.

(b) As of the date hereof, no event has occurred which would result in any breach or violation of or constitute a default (or an event which with notice or lapse of time or both would become a default) by Parent under any Financing Support Letter, and Parent does not have any reason to believe that any of the conditions to the Financing will not be satisfied or that the Financing will not be available to Parent on the Closing Date.

(c) The obligations of Parent under this Agreement are not subject to any conditions regarding Parent’s, its Affiliates’ or any other Person’s ability to obtain financing for the consummation of the transactions contemplated hereby.

Section 4.07 Solvency. Immediately after giving effect to the transactions contemplated by this Agreement, Parent and each of its Subsidiaries shall be able to pay their respective debts as they become due and shall own property which has a fair saleable value greater than the amounts required to pay their respective debts (including a reasonable estimate of the amount of all contingent liabilities). Immediately after giving effect to the transactions contemplated by this Agreement, Parent and each of its Subsidiaries shall have adequate capital to carry on their respective businesses. No transfer of property is being made and no obligation is being incurred in connection with

the transactions contemplated by this Agreement with the intent to hinder, delay or defraud either present or future creditors of Parent or its Subsidiaries.

Section 4.08 Inspections, No Other Representations. Parent has conducted its own independent review and analysis of the business, operations, assets, liabilities, results of operations, financial condition and prospects of the Company and has undertaken such investigation, and has been provided with and has evaluated such documents and information as it has deemed necessary, to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement. Parent agrees to accept the Company in the condition it is in on the Closing Date based upon its own inspection, examination and determination with respect thereto as to all matters and without reliance upon any express or implied representations or warranties of any nature made by or on behalf of or imputed to the Company, except as expressly set forth in this Agreement. Except for the representations and warranties set forth in **Article III**, Parent (on behalf of itself and its Affiliates) acknowledges and agrees that no other representation or warranty of any kind whatsoever, express or implied, at law or in equity, is made or shall be deemed to have been made by or on behalf of the Company or any of its Affiliates, and the Company hereby disclaims, and Parent (on behalf of itself and its Affiliates) hereby disclaims any reliance upon, any such other representation or warranty (notwithstanding the delivery or disclosure to Parent or any of its representatives or Affiliates of any documentation or other information with respect to any such other representation or warranty). Without limiting the generality of the foregoing, Parent acknowledges that the Company makes no representation or warranty with respect to any projections, estimates or budgets delivered to or made available to Parent of future revenues, future results of operations (or any component thereof), future cash flows or future financial condition (or any component thereof) of the Company or the future business and operations of the Company. Parent acknowledges that no employee or representative of the Company or any of its Affiliates has been authorized to make any statements or representations other than those specifically contained in this Agreement.

ARTICLE V COVENANTS

Section 5.01 Conduct of Business Prior to the Closing. Except as set forth on **Section 5.01** of the Disclosure Schedules, from the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by Parent (which consent shall not be unreasonably withheld or delayed), the Company shall (x) conduct the business of the Company and its Subsidiaries in the ordinary course of business consistent with past practice; and (y) use reasonable best efforts consistent with past practice to maintain and preserve intact the current organization, business and franchise of the Company and its Subsidiaries and to preserve the rights, franchises, goodwill and

relationships of its employees, customers, lenders, suppliers, regulators and others having business relationships with the Company or its Subsidiaries. Except as set forth on **Section 5.01** of the Disclosure Schedules, without limiting the foregoing, from the date hereof until the Closing Date, the Company shall use reasonable best efforts to, and to cause its Subsidiaries to:

- (a) preserve and maintain all of its material Permits;
- (b) pay its Taxes in the ordinary course of business;
- (c) maintain the material properties and assets owned, operated or used by it in substantially the same condition as they were on the date of this Agreement, subject to wear and tear in the ordinary course of business; provided, however, the Company shall not renew or extend the term of any lease of Leased Real Property or Material Contract without prior discussion with Parent;
- (d) continue in full force and effect without modification all material Insurance Policies, except as required by applicable Law;
- (e) defend and protect its material properties and assets from infringement or usurpation;
- (f) perform all of its obligations under all Material Contracts relating to or affecting its properties, assets or business in the ordinary course of business;
- (g) maintain its books and records in the ordinary course of business consistent with past practice;
- (h) comply in all material respects with all applicable Laws; and
- (i) not take or permit any action after the date of this Agreement that would cause any of the changes, events or conditions described in **Section 3.08(b) – (z)** to occur.

Section 5.02 Access to Information.

(a) From the date hereof until the earlier of the termination of this Agreement and the Closing, the Company shall (a) afford Parent and its Representatives reasonable access during normal business hours, and upon reasonable notice, to and the right to inspect all of the Real Property (subject to the rights of, and without disturbance to, tenants or subtenants), properties, assets, premises, books and records, Contracts and other documents and data related to the Company or its Subsidiaries in order for Parent to have the opportunity to make such investigation as it shall reasonably desire in connection with the consummation of the transactions contemplated hereby; (b) furnish Parent and its Representatives with such financial, operating and other data and information related to the Company and its Subsidiaries as Parent or such Representatives may reasonably request; and (c) instruct the Representatives of the Company and its Subsidiaries to cooperate with Parent in its reasonable investigation of the Company and

such Subsidiaries. Any investigation pursuant to this **Section 5.02** shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of the Company and its Subsidiaries. No investigation by Parent or other information received by Parent shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by the Company in this Agreement. Notwithstanding anything herein to the contrary, no such access or examination shall be permitted to the extent that it would require the Company or any of its Subsidiaries to disclose information subject to attorney-client privilege or attorney work product privilege, conflict with any third party confidentiality obligations to which the Company or any of its Subsidiaries is bound, or violate any applicable Law.

(b) From and after the Closing until the seven (7) year anniversary of the Closing Date, Parent shall, and shall cause the Surviving Corporation to, provide Stakeholder Representative, the Stakeholders and their respective authorized representatives with reasonable access (for the purpose of examining and copying), during normal business hours, upon reasonable notice, to the books and records of the Surviving Corporation in connection with any matter relating to or arising out of this Agreement or the transactions contemplated hereby or with respect to periods or occurrences prior to or on the Closing Date; *provided, that* such access shall be during normal business hours and upon reasonable notice and in a manner that does not unreasonably interfere with the normal business operations of Parent or the Surviving Corporation.

(c) Parent and the Company shall comply with, and shall cause their respective Representatives to comply with, all of their respective obligations under the Confidentiality Agreement, dated January 27, 2015, between Parent and the Company (the “**Confidentiality Agreement**”), which shall survive the termination of this Agreement in accordance with the terms set forth therein.

Section 5.03 No Solicitation of Other Bids.

(a) The Company shall not, and shall not authorize or permit any of its Subsidiaries, Affiliates or any of its or their Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal. The Company shall immediately cease and cause to be terminated, and shall cause its Subsidiaries, Affiliates and all of its and their Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to, or that could lead to, an Acquisition Proposal. For purposes hereof, “**Acquisition Proposal**” shall mean any inquiry, proposal or offer from any Person (other than Parent or any of its Affiliates) concerning (i) a merger, consolidation, liquidation, recapitalization, share exchange or other business combination

transaction involving the Company or any of its Subsidiaries; (ii) the issuance or acquisition of shares of capital stock or other equity securities of the Company; or (iii) the sale, lease, exchange or other disposition of any significant portion of the Company's or any Subsidiary's properties or assets.

(b) In addition to the other obligations under this **Section 5.03**, the Company shall promptly (and in any event within three Business Days after receipt thereof by the Company or its Representatives) advise Parent orally and in writing of any Acquisition Proposal, the material terms and conditions of such Acquisition Proposal, and the identity of the Person making the same.

(c) The Company agrees that the rights and remedies for noncompliance with this **Section 5.03** shall include having such provision specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to Parent and that money damages would not provide an adequate remedy to Parent.

Section 5.04 Stockholders Consent.

(a) The Company shall use its reasonable best efforts to obtain, within ten Business Days following the execution and delivery of this Agreement, the Requisite Company Vote pursuant to written consents of the Stockholders in the form attached hereto as **Exhibit C** (the "**Written Consent**"), including taking all action necessary under the Stockholders Agreement in connection with the exercise and invocation of the Drag-Along Rights provided by such Stockholders Agreement, upon which it is intended that Parent may rely as a third party beneficiary thereof from and after the Closing. The materials submitted to the Stockholders in connection with the Written Consent shall include the Company Board Recommendation. Promptly following receipt of the Written Consent, the Company shall deliver a copy of such Written Consent to Parent.

(b) Promptly following, but in no event more than five Business Days after, receipt of the Written Consent, the Company shall prepare and mail a notice (the "**Stockholder Notice**") to every Stockholder that did not execute the Written Consent. The Stockholder Notice shall (i) be a statement to the effect that the Company Board unanimously determined that the Merger is advisable in accordance with Section 251(b) of the DGCL and in the best interests of the Stockholders and unanimously approved and adopted this Agreement, the Merger and the other transactions contemplated hereby, (ii) provide the Stockholders to whom it is sent with notice of the actions taken in the Written Consent, including the approval and adoption of this Agreement, the Merger and the other transactions contemplated hereby in accordance with Section 228(e) of the DGCL and the by-laws of the Company and (iii) notify such Stockholders in accordance with Section 262 of the DGCL and of their obligations pursuant to the Stockholders Agreement. The Stockholder Notice shall include therewith a copy of Section 262 of the DGCL and all such other information as Parent shall reasonably request, and shall be sufficient in form and substance to start the twenty (20) day period during which a

Stockholder entitled to appraisal rights may demand appraisal of such Stockholder's Shares as contemplated by Section 262(d)(2) of the DGCL. All materials submitted to the Stockholders in accordance with this **Section 5.04(b)** shall be subject to Parent's advance review and reasonable approval (such approval not to be unreasonably conditioned, withheld or delayed).

Section 5.05 Notice of Certain Events.

(a) From the date hereof until the earlier of the termination of this Agreement and the Closing, the Company shall promptly notify Parent in writing of:

(i) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (B) has resulted in, or would reasonably be expected to result in, the failure of any of the conditions set forth in **Section 7.02** to be satisfied;

(ii) any notice or other written communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(iii) any notice or other written communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; and

(iv) any Actions commenced against, or to the Company's Knowledge threatened in writing against, the Company that would have been required to have been disclosed pursuant to **Section 3.17** or relates to the consummation of the transactions contemplated by this Agreement.

(b) From the date hereof until the earlier of the termination of this Agreement and the Closing, Parent shall promptly notify the Company in writing of (i) any fact, circumstance, event or action the existence, occurrence or taking of which has resulted in, or would reasonably be expected to result in, the failure of any of the conditions set forth in **Section 7.03** to be satisfied and (ii) the termination of the BWW APA or receipt of any notice of termination with respect to the BWW APA.

(c) Parent's receipt of information pursuant to this **Section 5.05** shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by the Company in this Agreement (including **Section 8.02** and **Section 9.01(b)**) and shall not be deemed to amend or supplement the Disclosure Schedules.

Section 5.06 Resignations. On the Closing Date, the Company shall deliver to Parent written short-form resignations of the directors of the Company set forth on Section 5.06 of the Disclosure Schedules indicating that such person resigns his or her position as a director of the Company effective immediately upon the Closing of the Merger.

Section 5.07 Governmental Approvals and Consents.

(a) Each party hereto shall, as promptly as possible, (i) make, or cause or be made, all filings and submissions required under any Law applicable to such party or any of its Affiliates; and (ii) use reasonable best efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the Ancillary Documents. Each party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. The parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

(b) The Company and Parent shall use reasonable best efforts to give all notices to, and obtain all consents from, all third parties that are described in **Section 3.03** of the Disclosure Schedules.

(c) Without limiting the generality of the parties' undertakings pursuant to subsections (a) and (b) above, each of the parties hereto shall use all reasonable best efforts to:

(i) respond to any inquiries by any Governmental Authority regarding antitrust or other matters with respect to the transactions contemplated by this Agreement or any Ancillary Document;

(ii) avoid the imposition of any order or the taking of any action that would restrain, alter or enjoin the transactions contemplated by this Agreement or any Ancillary Document; and

(iii) in the event any Governmental Order adversely affecting the ability of the parties to consummate the transactions contemplated by this Agreement or any Ancillary Document has been issued, to have such Governmental Order vacated or lifted.

(d) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between the Company and Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other party hereunder in advance of any filing, submission or attendance, it being the intent that the parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each party shall give notice to the other party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or

regulators of any Governmental Authority, with such notice being sufficient to provide the other party with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

Section 5.08 Directors' and Officers' Indemnification and Insurance.

(a) Parent and Merger Sub agree that all rights to indemnification, advancement of expenses and exculpation by the Company now existing in favor of each Person who is now, or has been at any time prior to the date hereof or who becomes prior to the Effective Time an officer, director or employee of the Company (each a “**D&O Indemnified Party**”) as provided in the Company Charter Documents, in each case as in effect on the date of this Agreement, or pursuant to any other Contracts in effect on the date hereof and disclosed in **Section 5.08** of the Disclosure Schedules, shall be assumed by the Surviving Corporation in the Merger, without further action, at the Effective Time and shall survive the Merger and shall remain in full force and effect in accordance with their terms, and, in the event that any proceeding is pending or asserted or any claim made during such period, until the final disposition of such proceeding or claim.

(b) For six (6) years after the Effective Time, to the fullest extent permitted under applicable Law, Parent and the Surviving Corporation (the “**D&O Indemnifying Parties**”) shall indemnify, defend and hold harmless each D&O Indemnified Party against all losses, claims, damages, liabilities, fees, expenses, judgments and fines arising in whole or in part out of actions or omissions in their capacity as such occurring at or prior to the Effective Time (including in connection with the transactions contemplated by this Agreement), and shall reimburse each D&O Indemnified Party for any legal or other expenses reasonably incurred by such D&O Indemnified Party in connection with investigating or defending any such losses, claims, damages, liabilities, fees, expenses, judgments and fines as such expenses are incurred, subject to the Surviving Corporation's receipt of an undertaking by such D&O Indemnified Party to repay such legal and other fees and expenses paid in advance if it is ultimately determined in a final and non-appealable judgment of a court of competent jurisdiction that such D&O Indemnified Party is not entitled to be indemnified under applicable Law; *provided, however*, that the Surviving Corporation will not be liable for any settlement effected without the Surviving Corporation's prior written consent (which consent shall not be unreasonably withheld or delayed). For a period of six (6) years after the Closing and at all times subject to applicable Law, (i) Parent shall not (and shall not cause or permit the Company or any of its Subsidiaries or any of Parent's other Subsidiaries or Affiliates to) amend or modify in any way adverse to the D&O Indemnified Parties, or to the beneficiaries thereof, the exculpation and indemnification provisions set forth in the organizational documents of the Company and its Subsidiaries. Parent agrees to pay, or to cause the Surviving Corporation or any of its Subsidiaries to pay, all expenses, including attorneys' fees, that may be incurred by the D&O Indemnified Parties in enforcing the indemnity and other obligations provided for in this **Section 5.08**, to the extent not covered by the D&O Tail Policy (the premium expense of which shall be paid as provided in **Section 5.08(c)**).

(c) Prior to the Closing, the Company shall obtain and fully pay for “tail” insurance policies with a claims period of at least six (6) years from the Effective Time with at least the same coverage and amount and containing terms and conditions that are not less advantageous to the directors and officers of the Company as the Company’s existing policies with respect to claims arising out of or relating to events which occurred before or at the Effective Time (including in connection with the transactions contemplated by this Agreement) (the “**D&O Tail Policy**”). The Company shall bear the cost of the D&O Tail Policy, and such costs, to the extent not paid prior to the Closing, shall be included in the determination of Transaction Expenses. During the term of the D&O Tail Policy, Parent shall not (and shall cause the Surviving Corporation not to) take any action following the Closing to cause the D&O Tail Policy to be cancelled or any provision therein to be amended or waived; provided, that neither Parent, the Surviving Corporation nor any Affiliate thereof shall be obligated to pay any premiums or other amounts in respect of such D&O Tail Policy.

(d) The obligations of Parent and the Surviving Corporation under this **Section 5.08** shall survive the consummation of the Merger and the Effective Time and shall not be terminated or modified in such a manner as to adversely affect any D&O Indemnified Party to whom this **Section 5.08** applies without the consent of such affected D&O Indemnified Party (it being expressly agreed that the D&O Indemnified Parties and his or her successors, heirs and representatives to whom this **Section 5.08** applies shall be third-party beneficiaries of this **Section 5.08**, each of whom may enforce the provisions of this **Section 5.08**).

(e) In the event Parent, the Surviving Corporation or any of their respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity in such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then, and in either such case, proper provision shall be made so that the successors and assigns of Parent or the Surviving Corporation, as the case may be, shall assume all of the obligations set forth in this **Section 5.08**. The agreements and covenants contained herein shall not be deemed to be exclusive of any other rights to which any Indemnified Party is entitled, whether pursuant to Law, Contract or otherwise. Nothing in this Agreement is intended to, shall be construed to or shall release, waive or impair any rights to directors’ and officers’ insurance claims under any policy that is or has been in existence with respect to the Company or its officers, directors and employees, it being understood and agreed that the indemnification provided for in this **Section 5.08** is not prior to, or in substitution for, any such claims under any such policies.

Section 5.09 Closing Conditions. From the date hereof until the Closing, each party hereto shall use reasonable best efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in **Article VII** hereof.

Section 5.10 Public Announcements. Unless otherwise required by applicable Law (based upon the reasonable advice of counsel), no party to this Agreement shall make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed), and the parties shall cooperate as to the timing and contents of any such announcement. Notwithstanding anything to the contrary herein, the Company shall not be prohibited or limited from indicating to any Person that it has executed a definitive agreement with respect to the sale of the Company.

Section 5.11 Further Assurances. At and after the Effective Time, the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and behalf of the Company or Merger Sub, any deeds, bills of sale, assignments or assurances and to take and do, in the name and on behalf of the Company or Merger Sub, any other actions and things to vest, perfect or confirm of record or otherwise in the Surviving Corporation any and all right, title and interest in, to and under any of the rights, properties or assets of the Company acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger.

Section 5.12 Release. Each of the Stockholders that signs the Written Consent or otherwise consents to the transactions contemplated hereby, shall be deemed to waive, release and discharge irrevocably and to irrevocably agree not to assert, any and all rights, claims, damages, actions and causes of action, obligations and liabilities, that such Stockholder ever had, now has or ever may have or claim to have in such Stockholders' capacity as a Stockholder of the Company prior to the Effective Time relating to this Agreement, the transactions contemplated hereby, and such Stockholder's ownership of Shares.

ARTICLE VI

TAX MATTERS

Section 6.01 Tax Covenants.

(a) Without the prior written consent of Parent, prior to the Closing, the Company, its Subsidiaries and Representatives shall not make, change or rescind any Tax election, amend any Tax Return or take any position on any Tax Return, take any action or enter into any other transaction other than in the ordinary course of business that would have the effect of increasing the Tax liability or reducing any Tax asset of Parent or the Surviving Corporation in respect of any Post-Closing Tax Period. The Company agrees that Parent is to have no liability for any Tax resulting from any action of the Company, any of its Representatives or the Stakeholders.

(b) All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees, if any (including any penalties and interest) incurred in connection with this Agreement and the Ancillary Documents (including any real property transfer Tax and any other similar Tax) (“**Transfer Taxes**”) shall be borne and paid by Parent and one half of such Taxes shall be treated as a Transaction Expense. The Surviving Corporation shall timely file any Tax Return or other document with respect to such Taxes or fees (and Stakeholder Representative shall cooperate with respect thereto as necessary).

Section 6.02 Termination of Existing Tax Sharing Agreements. Any and all existing Tax sharing agreements (whether written or not) binding upon the Company or any Subsidiary shall be terminated as of the Closing Date. After such date neither the Company nor any Subsidiary nor any of their Representatives shall have any further rights or liabilities thereunder.

Section 6.03 Tax Returns.

(a) The Company shall prepare and timely file, or cause to be prepared and timely filed, all Tax Returns required to be filed by it that are due on or before the Closing Date (taking into account any extensions), and shall timely pay all Taxes that are due and payable on or before the Closing Date (taking into account any extensions). Any such Tax Return shall be prepared in a manner consistent with past practice (unless otherwise required by Law).

(b) Parent shall prepare and timely file, or cause to be prepared and timely filed, all Tax Returns required to be filed by the Company after the Closing Date with respect to a Pre-Closing Tax Period and for any Straddle Period. Any such Tax Return shall be prepared in a manner consistent with past practice (unless otherwise required by Law) and, if it is an income or other material Tax Return, shall be submitted by Parent to Stakeholder Representative (together with schedules, statements and, to the extent requested by Stakeholder Representative, supporting documentation) at least 45 days prior to the due date (including extensions) of such Tax Return. If Stakeholder Representative objects to any item on any such Tax Return that relates to a Pre-Closing Tax Period, it shall, within ten days after delivery of such Tax Return, notify Parent in writing that it so objects, specifying with particularity any such item and stating the specific factual or legal basis for any such objection. If a notice of objection shall be duly delivered, Parent and Stakeholder Representative shall negotiate in good faith and use their reasonable best efforts to resolve such items. If Parent and Stakeholder Representative are unable to reach such agreement within ten days after receipt by Parent of such notice, the disputed items shall be resolved by the Independent Accountant and any determination by the Independent Accountant shall be final. The Independent Accountant shall resolve any disputed items within 20 days of having the item referred to it pursuant to such procedures as it may require. If the Independent Accountant is unable

to resolve any disputed items before the due date for such Tax Return, the Tax Return shall be filed as prepared by Parent and then amended to reflect the Independent Accountant's resolution. The costs, fees and expenses of the Independent Accountant shall be borne equally by Parent and Stakeholder Representative. The preparation and filing of any Tax Return of the Company that does not relate to a Pre-Closing Tax Period or Straddle Period shall be exclusively within the control of Parent. Parent shall be entitled to deduct from the Escrow Funds in accordance with **Article VIII** (i) Taxes due with respect to any such Tax Return that relate to Pre-Closing Tax Periods and (ii) Taxes due with respect to any such Tax Return that relate to Straddle Periods that are attributable under **Section 6.05** to the portion of such Straddle Period ending on the Closing Date, but only to the extent such Taxes due were not taken into account as liabilities in computing the Closing Working Capital.

Section 6.04 Straddle Period. In the case of Taxes that are payable with respect to a taxable period that begins before and ends after the Closing Date (each such period, a "**Straddle Period**"), the portion of any such Taxes that are treated as Pre-Closing Taxes for purposes of this Agreement shall be:

- (a) in the case of Taxes (i) based upon, or related to, income, receipts, profits, wages, capital or net worth, (ii) imposed in connection with the sale, transfer or assignment of property, or (iii) required to be withheld, deemed equal to the amount which would be payable if the taxable year ended with the Closing Date; and
- (b) in the case of other Taxes, deemed to be the amount of such Taxes for the entire period multiplied by a fraction the numerator of which is the number of days in the period ending on the Closing Date and the denominator of which is the number of days in the entire period.

Section 6.05 Contests. Subject to **Article VIII**, Parent agrees to give written notice to Stakeholder Representative in accordance with Article VIII of the receipt of any written notice by the Company, Parent or any of Parent's Affiliates which involves the assertion of any claim, or the commencement of any Action, in respect of which an indemnity may be sought by Parent pursuant to **Article VIII** (a "**Tax Claim**"); *provided, that* failure to comply with this provision shall not affect Parent's right to indemnification hereunder. Parent shall control the contest or resolution of any Tax Claim; *provided, however,* that Parent shall obtain the prior written consent of Stakeholder Representative (which consent shall not be unreasonably withheld or delayed) before entering into any settlement of a Tax Claim or ceasing to defend such Tax Claim; and, *provided further,* that Stakeholder Representative shall be entitled to participate in the defense of such Tax Claim and to employ counsel of its choice for such purpose, the fees and expenses of which separate counsel shall be borne solely by Stakeholder Representative (which may be advanced or reimbursed out of the Stakeholder Representative Expense Amount).

Section 6.06 Cooperation and Exchange of Information. The Stakeholder Representative, the Company and Parent shall provide each other with such cooperation and information as either of them reasonably may request of the others in filing any Tax Return pursuant to this **Article VI** or in connection with any audit or other proceeding in respect of Taxes of the Company. Such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings or other determinations by tax authorities. Each of Stakeholder Representative, the Company and Parent shall retain all Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company for any taxable period beginning before the Closing Date until the expiration of the statute of limitations of the taxable periods to which such Tax Returns and other documents relate, without regard to extensions except to the extent notified by any of the other parties in writing of such extensions for the respective Tax periods. Prior to transferring, destroying or discarding any Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company for any taxable period beginning before the Closing Date, Stakeholder Representative, the Company or Parent (as the case may be) shall provide the other parties with reasonable written notice and offer the other parties the opportunity to take custody of such materials.

Section 6.07 FIRPTA Statement. On the Closing Date, the Company shall deliver to Parent a certificate, dated as of the Closing Date, certifying to the effect that no interest in the Company is a U.S. real property interest (such certificate in the form required by Treasury Regulation Section 1.897-2(h) and 1.1445-3(c)) (the “**FIRPTA Statement**”).

ARTICLE VII

CONDITIONS TO CLOSING

Section 7.01 Conditions to Obligations of All Parties. The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(a) This Agreement shall have been duly adopted by the Requisite Company Vote.

(b) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

(c) The Company shall have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to in **Section 3.04** and Parent shall

have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to in **Section 4.02**, in each case, in form and substance reasonably satisfactory to Parent and the Company, and no such consent, authorization, order and approval shall have been revoked.

Section 7.02 Conditions to Obligations of Parent and Merger Sub. The obligations of Parent and Merger Sub to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Parent's waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of the Company contained in **Section 3.01, Section 3.02, Section 3.03(a), Section 3.05 and Section 3.25**, the representations and warranties of the Company contained in this Agreement shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects) except, where the failure of such representations and warranties to be so true and correct (giving effect to the applicable exceptions set forth in the Disclosure Schedules but without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein) has not had, and would not have, a Material Adverse Effect. The representations and warranties of the Company contained in **Section 3.01, Section 3.02, Section 3.03(a), Section 3.05 and Section 3.25** shall be true and correct in all respects (except with respect to the representations and warranties set forth in Section 3.05, to the extent *de minimis*) on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(b) The Company shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date; *provided, that*, with respect to agreements, covenants and conditions that are qualified by materiality, the Company shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) No Action shall have been commenced against Parent, Merger Sub or the Company, which would prevent the Closing. No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any transaction contemplated hereby.

(d) From the date of this Agreement, there shall not have occurred any Material Adverse Effect.

(e) The Company shall have delivered each of the closing deliverables set forth in **Section 2.03(a)**.

(f) Holders of no more than 30% of the outstanding shares of Company Common Stock as of immediately prior to the Effective Time, in the aggregate, shall have exercised, or remain entitled to exercise, statutory appraisal rights pursuant to Section 262 of the DGCL with respect to such shares of Company Common Stock.

Section 7.03 Conditions to Obligations of the Company. The obligations of the Company to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or the Company's waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of Parent and Merger Sub contained in **Section 4.01** and **Section 4.05**, the representations and warranties of Parent and Merger Sub contained in this Agreement shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects) except, where the failure of such representations and warranties to be so true and correct (giving effect to the applicable exceptions set forth in the Disclosure Schedules but without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein) has not had, and would not have, a material adverse effect on Parent's and Merger Sub's ability to consummate the transactions contemplated hereby. The representations and warranties of Parent and Merger Sub contained in **Section 4.01** and **Section 4.05** shall be true and correct in all respects on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(b) Parent and Merger Sub shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the Ancillary Documents to be performed or complied with by them prior to or on the Closing Date; *provided, that*, with respect to agreements, covenants and conditions that are qualified by materiality, Parent and Merger Sub shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) Parent shall have delivered each of the closing deliverables set forth in **Section 2.03(b)**.

(d) No action shall have been commenced against Parent, Merger Sub, or the Company, which would prevent the Closing. No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any transaction contemplated hereby.

ARTICLE VIII

INDEMNIFICATION

Section 8.01 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein, **Article VI** and this **Article VIII** shall survive the Closing and shall remain in full force and effect until the date that is 15 months from the Closing Date (the “**Release Date**”). All covenants and agreements of the parties contained herein shall not survive the Closing except to the extent explicitly specified otherwise herein or to the extent it is reasonably apparent such covenant is intended to have post-Closing effect. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the Indemnified Party to the Indemnifying Party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty or provision set forth in the first sentence of this Section 8.01 and such claims shall survive until finally resolved.

Section 8.02 Indemnification of Parent Indemnitees. Subject to the other terms and conditions of this **Article VIII**, each of Parent and its Affiliates, directors, officers and employees (including the Surviving Corporation) (collectively, the “**Parent Indemnitees**”) shall be indemnified by, defended against and held harmless from and against the Escrow Fund, which Escrow Fund shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, Parent Indemnitees based upon, arising out of, with respect to, or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of the Company contained in this Agreement or in any certificate or instrument delivered by or on behalf of the Company pursuant to this Agreement;

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by the Company pursuant to this Agreement;

(c) any claim made by any Stockholder relating to such Person’s rights with respect to the cancellation and retirement of such Person’s Shares, including any exercise by any Stockholder of appraisal rights in accordance with Section 262 of the DGCL and any expenses of the Surviving Corporation or Parent in defending against such assertion of appraisal rights; or

(d) (i) all Taxes of the Company or any Subsidiary relating to the business of the Company for all Pre-Closing Tax Periods; (ii) all Taxes of any member of an

affiliated, consolidated, combined or unitary group of which the Company (or any predecessor of the Company) is or was a member on or prior to the Closing Date by reason of a liability under Treasury Regulation Section 1.1502-6 or any comparable provisions of foreign, state or local Law; and (iii) any and all Taxes of any person imposed on the Company or any Subsidiary arising under the principles of transferee or successor liability or by contract, relating to an event or transaction occurring before the Closing Date.

Section 8.03 Indemnification By Parent. Subject to the other terms and conditions of this **Article VIII**, Parent shall indemnify and defend each of the Stakeholders and their Affiliates, directors, officers and employees (collectively, the “**Stakeholder Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Stakeholder Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Parent and Merger Sub contained in this Agreement or in any certificate or instrument delivered by or on behalf of Parent or Merger Sub pursuant to this Agreement; or

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Parent or Merger Sub pursuant to this Agreement.

Section 8.04 Certain Limitations. The indemnification provided for in **Section 8.02** and **Section 8.03** shall be subject to the following limitations:

(a) Parent Indemnitees shall not be entitled to indemnification under **Section 8.02(a)** (i) unless a claim, or a series of related claims, involves Losses in excess of Twelve Thousand Dollars (\$12,000) (the “**De Minimis**”) and if such Losses do not exceed the De Minimis, such Losses shall not be applied to or considered for the Deductible or otherwise for purposes of calculating the aggregate amount of Parent Indemnitees’ Losses, and (ii) until the aggregate amount of all Losses in respect of indemnification under **Section 8.02(a)** exceeds Four Hundred Fifty Thousand Dollars (\$450,000) (the “**Deductible**”), in which event the Escrow Fund shall be required to pay or be liable for all such Losses in excess of the Deductible. Notwithstanding anything to the contrary herein, the aggregate amount of all Losses in respect of which Parent Indemnitees may be entitled to recover indemnification pursuant to **Section 8.02** or this Agreement shall not exceed the Escrow Fund (the amount contained in such Escrow Fund, the “**Cap**”).

(b) Parent shall not be liable to the Stakeholder Indemnitees for indemnification under **Section 8.03(a)** (i) unless a claim, or a series of related claims, involves Losses in excess of the De Minimis and if such Losses do not exceed the De Minimis, such Losses shall not be applied to or considered for the Deductible or

otherwise for purposes of calculating the aggregate amount of the Stakeholder Indemnitees' Losses and (ii) until the aggregate amount of all Losses in respect of indemnification under **Section 8.03(a)** exceeds the Deductible, in which event Parent shall be required to pay or be liable for all such Losses in excess of the Deductible. The aggregate amount of all Losses for which Parent shall be liable pursuant to **Section 8.03** shall not exceed the Cap.

(c) For purposes of this **Article VIII**, any inaccuracy in or breach of any representation or warranty shall be determined without regard to any materiality, Material Adverse Effect or other similar qualification contained in or otherwise applicable to such representation or warranty.

(d) With respect to each indemnification obligation contained in this **Article VIII**, all Losses shall be (i) net of any Tax benefits actually realized by the Indemnified Party and (ii) net of any third-party insurance or indemnity, contribution or similar proceeds that have actually been recovered by the Indemnified Party and net of any out-of-pocket costs and expenses of such recoveries in connection with the facts giving rise to the right of indemnification (it being agreed that if third-party insurance or indemnification, contribution or similar proceeds in respect of such facts are recovered by the Indemnified Party subsequent to the Indemnifying Party's making of an indemnification payment in satisfaction of its applicable indemnification obligation, such proceeds shall be promptly remitted to the Indemnifying Party to the extent of the indemnification payment made), and the Indemnified Party shall use, and cause its Affiliates to use, reasonable best efforts to seek full recovery under all insurance and indemnity, contribution or similar provisions covering such Loss to the same extent as it would if such Loss were not subject to indemnification hereunder.

(e) No Parent Indemnitee shall be entitled to indemnification pursuant to this **Article VIII** to the extent that (i) prior to the date hereof, the Company and its Subsidiaries provided for or recorded a reserve in their consolidated books and records with respect to the matter giving rise to the Loss in a general category of items or matters similar in nature to the specific items or matters giving rise to such Loss, (ii) with respect to any Loss or alleged Loss to the extent such Loss or alleged Loss is included in the calculation of Closing Working Capital or if Parent shall have requested a reduction of the Closing Working Capital on account of any matter forming the basis for such Loss or alleged Loss, or (iii) such Loss (or any part thereof) results from or is magnified by the action of Parent or any Affiliate of Parent (including the Surviving Corporation or any of its Subsidiaries) after the Closing.

(f) Each Person entitled to indemnification hereunder shall take commercially reasonable steps to mitigate all losses, costs, expenses and damages after becoming aware of any event which could reasonably be expected to give rise to any Losses that are indemnifiable or recoverable hereunder or in connection herewith.

Section 8.05 Indemnification Procedures. The party making a claim under this **Article VIII** is referred to as the “**Indemnified Party**”, and the party against whom such claims are asserted under this **Article VIII** is referred to as the “**Indemnifying Party**”. For purposes of this **Article VIII**, (i) if Parent (or any other Parent Indemnitee) comprises the Indemnified Party, any references to Indemnifying Party (except provisions relating to an obligation to make payments) shall be deemed to refer to Stakeholder Representative (on behalf of the Escrow Fund and at the direction of the Majority Holders), and (ii) if Parent comprises the Indemnifying Party, any references to the Indemnified Party shall be deemed to refer to Stakeholder Representative (on behalf of the Escrow Fund and at the direction of the Majority Holders). Any payment received by Stakeholder Representative shall be for the benefit of the Stakeholders. If the Indemnifying Party is the Stakeholder Representative, any amounts to be paid hereunder shall be paid out of the Escrow Fund and the amount in the Escrow Fund shall be the sole recourse against such Indemnifying Party.

(a) **Third Party Claims.** If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement (a “**Third Party Claim**”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than 30 calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party’s expense and by the Indemnifying Party’s own counsel, and the Indemnified Party shall cooperate in good faith in such defense; *provided, that* if the Indemnifying Party is a Stakeholder, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third Party Claim that (x) is asserted directly by or on behalf of a Person that is a supplier of the Company, or (y) seeks an injunction or other equitable relief against the Indemnified Parties. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to **Section 8.05(b)**, it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party’s right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, *provided, that* if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified

Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to **Section 8.05(b)**, pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Stakeholder Representative, the Surviving Corporation and Parent shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) **Settlement of Third Party Claims.** Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this **Section 8.05(b)**. If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within ten days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to **Section 8.05(a)**, it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) **Direct Claims.** Any Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a “**Direct Claim**”) shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than 30 days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in

reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have 30 days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party's investigation by giving such information and assistance (including access to the Company's premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such 30 day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

Section 8.06 Payments; Escrow Fund.

(a) Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this **Article VIII**, such obligation shall be satisfied by Parent, if such Indemnifying Party is Parent or by the Escrow Fund, if such Indemnifying Party is the Stakeholder Representative, within 15 Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds.

(b) Any Losses payable to a Parent Indemnitee pursuant to this Agreement shall be satisfied from (and solely from) the Escrow Fund.

(c) At and after the Release Date, in accordance with the terms of the Escrow Agreement, the Escrow Agent shall pay any amounts remaining in the Escrow Fund in excess of all pending Third Party Claims and Direct Claims to the Stakeholder Representative (for distribution to the Stakeholders).

Section 8.07 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

Section 8.08 Acknowledgement by Parent and Merger Sub. Parent and the Merger Sub acknowledge that they have conducted to their satisfaction an independent investigation and verification of the condition (financial and otherwise), results of operations, assets, liabilities, properties and projected operations of the Company and its Subsidiaries and, in making its determination to proceed with the transactions contemplated by this Agreement, Parent and the Merger Sub have relied on the results of their own independent investigation and verification and Parent and the Merger Sub have relied on the representations and warranties of the Company expressly and specifically

set forth in this Agreement, including the disclosures made in the Disclosure Schedules. Such representations and warranties by the Company constitute the sole and exclusive representations and warranties of the Company to Parent and the Merger Sub in connection with the transactions contemplated hereby, and Parent and the Merger Sub understand, acknowledge and agree that all other representations and warranties of any kind or nature expressed or implied (including any relating to the future or historical financial condition, results of operations, assets or Liabilities of the Company and its Subsidiaries, or the quality, quantity or condition of the assets of the Company and its Subsidiaries) are specifically disclaimed by the Company. Except as expressly provided in this Agreement, the Company, its Subsidiaries and the Stakeholders do not make or provide, and Parent and the Merger Sub hereby waive, any warranty or representation, express or implied, as to the quality, merchantability, fitness for a particular purpose, conformity to samples, or condition of the assets of the Company and its Subsidiaries or any part thereto.

Section 8.09 Exclusive Remedies.

(a) Subject to **Section 10.12**, from and after the Closing, (i) the parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from actual fraud on the part of a party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this **Article VIII**, and (ii) in furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this **Article VIII**. Nothing in this **Section 8.09** shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any party's actual fraud.

(b) Except in the case of actual fraud, from and after the Closing, the right of Parent to recovery against the Escrow Fund shall constitute Parent's sole and exclusive remedy for (1) any and all Losses or other claims relating to or arising from this Agreement or in connection with the transactions contemplated hereby, including in any exhibit, Schedule or certificate delivered hereunder, and (2) any other matter relating to any of the Company and its Subsidiaries prior to the Closing, the operation of their respective businesses prior to the Closing, or any other transaction or state of facts relating to any of the Company and its Subsidiaries prior to the Closing (including any common law or statutory rights or remedies for environmental, health or safety matters), in each case regardless of the legal theory under which such liability or obligation may be sought to be imposed, whether sounding in contract or tort, or whether at Law or in

equity, or otherwise, and the parties hereto hereby agree that Parent shall have no remedy or recourse with respect to any of the foregoing.

ARTICLE IX

TERMINATION

Section 9.01 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of the Company and Parent;

(b) by Parent by written notice to the Company if:

(i) neither Parent nor Merger Sub is then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by the Company pursuant to this Agreement that would give rise to the failure of any of the conditions specified in **Article VII** and such breach, inaccuracy or failure has not been cured by the Company within 15 Business Days of the Company's receipt of written notice of such breach from Parent; or

(ii) any of the conditions set forth in **Section 7.01** or **Section 7.02** shall not have been, or if it is not possible that any such condition is capable of being, fulfilled on or before August 19, 2015 (the "**Outside Termination Date**"), unless such failure shall be due to the failure of Parent to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

(c) by the Company by written notice to Parent if:

(i) the Company is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Parent or Merger Sub pursuant to this Agreement that would give rise to the failure of any of the conditions specified in **Article VII** and such breach, inaccuracy or failure has not been cured by Parent or Merger Sub within 15 Business Days of Parent's or Merger Sub's receipt of written notice of such breach from the Company; or

(ii) any of the conditions set forth in **Section 7.01** or **Section 7.03** shall not have been, or if it is not possible that any such condition is capable of being, fulfilled on or before the Outside Termination Date, unless such failure shall be due to the failure of the Company to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or

(iii) on the date hereof, Parent has not paid the Deposit in accordance with **Section 2.17**; or

(iv) the BWW APA has been terminated in accordance with the terms thereof; or

(d) by Parent or the Company if:

(i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited or any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable; or

(ii) if within 20 days following the execution and delivery of this Agreement by all of the parties hereto, the Company shall not have delivered to Parent a copy of the executed Written Consent evidencing receipt of the Requisite Company Vote.

Section 9.02 Effect of Termination. In the event of the termination of this Agreement in accordance with this Article, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except:

(a) as set forth in this **Article IX, Section 2.17, Section 5.02(c)** and **Article X** hereof; and

(b) that nothing herein shall relieve any party hereto from liability for any willful breach of any provision hereof prior to termination.

ARTICLE X MISCELLANEOUS

Section 10.01 Stakeholder Representative.

(a) On or prior to the date hereof, the Stakeholders shall have irrevocably authorized and appointed Stakeholder Representative as such Person's representative and attorney-in-fact to act on behalf of such Person with respect to this Agreement and the Escrow Agreement and to take any and all actions and make any decisions required or permitted to be taken by Stakeholder Representative pursuant to this Agreement or the Escrow Agreement, including the exercise of the power to:

(i) give and receive notices and communications;

(ii) authorize delivery to Parent of cash from the Escrow Fund in satisfaction of any amounts owed to Parent pursuant to **Section 2.15** or **Article VIII**;

(iii) agree to, negotiate, enter into settlements and compromises of, and comply with orders or otherwise handle any other matters described in **Section 2.15**;

(iv) agree to, negotiate, enter into settlements and compromises of, and comply with orders of courts with respect to claims for indemnification made by Parent pursuant to **Article VIII**;

(v) litigate, arbitrate, resolve, settle or compromise any claim for indemnification pursuant to **Article VIII**;

(vi) execute and deliver all documents necessary or desirable to carry out the intent of this Agreement and any Ancillary Document (including the Escrow Agreement);

(vii) make all elections or decisions contemplated by this Agreement and any Ancillary Document (including the Escrow Agreement);

(viii) engage, employ or appoint any agents or representatives (including attorneys, accountants and consultants) to assist Stakeholder Representative in complying with its duties and obligations; and

(ix) take all actions necessary or appropriate in the good faith judgment of Stakeholder Representative for the accomplishment of the foregoing.

Notwithstanding anything the contrary herein, the parties hereto acknowledge and accept that any action taken or decision made hereunder by the Stakeholder Representative shall be at the direction of the Majority Holders and not in its individual capacity. Parent shall be entitled to deal exclusively with Stakeholder Representative on all matters relating to this Agreement (including **Article VIII**) and shall be entitled to rely conclusively (without further evidence of any kind whatsoever) on any document executed or purported to be executed on behalf of any Stakeholder by Stakeholder Representative, and on any other action taken or purported to be taken on behalf of any Stakeholder by Stakeholder Representative, as being fully binding upon such Person. Notices or communications to or from Stakeholder Representative shall constitute notice to or from each of the Stakeholders. Any decision or action by Stakeholder Representative hereunder, including any agreement between Stakeholder Representative and Parent relating to the defense, payment or settlement of any claims for indemnification hereunder, shall constitute a decision or action of all Stakeholders and shall be final, binding and conclusive upon each such Person. No Stakeholder shall have the right to object to, dissent from, protest or otherwise contest the same. The provisions of this **Section 10.01**, including the power of attorney granted hereby, are independent and severable, are irrevocable and coupled with an interest and shall not be terminated by any act of any one or Stakeholders, or by operation of Law.

(b) The Stakeholder Representative may resign at any time, and may be removed for any reason or no reason by the vote or written consent of a majority in interest of the Stakeholders (the “**Majority Holders**”); *provided, however*, in no event shall Stakeholder Representative resign or be removed until the earlier of (i) one hundred twenty (120) days after such resignation or removal or (ii) the Majority Holders having first appointed a new Stakeholder Representative who shall assume such duties

immediately upon the resignation or removal of Stakeholder Representative. In the event of the death, incapacity, resignation or removal of Stakeholder Representative, a new Stakeholder Representative shall be appointed by the vote or written consent of the Majority Holders. Notice of such vote or a copy of the written consent appointing such new Stakeholder Representative shall be sent to Parent, such appointment to be effective upon the later of the date indicated in such consent or the date such notice is received by Parent; *provided*, that until such notice is received, Parent, Merger Sub and the Surviving Corporation shall be entitled to rely on the decisions and actions of the prior Stakeholder Representative as described in **Section 10.01(a)** above.

(c) The Stakeholder Representative shall not be liable to the Stakeholders for actions taken pursuant to this Agreement or the Escrow Agreement, except to the extent such actions shall have been determined by a court of competent jurisdiction to have constituted gross negligence, fraud, intentional misconduct or bad faith (it being understood that any act done or omitted pursuant to the advice of counsel, accountants and other professionals and experts retained by Stakeholder Representative shall be conclusive evidence of good faith). The Stakeholders shall severally and not jointly, indemnify and hold harmless Stakeholder Representative from and against, compensate it for, reimburse it for and pay any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorneys' fees and disbursements, arising out of and in connection with its activities as Stakeholder Representative under this Agreement and the Escrow Agreement (the "**Representative Losses**"), in each case as such Representative Loss is suffered or incurred; *provided*, that in the event it is finally adjudicated that a Representative Loss or any portion thereof was primarily caused by the gross negligence, fraud, intentional misconduct or bad faith of Stakeholder Representative, Stakeholder Representative shall reimburse the Stakeholders the amount of such indemnified Representative Loss attributable to such gross negligence, fraud, intentional misconduct or bad faith. The Representative Losses shall be satisfied: (i) from the Stakeholder Representative Expense Amount; and (ii) to the extent the amount of the Representative Losses exceeds amounts available to Stakeholder Representative under (i), from amounts that would otherwise be payable to the Stakeholder Representative (for distribution to the Stakeholders) from the Escrow Fund. As soon as practicable after the date on which the final obligation of Stakeholder Representative under this Agreement and the Escrow Agreement have been discharged or such other date as Stakeholder Representative deems appropriate, the Stakeholder Representative distribute to the Stakeholders any amounts remaining in the Stakeholder Representative Expense Amount.

Section 10.02 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

Section 10.03 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile (with confirmation of transmission) or e-mail of a PDF document if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this **Section 10.03**):

If to the Company: Buffets Restaurant Holdings, Inc.
405 Lancaster Avenue
Greer, SC 29650
E-mail: keith.kravcik@ovationbrands.com and
Jackson.walker@ovationbrands.com
Attention: Keith Kravcik, Chief Financial Officer
and Jackson Walker, General Counsel

with a copy to: Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, New York 10019-6099
Facsimile: 212-728-9968
E-mail: mcognetti@willkie.com
Attention: Mark A. Cognetti

If to Parent or Merger Sub: 120 Chula Vista
San Antonio, Texas 78232
Facsimile: 210-403-3580
E-mail: pdonbavand@foodmps.com
Attention: Peter Donbavand, Vice President

with a copy to: Dykema Cox Smith
112 E. Pecan St., Suite 1800
San Antonio, Texas 78205
Facsimile: 210-226-8395
E-mail: pryan@dykema.com
Attention: J. Patrick Ryan

If to Stakeholder Representative: Cortland Capital Market Services LLC
225 West Washington Street, 21st Floor
Chicago, Illinois 60606
Attn: Joanna Anderson and Legal Department
E-mail: joanna.anderson@Cortlandglobal.com and
legal@cortlandglobal.com

Section 10.04 Interpretation. For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 10.05 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 10.06 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 10.07 Entire Agreement. This Agreement, the Confidentiality Agreement, the Guarantee and the Ancillary Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and

agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the Ancillary Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 10.08 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. None of the parties may assign its rights or obligations hereunder without the prior written consent of the other parties, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 10.09 No Third-party Beneficiaries. Except (a) as otherwise expressly provided herein, (b) with respect to each Person entitled to indemnification pursuant to **Article VIII** (subject to the limitations set forth therein), each of which shall be an intended third party beneficiary of **Article VIII**, (c) with respect to Willkie Farr & Gallagher LLP, which shall be an intended third party beneficiary of **Section 10.14**, each of which shall also be an intended third party beneficiary of this **Section 10.09**, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 10.10 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by Parent, Merger Sub and the Company at any time prior to the Effective Time; *provided, however*, that after the Requisite Company Vote is obtained, there shall be no amendment or waiver that, pursuant to applicable Law, requires further approval of the Stockholders, without the receipt of such further approvals. After the Effective Time, this Agreement may only be amended, modified or supplemented by an agreement in writing signed by Parent and the Stakeholder Representative. Any failure of Parent or Merger Sub, on the one hand, or the Company, on the other hand, to comply with any obligation, covenant, agreement or condition herein may be waived by the Company (with respect to any failure by Parent or Merger Sub) or by Parent or Merger Sub (with respect to any failure by the Company), respectively, only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 10.11 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED EXCLUSIVELY IN THE DELAWARE COURT OF CHANCERY OF THE STATE OF DELAWARE; PROVIDED, THAT IF THE DELAWARE COURT OF CHANCERY DOES NOT HAVE JURISDICTION, ANY LEGAL SUIT, ACTION OR PROCEEDING SHALL BE BROUGHT EXCLUSIVELY IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF DELAWARE IN EACH CASE LOCATED IN THE CITY OF WILMINGTON AND COUNTY OF NEW CASTLE, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE ANCILLARY DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER

THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS **SECTION 10.11(c)**.

Section 10.12 Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity. The parties further agree to waive any requirement for the securing or posting of any bond in connection with the obtaining of any such injunction.

Section 10.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 10.14 Legal Representation.

(a) Recognizing that Willkie Farr & Gallagher LLP (“**Willkie Farr**”) has acted as legal counsel to certain of the Stakeholders and their Affiliates and the Company and its Affiliates prior to the Closing (the “**Willkie Farr Client Parties**”), in connection with this Agreement, the other agreements contemplated by this Agreement and the transactions contemplated hereby and thereby (the “**Willkie Farr Engagement**”). Only the Willkie Farr Client Parties shall be considered clients of Willkie Farr in the Willkie Farr Engagement. Willkie Farr intends to act and shall be permitted to act as legal counsel to certain of the Stakeholders and their Affiliates after the Closing, each of Parent and the Surviving Corporation (including on behalf of its Subsidiaries) hereby waives, on its own behalf and agrees to cause its Affiliates to waive, any conflicts that may arise in connection with Willkie Farr representing any of the Stakeholders and/or their respective Affiliates after the Closing as such representation may relate to Parent, the Company or any of its Subsidiaries or the transactions contemplated herein. In addition, all communications and documents involving or reflecting attorney-client confidences or attorney work product of any Stakeholder and its Affiliates in the course of the negotiation, documentation and consummation of the transactions contemplated hereby shall be deemed to be attorney-client confidences and attorney work product that belongs solely to such Stakeholders and their Affiliates, whether or not the Closing occurs. Accordingly, the Company, the Surviving Corporation and its Subsidiaries and its Affiliates shall not have access to any such communications or documents, or to the files of Willkie Farr relating to such engagement, whether or not the Closing shall have occurred. Without limiting the generality of the foregoing, upon and after the Closing, (i) the applicable Stakeholders and their Affiliates shall be the sole holders of the attorney-client privilege with respect to such engagement, and none of the Company or any of its

Subsidiaries shall be a holder thereof, (ii) to the extent that files of Willkie Farr in respect of such engagement constitute property of the client, only the applicable Stakeholders and their Affiliates shall hold such property rights and (iii) Willkie Farr shall have no duty whatsoever to reveal or disclose any such attorney-client communications, attorney work product or files to any of the Company and its Subsidiaries by reason of any attorney-client relationship between Willkie Farr and any of the Company and its Subsidiaries or otherwise.

(b) Recognizing that Young Conaway Stargatt & Taylor, LLP (“**YCST**”) has acted as legal counsel to the independent committee of the Company Board and the Company and its Affiliates prior to the Closing (the “**YCST Client Parties**”), in connection with this Agreement, the other agreements contemplated by this Agreement and the transactions contemplated hereby and thereby (the “**YCST Engagement**”). Only the YCST Client Parties shall be considered clients of YCST in the YCST Engagement. YCST intends to act and shall be permitted to act as legal counsel to certain of the Stakeholders and their Affiliates after the Closing, each of Parent and the Surviving Corporation (including on behalf of its Subsidiaries) hereby waives, on its own behalf and agrees to cause its Affiliates to waive, any conflicts that may arise in connection with YCST representing any of the Stakeholders and/or their respective Affiliates after the Closing as such representation may relate to Parent, the Company or any of its Subsidiaries or the transactions contemplated herein. In addition, all communications and documents involving or reflecting attorney-client confidences or attorney work product of any Stakeholder and its Affiliates in the course of the negotiation, documentation and consummation of the transactions contemplated hereby shall be deemed to be attorney-client confidences and attorney work product that belongs solely to such Stakeholders and their Affiliates, whether or not the Closing occurs. Accordingly, the Company, the Surviving Corporation and its Subsidiaries and its Affiliates shall not have access to any such communications or documents, or to the files of YCST relating to such engagement, whether or not the Closing shall have occurred. Without limiting the generality of the foregoing, upon and after the Closing, (i) the applicable Stakeholders and their Affiliates shall be the sole holders of the attorney-client privilege with respect to such engagement, and none of the Company or any of its Subsidiaries shall be a holder thereof, (ii) to the extent that files of YCST in respect of such engagement constitute property of the client, only the applicable Stakeholders and their Affiliates shall hold such property rights and (iii) YCST shall have no duty whatsoever to reveal or disclose any such attorney-client communications, attorney work product or files to any of the Company and its Subsidiaries by reason of any attorney-client relationship between YCST and any of the Company and its Subsidiaries or otherwise.

[SIGNATURE PAGE FOLLOWS]

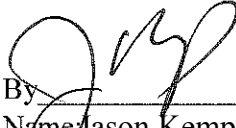
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as
of the date first written above by their respective officers thereunto duly authorized.

**BUFFETS RESTAURANTS
HOLDINGS, INC.**

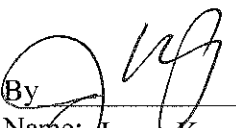
By Keith Kravcik
Name: Keith Kravcik
Title: Chief Financial Officer

[Signature Page to Agreement and Plan of Merger]

ALAMO OVATION, LLC

By 
Name: Jason Kemp
Title: Manager

**ALAMO OVATION
ACQUISITION, INC.**

By 
Name: Jason Kemp
Title: Secretary and Treasurer

**CORTLAND CAPITAL
MARKET SERVICES LLC,**
solely in its capacity as Stakeholder
Representative

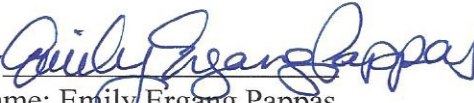
By 
Name: Emily Ergang Pappas
Title: Associate Counsel

EXHIBIT A

FORM OF CERTIFICATE OF INCORPORATION

**CERTIFICATE OF INCORPORATION
OF
ALAMO OVATION ACQUISITION, INC.**

THE UNDERSIGNED, acting as the incorporator of a corporation under and in accordance with the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended from time to time (the “**General Corporation Law**”), hereby adopts the following Certificate of Incorporation for such corporation:

ARTICLE I

The name of the corporation is Alamo Ovation Acquisition, Inc. (the “**Corporation**”).

ARTICLE II

The purpose for which the Corporation is organized is any or all lawful acts and activities for which corporations may be incorporated under the General Corporation Law.

ARTICLE III

The street address of the initial registered office of the Corporation is 615 South DuPont Highway, Dover, County of Kent, Delaware 19901, and the name of its initial registered agent at such address is Capitol Services, Inc.

ARTICLE IV

The total number of shares of capital stock that the Corporation is authorized to issue is 1,000 shares of Common Stock, par value \$0.01 per share.

ARTICLE V

The name and mailing address of the incorporator is as follows:

<u>Name</u>	<u>Address</u>
J. Patrick Ryan	c/o Dykema Cox Smith 112 East Pecan Street San Antonio, Texas 78205

ARTICLE VI

Section 6.1 **Board Powers.** The business and affairs of the Corporation shall be managed by, or under the direction of, the Board. In addition to the powers and authority expressly conferred upon the Board by statute, this Certificate or the By-Laws (the “**By-Laws**”) of the Corporation, the Board is hereby empowered to exercise all such powers and do all such

acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the General Corporation Law, this Certificate and any By-Laws adopted by the stockholders; provided, however, that no By-Laws hereafter adopted by the stockholders shall invalidate any prior act of the Board that would have been valid if such By-Laws had not been adopted.

Section 6.2 Election. Unless and except to the extent that the By-Laws shall so require, the election of directors need not be by written ballot.

Section 6.3 Initial Director. Upon the filing of this Certificate, the powers of the incorporator shall terminate. The name and mailing address of the persons who are to serve as initial directors until the first annual meeting of stockholders of the Corporation and such directors' successors are elected and qualified are as follows:

<u>Name</u>	<u>Address</u>
Larry Harris	120 Chula Vista San Antonio, Texas 78232
Allen Jones	120 Chula Vista San Antonio, Texas 78232
Jason Kemp	120 Chula Vista San Antonio, Texas 78232

ARTICLE VII

In furtherance and not in limitation of the powers conferred upon it by law, the Board shall have the power to adopt, amend, alter or repeal the By-Laws. The By-Laws also may be adopted, amended, altered or repealed by the stockholders.

ARTICLE VIII

Section 8.1 Limitation of Personal Liability. No person who is or was a director of the Corporation shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted by the General Corporation Law as the same exists or hereafter may be amended. If the General Corporation Law is hereafter amended to authorize corporate action further limiting or eliminating the liability of directors, then the liability of a director to the Corporation or its stockholders shall be limited or eliminated to the fullest extent permitted by the General Corporation Law, as so amended. Any repeal or amendment of this Section 8.1 by the stockholders of the Corporation or by changes in law, or the adoption of any other provision of this Certificate inconsistent with this Section 8.1 will, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to further limit or eliminate the liability of directors) and shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or amendment or adoption of such inconsistent provision with respect to acts or

omissions occurring prior to such repeal or amendment or adoption of such inconsistent provision.

Section 8.2 Indemnification.

(a) Each person who is or was made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a ***“proceeding”***) by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer, employee or agent of the Corporation or, while a director or officer, employee or agent of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter a ***“Covered Person”***) or while a director or officer of the Corporation or a Covered Person, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust enterprise or nonprofit entity (an ***“Other Entity”***), including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized or permitted by applicable law, as the same exists or may hereafter be amended, against all expense, liability and loss (including, without limitation, attorneys’ fees, judgments, fines, ERISA excise taxes and penalties and amounts paid in settlement) reasonably incurred or suffered by such Covered Person, and such right to indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except for proceedings to enforce rights to indemnification, the Corporation shall indemnify a Covered Person in connection with a proceeding (or part thereof) initiated by such Covered Person only if such proceeding (or part thereof) was authorized by the Board. The right to indemnification conferred by this Section 8.2 shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any such proceeding in advance of its final disposition.

(b) In addition to the right to indemnification conferred in Section 8.2(a), a Covered Person shall also have the right to be paid by the Corporation the expenses (including, without limitation, attorneys’ fees) incurred in defending, testifying, or otherwise participating in any such proceeding in advance of its final disposition (hereinafter an ***“advancement of expenses”***); provided, however, that, if the General Corporation Law requires, an advancement of expenses incurred by a Covered Person in his or her capacity as a director or officer of the Corporation (and not in any other capacity in which service was or is rendered by such Covered Person, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an ***“undertaking”***), by or on behalf of such Covered Person, to repay all amounts so advanced if it shall ultimately be determined by

final judicial decision from which there is no further right to appeal (hereinafter a “**final adjudication**”) that such Covered Person is not entitled to be indemnified for such expenses under this Section 8.2 or otherwise.

(c) If a claim under Section 8.2(a) or (b) is not paid in full by the Corporation within 30 days after a written claim therefor by the Covered Person has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the Covered Person may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Covered Person shall also be entitled to be paid the expense of prosecuting or defending such suit. In any suit brought by the Covered Person to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Covered Person is not entitled to be indemnified, or to such advancement of expenses, under this Section 8.2 or otherwise shall be on the Corporation.

(d) The rights conferred on any Covered Person by this Section 8.2 shall not be exclusive of any other rights which any Covered Person may have or hereafter acquire under law, this Certificate, the By Laws, an agreement, vote of stockholders or disinterested directors, or otherwise.

(e) Any repeal or amendment of this Section 8.2 by the stockholders of the Corporation or by changes in law, or the adoption of any other provision of this Certificate inconsistent with this Section 8.2, will, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to provide broader indemnification rights on a retroactive basis than permitted prior thereto), and will not in any way diminish or adversely affect any right or protection existing at the time of such repeal or amendment or adoption of such inconsistent provision in respect of any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

(f) This Section 8.2 shall not limit the right of the Corporation, to the extent and in the manner authorized or permitted by law, to indemnify and to advance expenses to persons other than Covered Persons.

ARTICLE IX

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate (including any Preferred Stock Designation), in the manner now or hereafter prescribed by this Certificate and the General Corporation Law; and except as set forth in ARTICLE VIII, all rights, preferences and privileges herein conferred upon stockholders, directors or any other persons by and pursuant to this Certificate in its present form or as hereafter amended are granted subject to the right reserved in this Article.

[Signature page follows]

***[SIGNATURE PAGE TO
CERTIFICATE OF INCORPORATION OF
ALAMO OVATION ACQUISITION, INC.]***

IN WITNESS WHEREOF, the incorporator of the Corporation hereto has caused this Certificate of Incorporation to be duly executed as of July 15, 2015.

J. Patrick Ryan, Incorporator

EXHIBIT B

FORM OF BY-LAWS

BY-LAWS

OF

ALAMO OVATION ACQUISITION, INC.

ARTICLE I.
OFFICES

Section 1.1. Registered Office. The registered office of the Corporation within the State of Delaware shall be located at either (a) the principal place of business of the Corporation in the State of Delaware or (b) the office of the corporation or individual acting as the Corporation's registered agent in Delaware.

Section 1.2. Additional Offices. The Corporation may, in addition to its registered office in the State of Delaware, have such other offices and places of business, both within and outside the State of Delaware, as the Board of Directors of the Corporation (the "**Board**") may from time to time determine or as the business and affairs of the Corporation may require.

ARTICLE II.
STOCKHOLDERS MEETINGS

Section 2.1. Annual Meetings. Unless directors are elected by written consent in lieu of an annual meeting as permitted by applicable law or an annual meeting is otherwise not required by applicable law, an annual meeting of stockholders shall be held at such place and time and on such date as shall be determined by the Board and stated in the notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a). At each annual meeting, the stockholders shall elect directors of the Corporation and may transact any other business as may properly be brought before the meeting. Stockholders may, unless the Corporation's Certificate of Incorporation, as the same may be amended or restated from time to time (the "**Certificate of Incorporation**"), provides otherwise, act by written consent to elect directors; provided, however, that if such consent is less than unanimous, such action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action.

Section 2.2. Special Meetings. Except as otherwise required by applicable law or provided in the Certificate of Incorporation, special meetings of stockholders, for any purpose or purposes, may be called only by the Chairman of the Board or the President, by the Board, or by the Secretary at the request in writing of stockholders holding shares representing a majority of the voting power of the outstanding shares entitled to vote on the matter for which such meeting is to be called. The Secretary shall call such a meeting upon receiving such a request. Special meetings of stockholders shall be held at such place and time and on such date

as shall be determined by the Board and stated in the Corporation's notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a).

Section 2.3. Notices. Notice of each stockholders meeting stating the place, if any, date, and time of the meeting, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, shall be given in the manner permitted by Section 9.3 to each stockholder entitled to vote thereat by the Corporation not less than 10 nor more than 60 days before the date of the meeting. If said notice is for a stockholders meeting other than an annual meeting, it shall in addition state the purpose or purposes for which the meeting is called, and the business transacted at such meeting shall be limited to the matters so stated in the Corporation's notice of meeting (or any supplement thereto).

Section 2.4. Quorum. Except as otherwise provided by applicable law, the Certificate of Incorporation or these By-Laws, the presence, in person or by proxy, at a stockholders meeting of the holders of shares of outstanding capital stock of the Corporation representing a majority of the voting power of all outstanding shares of capital stock of the Corporation entitled to vote at such meeting shall constitute a quorum for the transaction of business at such meeting, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of shares representing a majority of the voting power of the outstanding shares of such class or series shall constitute a quorum of such class or series for the transaction of such business. If a quorum shall not be present at any meeting of the stockholders, the chairman of the meeting or the stockholders entitled to vote thereat so present, by a majority in voting power thereof, may adjourn the meeting from time to time in the manner provided in Section 2.6 until a quorum shall attend. The stockholders present at a duly convened meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the voting power of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation or any such other corporation to vote shares held by it in a fiduciary capacity.

Section 2.5. Voting of Shares.

(a) Voting Lists. The Secretary shall prepare, or shall cause the officer or agent who has charge of the stock ledger of the Corporation to prepare, at least 10 days before each meeting of stockholders, a complete list of the stockholders of record entitled to vote thereat arranged in alphabetical order and showing the address and the number of shares registered in the name of each stockholder. Nothing contained in this Section 2.5(a) shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business

hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If a meeting of stockholders is to be held solely by means of remote communication as permitted by Section 9.5(a), the list shall be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of meeting. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list required by this Section 2.5(a) or to vote in person or by proxy at any meeting of stockholders.

(b) Manner of Voting. At any stockholders meeting, every stockholder entitled to vote may vote in person or by proxy. If authorized by the Board, the voting by stockholders or proxyholders at any meeting conducted by remote communication may be effected by a ballot submitted by electronic transmission (as defined in Section 9.3(c)), provided that any such electronic transmission must either set forth or be submitted with information from which the Corporation can determine that the electronic transmission was authorized by the stockholder or proxyholder. The Board, in its discretion, or the chairman of the meeting of stockholders, in such person's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

(c) Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. Proxies need not be filed with the Secretary until the meeting is called to order, but shall be filed with the Secretary before being voted. Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy, either of the following shall constitute a valid means by which a stockholder may grant such authority:

(i) A stockholder may execute a writing authorizing another person or persons to act for such stockholder as proxy. Execution may be accomplished by the stockholder or such stockholder's authorized officer, director, employee or agent signing such writing or causing such person's signature to be affixed to such writing by any reasonable means, including, but not limited to, by facsimile signature.

(ii) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of an electronic transmission to the person who will be the holder of the proxy, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder.

Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission authorizing another person or persons to act as proxy for a stockholder may be substituted or used in lieu of the original writing or transmission for any and all purposes for

which the original writing or transmission could be used; provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

(d) Required Vote. When a quorum is present at any meeting, the vote of the holders, present in person or represented by proxy, of capital stock of the Company representing a majority of the votes of all capital stock of the Company entitled to vote thereat shall decide any question brought before such meeting, unless the question is one upon which, by express provision of law or the certificate of incorporation or these Bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such question.

(e) Inspectors of Election. The Board may appoint one or more persons as inspectors of election, who may be employees of the Corporation or otherwise serve the Corporation in other capacities, to act at any meeting of stockholders or any adjournment thereof and to make a written report thereof. The Board may appoint one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspectors of election or alternates are appointed by the Board, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall ascertain and report the number of outstanding shares and the voting power of each; determine the number of shares present in person or represented by proxy at the meeting and the validity of proxies and ballots; count all votes and ballots and report the results; determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. No person who is a candidate for an office at an election may serve as an inspector at such election. Each report of an inspector shall be in writing and signed by the inspector or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors.

Section 2.6. Adjournments. Any meeting of stockholders, annual or special, may be adjourned by the chairman of the meeting or by the stockholders present and entitled to vote thereat, by a majority in voting power thereof, from time to time, whether or not there is a quorum, to reconvene at the same or some other place. Notice need not be given of any such adjourned meeting if the date, time, place, if any, thereof, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the stockholders, or the holders of any class or series of stock entitled to vote separately as a class, as the case may be, may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 2.7. Conduct of Meetings. The chairman of each annual and special meeting of stockholders shall be the Chairman of the Board or, in the absence (or inability or refusal to act) of the Chairman of the Board, the President (if he or she shall be a director) or, in

the absence (or inability or refusal to act) of the President or if the President is not a director, such other person as shall be appointed by the Board, or in the absence of such appointment, a chairman chosen at the meeting. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the chairman of the meeting. The Board may adopt such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with these By-Laws or such rules and regulations as adopted by the Board, the chairman of any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Unless and to the extent determined by the Board or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The secretary of each annual and special meeting of stockholders shall be the Secretary or, in the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary so appointed to act by the chairman of the meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 2.8. Consents in Lieu of Meeting. Unless otherwise provided by the Certificate of Incorporation, any action required or permitted to 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 stock having not less than the minimum voting power 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 to its registered office in the State of Delaware, the Corporation's principal place of business, or the Secretary. 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 date the earliest dated consent is delivered to the Corporation, a written consent or consents signed by a sufficient number of holders to take such action are delivered to the Corporation by delivery to the Corporation's registered office in the State of Delaware, the Corporation's principal place of business, or the Secretary. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. An electronic transmission consenting to the action to be taken and transmitted by a stockholder, proxyholder or a person or persons authorized to act for a stockholder or proxyholder shall be deemed to be written, signed and dated for purposes hereof if such electronic transmission sets forth or is delivered with information from which the Corporation can determine that such transmission was transmitted by a stockholder or proxyholder (or by a person authorized to act for a stockholder or proxyholder) and the date on which such stockholder, proxyholder or authorized person transmitted such transmission. The date on which such electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and delivered to the Corporation by delivery either to the Corporation's registered office in the State of Delaware, the Corporation's principal place of business, or the Secretary. Delivery made to the Corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the limitations on delivery in the previous sentence, consents given by electronic transmission may be otherwise delivered to the

Corporation's principal place of business or to the Secretary if, to the extent, and in the manner provided by resolution of the Board. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used; provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing. 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 holders were delivered to the Corporation as provided in this Section 2.8.

ARTICLE III. DIRECTORS

Section 3.1. Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-Laws required to be exercised or done by the stockholders. Directors need not be stockholders or residents of the State of Delaware.

Section 3.2. Number; Term. The number of directors of the Corporation initially shall be [three] and the initial directors shall be [Larry Harris, Allen Jones and Jason Kemp]. Thereafter the number of directors may be determined from time to time by the Board, but no decrease in such number shall have the effect of shortening the term of any incumbent director. Except as otherwise provided in the Certificate of Incorporation, the directors shall be elected at the annual meeting of stockholders to hold office until the next succeeding annual meeting of stockholders. Each director shall hold office for the term for which such director is elected and until his or her successor shall have been elected and qualified, subject to such director's earlier death, resignation, retirement, disqualification or removal.

Section 3.3. Newly Created Directorships and Vacancies. Except as otherwise provided in the Certificate of Incorporation, vacancies resulting from death, resignation, retirement, disqualification, removal or other cause and newly created directorships resulting from an increase in the number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority vote of the directors then in office, even if less than a quorum, by a sole remaining director, or by the stockholders. Except as otherwise provided in the Certificate of Incorporation, if the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series may be filled only by a majority of the directors elected by such class or classes or series thereof then in office, by a sole remaining director so elected, or by the stockholders of such class or classes or series thereof. Except as otherwise provided in the Certificate of Incorporation, any director elected or chosen in accordance with this Section 3.3 shall hold office until the next annual election of directors and until his or her successor shall have been elected and qualified, subject to such director's earlier death, resignation, retirement, disqualification or removal.

Section 3.4. Compensation. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, the Board shall have the authority to fix the compensation of directors. The directors may be reimbursed their expenses, if any, of attendance at each meeting of the Board and may be paid either a fixed sum for attendance at each meeting of the Board or other compensation as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of committees of the Board may be allowed like compensation and reimbursement of expenses for attending committee meetings.

ARTICLE IV. BOARD MEETINGS

Section 4.1. Annual Meetings. The Board shall meet as soon as practicable after the adjournment of each annual stockholders meeting at the place of the annual stockholders meeting unless the Board shall fix another time and place and give notice thereof in the manner required herein for special meetings of the Board. No notice to the directors shall be necessary to legally convene this meeting, except as provided in this Section 4.1.

Section 4.2. Regular Meetings. Regularly scheduled, periodic meetings of the Board may be held without notice at such times, dates and places as shall from time to time be determined by the Board.

Section 4.3. Special Meetings. Special meetings of the Board (a) may be called by the Chairman of the Board or President and (b) shall be called by the Chairman of the Board, President or Secretary on the written request of a majority of directors then in office, or the sole director, as the case may be, and shall be held at such time, date and place as may be determined by the person calling the meeting or, if called upon the request of directors or the sole director, as specified in such written request. Notice of each special meeting of the Board shall be given, as provided in Section 9.3, to each director (i) at least 24 hours before the meeting if such notice is oral notice given personally or by telephone or written notice given by hand delivery or by means of a form of electronic transmission and delivery; (ii) at least two days before the meeting if such notice is sent by a nationally recognized overnight delivery service; and (iii) at least five days before the meeting if such notice is sent through the United States mail. If the Secretary shall fail or refuse to give such notice, then the notice may be given by the officer who called the meeting or the directors who requested the meeting. Any and all business that may be transacted at a regular meeting of the Board may be transacted at a special meeting. Except as may be otherwise expressly provided by applicable law, the Certificate of Incorporation, or these By-Laws, neither the business to be transacted at, nor the purpose of, any special meeting need be specified in the notice or waiver of notice of such meeting. A special meeting may be held at any time without notice if all the directors are present or if those not present waive notice of the meeting in accordance with Section 9.4.

Section 4.4. Quorum; Required Vote. A majority of the Board, but in any event not less than one-third of the Whole Board (as defined below), shall constitute a quorum for the transaction of business at any meeting of the Board, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board, except

as may be otherwise specifically provided by applicable law, the Certificate of Incorporation or these By-Laws. If a quorum shall not be present at any meeting, a majority of the directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present. "Whole Board" shall mean the total number of directors that the Corporation would have if there were no vacancies.

Section 4.5. Consent In Lieu of Meeting. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board or any committee thereof may be taken without a meeting if all members of the Board 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 (or paper reproductions thereof) are filed with the minutes of proceedings of the Board 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 4.6. Organization. The chairman of each meeting of the Board shall be the Chairman of the Board or, in the absence (or inability or refusal to act) of the Chairman of the Board, the President (if he or she shall be a director) or in the absence (or inability or refusal to act) of the President or if the President is not a director, a chairman elected from the directors present. The Secretary shall act as secretary of all meetings of the Board. In the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary shall perform the duties of the Secretary at such meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

ARTICLE V. COMMITTEES OF DIRECTORS

Section 5.1. Establishment. The Board may designate one or more committees, each committee to consist of one or more of the directors. Each committee shall keep regular minutes of its meetings and report the same to the Board when required. The Board shall have the power at any time to fill vacancies in, to change the membership of, or to dissolve any such committee.

Section 5.2. Available Powers. Any committee established pursuant to Section 5.1 hereof, to the extent permitted by applicable law and by resolution of the Board, shall have and may exercise all of the powers and authority of the Board 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 that may require it.

Section 5.3. Alternate Members. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee.

Section 5.4. Procedures. Unless the Board otherwise provides, the time, date, place, if any, and notice of meetings of a committee shall be determined by such committee. At meetings of a committee, a majority of the number of members of the committee (but not

including any alternate member, unless such alternate member has replaced any absent or disqualified member at the time of, or in connection with, such meeting) shall constitute a quorum for the transaction of business. The act of a majority of the members present at any meeting at which a quorum is present shall be the act of the committee, except as otherwise specifically provided by applicable law, the Certificate of Incorporation, these By-Laws or the Board. If a quorum is not present at a meeting of a committee, the members present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present. Unless the Board otherwise provides and except as provided in these By-Laws, each committee designated by the Board may make, alter, amend and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board is authorized to conduct its business pursuant to Article III and Article IV of these By-Laws.

ARTICLE VI. OFFICERS

Section 6.1. Officers. The officers of the Corporation that may be elected by the Board are a Chairman of the Board, a President, a Treasurer, a Secretary and such other officers (including without limitation a Chief Financial Officer, Vice Presidents, Assistant Secretaries and Assistant Treasurers) as the Board from time to time may determine. Officers elected by the Board shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article VI. Such officers shall also have such powers and duties as from time to time may be conferred by the Board. The Chairman of the Board or President may also appoint such other officers (including without limitation one or more Vice Presidents and Controllers) as may be necessary or desirable for the conduct of the business of the Corporation. Such other officers shall have such powers and duties and shall hold their offices for such terms as may be provided in these By-Laws or as may be prescribed by the Board or, if such officer has been appointed by the Chairman of the Board or President, as may be prescribed by the appointing officer.

(a) Chairman of the Board. The Chairman of the Board shall preside when present at all meetings of the stockholders and the Board. The Chairman of the Board shall advise and counsel the President and other officers and shall exercise such powers and perform such duties as shall be assigned to or required of the Chairman of the Board from time to time by the Board or these By-Laws.

(b) President. The President shall be the chief executive and operating officer of the Corporation and shall, subject to the authority of the Board, have general management and control of the day-to-day business operations of the Corporation. The President shall put into operation the business policies of the Corporation as determined by the Board and as communicated to the President by the Board. The President shall make recommendations to the Board on all operational matters that would normally be reserved for the final executive responsibility of a chief executive officer. In the absence (or inability or refusal to act) of the Chairman of the Board, the President (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board.

(c) Vice Presidents. In the absence (or inability or refusal to act) of the President, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the Board) shall perform the duties and have the powers of the President. Any one or more of the Vice Presidents may be given an additional designation of rank or function.

(d) Secretary.

(i) The Secretary shall attend all meetings of the stockholders, the Board and (as required) committees of the Board and shall record the proceedings of such meetings in books to be kept for that purpose. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board and shall perform such other duties as may be prescribed by the Board, the Chairman of the Board or President. The Secretary shall have custody of the corporate seal of the Corporation and the Secretary, or any Assistant Secretary, shall have authority to affix the same to any instrument requiring it, and when so affixed, it may be attested by his or her signature or by the signature of such Assistant Secretary. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing thereof by his or her signature.

(ii) The Secretary shall keep, or cause to be kept, at the principal executive office of the Corporation or at the office of the Corporation's transfer agent or registrar, if one has been appointed, a stock ledger, or duplicate stock ledger, showing the names of the stockholders and their addresses, the number and classes of shares held by each and, with respect to certificated shares, the number and date of certificates issued for the same and the number and date of certificates cancelled.

(e) Assistant Secretaries. The Assistant Secretary or, if there be more than one, the Assistant Secretaries in the order determined by the Board shall, in the absence (or inability or refusal to act) of the Secretary, perform the duties and have the powers of the Secretary.

(f) Treasurer. The Treasurer shall perform all duties commonly incident to that office (including, without limitation, the care and custody of the funds and securities of the Corporation which from time to time may come into the Treasurer's hands and the deposit of the funds of the Corporation in such banks or trust companies as the Board or the President may authorize).

(g) Assistant Treasurers. The Assistant Treasurer or, if there shall be more than one, the Assistant Treasurers in the order determined by the Board shall, in the absence (or inability or refusal to act) of the Treasurer, perform the duties and exercise the powers of the Treasurer.

Section 6.2. Term of Office. The elected officers of the Corporation shall be elected annually by the Board at its first meeting held after each annual meeting of stockholders. All officers elected by the Board shall hold office until the next annual meeting of the Board and until their successors are duly elected and qualified or until their earlier death, resignation,

retirement, disqualification, or removal from office. Any officer may be removed, with or without cause, at any time by the Board. Any officer appointed by the Chairman of the Board or President may also be removed, with or without cause, by the Chairman of the Board or President, as the case may be, unless the Board otherwise provides. Any vacancy occurring in any elected office of the Corporation may be filled by the Board. Any vacancy occurring in any office appointed by the Chairman of the Board or President may be filled by the Chairman of the Board or President, as the case may be, unless the Board then determines that such office shall thereupon be elected by the Board, in which case the Board shall elect such officer.

Section 6.3. Other Officers. The Board may delegate the power to appoint such other officers and agents, and may also remove such officers and agents or delegate the power to remove same, as it shall from time to time deem necessary or desirable.

Section 6.4. Multiple Officeholders; Stockholder and Director Officers. Any number of offices may be held by the same person, unless the Certificate of Incorporation or these By-Laws otherwise provide. Officers need not be stockholders or residents of the State of Delaware.

ARTICLE VII. SHARE CERTIFICATES

Section 7.1. Entitlement to Certificates. The shares of the Corporation shall be represented by certificates, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed in accordance with Section 7.3 representing the number of shares registered in certificate form. The Corporation shall not have power to issue a certificate representing shares in bearer form.

Section 7.2. Multiple Classes of Stock. If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the Corporation shall (a) cause 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 or rights to be set forth in full or summarized on the face or back of any certificate which the Corporation issues to represent shares of such class or series of stock or (b) in the case of uncertificated shares, within a reasonable time after the issuance or transfer of such shares, send to the registered owner thereof a written notice containing the information required to be set forth on certificates as specified in clause (a) above; provided, however, that, except as otherwise provided by applicable law, in lieu of the foregoing requirements, there may be set forth on the face or back of such certificate or, in the case of uncertificated shares, on such written notice 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 or rights.

Section 7.3. Signatures. Each certificate representing capital stock of the Corporation shall be signed by or in the name of the Corporation by (a) the Chairman of the Board, the President or a Vice President and (b) the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Corporation. Any or all 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, such certificate may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar on the date of issue.

Section 7.4. Consideration and Payment for Shares.

(a) Subject to applicable law and the Certificate of Incorporation, shares of stock may be issued for such consideration, having in the case of shares with par value a value not less than the par value thereof, and to such persons, as determined from time to time by the Board. The consideration may consist of any tangible or intangible property or benefit to the Corporation including cash, promissory notes, services performed, contracts for services to be performed or other securities.

(b) Subject to applicable law and the Certificate of Incorporation, shares may not be issued until the full amount of the consideration has been paid, unless upon the face or back of each certificate issued to represent any partly paid shares of capital stock or upon the books and records of the Corporation in the case of partly paid uncertificated shares, there shall have been set forth the total amount of the consideration to be paid therefor and the amount paid thereon up to and including the time said certificate representing certificated shares or said uncertificated shares are issued

Section 7.5. Lost, Destroyed or Wrongfully Taken Certificates.

(a) If an owner of a certificate representing shares claims that such certificate has been lost, destroyed or wrongfully taken, the Corporation shall issue a new certificate representing such shares or such shares in uncertificated form if the owner: (i) requests such a new certificate before the Corporation has notice that the certificate representing such shares has been acquired by a protected purchaser; (ii) if requested by the Corporation, delivers to the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, wrongful taking or destruction of such certificate or the issuance of such new certificate or uncertificated shares; and (iii) satisfies other reasonable requirements imposed by the Corporation.

(b) If a certificate representing shares has been lost, apparently destroyed or wrongfully taken, and the owner fails to notify the Corporation of that fact within a reasonable time after the owner has notice of such loss, apparent destruction or wrongful taking and the Corporation registers a transfer of such shares before receiving notification, the owner shall be precluded from asserting against the Corporation any claim for registering such transfer or a claim to a new certificate representing such shares or such shares in uncertificated form.

Section 7.6. Transfer of Stock.

(a) If a certificate representing shares of the Corporation is presented to the Corporation with an indorsement requesting the registration of transfer of such shares or an instruction is presented to the Corporation requesting the registration of transfer of uncertificated shares, the Corporation shall register the transfer as requested if:

(i) in the case of certificated shares, the certificate representing such shares has been surrendered;

(ii) (A) with respect to certificated shares, the indorsement is made by the person specified by the certificate as entitled to such shares; (B) with respect to uncertificated shares, an instruction is made by the registered owner of such uncertificated shares; or (C) with respect to certificated shares or uncertificated shares, the indorsement or instruction is made by any other appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(iii) the Corporation has received a guarantee of signature of the person signing such indorsement or instruction or such other reasonable assurance that the indorsement or instruction is genuine and authorized as the Corporation may request;

(iv) the transfer does not violate any restriction on transfer imposed by the Corporation that is enforceable in accordance with Section 7.8(a); and

(v) such other conditions for such transfer as shall be provided for under applicable law have been satisfied.

(b) Whenever any transfer of shares shall be made for collateral security and not absolutely, the Corporation shall so record such fact in the entry of transfer if, when the certificate for such shares is presented to the Corporation for transfer or, if such shares are uncertificated, when the instruction for registration of transfer thereof is presented to the Corporation, both the transferor and transferee request the Corporation to do so.

Section 7.7. Registered Stockholders. Before due presentment for registration of transfer of a certificate representing shares of the Corporation or of an instruction requesting registration of transfer of uncertificated shares, the Corporation may treat the registered owner as the person exclusively entitled to inspect for any proper purpose the stock ledger and the other books and records of the Corporation, vote such shares, receive dividends or notifications with respect to such shares and otherwise exercise all the rights and powers of the owner of such shares, except that a person who is the beneficial owner of such shares (if held in a voting trust or by a nominee on behalf of such person) may, upon providing documentary evidence of beneficial ownership of such shares and satisfying such other conditions as are provided under applicable law, may also so inspect the books and records of the Corporation.

Section 7.8. Effect of the Corporation's Restriction on Transfer. A written restriction on the transfer or registration of transfer of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, if permitted by the Delaware General Corporation Law ("**DGCL**") and noted conspicuously on the certificate representing such shares or, in the case of uncertificated shares, contained in a notice sent by the Corporation to the registered owner of such shares within a reasonable time after the issuance or transfer of such shares, may be enforced against the holder of such shares or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder.

(b) A restriction imposed by the Corporation on the transfer or the registration of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, even if otherwise lawful, is ineffective against a person without actual knowledge of such restriction unless: (i) the shares are certificated and such restriction is noted conspicuously on the certificate; or (ii) the shares are uncertificated and such restriction was contained in a notice sent by the Corporation to the registered owner of such shares within a reasonable time after the issuance or transfer of such shares.

Section 7.9. Regulations. The Board shall have power and authority to make such additional rules and regulations, subject to any applicable requirement of law, as the Board may deem necessary and appropriate with respect to the issue, transfer or registration of transfer of shares of stock or certificates representing shares. The Board may appoint one or more transfer agents or registrars and may require for the validity thereof that certificates representing shares bear the signature of any transfer agent or registrar so appointed.

ARTICLE VIII. INDEMNIFICATION

Section 8.1. Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "**proceeding**"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer, employee or agent of the Corporation or, while a director or officer, employee or agent of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee

benefit plan (hereinafter a “**Covered Person**”), or, while a director or officer of the Corporation or a Covered Person, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust enterprise or nonprofit entity (an “**Other Entity**”), including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized or permitted by applicable law, as the same exists or may hereafter be amended, against all expense, liability and loss (including, without limitation, attorneys’ fees, judgments, fines, ERISA excise taxes and penalties and amounts paid in settlement) reasonably incurred or suffered by such Covered Person; provided, however, that, except as provided in Section 8.3 with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify a Covered Person in connection with a proceeding (or part thereof) initiated by such Covered Person only if such proceeding (or part thereof) was authorized by the Board.

Section 8.2. Right to Advancement of Expenses. In addition to the right to indemnification conferred in Section 8.1, a Covered Person shall also have the right to be paid by the Corporation the expenses (including, without limitation, attorneys’ fees) incurred in defending, testifying, or otherwise participating in any such proceeding in advance of its final disposition (hereinafter an “**advancement of expenses**”); provided, however, that, if the DGCL requires, an advancement of expenses incurred by a Covered Person in his or her capacity as a director or officer of the Corporation (and not in any other capacity in which service was or is rendered by such Covered Person, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an “**undertaking**”), by or on behalf of such Covered Person, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a “**final adjudication**”) that such Covered Person is not entitled to be indemnified for such expenses under this Article VIII or otherwise.

Section 8.3. Right of Indemnitee to Bring Suit. If a claim under Section 8.1 or Section 8.2 is not paid in full by the Corporation within 30 days after a written claim therefor by the Covered Person has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the Covered Person may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Covered Person shall also be entitled to be paid the expense of prosecuting or defending such suit. In (a) any suit brought by the Covered Person to enforce a right to indemnification hereunder (but not in a suit brought by a Covered Person to enforce a right to an advancement of expenses) it shall be a defense that, and (b) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the Covered Person has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the Covered Person is proper in the circumstances because the Covered Person has met the applicable standard of conduct set forth

in the DGCL, nor an actual determination by the Corporation (including a determination by its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the Covered Person has not met such applicable standard of conduct, shall create a presumption that the Covered Person has not met the applicable standard of conduct or, in the case of such a suit brought by the Covered Person, shall be a defense to such suit. In any suit brought by the Covered Person to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Covered Person is not entitled to be indemnified, or to such advancement of expenses, under this Article VIII or otherwise shall be on the Corporation.

Section 8.4. Non-Exclusivity of Rights. The rights provided to Covered Persons pursuant to this Article VIII shall not be exclusive of any other right which any Covered Person may have or hereafter acquire under applicable law, the Certificate of Incorporation, these By-Laws, an agreement, a vote of stockholders or disinterested directors, or otherwise.

Section 8.5. Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and/or any Covered Person or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL and this Article VIII.

Section 8.6. Indemnification of Other Persons. This Article VIII shall not limit the right of the Corporation to the extent and in the manner authorized or permitted by law to indemnify and to advance expenses to persons other than Covered Persons. Without limiting the foregoing, the Corporation may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation and to any other person who is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan, to the fullest extent of the provisions of this Article VIII with respect to the indemnification and advancement of expenses of Covered Persons under this Article VIII.

Section 8.7. Amendments. Any repeal or amendment of this Article VIII by the Board or the stockholders of the Corporation or by changes in applicable law, or the adoption of any other provision of these By-Laws inconsistent with this Article VIII, will, unless otherwise required by applicable law, be prospective only (except to the extent such amendment or change in applicable law permits the Corporation to provide broader indemnification rights to Covered Persons on a retroactive basis than permitted prior thereto), and will not in any way diminish or adversely affect any right or protection existing at the time of such repeal or amendment or adoption of such inconsistent provision in respect of any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

Section 8.8. Certain Definitions. For purposes of this Article VIII, (a) references to “other enterprise” shall include any employee benefit plan; (b) references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; (c) references to “serving at the request of the Corporation” shall include any service that

imposes duties on, or involves services by, a person with respect to any employee benefit plan, its participants, or beneficiaries; and (d) a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interest of the Corporation” for purposes of Section 145 of the DGCL.

Section 8.9. Contract Rights. The rights provided to Covered Persons pursuant to this Article VIII shall be contract rights and such rights shall continue as to a Covered Person who has ceased to be a director, officer, agent or employee and shall inure to the benefit of the Covered Person’s heirs, executors and administrators.

Section 8.10. Severability. If any provision or provisions of this Article VIII 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 Article VIII shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Article VIII (including, without limitation, each such portion of this Article VIII containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

ARTICLE IX. MISCELLANEOUS

Section 9.1. Place of Meetings. If the place of any meeting of stockholders, the Board or committee of the Board for which notice is required under these By-Laws is not designated in the notice of such meeting, such meeting shall be held at the principal business office of the Corporation; provided, however, if the Board has, in its sole discretion, determined that a meeting shall not be held at any place, but instead shall be held by means of remote communication pursuant to Section 9.5 hereof, then such meeting shall not be held at any place.

Section 9.2. Fixing Record Dates.

(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 may fix a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the Board, 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, 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 business day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the business 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, however, that the Board may fix a new record date for the adjourned meeting.

(b) 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 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 adopts the resolution relating thereto.

(c) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board 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, 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. If no record date has been fixed by the Board, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board is otherwise required, 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 the State of Delaware, its principal place of business, or the Secretary. 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 and prior action by the Board is otherwise required, 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 adopts the resolution taking such prior action.

Section 9.3. Means of Giving Notice.

(a) Notice to Directors. Whenever under applicable law, the Certificate of Incorporation or these By-Laws notice is required to be given to any director, such notice shall be given either (i) in writing and sent by hand delivery, through the United States mail, or by a nationally recognized overnight delivery service for next day delivery, (ii) by means of facsimile telecommunication or other form of electronic transmission, or (iii) by oral notice given personally or by telephone. A notice to a director will be deemed given as follows: (i) if given by hand delivery, orally, or by telephone, when actually received by the director, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (iv) if sent by facsimile telecommunication, when sent to the facsimile transmission number for such director appearing on the records of the Corporation, (v) if sent by electronic mail, when sent to the electronic mail address for such director appearing on the records of the Corporation, or (vi) if sent by any other form of electronic transmission, when sent to the address, location or number (as applicable) for such director appearing on the records of the Corporation.

(b) Notice to Stockholders. Whenever under applicable law, the Certificate of Incorporation or these By-Laws notice is required to be given to any stockholder, such notice may be given (i) in writing and sent either by hand delivery, through the United States mail, or by a nationally recognized overnight delivery service for next day delivery, or (ii) by means of a form of electronic transmission consented to by the stockholder, to the extent permitted by, and subject to the conditions set forth in, Section 232 of the DGCL. A notice to a stockholder shall

be deemed given as follows: (i) if given by hand delivery, when actually received by the stockholder, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation, and (iv) if given by a form of electronic transmission consented to by the stockholder to whom the notice is given and otherwise meeting the requirements set forth above, (A) if by facsimile transmission, when directed to a number at which the stockholder has consented to receive notice, (B) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice, (C) if by a posting on an electronic network together with separate notice to the stockholder of such specified posting, upon the later of (1) such posting and (2) the giving of such separate notice, and (D) if by any other form of electronic transmission, when directed to the stockholder. A stockholder may revoke such stockholder's consent to receiving notice by means of electronic communication by giving written notice of such revocation to the Corporation. Any such consent shall be deemed revoked if (1) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (2) such inability becomes known to the Secretary or an Assistant Secretary or to the Corporation's transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(c) Electronic Transmission. “**Electronic transmission**” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, including but not limited to transmission by telex, facsimile telecommunication, electronic mail, telegram and cablegram.

(d) Notice to Stockholders Sharing Same Address. Without limiting the manner by which notice otherwise may be given effectively by the Corporation to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. A stockholder may revoke such stockholder's consent by delivering written notice of such revocation to the Corporation. Any stockholder who fails to object in writing to the Corporation within 60 days of having been given written notice by the Corporation of its intention to send such a single written notice shall be deemed to have consented to receiving such single written notice.

(e) Exceptions to Notice Requirements. Whenever notice is required to be given, under the DGCL, the Certificate of Incorporation or these Bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the

Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

Whenever notice is required to be given by the Corporation, under any provision of the DGCL, the Certificate of Incorporation or these Bylaws, to any stockholder to whom (1) notice of two consecutive annual meetings of stockholders and all notices of stockholder meetings or of the taking of action by written consent of stockholders without a meeting to such stockholder during the period between such two consecutive annual meetings, or (2) all, and at least two payments (if sent by first-class mail) of dividends or interest on securities during a 12-month period, have been mailed addressed to such stockholder at such stockholder's address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such stockholder shall not be required. Any action or meeting which shall be taken or held without notice to such stockholder shall have the same force and effect as if such notice had been duly given. If any such stockholder shall deliver to the Corporation a written notice setting forth such stockholder's then current address, the requirement that notice be given to such stockholder shall be reinstated. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to Section 230(b) of the DGCL. The exception in subsection (1) of the first sentence of this paragraph to the requirement that notice be given shall not be applicable to any notice returned as undeliverable if the notice was given by electronic transmission.

Section 9.4. Waiver of Notice. Whenever any notice is required to be given under applicable law, the Certificate of Incorporation, or these By-Laws, a written waiver of such notice, signed before or after the date of such meeting by the person or persons entitled to said notice, or a waiver by electronic transmission by the person entitled to said notice, shall be deemed equivalent to such required notice. All such waivers shall be kept with the books of the Corporation. Attendance at a meeting shall constitute a waiver of notice of such meeting, except where a person attends for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

Section 9.5. Meeting Attendance via Remote Communication Equipment.

(a) Stockholder Meetings. If authorized by the Board in its sole discretion, and subject to such guidelines and procedures as the Board may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication:

- (i) participate in a meeting of stockholders; and
- (ii) be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (A) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (B) the Corporation shall

implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (C) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such votes or other action shall be maintained by the Corporation.

(b) **Board Meetings.** Unless otherwise restricted by applicable law, the Certificate of Incorporation, or these By-Laws, members of the Board or any committee thereof may participate in a meeting of the Board or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Such participation in a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

Section 9.6. Dividends. The Board may from time to time declare, and the Corporation may pay, dividends (payable in cash, property or shares of the Corporation's capital stock) on the Corporation's outstanding shares of capital stock, subject to applicable law and the Certificate of Incorporation.

Section 9.7. Reserves. The Board may set apart out of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

Section 9.8. Contracts and Negotiable Instruments. Except as otherwise provided by applicable law, the Certificate of Incorporation or these By-Laws, any contract, bond, deed, lease, mortgage or other instrument may be executed and delivered in the name and on behalf of the Corporation by such officer or officers or other employee or employees of the Corporation as the Board may from time to time authorize. Such authority may be general or confined to specific instances as the Board may determine. The Chairman of the Board, the President or any Vice President may execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation. Subject to any restrictions imposed by the Board, the Chairman of the Board or President or any Vice President may delegate powers to execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation to other officers or employees of the Corporation under such person's supervision and authority, it being understood, however, that any such delegation of power shall not relieve such officer of responsibility with respect to the exercise of such delegated power.

Section 9.9. Fiscal Year. The fiscal year of the Corporation shall be fixed by the Board.

Section 9.10. Seal. The seal of the Corporation shall be in such form as shall from time to time be adopted by the Board. The seal may be used by causing it or a facsimile thereof to be impressed, affixed or otherwise reproduced.

Section 9.11. Books and Records. The books and records of the Corporation may be kept within or outside the State of Delaware at such place or places as may from time to time be designated by the Board.

Section 9.12. Resignation. Any director, committee member or officer may resign by giving notice thereof in writing or by electronic transmission to the Chairman of the Board, the President or the Secretary. The resignation shall take effect at the time specified therein, or at the time of receipt of such notice if no time is specified or the specified time is earlier than the time of such receipt. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 9.13. Surety Bonds. Such officers, employees and agents of the Corporation (if any) as the Chairman of the Board, President or the Board may direct, from time to time, shall be bonded for the faithful performance of their duties and for the restoration to the Corporation, in case of their death, resignation, retirement, disqualification or removal from office, of all books, papers, vouchers, money and other property of whatever kind in their possession or under their control belonging to the Corporation, in such amounts and by such surety companies as the Chairman of the Board, President or the Board may determine. The premiums on such bonds shall be paid by the Corporation and the bonds so furnished shall be in the custody of the Secretary.

Section 9.14. Securities of Other Corporations. Powers of attorney, proxies, waivers of notice of meeting, consents in writing and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the Chairman of the Board, President or any Vice President. Any such officer may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities, or to consent in writing, in the name of the Corporation as such holder, to any action by such corporation, and at any such meeting or with respect to any such consent shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed. The Board may from time to time confer like powers upon any other person or persons.

Section 9.15. Amendments. The Board shall have the power to adopt, amend, alter or repeal the By-Laws. The By-Laws also may be adopted, amended, altered or repealed by the stockholders.

[Signature Page to Follow]

[Signature Page to the By-Laws of Alamo Ovation Acquisition, Inc.]

]

These Bylaws are hereby adopted by the Company to be effective as of July 15, 2015.

_____, President and
Secretary

EXHIBIT C

FORM OF WRITTEN CONSENT

**WRITTEN CONSENT
OF
CERTAIN STOCKHOLDERS
OF
BUFFETS RESTAURANTS HOLDINGS, INC.**

We, the undersigned, constituting the holders of (i) a majority of the issued and outstanding shares of common stock, par value \$0.01 per share (the “Common Stock”), of Buffets Restaurants Holdings, Inc., a corporation organized and existing under the laws of the State of Delaware (the “Company”), and (ii) a majority of the issued and outstanding shares of capital stock of the Company entitled to vote, as required by Section 251 of the General Corporation Law of the State of Delaware (the “DGCL”), hereby consent, pursuant to Section 228 of the DGCL, to the adoption of the following resolutions, and to the actions authorized thereby, without a meeting:

WHEREAS, the Company has entered into that certain Agreement and Plan of Merger, dated as of July 20, 2015, among the Company, Alamo Ovation, LLC, a Texas limited liability company (“Parent”), an affiliate of FMP SA Management Group, LLC, a Texas limited liability company (“FMP”), Alamo Ovation Acquisition, Inc., a Delaware corporation and wholly owned subsidiary of Parent (“Merger Sub”), and at or prior to Closing, the Stakeholder Representative, solely in its capacity as Stakeholder Representative (“Stakeholder Representative”), an executed copy of which is attached as Exhibit A hereto (the “Merger Agreement”), providing for, among other things, the merger of Merger Sub with and into the Company, with the Company continuing as the surviving entity and a wholly owned subsidiary of Parent (the “Merger”);

WHEREAS, as of the date hereof the Company has approximately \$61.8 million principal amount of Secured Debt (as defined in the Merger Agreement) outstanding, which amount exceeds the Purchase Price (as defined in the Merger Agreement);

WHEREAS, in connection with Closing, the lenders in respect of the Secured Debt are agreeing to release their liens with respect to the Company and its Subsidiaries in accordance with the payoff letters in respect thereof;

WHEREAS, the board of directors of the Company (the “Board”) has determined that the Merger Agreement and the transactions contemplated thereby, including the Merger, are fair to, advisable for and in the best interests of the Company and its stockholders and has directed that the Merger Agreement be submitted to the stockholders of the Company for their adoption;

WHEREAS, the Board caused a copy of the Merger Agreement to be delivered to the stockholders for their review and adoption;

WHEREAS, pursuant to Section 251 of the DGCL, to adopt the Merger Agreement, the Company must obtain the affirmative vote or written consent of the holders of a

majority of the outstanding shares of capital stock entitled to vote thereon in favor of the adoption of the Merger Agreement; and

WHEREAS, the undersigned stockholders hold a majority of the outstanding capital stock entitled to vote on the Merger Agreement.

NOW, THEREFORE, BE IT

RESOLVED, that the Merger Agreement and the transactions contemplated thereby, including the Merger and the Stockholder Release contain in Section 5.12 of the Merger Agreement, which Release is incorporated herein and any other documents, instruments, or certificates required by, referenced in or related to the Merger Agreement, be and hereby are approved, authorized and adopted in all respects without prior notice on the terms and conditions set forth in the Merger Agreement by the undersigned stockholders of the Company pursuant to the provisions of the DGCL, and this resolution shall constitute the affirmative consent of the holders of the undersigned for all purposes of the DGCL, and in accordance with such Section 5.12 of the Merger Agreement the undersigned stockholders each hereby waives, releases and discharges irrevocably and irrevocably agrees not to assert, any and all rights, claims, damages, actions and causes of action, obligations and liabilities, that such stockholder ever had, now has or ever may have or claim to have in such stockholder's capacity as a stockholder of the Company prior to the Effective Time (as defined in the Merger Agreement) relating to the Merger Agreement, the transactions contemplated thereby, and such stockholder's ownership of shares of the Company; and be it

FURTHER RESOLVED, that each of the undersigned stockholders hereby affirmatively waives and agrees not to exercise any dissenters' right, appraisal right or similar right the undersigned may have under applicable law (including Section 262 of the DGCL) arising in connection with the Merger Agreement (and the transactions contemplated thereby, including the Merger); and be it

FURTHER RESOLVED, that all acts, transactions, or agreements undertaken prior to the adoption of the foregoing resolutions by any of the directors, officers or authorized representatives of the Company in its name and for its account in connection with the foregoing matters are hereby ratified, confirmed and approved in all respects; and be it further

FURTHER RESOLVED, that the officers of the Company be, and each of them severally hereby is, empowered, authorized and directed in the name of and on behalf of the Company to take such actions as they may deem necessary, appropriate or advisable to carry out the intent of any and all of the foregoing resolutions and the transactions contemplated thereby, provided that in the case of an amendment to the Merger Agreement following the date hereof, any such amendment shall be subject to the terms set forth in the DGCL, including any requirement to obtain the consent of the stockholders of the Company in connection therewith.

This Written Consent and the actions taken hereby shall be binding upon and shall inure to the benefit of the stockholders of the Company and their respective successors, assigns and transferees. This Written Consent shall be irrevocable, and any vote, consent or other action by any stockholder executing this Written Consent that is not in accordance with this Written

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Consent will be considered null and void; *provided*, that notwithstanding anything else to the contrary herein, this Written Consent shall terminate and be of no further force and effect upon the termination or expiration of the Merger Agreement if such termination or expiration occurs prior to the Effective Time. This Written Consent may be executed in any number of counterparts, any of which may be executed and transmitted by facsimile, and each of which will be deemed to be an original of this Written Consent and all of which, when taken together, will be deemed to constitute one and the same instrument.

[Signature page follows.]

IN WITNESS WHEREOF, the undersigned have executed this Written Consent of Certain Stockholders of Buffets Restaurants Holdings, Inc. (the “Company”) as of the date written below their respective signatures, and direct that it be filed with the minutes of the meetings of the stockholders of the Company and treated, for all purposes, as a resolution adopted at a duly held meeting of stockholders. By executing this Written Consent, each undersigned stockholder is giving written consent with respect to all shares of the Company’s capital stock held by such stockholder in favor of the above resolutions.

Print name of stockholder

Signature

Print name of signatory, if different

Print title, if applicable

Date of signature

Exhibit A

Merger Agreement

EXHIBIT D

ILLUSTRATIVE CLOSING STATEMENT

Exhibit D

Working Capital Calculation Exhibit

(in Thousands)

	P12-15	Adjustments & Notes
Cash & Cash Equivalents	6,482	Adj (i)
Receivables	6,988	Adj's (ii) (vii)
Income tax receivable	-	
Inventory	5,864	
Restricted Cash	-	
Prepaid Expenses & Other Asset	8,844	Adj (iii)
Assets Held for Sale	-	
Deferred Income Taxes	6,057	Adj (iv)
Due from Affiliates	-	
Total current assets	34,235	
Accounts Payable	23,925	
Accrued Liabilities	60,759	Adj's (v) (vi) (xi) Note (A)
Creditor Pool Obligation	-	
Income Taxes Payable	1,150	
Short Term Debt	-	Adj (viii)
Current Maturities of Long-Term Debt	-	Adj (ix)
Current Maturities of Capital Lease Obligations	886	Adj (x)
Total current liabilities	86,721	
Working Capital, as reported	(52,486)	

Adjustments to arrive at Working Capital:

(i) Exclude Cash & Cash Equivalents	(6,482)	Note (a)
(ii) Exclude workers comp excess claims receivable	(3,584)	Note (b)
(iii) Exclude Prepaid Minimum Rent	(4,625)	Note (c)
(iv) Exclude Deferred Income Taxes	(6,057)	Note (f)
(v) Exclude Workers Comp Excess Claims liability	3,584	Note (b)
(vi) Exclude Workers Comp liabilities	16,475	Note (d)
(vii) Exclude Income Tax Receivable	(5)	Note (f)
(viii) Exclude Short Term Debt	-	Note (e)
(ix) Exclude Current Maturities of Long-Term Debt	-	Note (e)
(x) Exclude Current Maturities of Capital Lease Obliga	886	Note (e)
(xi) Exclude Accrued Interest	127	Note (e)

Working Capital as defined	(52,167)
Target Working Capital as defined	(52,849)

Notes:

- (a) Cash & Cash Equivalents are to be excluded from the determination of Working Capital as cash will be settled outside of Working Capital with a minimum total cash to be delivered at closing of \$7,400,000
- (b) Workers comp excess claims receivable and liability are both excluded from the determination of Working Capital
- (c) Prepaid Minimum Rent is excluded from the determination of Working Capital and will be a cash settlement item at close credited to seller
- (d) Workers Comp liabilities are excluded from the determination of Working Capital
- (e) All third party debt obligations and related accrued interest are excluded from the determination of Working Capital
- (f) Income Tax Receivable and Deferred Income Taxes are excluded from the determination of working capital.
- (A) Legal accruals of \$2,500,000 for the Del Campo and Walter cases are included in the Target Working Capital and will also be included in the Estimated Closing Working Capital and Closing Working Capital calculations.

EXHIBIT E

FORM OF GUARANTEE

PERSONAL GUARANTEE

This Personal Guarantee, is entered into this 20th day of July, 2015 (this “Guarantee”), by Lawrence Farrell Harris Jr., an individual with his principal place of business at 120 Chula Vista, San Antonio, Texas 78232, Allen Jackie Jones, an individual with his principal place of business at 120 Chula Vista, San Antonio, Texas 78232, and Jason Richard Kemp, an individual with his principal place of business at 120 Chula Vista, San Antonio, Texas 78232 (collectively, the “Guarantors” and each a “Guarantor”), in favor of Buffets Restaurants Holdings, Inc., a Delaware corporation (the “Company”) and the Stakeholders (as such term is defined in the Merger Agreement referred to below) (each, a “Guaranteed Party” and collectively, the “Guaranteed Parties”). Reference is hereby made to the Merger Agreement and Plan of Merger, dated as of the date hereof (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “Merger Agreement”) among the Company, Alamo Ovation, LLC, a Texas limited liability company (“Parent”), affiliated with FMP SA Management Group, LLC, a Texas limited liability company (“FMP”), Alamo Ovation Acquisition, Inc., a Delaware corporation and wholly owned subsidiary of Parent (“Merger Sub”), and at or prior to the Closing, the Stakeholder Representative, solely in its capacity as Stakeholder Representative. Capitalized terms used herein but not otherwise defined herein have the meanings ascribed to them in the Merger Agreement.

1. Guarantee. To induce the Company and the Stakeholder Representative, on behalf of the Stakeholders, to enter into the Merger Agreement and to induce the Stakeholders to agree to the transactions contemplated by the Merger Agreement and to a reduced payoff under the Original Credit Facility, each Guarantor, intending to be legally bound, hereby absolutely, irrevocably and unconditionally, severally but not jointly, guarantees to the Guaranteed Parties in accordance with the terms hereof up to such Guarantor’s respective percentage as set forth opposite his name in Annex 1 hereto (for each such Guarantor, his “Guaranteed Percentage”) the full, punctual and complete performance by Parent of Parent’s and Merger Sub’s obligation to pay the Purchase Price and any and all obligations of Parent pursuant to Sections 2.03, 2.12, 2.15, 2.16, 2.17, 2.18, 6.01, Article VII and 10.02 of the Merger Agreement, including any payment obligations of Parent arising as a result of a breach by Parent or Merger Sub of the Merger Agreement (the “Guaranteed Obligations”). The Guarantors obligations pursuant hereto shall become effective at 12:01 a.m. Eastern Daylight Time on July 27, 2015 (the “Effective Time”), unless the BWW APA shall have been terminated in accordance with Section 9.01(c)(3) of the BWW APA and the Guarantors have provided the Guaranteed Parties with written notice thereof in each case prior to such time (in which case this Guarantee shall be null and void). Notwithstanding anything to the contrary contained herein, until the closing of the BWW Sale, the maximum aggregate liability of each Guarantor hereunder shall not exceed its Guaranteed Percentage multiplied by \$2,500,000 (it being agreed that upon closing of the BWW Sale, the foregoing limitation shall no longer apply or be of any force or effect). If Parent fails to discharge any of the Guaranteed Obligations when due, then the Guarantors’ liabilities to the Guaranteed Parties hereunder in respect of such Guaranteed Obligations shall, at the Guaranteed Parties’ option and upon notice to the Guarantors, become immediately due and payable (notwithstanding any stay, injunction or other prohibition preventing such declaration), and the Guaranteed Parties may at any time and from time to time, at their option, and so long as Parent has failed to perform the Guaranteed Obligations, take any and all actions available hereunder or under applicable Law to collect the Guaranteed Obligations from the Guarantors in accordance

with the terms hereof. All payments hereunder shall be made in lawful money of the United States, in immediately available funds. Each Guarantor promises and undertakes to make all payments hereunder free and clear of any deduction, offset, defense, claim or counterclaim of any kind.

2. Nature of Guarantee. Each Guarantor's liability hereunder is absolute, unconditional, irrevocable and continuing irrespective of any modification, amendment or waiver of or any consent to departure from the Merger Agreement (even if such modification, amendment, waiver or consent to departure is agreed to by Parent), and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety, other than payment in full of the Guaranteed Obligations. Without limiting the foregoing, the Guaranteed Parties shall not be obligated to file any claim relating to the Guaranteed Obligations in the event that Parent becomes subject to a bankruptcy, reorganization or similar proceeding, and the failure of any Guaranteed Party to so file shall not affect the Guarantors' respective obligations hereunder. In the event that any payment or any part of any payment hereunder is rescinded or must otherwise be, and is, returned to the Guarantors or their respective estates for any reason whatsoever, each Guarantor shall remain liable hereunder as if such payment had not been made. This Guarantee is a guarantee of payment and not of collection. The Guaranteed Parties shall not have any obligation to proceed at any time or in any manner, or exhaust any or all of their respective rights or remedies or take any other action, against Parent or any other Person now or hereafter liable with respect to the Guaranteed Obligations prior to proceeding against any Guarantor hereunder. Each Guarantor acknowledges that the Guaranteed Parties may bring and prosecute a separate action or actions against such Guarantor for the full amount of such Guarantor's Guaranteed Percentage of the Guaranteed Obligations, regardless of whether any such action is brought against Parent or any other Guarantor or whether Parent or any other Guarantor is joined in any such action or actions.

3. Certain Waivers. Each Guarantor agrees that the obligations of such Guarantor hereunder shall not be released or discharged, in whole or in part, or otherwise affected by, and each Guarantor hereby expressly waives to the fullest extent permitted by applicable Law any defense now or in the future arising by reason of: (a) the failure or delay on the part of any Guaranteed Party to assert any claim or demand or to enforce any right or remedy against Parent or any other Guarantor; (b) any change in the time, place, terms or manner of payment of any of the Guaranteed Obligations, or any waiver, compromise, rescission, consolidation or other amendment or modification of any of the terms or provisions of the Merger Agreement made in accordance with the terms thereof or any agreement evidencing, securing or otherwise executed in connection with any of the Guaranteed Obligations; (c) the addition, substitution or release of any entity or other Person now or hereafter liable with respect to the Guaranteed Obligations or otherwise interested in the transactions contemplated by the Merger Agreement (including any other Guarantor); (d) any change in the corporate existence, structure or ownership of Parent or any other Person now or hereafter liable with respect to the Guaranteed Obligations or otherwise interested in the transactions contemplated by the Merger Agreement (including any other Guarantor); (e) any insolvency, bankruptcy, reorganization or other similar proceeding affecting Parent or any other Person now or hereafter liable with respect to the Guaranteed Obligations or otherwise interested in the transactions contemplated by the Merger Agreement (including any other Guarantors); (f) the adequacy of any means any Guaranteed Party may have of obtaining payment related to the Guaranteed Obligations; (g) the existence of any claim, set-off or other

rights which any Guarantor may have at any time against Parent or the Company, whether in connection with the Guaranteed Obligations or otherwise; (h) the invalidity, illegality or unenforceability of the Merger Agreement; (i) any acceleration, extension, renewal, settlement, compromise, waiver or release in respect of any of the Guaranteed Obligations by operation of law or otherwise; or (j) any discharge of a Guarantor as a matter of applicable Law or equity (other than a discharge of a Guarantor with respect to the Guaranteed Obligations as a result of indefeasible payment in full of the Guaranteed Obligations in accordance with their terms). To the fullest extent permitted by applicable Law, the Guarantors hereby expressly waive any and all rights or defenses arising by reason of any applicable Law which would otherwise require any election of remedies by the Guaranteed Parties. Each Guarantor waives promptness, diligence, notice of the acceptance of this Guarantee and of the Guaranteed Obligations, presentment, demand for payment or performance, notice of non-performance, default, dishonor and protest, notice of any Guaranteed Obligations incurred and all other notices of any kind (other than notices to Parent pursuant to the Merger Agreement), all defenses which may be available by virtue of any valuation, stay, moratorium law or other similar applicable Law now or hereafter in effect or any right to require the marshalling of assets of Parent or any other Person now or hereafter liable with respect to the Guaranteed Obligations or otherwise interested in the transactions contemplated by the Merger Agreement (including any other Guarantor), and all suretyship defenses generally. Each Guarantor further expressly waives the benefit of any and all statutes of limitation in respect of his obligations hereunder, to the fullest extent permitted by applicable Law. Each Guarantor acknowledges that it will receive substantial direct and indirect benefits from the transactions contemplated by the Merger Agreement and that the waivers set forth in this Guarantee are knowingly made in contemplation of such benefits.

4. Representations and Warranties. Each Guarantor hereby represents and warrants, severally and not jointly, that (a) Exhibit A correctly identifies such Guarantor's name (as indicated on such Guarantor's unexpired driver's license (or other unexpired state or federal issued identification) in the jurisdiction where the Guarantor's principal residence is located), and such Guarantor's principal place of business; (b) such Guarantor has authorized the execution, delivery and performance of this Guarantee; (c) such Guarantor has the legal capacity, power, authority and right to execute and deliver this Guarantee and to perform all of such Guarantor's obligations hereunder; (d) no other action by such Guarantor is necessary to authorize such execution, delivery and performance, and upon such execution and delivery, this Guarantee shall constitute a valid and binding obligation of such Guarantor, enforceable against such Guarantor in accordance with its terms; (e) no consent, approval or authorization of, or registration, declaration or filing with, any Governmental Authority or other person is required in connection with the execution, delivery and performance by such Guarantor of this Guarantee; and (f) such Guarantor has and will at all times during the term of this Guarantee have promptly available funds in excess of the sum of the amount of his obligations hereunder plus the aggregate amount of all other commitments and obligations it has at such time. Each Guarantor acknowledges that the Guaranteed Parties have specifically relied on the accuracy of his respective representations and warranties contained in this paragraph 4 and in the event of any breach hereof, the Guaranteed Parties shall have a right to seek appropriate damages and any such damages shall be a "Guaranteed Obligation" for purposes of this Guarantee.

5. Subrogation. Each Guarantor will not exercise against Parent or Merger Sub any rights of subrogation or contribution, whether arising by contract or operation of law (including,

without limitation, any such right arising under bankruptcy or insolvency Laws) or otherwise, by reason of any payment by it pursuant to the provisions of paragraph 1 hereof unless and until the Guaranteed Obligations have been indefeasibly paid in full.

6. Successors and Assigns. None of the Guarantors or the Guaranteed Parties may assign, delegate or otherwise transfer his or its rights, interests or obligations hereunder to any other Person (except by operation of applicable Law) without the prior written consent of each Guaranteed Party (in the case of an assignment or delegation by one or more Guarantors) or each Guarantor (in the case of an assignment or delegation by one or more Guaranteed Parties). Each of the Guarantors' covenants and agreements herein shall bind such Guarantor's heirs, executors, legal representatives and other successors, in their capacity as such, and shall inure to the benefit of the Guaranteed Parties and their respective successors and assigns.

7. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses:

If to a Guaranteed Party:

Buffets Restaurant Holdings, Inc.
405 Lancaster Avenue
Greer, SC 29650
Attention: Keith Kravcik, Chief Financial Officer
Jackson Walker, General Counsel
Email: keith.kravcik@ovationbrands.com
Jackson.walker@ovationbrands.com

and

Cortland Capital Market Services LLC, as Stakeholder Representative
225 West Washington Street, 21st Floor
Chicago, Illinois 60606
Attn: Joanna Anderson and Legal Department
Email: joanna.anderson@Cortlandglobal.com and
legal@cortlandglobal.com

If to a Guarantor, to the address set forth opposite such Guarantor's name on Annex 1 hereto.

8. Continuing Guarantee. This Guarantee may not be revoked or terminated and shall remain in full force and effect and be binding on each Guarantor and his successors and permitted assigns until the Guaranteed Obligations have been indefeasibly paid in full.

9. Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Guarantee shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS GUARANTEE OR THE TRANSACTIONS CONTEMPLATED HEREBY MAY BE INSTITUTED EXCLUSIVELY IN THE DELAWARE COURT OF CHANCERY OF THE STATE OF DELAWARE; PROVIDED, THAT IF THE DELAWARE COURT OF CHANCERY DOES NOT HAVE JURISDICTION, ANY LEGAL SUIT, ACTION OR PROCEEDING SHALL BE BROUGHT EXCLUSIVELY IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF DELAWARE IN EACH CASE LOCATED IN THE CITY OF WILMINGTON AND COUNTY OF NEW CASTLE, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS GUARANTEE IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS GUARANTEE OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY TO THIS GUARANTEE CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS PARAGRAPH 9(C).

10. Counterparts. This Guarantee may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

11. Third-Party Beneficiaries. This Guarantee is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Guarantee.

12. Confidentiality. This Guarantee shall be treated as confidential and is being provided to the Guaranteed Parties solely in connection with the Merger Agreement and the transactions contemplated thereby. This Guarantee may not be publicly circulated, quoted or otherwise referred to in any public document, except with the prior written consent of the Guarantors in each instance; *provided* that no such written consent is required for any disclosure of the existence or content of this Guarantee by the Guaranteed Parties (i) to the extent required by applicable Law, provided the Guarantors are provided an opportunity to review such required disclosure in advance of such public disclosure being made, (ii) to each Guaranteed Party's respective Affiliates and Representatives or (iii) in connection with the enforcement by the Guaranteed Parties of their respective rights hereunder or under the Merger Agreement or the Ancillary Documents, including in connection with any litigation related thereto.

13. Expenses. Each Guarantor agrees to pay on demand all reasonable out-of-pocket expenses (including the reasonable fees and expenses of counsel) incurred by any Guaranteed Party in connection with the enforcement of its rights hereunder with respect to such Guarantor.

14. Transfers. Notwithstanding anything to the contrary contained herein, if during the term of this Guarantee, any of the Guarantors transfers or conveys all or a substantial portion of his properties and other assets to any Person, then, in each case, such continuing or surviving entity or transferee, as applicable, shall assume such Guarantor's obligations hereunder, and the Guaranteed Parties may seek recourse, whether by the enforcement of any judgment, order or assessment or by any legal or equitable proceeding or by virtue of any other applicable Law, against such continuing or surviving entity or transferee, but only to the extent of the liability of such Guarantor hereunder.

15. Acknowledgement. Each Guarantor acknowledges that he will receive substantial indirect benefits from the transactions contemplated by the Merger Agreement and that the waivers set forth in this Guarantee are knowingly made in contemplation of such benefits. Each Guarantor hereby covenants and agrees that he shall not institute, and shall not cause his Affiliates to institute, any proceeding asserting that this Guarantee is illegal, invalid or unenforceable in accordance with its terms.

16. Miscellaneous.

(a) This Guarantee, the Merger Agreement, the Confidentiality Agreement and the Ancillary Documents constitute the sole and entire agreement of the parties to this Guarantee with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

(b) If any term or provision of this Guarantee is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect

any other term or provision of this Guarantee or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Guarantee so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(c) The descriptive headings herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Guarantee.

(d) All parties acknowledge that each party and his or its counsel have reviewed this Guarantee and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Guarantee.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned have caused this Guarantee to be executed and delivered as of the date first written above.

LAWRENCE FARRELL HARRIS JR.

STATE OF _____) ss.:
COUNTY OF _____)

On this ____ day of July, 2015, before me personally came Lawrence Farrell Harris Jr., to me known to be the person who executed the foregoing instrument, and who, being duly sworn by me, did depose and say that he is the person described in and who executed the foregoing.

ALLEN JACKIE JONES

STATE OF _____)
COUNTY OF _____) ss.:

On this ____ day of July, 2015, before me personally came Allen Jackie Jones, to me known to be the person who executed the foregoing instrument, and who, being duly sworn by me, did depose and say that he is the person described in and who executed the foregoing.

[Signature Page to Guarantee]

JASON RICHARD KEMP

STATE OF _____)
) ss.:
COUNTY OF _____)

On this ____ day of July, 2015, before me personally came Jason Richard Kemp, to me known to be the person who executed the foregoing instrument, and who, being duly sworn by me, did depose and say that he is the person described in and who executed the foregoing.

[Signature Page to Guarantee]

BUFFETS RESTAURANTS HOLDINGS,
INC.

By: _____
Name: Keith Kravcik
Title: Chief Financial Officer

Annex 1

Guarantors

Guarantor	Guaranteed Percentage	Address for Notices
Lawrence Farrell Harris Jr.	33.334%	120 Chula Vista, San Antonio, Texas 78232 Email:
Allen Jackie Jones	33.333%	120 Chula Vista, San Antonio, Texas 78232 Email:
Jason Richard Kemp	33.333%	120 Chula Vista, San Antonio, Texas 78232 Email:

Exhibit B

[Parties to Merger Agreement]

Alamo Ovation, LLC (a Tx LLC)

Alamo Ovation Acquisition, Inc. (a DE corporation merged into Buffets
Restaurants Holdings, Inc.)

Buffets Restaurants Holdings, Inc. (a DE corporation)

Cortland Capital Market Services, LLC (by subsequent designation as Stakeholder
Representative)

Exhibit C

[List of former directors and officers]

Anthony Wedo
Keith Kravcik
Keith Wall
Greg Graber
Jackson Walker
Jason Smith
Santino Blumetti
Todd Brown
Warren Elish
Philip Friedman
David Merritt
Rob Webster

Stakeholders

Credit Suisse Loan Funding LLC
Eaton Vance Floating Rate Portfolio
Rimrock High Income Plus (Master) Fund Ltd.
Rimrock Low Volatility (Master) Fund Ltd.
Rimrock Low Volatility (QP) (Master) Fund Ltd.
RLG FI Holdings LLC
Twin Haven Special Opportunities Fund III LP

Exhibit D

Directors and Officers liability policies:

- Private Organization Directors, Officers and Entity Practices Liability Insurance Policy issued by Beazley Insurance Company, Inc., Policy Number V11907150501. [Primary D&O Tail Policy]
- Excess Insurance Policy issued by Continental Casualty Company, Policy Number 425587963. [Secondary D&O Tail Policy]
- Executive Elite Directors and Officers Liability Insurance Policy issued by Federal Insurance Company, Policy Number 8225-6826. [Tertiary D&O Tail Policy]

Exhibit E

ACE Insurance Agreements

Insurance Policies:

<u>Policy Number</u>	<u>Policy Period</u>	<u>Insurer</u>	<u>Type of Coverage</u>
C42850378	10/23/08-02/23/09	ACE American Insurance Company	Workers' Compensation
C4285041A	10/23/08-02/23/09	ACE American Insurance Company	Workers' Compensation
C43971505	2/23/04-2/23/05	ACE American Insurance Company	Workers' Compensation
C43971542	2/23/04-2/23/05	ACE American Insurance Company	Workers' Compensation
C43499087	6/23/08-10/23/08	ACE American Insurance Company	Workers' Compensation
C43499531	6/23/08-10/23/08	ACE American Insurance Company	Workers' Compensation
C44167712	2/23/05-2/23/06	ACE American Insurance Company	Workers' Compensation
C44174844	2/23/05-2/23/06	ACE American Insurance Company	Workers' Compensation
C44340665	2/23/06-2/23/07	ACE American Insurance Company	Workers' Compensation
C44340677	2/23/06-2/23/07	ACE American Insurance Company	Workers' Compensation
C44347179	2/23/08-6/23/08	ACE American Insurance Company	Workers' Compensation
C44347210	2/23/08-6/23/08	ACE American Insurance Company	Workers' Compensation
C44368468	2/23/09-6/23/09	ACE American Insurance Company	Workers' Compensation
C4446066A	2/23/07-2/23/08	ACE American Insurance Company	Workers' Compensation
C44460701	2/23/07-2/23/08	ACE American Insurance Company	Workers' Compensation
C44460671	2/23/07-2/23/08	ACE American Insurance Company	Workers' Compensation
C44721041	8/18/06-8/18/07	Pacific Employers Insurance Company	Workers' Compensation
C45001106	8/18/07-8/18/08	ACE Property and Casualty Insurance Company	Workers' Compensation
C45011768	8/20/07-8/20/08	ACE Property and Casualty Insurance Company	Workers' Compensation
C45012074	8/18/07-8/18/08	ACE Property and Casualty Insurance Company	Workers' Compensation

<u>Policy Number</u>	<u>Policy Period</u>	<u>Insurer</u>	<u>Type of Coverage</u>
C45698877	6/23/09-12/23/09	ACE American Insurance Company	Workers' Compensation
C45698889	6/23/09-12/23/09	ACE American Insurance Company	Workers' Compensation
C45710075	12/23/09-06/23/10	ACE American Insurance Company	Workers' Compensation
C45710087	12/23/09-06/23/10	ACE American Insurance Company	Workers' Compensation
C46136925	6/23/10-6/23/11	ACE American Insurance Company	Workers' Compensation
C46136962	6/23/10-6/23/11	ACE American Insurance Company	Workers' Compensation
C46482049	6/23/11- 6/23/12	ACE American Insurance Company	Workers' Compensation
C46482050	6/23/11- 6/23/12	ACE American Insurance Company	Workers' Compensation
C47321153	6/23/13-6/23/14	ACE American Insurance Company	Workers' Compensation
C47321141	6/23/13-6/23/14	ACE American Insurance Company	Workers' Compensation
C47321165	6/23/13-6/23/14	ACE American Insurance Company	Workers' Compensation
C47889352	6/23/14-6/23/15	ACE American Insurance Company	Workers' Compensation
C47889364	6/23/14-6/23/15	ACE American Insurance Company	Workers' Compensation
C47889340	6/23/14-6/23/15	ACE American Insurance Company	Workers' Compensation
C48150135	6/23/15-6/23/16	ACE American Insurance Company	Workers' Compensation
C48150147	6/23/15-6/23/16	ACE American Insurance Company	Workers' Compensation
C48150123	6/23/15-6/23/16	ACE American Insurance Company	Workers' Compensation
WXA663546	1/01/02-1/01/03	Westchester Surplus Lines Insurance Company	Excess Fire
G2170555A	2/23/04-2/23/07	ACE American Insurance Company	General Liability
G23720061	2/23/07-2/23/08	ACE American Insurance Company	General Liability
G23737425	2/23/08-2/23/09	ACE American Insurance Company	General Liability
G23740552	6/23/08-10/23/08	ACE American Insurance Company	General Liability
G23746323	10/23/08-02/23/09	ACE American Insurance Company	General Liability
G23751768	2/23/09-6/23/09	ACE American Insurance Company	General Liability
G24931924	6/23/09-12/23/09	ACE American Insurance Company	General Liability
G24938980	12/23/09-06/23/10	ACE American Insurance Company	General Liability

<u>Policy Number</u>	<u>Policy Period</u>	<u>Insurer</u>	<u>Type of Coverage</u>
G25519309	6/23/10-6/23/11	ACE American Insurance Company	General Liability
G25530548	6/23/11- 6/23/12	ACE American Insurance Company	General Liability
D37409741	7/7/13-7/7/14	Illinois Union Insurance Company	Excess Commercial Property, Bus. Income Interruption, Commercial Inland Marine
G2702161A	6/23/13-6/23/14	ACE American Insurance Company	General Liability
G27334465	6/23/14-6/23/15	ACE American Insurance Company	General Liability
G27393251	6/23/15-6/23/16	ACE American Insurance Company	General Liability
H0757079A	1/1/02-1/01/03	Pacific Employers Insurance Company	Automobile Liability
H07837057	6/23/08-10/23/08	ACE American Insurance Company	Automobile Liability
H07944500	2/23/04-02/23/07	ACE American Insurance Company	Automobile Liability
H08228930	2/23/07-02/23/08	ACE American Insurance Company	Automobile Liability
H08233731	2/23/08-06/23/08	ACE American Insurance Company	Automobile Liability
H0824828A	10/23/08-02/23/09	ACE American Insurance Company	Automobile Liability
H08253778	2/23/09-06/23/09	ACE American Insurance Company	Automobile Liability
H08579295	6/23/09-12/23/09	ACE American Insurance Company	Automobile Liability
H08584126	12/23/09-06/23/10	ACE American Insurance Company	Automobile Liability
H08625098	6/23/10-6/23/11	ACE American Insurance Company	Automobile Liability
H08635122	6/23/11-6/23/12	ACE American Insurance Company	Automobile Liability
H08719998	6/23/13-6/23/14	ACE American Insurance Company	Automobile Liability
H08821185	6/23/14-6/23/15	ACE American Insurance Company	Automobile Liability
H08856977	6/23/15-6/23/16	ACE American Insurance Company	Automobile Liability
D37409741	7/7/14-7/7/15	Illinois Union Insurance Company	Excess Commercial Property, Bus. Income Interruption, Commercial Inland Marine

<u>Policy Number</u>	<u>Policy Period</u>	<u>Insurer</u>	<u>Type of Coverage</u>
D37409741	7/7/15-7/7/16	Illinois Union Insurance Company	Excess Commercial Property, Bus. Income Interruption, Commercial Inland Marine
D37409753	7/7/13-7/7/14	Illinois Union Insurance Company	Excess Commercial Property, Bus. Income Interruption, Commercial Inland Marine
D37409753	7/7/14-7/7/15	Illinois Union Insurance Company	Excess Commercial Property, Bus. Income Interruption, Commercial Inland Marine
D37409753	7/7/15-7/7/16	Illinois Union Insurance Company	Excess Commercial Property, Bus. Income Interruption, Commercial Inland Marine

Related Agreements:

1. Bound Casualty Program, as renewed, amended, modified, endorsed or supplemented from time to time and including any exhibit or addenda thereto, for Buffets Restaurants Holdings, Inc. effective June 23, 2011.
2. Final Bound Proposal, as renewed, amended, modified, endorsed or supplemented from time to time and including any exhibit or addenda thereto, for Buffets Restaurants Holdings, Inc. for the period of February 23, 2007 through February 23, 2008, including but not limited to the Collateral Agreement, as renewed, amended, modified, endorsed or supplemented from time to time and including any exhibit or addenda thereto, by and among Buffets Restaurants Holdings, Inc. and ACE American Insurance Company effective as of February 23, 2007.
3. Proposal, as renewed, amended, modified, endorsed or supplemented from time to time and including any exhibit or addenda thereto, for Buffets Restaurants Holdings, Inc. for the period of February 23, 2008 through June 22, 2008, including but not limited to the Collateral and Payment Agreement, as renewed, amended, modified, endorsed or supplemented from time to time and including any exhibit or addenda thereto, by and among Buffets Restaurants Holdings, Inc. and ACE American Insurance Company effective as of February 23, 2008.
4. Casualty Program Final Bound Proposal, as renewed, amended, modified, endorsed or supplemented from time to time and including any exhibit or addenda thereto, for Buffets Restaurants Holdings, Inc. for the period of June 23, 2008 through October 22, 2008, including but not limited to the Collateral and Payment Agreement, as renewed, amended, modified, endorsed or supplemented from time to time and including any exhibit or addenda

thereto, by and among Buffets Restaurants Holdings, Inc. and ACE American Insurance Company effective as of June 23, 2008.

5. Combined Multi-Line Program Agreement, as renewed, amended, modified, endorsed or supplemented from time to time and including any exhibit or addenda thereto, by and among Buffets, Inc. and ACE American Insurance Company effective as of February 23, 2004.
6. Final Sold Casualty Program Proposal, as renewed, amended, modified, endorsed or supplemented from time to time and including any exhibit or addenda thereto, for Buffets Restaurants Holdings, Inc. for the period of February 23, 2006 through February 23, 2007, including but not limited to the Collateral Agreement, as renewed, amended, modified, endorsed or supplemented from time to time and including any exhibit or addenda thereto, by and among Buffets Restaurants Holdings, Inc. and ACE American Insurance Company effective as of January 1, 2006.
7. Bound Casualty Program Proposal, as renewed, amended, modified, endorsed or supplemented from time to time and including any exhibit or addenda thereto, for Buffets Restaurants Holdings, Inc. for the period of June 23, 2013 through June 23, 2014.
8. Bound Casualty Program Proposal, as renewed, amended, modified, endorsed or supplemented from time to time and including any exhibit or addenda thereto, for Buffets Restaurants Holdings, Inc. for the period of June 23, 2014 through June 23, 2015, including but not limited Collateral and Payment Agreement, as renewed, amended, modified, endorsed or supplemented from time to time and including any exhibit or addenda thereto, by and among ACE American Insurance Company, on the one hand, and Buffets Restaurant Holdings, Inc. and Buffets Inc., on the other hand, effective as of June 23, 2014.
9. Bound Casualty Program Proposal, as renewed, amended, modified, endorsed or supplemented from time to time and including any exhibit or addenda.

Exhibit F

[List of notice parties]

Cortland Capital Market Services, LLC (as Stakeholder Representative)

EXHIBIT J
Security Agreement

SECURITY AGREEMENT

May 18, 2017

between

EACH OF THE GRANTORS PARTY HERETO

and

META ADVISORS LLC,

as Trustee

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This **SECURITY AGREEMENT**, dated as of May 18, 2017 (this “**Agreement**”), between **EACH OF THE UNDERSIGNED**, whether as an original signatory hereto or as an Additional Grantor (as herein defined) (each, a “**Grantor**”), and META Advisors LLC, as the Unsecured Creditors Trustee for the Unsecured Creditors Trust (each, as defined in the Plan, as defined below) (together with its successors and assigns in such capacity as Trustee, the “**Trustee**”).

RECITALS:

WHEREAS, reference is made to that certain Promissory Note, dated as of the date hereof (as it may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “**Note**”), made by Buffets, LLC, a Minnesota limited liability company, Hometown Buffet, Inc., a Minnesota corporation, OCB Restaurant Company, LLC, a Minnesota limited liability company, OCB Purchasing Co., a Minnesota corporation, Ryan’s Restaurant Group, LLC, a South Carolina limited liability company, Fire Mountain Restaurants, LLC, an Ohio limited liability company, and Tahoe Joe’s, Inc., a Minnesota corporation (collectively and individually, the “**Company**”), payable to the Trustee, for its own benefit and for the benefit the Unsecured Creditors Trust (as defined in the Plan (as defined below), the “**Trust**”; collectively, the Trust, the Trustee, and the Claimants, the “**Claimholders**”);

WHEREAS, in consideration of the extensions of credit and other accommodations of Claimholders as set forth in the Note, each Grantor has agreed to secure such Grantor’s Obligations (as defined below) under the Transaction Documents (as defined below) as set forth herein; and

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, each Grantor and the Trustee agree as follows:

SECTION 1. DEFINITIONS; GRANT OF SECURITY.

1.1 General Definitions. In this Agreement, the following terms shall have the following meanings:

“**Additional Grantors**” shall have the meaning assigned in Section 5.3.

“**Agreement**” shall have the meaning set forth in the preamble.

“**Bankruptcy Code**” shall mean Title 11 of the United States Code entitled “Bankruptcy”, as now and hereafter in effect, or any successor statute.

“**Claimants**” the holders of Allowed General Unsecured Claims (as defined in the Plan).

“**Claimholders**” shall mean the Trust, the Trustee, and the Claimants.

“**Bankruptcy Causes of Action**” shall mean all rights, claims, causes of action, avoiding powers, suits and proceedings of or brought by or which may be asserted by the Debtors and/or the Reorganized Debtors, as the case may be, under chapter 5 of the Bankruptcy

Code, including by way of illustration and not limitation, under Section 510, 541, 544, 547, 548, 549, 550, 553, and 554 of the Bankruptcy Code, together with any claims, rights, remedies or demands that may be asserted by a creditor or representative of creditors under similar applicable state or other law, and claims in the nature of substantive consolidation, successor liability, veil piercing or alter ego.

“**Collateral**” shall have the meaning set forth in Section 2.1 of this Agreement.

“**Commercial Tort Claims**” shall mean all “commercial tort claims” as defined in Article 9 of the UCC.

“**Company**” shall have the meaning set forth in the recitals.

“**Confirmation Order**” shall mean that certain Findings of Fact, Conclusions of Law, and Order under Section 1129 of the Bankruptcy Code Confirming Debtors’ Second Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code, entered by the United States Bankruptcy Court for the Western District of Texas on April 27, 2017 (as the same may be amended, restated, supplemented, or otherwise modified from time to time).

“**Grantors**” shall have the meaning set forth in the preamble.

“**Lien**” shall mean any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing.

“**Note**” shall have the meaning set forth in the recitals.

“**Permitted Liens**” shall mean

(a) Liens for or priority claims imposed by law that are incidental to the conduct of business or the ownership of properties and assets (including mechanic’s, warehousemen’s, carriers’, attorneys’ and statutory landlords’ liens) and deposits, pledges or Liens to secure statutory obligations, surety, performance or appeal bonds or other liens of like nature incurred in the ordinary course of business and not in connection with the borrowing of money; provided that in each case, the obligation secured is not overdue, or, if overdue, is being contested in good faith and adequate reserves have been established by Grantors; and provided, further, that the Lien and security interest provided in this Agreement is not, in the opinion of the Trustee, unreasonably jeopardized thereby;

(b) Liens securing the payments of taxes, assessments and governmental charges or levies incurred in the ordinary course of business that either (y) are not delinquent, or (z) are being contested in good faith by appropriate legal or administrative proceedings and as to which adequate reserves have been set aside on their books, and so long as during the period of any such contest, the Grantors shall suffer no loss of any privilege of doing business or any other right, power or privilege necessary or material to the operation of their respective businesses of operating restaurants and providing commercial food services;

(c) Liens listed on Schedule 1 attached hereto;

(d) Liens arising in connection with purchase money indebtedness and capitalized leases (and attaching only to the property being acquired or leased), provided that any such Lien attaches to such property within sixty (60) days of the acquisition thereof and attaches solely to the property so acquired;

(e) extensions, renewals and replacements of Liens referred to in clauses (a) through (d) above; provided that any such extension, renewal or replacement Lien shall be limited to the property or assets covered by the Lien extended, renewed or replaced and that the obligations secured by any such extension, renewal or replacement Lien shall be in a principal amount not greater than the principal amount of the obligations secured by the Lien extended, renewed or replaced;

(f) easements, rights-of-way, restrictions, minor defects or irregularities in title and other similar Liens not interfering in any material respect with the ordinary conduct of the business of the Grantors;

(g) customary rights of set-off in favor of banks;

(h) any interest or title of a licensor, sublicensor, lessor or sublessor in the property covered by any license or lease agreement of any Grantor provided that such license or lease agreement is not otherwise prohibited hereunder;

(i) pledges or deposits made and Liens arising in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation or other similar insurance; (ii) deposits securing liability to insurance carriers under insurance or self-insurance arrangements in respect of such obligations in the ordinary course of business; and (iii) pledges and deposits securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to any Grantor in the ordinary course of business;

(j) any Lien existing on any property or asset prior to the acquisition thereof by any Grantor or existing on any property or asset of any Person that becomes a Subsidiary after the date hereof prior to the time such Person becomes a Subsidiary; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be and (ii) such Lien shall not apply to any other property or assets of Grantor or any Subsidiary (other than proceeds and after acquired property of any acquired Subsidiary to the extent required by the terms of any indebtedness assumed in such acquisition); and

(k) Liens provided for or permitted to exist under the Plan, but only to the extent such Liens are and remain subordinate and junior to the Trustee's Liens in and to the Collateral.

"Person" shall mean and include natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint

stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governmental authorities.

“**Plan**” shall mean that certain Debtors’ Second Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code, dated as of March 31, 2017 (as the same may be amended, restated, supplemented, or otherwise modified from time to time).

“**Proceeds**” shall mean have the meaning assigned in Section 2.1.

“**Secured Obligations**” shall have the meaning assigned in Section 3.1.

“**Specified Leases**” means any lease or other agreement pursuant to which any Grantor leases any real property, including, without limitation, all leases or agreements identified on any Schedule of Additional Assumed Leases (as defined in the Plan) and all leases and agreements identified on Schedule 2 attached hereto.

“**Subordination Agreement**” shall mean that certain Subordination Agreement dated on or about the date hereof by and among the Trustee and the holders of Subordinated Claims (as defined in the Plan).

“**Subsidiary**” shall mean, with respect to any Person, (a) any corporation (or similar entity under foreign Law) of which an aggregate of more than fifty percent (50%) of the outstanding equity interests having ordinary voting power to elect a majority of the board of directors (or equivalent body) of such corporation (irrespective of whether, at the time, equity interests of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, owned legally or beneficially by such Person or one or more Subsidiaries of such Person, or with respect to which any such Person has the right to vote or designate the vote of fifty percent (50%) or more of such equity interests whether by proxy, agreement, operation of law or otherwise, and (b) any partnership, limited liability company, association, joint venture, trust or other entity in which such Person and/or one or more Subsidiaries of such Person shall have an interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%) or of which any such Person is a general partner, managing member or may exercise the powers of a general partner or managing member. Unless the context otherwise requires, each reference to a Subsidiary shall be a reference to a Subsidiary of a Grantor.

“**Transaction Documents**” shall mean the Note, the Plan, the Subordination Agreement, this Agreement, and each and every document executed in connection therewith.

“**Trustee**” shall have the meaning set forth in the preamble.

“**UCC**” shall mean the Uniform Commercial Code as in effect from time to time in the State of Texas or, when the context implies, the Uniform Commercial Code as in effect from time to time in any other applicable jurisdiction.

“**United States**” shall mean the United States of America.

1.2 Definitions; Interpretation. All capitalized terms used herein (including the preamble and recitals hereto) and not otherwise defined herein shall have the meanings ascribed thereto in the Plan or, if not defined therein, in the UCC. References to “Sections,” “Exhibits” and “Schedules” shall be to Sections, Exhibits and Schedules, as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. If any conflict or inconsistency exists between this Agreement and the Note, the Note shall govern. All references herein to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to any Article of the UCC.

SECTION 2. GRANT OF SECURITY.

2.1 Grant of Security. Each Grantor grants and transfers to Trustee, for the benefit of the Claimholders, a continuing security interest (the “**Security Interest**”) in all assets of such Grantor, including, without limitation, all of the following property of such Grantor or in which such Grantor has rights, whether presently existing or acquired after the date of this Agreement (collectively, together with all Proceeds, the “**Collateral**”)

- (a) Accounts;
- (b) Chattel Paper;
- (c) Commercial Tort Claims;
- (d) Deposit Accounts;
- (e) Documents;
- (f) General Intangibles;
- (g) Goods, including Equipment and Fixtures;
- (h) Instruments;
- (i) Inventory;
- (j) Investment Property;
- (k) Letters of Credit and Letter-of-Credit Rights;

- (l) Money and other assets of Grantor;
- (m) all rights under any and all lease agreements including, without limitation, the Specified Leases only to the extent permitted under the Confirmation Order;
- (n) all Accessions and Supporting Obligations; and

all other interests in real property¹ (whether the subject of grants under separate Transaction Documents or otherwise), all books and records relating to the above and foregoing property, and all proceeds (as such term is defined, without limitation, in the UCC) and products, whether tangible or intangible of any of the above and foregoing property, all proceeds of any condemnation award relating to any of the above property, all proceeds of insurance covering or relating to any or all of the above property and all rebates and returns relating to any of the above property (all such proceeds, collectively, “**Proceeds**”).

SECTION 3. SECURITY FOR OBLIGATIONS; GRANTORS REMAIN LIABLE.

3.1 Security for Obligations. This Agreement secures, and the Collateral is collateral security for, the prompt and complete payment or performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. §362(a) (and any successor provision thereof)), of all obligations owed by any Grantor to any Claimholder under any Transaction Document (the “**Secured Obligations**”).

3.2 Continuing Liability Under Collateral. Notwithstanding anything herein to the contrary, (a) each Grantor shall remain liable for all obligations with respect to the Collateral and nothing contained herein is intended or shall be a delegation of duties to the Trustee or any other Claimholder, (b) each Grantor shall remain liable under each of the agreements included in the Collateral, to perform all of the obligations undertaken by it thereunder all in accordance with and pursuant to the terms and provisions thereof, and neither the Trustee nor any other Claimholder shall have any obligation or liability under any of such agreements by reason of or arising out of this Agreement or any other document related thereto nor shall the Trustee nor any other Claimholder have any obligation to make any inquiry as to the nature or sufficiency of any payment received by it or have any obligation to take any action to collect or enforce any rights under any agreement included in the Collateral, and (c) the exercise by the Trustee of any of its rights hereunder shall not release any Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral.

SECTION 4. REPRESENTATIONS AND WARRANTIES AND COVENANTS.

4.1 Generally.

¹ Not including interests in non-residential real property leases, which are addressed in subsection 2.1(m) above.

(a) Representations and Warranties. Each Grantor hereby represents and warrants, as of the date hereof that:

(i) it owns the Collateral purported to be owned by it or otherwise has the rights it purports to have in each item of Collateral and, as to all Collateral whether now existing or hereafter acquired, will continue to own or have such rights in each item of the Collateral, in each case free and clear of any and all Liens, rights or claims of all other Persons other than Permitted Liens;

(ii) Schedule 4.1(A) (as such schedule may be amended or supplemented from time to time) sets forth: (w) the type of organization of such Grantor, (x) the jurisdiction of organization of such Grantor, (y) its organizational identification number and (z) the jurisdiction where the chief executive office or its sole place of business is (or the principal residence if such Grantor is a natural person), and for the one-year period preceding the date hereof has been, located.

(iii) the full legal name of such Grantor is as set forth on Schedule 4.1(A) (as such schedule may be amended or supplemented from time to time), and it has not done in the past five (5) years, and does not do, business under any other name (including any trade-name or fictitious business name) except for those names set forth on Schedule 4.1(B) (as such schedule may be amended or supplemented from time to time), so as to have any negative effect on the creation, perfection, or priority of any security interest contemplated in, or created by, this Agreement;

(iv) except as provided on Schedule 4.1(C) (as such schedule may be amended or supplemented from time to time), it has not changed its legal name, jurisdiction of organization, chief executive office or sole place of business (or principal residence if such Grantor is a natural person) or its corporate structure in any way (e.g., by merger, consolidation, change in corporate form or otherwise) within the past five (5) years, so as to have any negative effect on the creation, perfection, or priority of any security interest contemplated in, or created by, this Agreement;

(v) it has not within the past five (5) years become bound (whether as a result of merger or otherwise) as debtor under a security agreement entered into by another Person, which has not heretofore been terminated, so as to have any negative effect on the creation, perfection, or priority of any security interest contemplated in, or created by, this Agreement;

(vi) upon the filing of all UCC financing statements naming each Grantor as "debtor" and the Trustee as "secured party" and describing the Collateral in the filing offices set forth opposite such

Grantor's name on Schedule 4.1(E) hereof (as such schedule may be amended or supplemented from time to time), the security interests granted to the Trustee hereunder constitute valid and perfected first-priority Liens (subject in the case of priority only to Permitted Liens on all of the Collateral) in which a security interest may be perfected by such filing under the UCC;

(vii) all actions and consents, including all filings, notices, registrations and recordings necessary or desirable for the exercise by the Trustee of the voting or other rights provided for in this Agreement or the exercise of remedies in respect of the Collateral have been made or obtained or have been effectively provided for under the Plan;

(viii) other than the financing statements filed in favor of the Trustee, no effective UCC financing statement, fixture filing or other instrument similar in effect under any applicable law covering all or any part of the Collateral is on file in any filing or recording office except for (A) financing statements for which proper termination statements have been delivered to the Trustee for filing and (B) financing statements filed to perfect the Permitted Liens or (C) financing statements as to Liens that have either been terminated or discharged under the Plan;

(ix) no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body is required for either (A) the pledge or grant by any Grantor of the Liens purported to be created in favor of the Trustee hereunder or (B) the exercise by Trustee of any rights or remedies in respect of any Collateral (whether specifically granted or created hereunder or created or provided for by applicable law), except for the filings contemplated by clause (vii) above or as have been effectively provided for under the Plan;

(x) all written information supplied by any Grantor with respect to any of the Collateral (in each case taken as a whole with respect to any particular Collateral) is accurate and complete in all material respects;

(xi) none of the Collateral constitutes, or is the Proceeds of, "farm products" (as defined in the UCC);

(xii) it does not own any "as extracted collateral" (as defined in the UCC) or any timber to be cut;

(xiii) except as described on Schedule 4.1(D), such Grantor has not become bound as a debtor, either by contract or by operation of law, by a security agreement previously entered into by another Person; and

(xiv) such Grantor has been duly organized as an entity of the type as set forth opposite such Grantor's name on Schedule 4.1(A) solely

under the laws of the jurisdiction as set forth opposite such Grantor's name on Schedule 4.1(A) and remains duly existing as such. Such Grantor has not filed any certificates of domestication, transfer or continuance in any other jurisdiction.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) except for the security interest created by the Transaction Documents, it shall not create or suffer to exist any Lien upon or with respect to any of its properties or assets, except Permitted Liens, and such Grantor shall defend the Collateral against all Persons at any time claiming any interest (other than Permitted Liens) therein;

(ii) it shall not produce, use or permit any Collateral to be used unlawfully or in violation of any provision of this Agreement or any applicable statute, regulation or ordinance or any policy of insurance covering the Collateral;

(iii) it shall not change such Grantor's legal name, identity, corporate structure (e.g., by merger, consolidation, change in corporate form or otherwise) sole place of business (or principal residence if such Grantor is a natural person), chief executive office, type of organization or jurisdiction of organization or establish any trade names unless it shall have (A) notified the Trustee in writing, by executing and delivering to the Trustee a completed Security Agreement Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto, at least ten (10) days before any such change or establishment, identifying such new proposed name, identity, corporate structure, sole place of business (or principal residence if such Grantor is a natural person), chief executive office, jurisdiction of organization or trade name and providing such other information in connection therewith as the Trustee may reasonably request and (b) taken all actions necessary or advisable to maintain the continuous validity, perfection and the same or better priority of the Trustee's security interest in the Collateral intended to be granted and agreed to hereby; provided, however, upon the specified advance notice, the Company shall be permitted to merge, consolidate or combine Ryan's Restaurant Group, LLC, a South Carolina limited liability company, and Fire Mountain Restaurants, LLC, an Ohio limited liability company, both of which operate exclusively Ryan's Steakhouse restaurants, provided that the successor or survivor of any such combination is or remains a Grantor hereunder and obligor under all of the Transaction Documents;

(iv) it shall pay promptly when due all property and other taxes, assessments and governmental charges or levies imposed upon, and all claims (including claims for labor, materials and supplies) against, the

Collateral, except to the extent the validity thereof is being contested in good faith; provided, such Grantor shall in any event pay such taxes, assessments, charges, levies or claims not later than five (5) days before the date of any proposed sale under any judgment, writ or warrant of attachment entered or filed against such Grantor or any of the Collateral as a result of the failure to make such payment;

(v) upon such Grantor or any officer of such Grantor obtaining knowledge thereof, it shall promptly notify the Trustee in writing of any event that may have a material adverse effect on the value of the Collateral or any portion thereof, the ability of any Grantor or the Trustee to dispose of the Collateral or any portion thereof, or the rights and remedies of the Trustee in relation thereto, including, without limitation, the levy of any legal process against the Collateral or any portion thereof;

(vi) it shall not take or permit any action which could impair the Trustee's rights in the Collateral; and

(vii) it shall not sell, transfer or assign (by operation of law or otherwise) any Collateral except for (x) the sale of inventory in the ordinary course of business and the related ordinary course cycle of receivables collections and (y) the sale or disposition of obsolete or worn-out furniture, fixtures or equipment in the ordinary course of business and consistent with past practice (provided that as to sales pursuant to clause (y), the proceeds thereof shall be applied to payment on the Note except as otherwise provided thereunder); provided further, however, in order to better market and promote its services, the assets and business of the Company's Wisconsin cabinet plant may be spun off or assigned to a new entity upon at least twenty (20) days advance written notice to the Trustee, provided that such new entity shall become an Additional Grantor hereunder and that any attendant transfers shall be subject to and have no effect on the existence, priority or perfection of any security interest of the Trust in any Collateral.

SECTION 5. ACCESS; RIGHT OF INSPECTION AND FURTHER ASSURANCES; ADDITIONAL GRANTORS.

5.1 Access; Right of Inspection. The Trustee shall have the right to inspect and make copies of, at any time upon reasonable notice (or, while an Event of Default exists, without notice), all the books, correspondence and records of each Grantor.

5.2 Further Assurances.

(a) Each Grantor agrees that from time to time, at the expense of such Grantor, that it shall promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that the Trustee may reasonably request, to create and/or maintain the validity,

perfection or priority of and protect any security interest granted hereby or to enable the Trustee to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, each Grantor shall:

(i) file such financing or continuation statements, or amendments thereto, and execute and deliver such other agreements, instruments, endorsements, powers of attorney or notices, as may be necessary or desirable, or as the Trustee may reasonably request, to perfect and preserve the security interests granted or purported to be granted hereby;

(ii) at any reasonable time, upon request by the Trustee, assemble the Collateral and allow inspection of the Collateral by the Trustee, or persons designated by the Trustee; and

(iii) at the Trustee's reasonable request, appear in and defend any action or proceeding that may affect such Grantor's right or title in or to or the Trustee's security interest in and to all or any part of the Collateral.

(b) Each Grantor hereby authorizes the Trustee to file a Record or Records, including, without limitation, financing or continuation statements, and amendments thereto, in any jurisdictions and with any filing offices as the Trustee may determine, in its sole discretion, are necessary or advisable to perfect the security interest granted to the Trustee herein. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as the Trustee may determine, in its sole discretion, is necessary, advisable or prudent to ensure the perfection of the security interest in the Collateral granted to the Trustee herein. Each Grantor shall furnish to the Trustee from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Trustee may reasonably request, all in reasonable detail.

(c) As to the Grantors' interests in non-residential real property leases, including, without limitation, the Specified Leases: (i) the Grantors' obligations pursuant to subsection 5.2(a) (and all subsections thereof) shall be limited to execution of such additional instruments and documents and taking such additional actions as are permitted by the Confirmation Order; and (ii) the authorization set forth in subsection 5.2(b) shall be limited to recording such Records as are permitted by the Confirmation Order.

5.3 Additional Grantors. From time to time subsequent to the date hereof, additional Persons may become parties hereto as additional Grantors (each, an "**Additional Grantor**"), by executing a joinder agreement, in form and substance satisfactory to the Trustee. Upon delivery of any such joinder agreement to the Trustee, notice of which is hereby waived by

Grantors, each Additional Grantor shall be a Grantor and shall be as fully a party hereto as if Additional Grantor were an original signatory hereto. Each Grantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Grantor hereunder, nor by any election of Trustee not to cause any Subsidiary of Company to become an Additional Grantor hereunder. This Agreement shall be fully effective as to any Grantor that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Grantor hereunder.

SECTION 6. TRUSTEE APPOINTED ATTORNEY-IN-FACT.

6.1 Power of Attorney. Each Grantor hereby irrevocably appoints the Trustee (such appointment being coupled with an interest) as such Grantor's attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor, the Trustee or otherwise, from time to time in the Trustee's discretion to take any action and to execute any instrument that the Trustee may deem reasonably necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, the following: upon the occurrence and during the continuance of any Event of Default, to ask for, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;

(b) upon the occurrence and during the continuance of any Event of Default, to receive, endorse and collect any drafts or other instruments, documents and chattel paper constituting Proceeds of any Collateral;

(c) upon the occurrence and during the continuance of any Event of Default, to file any claims or take any action or institute any proceedings that the Trustee may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Trustee with respect to any of the Collateral;

(d) upon the occurrence and during the continuance of any Event of Default, to perform (at Grantors' sole cost and expense, with any advances for such cost and expense being deemed to constitute an Advance) the affirmative obligations of such Grantor hereunder;

(e) [intentionally deleted];

(f) upon the occurrence and during the continuance of any Event of Default, to take or cause to be taken all actions necessary to perform or comply or cause performance or compliance with the terms of this Agreement, including, without limitation, to pay or discharge taxes or Liens (other than Permitted Liens) levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by the Trustee in its sole discretion, any such payments made by the Trustee to become obligations of such Grantor to the Trustee, due and payable immediately without demand; and

(g) generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Trustee were the absolute owner thereof for all purposes, and to do, at the Trustee's option and such Grantor's expense, at any time or from time to time, all acts and things that the Trustee deems reasonably necessary to protect, preserve or realize upon the Collateral and the Trustee's security interest therein to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

6.2 No Duty on the Part of Trustee or the Claimholders. The powers conferred on the Trustee hereunder are solely to protect the interests of the Claimholders in the Collateral and shall not impose any duty upon the Trustee or any Claimholder to exercise any such powers. The Trustee and the Claimholders shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct. The foregoing powers of attorney under this Section 6.2 being coupled with an interest, are irrevocable until the security interest granted to the Trustee hereby shall have terminated in accordance with the terms hereof.

SECTION 7. REMEDIES.

7.1 Generally.

(a) If any Event of Default shall have occurred and be continuing, the Trustee may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it at law or in equity, all the rights and remedies of the Trustee on default under the UCC (whether or not the UCC applies to the affected Collateral) to collect, enforce or satisfy any Secured Obligations then owing, whether by acceleration or otherwise.

(b) At any time following the occurrence and during the continuation of an Event of Default, the Trustee may: (1) settle, compromise, or sell the Collateral without giving any warranties as to the Collateral and may specifically disclaim or modify any warranties and (2) enforce, at the expense of such Grantor, settle or compromise the amount or payment of any Collateral, in the same manner and to the same extent as such Grantor might have done.

(c) The Trustee shall have no obligation to marshal any of the Collateral.

7.2 Application of Proceeds. Except as expressly provided elsewhere in this Agreement, all Proceeds received by the Trustee in respect of any sale, any collection from, or other realization upon all or any part of the Collateral shall be applied in full or in part by the Trustee against the Secured Obligations in accordance with the Note.

7.3 Sales on Credit. If Trustee sells any of the Collateral upon credit, Grantor will be credited only with payments actually made by purchaser and received by Trustee and

applied to indebtedness of the purchaser. If the purchaser fails to pay for the Collateral, Trustee may resell the Collateral and Grantor shall be credited with proceeds of the sale.

SECTION 8. ADMINISTRATOR.

8.1 Generally. The Trustee has been appointed to act as Trustee hereunder by the Claimants. The Trustee shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including, without limitation, the release or substitution of Collateral), solely in accordance with the Transaction Documents. Trustee may resign in accordance with the terms set forth in the Transaction Documents.

SECTION 9. CONTINUING SECURITY INTEREST; TRANSFER OF LOANS.

This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until the payment in full of all Secured Obligations, shall be binding upon each Grantor and its successors and assigns, and shall inure, together with the rights and remedies of the Trustee hereunder, to the benefit of the Trustee and its successors, transferees and assigns. Without limiting the generality of the foregoing, but subject to the terms of the Transaction Documents, any Claimholder may assign or otherwise transfer any Secured Obligations held by it to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to Claimholders herein or otherwise. Upon the payment in full of all Secured Obligations, the security interest granted hereby shall automatically terminate hereunder and of record and all rights to the Collateral shall revert to Grantors. Upon any such termination the Trustee shall, at Grantors' expense, execute and deliver to Grantors or otherwise authorize the filing of such documents as Grantors shall reasonably request, including financing statement amendments to evidence such termination. Upon any disposition of property permitted by the Transaction Documents, the Liens granted herein shall be deemed to be automatically released and such property shall automatically revert to the applicable Grantor with no further action on the part of any Person and the Trustee shall, at Grantor's expense, execute and deliver or otherwise authorize the filing of such documents as Grantors shall reasonably request, in form and substance reasonably satisfactory to the Trustee, including financing statement amendments to evidence such release.

SECTION 10. STANDARD OF CARE; ADMINISTRATOR MAY PERFORM.

The powers conferred on the Trustee hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Trustee shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. The Trustee shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment substantially equal to that which the Trustee accords its own property. Neither the Trustee nor any of its directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of

any Grantor or otherwise. If any Grantor fails to perform any agreement contained herein, the Trustee may itself perform, or cause performance of, such agreement, and the expenses of the Trustee incurred in connection therewith shall be payable by each Grantor as an obligation under the Note.

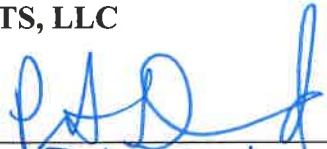
SECTION 11. MISCELLANEOUS.

Any notice required or permitted to be given under this Agreement shall be given in accordance with the Note. No failure or delay on the part of the Trustee in the exercise of any power, right or privilege hereunder or under any other Transaction Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement and the other Transaction Documents are cumulative to, and not exclusive of, any rights or remedies otherwise available. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of an Event of Default if such action is taken or condition exists. This Agreement shall be binding upon and inure to the benefit of the Trustee and Grantors and their respective successors and assigns. No Grantor shall, without the prior written consent of the Trustee given in accordance with the Note, assign any right, duty or obligation hereunder. This Agreement and the other Transaction Documents embody the entire agreement and understanding between Grantors and the Trustee and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Transaction Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. This Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission shall be effective as delivery of an original manually executed counterpart of this Agreement.

THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO ITS CONFLICTS OF LAW PROVISIONS.

IN WITNESS WHEREOF, each Grantor and the Trustee have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

BUFFETS, LLC

By: 
Name: Peter Dunbar
Title: vice president

HOMETOWN BUFFET, INC.

By: 
Name: Peter Dunbar
Title: vice president

OCB RESTAURANT COMPANY, LLC

By: 
Name: Peter Dunbar
Title: vice president

OCB PURCHASING CO.

By: 
Name: Peter Dunbar
Title: vice president

RYAN'S RESTAURANT GROUP, LLC

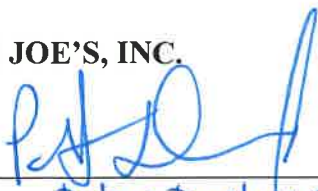
By: 
Name: Peter Dunbar
Title: vice president

FIRE MOUNTAIN RESTAURANTS, LLC

By: 

Name: Peter Donbavand
Title: vice president

TAHOE JOE'S, INC.

By: 
Name: Peter Donbavand
Title: vice president

META Advisors LLC, not individually, but solely
in its capacity as Unsecured Creditors' Trustee of
the Buffets Unsecured Creditors' Trust

By: 
James D. Hunt
Chief Operating Officer

SCHEDULE 1
TO SECURITY AGREEMENT

PERMITTED LIENS

1. All existing liens granted by any of the Debtors in favor of one or more of Alamo CRG, LLC; FMP SA Management Group, LLC; All Jones, LLC; Dayspring Operating Company, LLC; BPTx Holdings, LLC; or Larrac Inv., LLC, all such existing liens being subordinated to the liens granted pursuant to the Transaction Documents pursuant to the Subordination Agreement included within the Transaction Documents

SCHEDULE 2
TO SECURITY AGREEMENT

SPECIFIED LEASES

SCHEDULE 2

Store No.	Concept	Address	City	State	Zip	Landlord
4	OCB	2613 E Clairemont Ave	Eau Claire	WI	54701	George D. Pathos, Sophia D. Pathos, Mary D. Pathos-DeMoss
7	OCB	14150 Nicollet Ave	Burnsville	MN	55337	Cobblestone Properties, LLC
16	OCB	4902 South 74th Street	Greenfield	WI	53220	Greenfield, LP
36	OCB	4190 E Court St Suite 801	Burton	MI	48509	Stockbridge Courtland Center, LLC
51	HTB	12228 St. Charles Rock Rd	Bridgeton	MO	63044	LVP De Paul LLC
61	HTB	5259 Airport Highway	Toledo	OH	43615	ECO SBC 2015-1 REO 136426, LLC
66	OCB	4695 Bay Road	Saginaw	MI	48604	FASHION SQUARE WEST, LLC
73	OCB	6560 West Fullerton Avenue	Chicago	IL	60707	Bricktown Square, LLC
83	RYAN	2151 Gallatin Pike North	Madison	TN	37115	RB RIVERGATE LLC
108	HTB	5555 Youngstown-Warren Road	Niles	OH	44446	Boulevard Centre, LLC
126	CB	801 N Academy Blvd	Colorado Springs	CO	80909	Citadel Crossing Associates
138	OCB	4401 Transit Rd	Buffalo	NY	14221	BENCHMARK-CLARENCE ASSOCIATES, LLC
139	OCB	5220 West Main St	Kalamazoo	MI	49009	DFG-Maple Hill, LLC
146	HTB	840 Northridge Mall	Salinas	CA	93906	Northridge Owner, L.P.
149	OCB	9620 Metro Pkwy W.	Phoenix	AZ	85051	PDG America Shopping Center, LLC
181	OCB	905 Loucks Road	York	PA	17404	Urban Edge York, LP
204	HTB	517 Maine Mall	South Portland	ME	04106	GGP-MAINE MALL L.L.C.
211	OCB	2942 Prince William Parkway	Woodbridge	VA	22192	KIR SMOKETOWN STATION L.P.
213	OCB	17125 North 79th Avenue	Glendale	AZ	85308	BHC ENTERPRISES, LC
214	OCB	1245 Whitehall Mall	Whitehall	PA	18052	WP Glimcher Inc.
226	HTB	72-513C Highway 111	Palm Desert	CA	92260	Desert Crossing I, LLC
231	HTB	165 Slater St.	Manchester	CT	06042	NORMAN C. JACK AS TRUSTEE
234	OCB	5083 Jonestown Road	Harrisburg	PA	17112	KIMCO OF PENNSYLVANIA TRUST
237	OCB	821 County Route 64	Elmira	NY	14903	BG FLATS II - III, LLC
243	OCB	4601 200TH STREET SW	Lynnwood	WA	98036	MSB SHOPPING CENTER
245	OCB	1321 N Columbia Center Blvd Suite 873	Kennewick	WA	99336	Simon Property Group

Store No.	Concept	Address	City	State	Zip	Landlord
251	OCB	10445 Indianapolis Boulevard	Highland	IN	46322	DDRM Highland Grove, LLC
252	HTB	8629 South Sepulveda Blvd	Westchester	CA	90045	STRS OHIO CA REAL ESTATE INVESTMENTS II, LLC
256	HTB	1850 W Empire Ave	Burbank	CA	91504	VEREIT ML-1
259	OCB	6625 East Southern Avenue	Mesa	AZ	85206	NED M AND CONNIE G THOMPSON, TRUSTEE OF NED M AND CONNIE G THOMPSON FAMILY TRUST
260	CB	7407 E 36th Ave	Denver	CO	80238	Great Northern Gas Co.
262	HTB	10910 Foothill Boulevard	Rancho Cucamonga	CA	91730	VEREIT ML-1
263	HTB	930 Dennerly Road	San Diego	CA	92154	Yam and Sue Lee living Trust
269	HTB	3617 W Shaw Avenue	Fresno	CA	93711	VEREIT ML-1
275	HTB	8432 Firestone Boulevard	Downey	CA	90241	DOWNEY DOLAN HE LLC
297	HTB	7868 Van Nuys Boulevard	Van Nuys	CA	91402	NF PLANT ASSOCIATES, LLC
298	HTB	1665 Countryside Dr	Turlock	CA	95380	VEREIT SL-1
299	HTB	2900 Deerfield Dr	Janesville	WI	53546	Inland Commercial Prop. Mgmt.
301	HTB	7809-B Ne Vancouver Plaza Dr	Vancouver	WA	98662	Cafaro Companies
303	OCB	3500 South Meridian	Puyallup	WA	98373	Cafaro Companies
305	OCB	5815 Lakewood Towne Center Blvd SW	Tacoma	WA	98499	RPAI US Management LLC
306	HTB	10542-A Se Washington St	Portland	OR	97216	Plaza 205 GARP LLC
309	HTB	636 Lancaster Drive Ne	Salem	OR	97301	LANCASTER CENTER EAST LLC
310	OCB	1816 South 320th Street	Federal Way	WA	98003	SEATAC VILLAGE SHOPPING CENTER, LLC
337	HTB	3520 W Carson St	Torrance	CA	90503	Simon Property Group
339	HTB	704 Southland Mall	Hayward	CA	94545	Southland Mall LP
340	HTB	1315 Gateway Blvd	Fairfield	CA	94533	FAIRFIELD GATEWAY, LP
341	HTB	2050 Diamond Blvd	Concord	CA	94520	John Lee & Helen Lee
704	HTB	9635 Chapman Avenue	Garden Grove	CA	92841	HGGA Promenade LP
705	HTB	651 Palomar Street	Chula Vista	CA	91911	EC Palomar Center, LLC
707	HTB	1025 West Robinhood Drive	Stockton	CA	95207	Stonecreek Village Shopping Center, LLC
711	HTB	3790 Sw Hall Boulevard	Beaverton	OR	97005	Biggi Development Partnership
713	HTB	3744 N Blackstone Ave	Fresno	CA	93726	5561 SULTANA, LLC
714	HTB	1135 Highland Avenue	National City	CA	91950	SOUTH BAY SPE, LLC
715	HTB	1380 Churn Creek Rd	Redding	CA	96003	SHASTA STATION LLC
716	HTB	1771 Prescott Road	Modesto	CA	95350	Redwood Theatres, Inc.

Store No.	Concept	Address	City	State	Zip	Landlord
718	HTB	5478 Newpark Plaza	Newark	CA	94560	New Park Plaza Associations, LLC
725	HTB	1299 Center Drive	Medford	OR	97501	SUSSLIN INVESTMENTS I, LLC
727	HTB	22500 Towngate Circle	Moreno Valley	CA	92553	2250 Town Circle Holdings LLC
736	HTB	6705 Fallbrook Ave	Canoga Park	CA	91307	VEREIT ML-1
739	HTB	4221 South H Street	Bakersfield	CA	93304	Midtowne National Group, LP
742	HTB	3041 West Florida Avenue	Hemet	CA	92545	GRANITE VILLAGE WEST L.P.
743	HTB	1318 North Azusa Avenue	Covina	CA	91722	KIR COVINA, L.P.
745	HTB	24990 Redlands Boulevard	Loma Linda	CA	92354	BLUE BANNER COMPANY, INC.
746	HTB	3000 Gateway Street	Springfield	OR	97477	GGP Gateway Mall, LLC
747	HTB	1804 South Mooney Boulevard	Visalia	CA	93277	Visalia Property Partnership
750	HTB	561 U.S. Route 1 South	Edison	NJ	08817	WICK SHOPPING PLAZA ASSOCIATES, LLC
753	HTB	127 West Valley Boulevard	Rialto	CA	92376	VEREIT ML-1
756	OCB	4640 Roosevelt Boulevard	Philadelphia	PA	19124	VEREIT SL-2
765	HTB	875-877 North Wilcox Avenue	Montebello	CA	90640	LUCKY MONTEBELLO SHOPPING CENTER
767	HTB	6257 Atlantic Avenue	Bell	CA	90201	Bell Palm Plaza, LP
785	HTB	1431 South Bradley Road	Santa Maria	CA	93454	VEREIT ML-1
788	HTB	1901 Lockwood St	Oxnard	CA	93036	VEREIT ML-1
794	OCB	1325 New Churchmans Road	Newark	DE	19713	VEREIT ML-1
796	HTB	4700 Candlewood St	Lakewood	CA	90712	Macerich Lakewood LP
803	HTB	390 N Mckinley St	Corona	CA	92879	KIMCO REALTY CORPORATION
805	HTB	408 North Capitol Avenue	San Jose	CA	95133	CAPITOL SQUARE PARTNERS
806	HTB	1008 East 17th Street	Santa Ana	CA	92701	WILLIAM H. GRIFFITH, AS SOLE TRUSTEE UNDER THE WILLIAM H. GRIFFITH REVOCABLE TRUST U/A DATED NOVEMBER 7, 1989
807	HTB	2670 El Camino Real	Santa Clara	CA	95051	Moonlite Associates, LLC
811	OCB	2513 Main Street	Union Gap	WA	98903	VEREIT ML-1
813	OCB	6821 W Canal Dr	Kennewick	WA	99337	JBP PROPERTIES LLC
822	TJ	7006 N Cedar Ave Fresno	Fresno	CA	93720	Cedar Pointe Investors, LP
823	TJ	9000 Ming Ave	Bakersfield	CA	93311	VICTORIA LAND PARTNERS, LP
824	TJ	1040 Helen Power Dr	Vacaville	CA	95687	Midtowne National Group, LP
825	TJ	485 Madonna Rd #2	San Luis Obispo	CA	93405	SLO Promenade DE, LLC
828	TJ	1905 Taylor Rd	Roseville	CA	95661	Hormox Demooei

Store No.	Concept	Address	City	State	Zip	Landlord
830	TJ	3801 Pelandale Ave	Modesto	CA	95356	Inland Commercial Real Estate
831	TJ	4015 W Caldwell Ave	Visalia	CA	93277	VISALIA RETAIL 2015 LLC
835	TJ	3968 Grand Ave	Chino	CA	91710	SY VENTURES III LLC
2118	RYAN	2305 Shorter Ave Sw	Rome	GA	30165	VEREIT ML-2
2138	RYAN	1314 N Main Street	Summerville	SC	29483	VEREIT ML-1
2185	RYAN	4051 Ryan Street	Lake Charles	LA	70605	Spirit ML
2195	RYAN	230 Collins Rd Ne	Cedar Rapids	IA	52402	Realty Income
2218	RYAN	10810 W 75th Street	Shawnee	KS	66214	Realty Income
2261	RYAN	1920 Mel Browning Street	Bowling Green	KY	42104	Spirit ML
2262	RYAN	3607 Hwy 17 S	North Myrtle Beach	SC	29582	DPI GROUP, LLC
2278	RYAN	1413 N Loop 336 West	Conroe	TX	77304	Spirit ML
2304	RYAN	1201 Hwy 45 North	Columbus	MS	39705	Realty Income
2328	RYAN	1101 N Service Road E	Ruston	LA	71270	Realty Income
2345	RYAN	1102 Ave Of Mid America	Effingham	IL	62401	Realty Income
2347	RYAN	929 S Westwood Blvd	Poplar Bluff	MO	63901	Realty Income
2357	RYAN	243 Steven B Tanger Blvd	Commerce	GA	30529	VEREIT ML-2
2370	RYAN	1000 Brevard Rd	Asheville	NC	28806	VEREIT ML-2
2380	RYAN	2645 E Andrew Johnson Hwy	Greeneville	TN	37745	Realty Income
2394	RYAN	341 Eisenhower Drive	Hanover	PA	17331	DIVINITY INVESTMENTS, LLC
2406	RYAN	232 Frontage Road	Picayune	MS	39466	Spirit ML
2408	RYAN	374 Walmart Plaza	Sylva	NC	28779	Realty Income
2416	RYAN	519 Emily Drive	Clarksburg	WV	26301	VEREIT ML-1
2418	RYAN	103 Rhl Blvd	Charleston	WV	25309	VEREIT ML-1
2419	RYAN	2330 Memorial Drive	Waycross	GA	31501	Realty Income
2423	RYAN	3000 S Ferdon Blvd	Crestview	FL	32536	COMMUNITY BANK OF RAYMORE
2424	RYAN	195 Greasy Ridge Rd	Princeton	WV	24739	Spirit ML
2433	RYAN	4955 Hwy 90	Pace	FL	32571	Pace 1800, LLC
2435	RYAN	405 S Cumberland Street	Lebanon	TN	37087	MARCO POLO, INC.
2436	RYAN	4615 Broadway St	Mount Vernon	IL	62864	Realty Income
2440	RYAN	2210 S Harper Road	Corinth	MS	38834	Realty Income
2441	RYAN	5309 Milan Road	Sandusky	OH	44870	Realty Income
2474	RYAN	1400 Dallas Highway 77	Waxahachie	TX	75165	Realty Income

SCHEDULE 4.1
TO SECURITY AGREEMENT

GENERAL INFORMATION

- (A) Full Legal Name, Type of Organization, Jurisdiction of Organization, Chief Executive Office/Sole Place of Business (or Residence if Grantor is a Natural Person) and Organizational Identification Number of each Grantor:

<u>Full Legal Name</u>	<u>Type of Organization</u>	<u>Jurisdiction of Organization</u>	<u>Chief Executive Office/Sole Place of Business (or Residence if Grantor is a Natural Person)</u>	<u>Organization I.D.#</u>
Buffets, LLC	LLC	Minnesota	Texas	41-1462294
Hometown Buffet, Inc.	Corporation	Minnesota	Texas	33-0463002
OCB Restaurant Company, LLC	LLC	Minnesota	Texas	41-1777607
OCB Purchasing, Co.	Corporation	Minnesota	Texas	41-1777610
Ryans Restaurant Group, LLC	LLC	South Carolina	Texas	57-0657895
Fire Mountain Restaurants, LLC	LLC	Ohio	Texas	57-0968003
Tahoe Joes, Inc.	Corporation	Minnesota	Texas	91-1957129

- (B) Other Names (including any Trade-Name or Fictitious Business Name) under which each Grantor has conducted business for the past five (5) years:

<u>Full Legal Name</u>	<u>Trade Name or Fictitious Business Name</u>
Buffets, LLC	Old Country Buffet Hometown Buffet
Hometown Buffet, Inc.	Hometown Buffet

OCB Restaurant Company, LLC	Old Country Buffet
OCB Purchasing Co.	Not Applicable
Ryans Restaurant Group, LLC	Ryan's Steakhouse
Fire Mountain Restaurants, LLC	Fire Mountain Grill; Ryan's Steakhouse
Tahoe Joes, Inc.	Tahoe Joe's Steakhouse; Tahoe Joe's Famous Steakhouse

- (C) Changes in Name, Jurisdiction of Organization, Chief Executive Office or Sole Place of Business (or Principal Residence if Grantor is a Natural Person) and Corporate Structure within the past five (5) years:

<u>Name of Grantor</u>	<u>Date of Change</u>	<u>Description of Change</u>
Buffets, LLC	August 19, 2015	Chief Executive Office changed upon completion of Merger
Hometown Buffet, Inc.	August 19, 2015	Chief Executive Office changed upon completion of Merger
OCB Restaurant Company, LLC	August 19, 2015	Chief Executive Office changed upon completion of Merger
OCB Purchasing Co.	August 19, 2015	Chief Executive Office changed upon completion of Merger
Ryans Restaurant Group, LLC	August 19, 2015	Chief Executive Office changed upon completion of Merger
Fire Mountain Restaurants, LLC	August 19, 2015	Chief Executive Office changed upon completion of Merger
Tahoe Joes, Inc.	August 19, 2015	Chief Executive Office changed upon completion of Merger

- (D) Agreements pursuant to which any Grantor is found as debtor within the past five (5) years:

<u>Name of Grantor</u>	<u>Description of Agreement</u>
Buffets, LLC	Subordinated loans subject to Subordination Agreement
Hometown Buffet, Inc.	Subordinated loans subject to Subordination Agreement
OCB Restaurant Company, LLC	Subordinated loans subject to Subordination Agreement
OCB Purchasing Co.	Subordinated loans subject to Subordination Agreement
Ryans Restaurant Group, LLC	Subordinated loans subject to Subordination Agreement
Fire Mountain Restaurants, LLC	Subordinated loans subject to Subordination Agreement
Tahoe Joes, Inc.	Subordinated loans subject to Subordination Agreement

Each of the Grantors was subject to security agreements collateralizing the following credit agreements, which were terminated and which liens were released in connection with the closing of the Merger in August 2015:

Credit Agreement, dated as of July 18, 2012, as amended by Amendment No. 1 thereto dated September 24, 2013, Amendment No. 2 thereto dated October 15, 2013, Amendment No. 3 thereto dated May 27, 2014, Amendment No. 4 thereto dated June 26, 2014, Amendment No. 5 thereto dated September 29, 2014, Amendment No. 6 thereto dated December 5, 2014, Amendment No. 7 dated as of April 8, 2015, Amendment No. 8, dated May 29, 2015 entered into by and among Buffets, Inc. (administratively converted to Buffets, LLC), Buffets Restaurants Holdings, Inc., Buffets Holdings, Inc. (administratively converted to Buffets Holdings, LLC), and the Lenders named therein and Credit Suisse AG, Cayman Islands Branch, as administrative agent and collateral agent

Credit Agreement, dated as of December 5, 2014, as amended by the Limited Waiver of

and Extension of Deadline to Deliver Control Agreements dated January 16, 2015, Amendment No. 1 dated April 8, 2015, and Amendment No. 2 dated May 29, 2015 among Buffets, Inc. (administratively converted to Buffets, LLC), Buffets Restaurants Holdings, Inc., Buffets Holdings, Inc. (administratively converted to Buffets Holdings, LLC), the Lenders named therein and Cortland Capital Market Services LLC as administrative and collateral agent

(E) Financing Statements:

<u>Name of Grantor</u>	<u>Filing Jurisdiction(s)</u>
Buffets, LLC	Minnesota Secretary of State's Office
Hometown Buffet, Inc.	Minnesota Secretary of State's Office
OCB Restaurant Company, LLC	Minnesota Secretary of State's Office
OCB Purchasing Co.	Minnesota Secretary of State's Office
Ryans Restaurant Group, LLC	South Carolina Secretary of State's Office
Fire Mountain Restaurants, LLC	Ohio Secretary of State's Office
Tahoe Joes, Inc.	Minnesota Secretary of State's Office

EXHIBIT A
TO SECURITY AGREEMENT

SECURITY AGREEMENT SUPPLEMENT

This **SECURITY AGREEMENT SUPPLEMENT**, dated [____], [____], is delivered by [NAME OF GRANTOR] a [NAME OF STATE OF INCORPORATION/FORMATION] [corporation/limited liability company/limited partnership] (the “Grantor”) pursuant to the Security Agreement, dated as of May [___], 2017 (as it may be from time to time amended, restated, amended and restated, modified or supplemented, the “Security Agreement”), among the Grantors named therein, and META Advisors LLC, as Trustee. Capitalized terms used herein not otherwise defined herein shall have the meanings ascribed thereto in the Security Agreement.

Grantor hereby confirms the grant to the Trustee set forth in the Security Agreement of, and does hereby grant to the Trustee, a security interest in all of Grantor’s right, title and interest in and to all Collateral to secure the Secured Obligations, in each case whether now or hereafter existing or in which Grantor now has or hereafter acquires an interest and wherever the same may be located. Grantor represents and warrants that the attached Supplements to Schedules accurately and completely set forth all additional information required pursuant to the Security Agreement and hereby agrees that such Supplements to Schedules shall constitute part of the Schedules to the Security Agreement.

IN WITNESS WHEREOF, Grantor has caused this Security Agreement Supplement to be duly executed and delivered by its duly authorized officer as of _____, 20__.

[NAME OF GRANTOR]

By: _____
Name:
Title:

SUPPLEMENT TO SCHEDULE 4.1
TO SECURITY AGREEMENT

Additional Information:

- (A) Full Legal Name, Type of Organization, Jurisdiction of Organization, Chief Executive Office/Sole Place of Business (or Residence if Grantor is a Natural Person) and Organizational Identification Number of each Grantor:

<u>Full Legal Name</u>	<u>Type of Organization</u>	<u>Jurisdiction of Organization</u>	<u>Chief Executive Office/Sole Place of Business (or Residence if Grantor is a Natural Person)</u>	<u>Organization I.D.#</u>

- (B) Other Names (including any Trade-Name or Fictitious Business Name) under which each Grantor has conducted business for the past five (5) years:

<u>Full Legal Name</u>	<u>Trade Name or Fictitious Business Name</u>

- (C) Changes in Name, Jurisdiction of Organization, Chief Executive Office or Sole Place of Business (or Principal Residence if Grantor is a Natural Person) and Corporate Structure within the past five (5) years:

<u>Name of Grantor</u>	<u>Date of Change</u>	<u>Description of Change</u>

- (D) Agreements pursuant to which any Grantor is found as debtor within the past five (5) years:

<u>Name of Grantor</u>	<u>Description of Agreement</u>

- (E) Financing Statements:

<u>Name of Grantor</u>	<u>Filing Jurisdiction(s)</u>

EXHIBIT K
List of the Excluded Causes of Actions

Buffets, LLC et. al

United States Bankruptcy Court for the Western District of Texas, San Antonio Division

Case no. 16-50557

Amended Exhibit K to Plan Supplement

Schedule of Causes of Action Excluded from Trust Causes of Action:

All Claims or Causes of Action, including but not limited to avoidance actions under Chapter 5 of the Bankruptcy Code against the persons and entities named below are excluded from the Schedule of Trust Causes of Action

Number	Transferee
1	BASSHAM FOODS
2	BAY AREA BEVERAGE
3	BIMBO BAKERIES USA
4	BIMBO BAKERIES USA INC
5	BIMBO FOODS INC
6	BIX PRODUCE CO
7	BROTHERS PRODUCE
8	CADILLAC COFFEE CO
9	CENTRAL ILLINOIS PRODUCE
10	CHALLENGE DAIRY PRODUCTS
11	COASTAL SUNBELT PRODUCE CO
12	COCA COLA BOTTLING CO CONSOLID
13	COCA COLA NORTH AMERICA
14	CROOK BROTHERS
15	DAYLIGHT FOODS INC
16	DAYLIGHT PRODUCE COMPANY
17	DBI BEVERAGE
18	DIXIE PRODUCE INC
19	DUCK DELIVERY PRODUCE INC
20	DYKEMA COX SMITH
21	DYKEMA GOSSETT
22	DYNAMIC FOODS
23	ECOLAB
24	ECOLAB EQUIPMENT CARE
25	ECOLAB FOOD SAFETY SPECIALTIES
26	EDWARD DON & CO
27	FOOD SERVICES OF AMERICA
28	FRESHPACK PRODUCE INC
29	FRESHPOINT CENTRAL CALIFORNIA
30	FRESHPOINT SOUTHERN CALIFORNIA
31	GARDEN WHOLESALE INC
32	GET FRESH PRODUCE INC
33	GRAND AVENUE PRODUCE CO INC
34	GULF COAST PRODUCE DISTRIBUTOR
35	HALLER ENTERPRISES INC
36	ICEE COMPANY
37	J AMBROGI FOOD DISTRIBUTION INC
38	JH HONEYCUTT & SONS INC
39	KATSIROUBAS PRODUCE
40	KEANY PRODUCE CO
41	LA GRASSO BROS INC
42	LIBERTY FRUIT COMPANY INC
43	MCCARTNEY PRODUCE
44	MEADOW GOLD DAIRY

Buffets, LLC et. al

United States Bankruptcy Court for the Western District of Texas, San Antonio Division

Case no. 16-50557

Amended Exhibit K to Plan Supplement

Schedule of Causes of Action Excluded from Trust Causes of Action:

All Claims or Causes of Action, including but not limited to avoidance actions under Chapter 5 of the Bankruptcy Code against the persons and entities named below are excluded from the Schedule of Trust Causes of Action

Number	Transferee
45	MENTO PRODUCE
46	MUZAK LLC
47	NCR CORP
48	NUCO2 INC
49	PAPPY'S FINE FOODS
50	PHOENIX WHOLESALE FOOD SERVICE
51	POCONO PROFOODS
52	PROTECTION ONE
53	QUALITY FRUIT & VEGETABLE CO
54	REPUBLIC SERVICES
55	ROYAL CUP AFFILIATES
56	ROYAL CUP INC
57	SALADINO'S INC
58	SALADINO'S ONTARIO
59	SALADINO'S WEST SACRAMENTO
60	SANTA MARIA WHOLESALE PRODUCE
61	SANTA MONICA SEAFOOD COMPANY
62	SENN BROS PRODUCE INC
63	SGC FOODSERVICE
64	SHOES FOR CREWS INC
65	SIERRA SEAFOOD SPECIALTIES
66	SIRNA & SONS MAINLINE PRODUCE
67	SPRING VALLEY DAIRY
68	SUNRISE FRESH PRODUCE LLC
69	SYSCO
70	SYSCO CENTRAL CA
71	SYSCO CENTRAL CALIFORNIA
72	SYSCO FOOD SERVICE
73	SYSCO KNOXVILLE LLC
74	SYSCO RIVERSIDE INC
75	TAYLOR BOYS PRODUCE INC
76	THE GARDEN
77	UNION PRODUCE
78	UNITED PRODUCE CO INC
79	UPPER LAKES FOODS INC
80	US FOODS INC
81	VAN EERDEN DISTRIBUTION CO
82	WASSERSTROM
83	YOUNGS MARKET CO LLC

EXHIBIT L
List of the Excluded Insider Causes of Action

Buffets, LLC et al .

United States Bankruptcy Court for the Western District of Texas, San Antonio Division
Case No. 16-50557-rbk

Exhibit L to Plan Supplement: Schedule of Excluded Insider Causes of Action

The Excluded Insider Causes of Action are all causes of action against (a) any of the Debtors' current respective officers, directors, employees, partners, advisors, attorneys, financial advisors, accountants, and other professionals, each solely in their capacities as such, or (b) FMP, the DIP Lender, Pre-Petition Secured Creditors and all of their current officers, directors, principals, members, employees, subsidiaries, affiliates, advisors, attorneys, financial advisors, accountants, and any other professionals of FMP, the DIP Lender and Pre-Petition Secured Creditors, each solely in their capacities as such. The Debtors reserve the right to supplement this list. This specifically includes any claim or cause of action related to the above-captioned Chapter 11 Cases or the Debtors therein against the following persons or entities:

Excluded Insider Entity	
1	Adele Wang a.k.a. Zilin Wang
2	Alamo CRG, LLC
3	Alamo Ovation, LLC
4	Alamo Ovation II, LLC
5	All Jones, LLC
6	Allen Jones
7	BPTX Holdings, LLC
8	Brian Bailey
9	Brian Jerden
10	Brian Padilla
11	Buffets Holdings, LLC
12	Buffets Restaurant Holdings, Inc.
13	Constance Luck
14	Dayspring Operating Company, LLC
15	FMP Ovation Payroll, LLC
16	FMP SA Management Group, LLC
17	Hugo Gonzales
18	Jason Kemp
19	Larrac Inv., LLC Series L
20	Lawrence Harris, Jr.
21	Michael Griffith
22	Peter Donbavand
23	Robert Amaro
24	Tracy Amass

EXHIBIT M
Collateral Assignment of Leases

[intentionally omitted]

EXHIBIT N
Composite of Mortgages

PREPARED BY, RECORDING REQUESTED BY
AND UPON RECORDATION RETURN TO:

David Kurzweil
Greenberg Traurig LLP
Terminus 200
3333 Piedmont Road NE, Suite 2500
Atlanta, GA 30305

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT
AND FIXTURE FILING**

by and from

**FIRE MOUNTAIN RESTAURANTS, LLC, an Ohio limited liability company,
“Grantor”**

to

**META ADVISORS LLC,
in its capacity as Unsecured Creditors’ Trustee for the Unsecured Creditors’ Trust,
“Beneficiary”**

Dated as of May 18, 2017

**Location: 1452 Benvenue Road
City: Rocky Mount
County: Nash County, NC**

**THIS DOCUMENT SERVES AS A FIXTURE FILING UNDER SECTION 9-502 OF THE
NORTH CAROLINA UNIFORM COMMERCIAL CODE AND IS TO BE FILED IN THE
REAL PROPERTY RECORDS. THIS DOCUMENT CONVEYS A SECURITY INTEREST IN
GOODS WHICH ARE OR ARE TO BECOME FIXTURES.**

**DEED OF TRUST, ASSIGNMENT OF
RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING
(Nash County, North Carolina)**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this “**Deed of Trust**”) is dated as of this 18th day of May, 2017, and is delivered pursuant to the below-described Promissory Note, by and from FIRE MOUNTAIN RESTAURANTS, LLC, an Ohio limited liability company, having a principal office address of 120 Chula Vista Drive, San Antonio, TX, 78232 (“**Grantor**”), to META ADVISORS LLC (“**Trustee**”) in its capacity as Unsecured Creditors’ Trustee for the Unsecured Creditors’ Trust (each, as defined in the Plan, as defined below), with a mailing address of c/o Kelley Drye & Warren LLP, 101 Park Avenue, New York, NY 10178 (together with its successors and assigns, “**Beneficiary**”)

RECITALS:

WHEREAS, Grantor is the fee owner of the real property described in Exhibit A attached hereto; and

WHEREAS, Mortgagor filed petition for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Western District of Texas (the “**Bankruptcy Court**”);

WHEREAS, Grantor filed that certain Debtors’ Second Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code, dated as of March 31, 2017 (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the “**Plan**”) establishing the Unsecured Creditors’ Trust;

WHEREAS, the Bankruptcy Court entered an order confirming the Plan on April 27, 2017;

WHEREAS, Grantor is indebted to Beneficiary under that certain Promissory Note, dated on or about the date hereof (as it may be amended, restated, supplemented or otherwise modified from time to time, the “**Note**”) and such indebtedness is secured by that certain Security Agreement, dated on or about the date hereof (as it may be amended, restated, supplemented or otherwise modified from time to time, the “**Security Agreement**”; the Note, the Security Agreement, the Plan (as defined below), and any and all documents executed in connection therewith, the “**Transaction Documents**”);

WHEREAS, pursuant to the Security Agreement and the Plan, Grantor granted Beneficiary a continuing security interest in all assets of the Grantor, including, without limitation, all rights in any real property of the Grantor;

WHEREAS, defined terms used herein and not otherwise defined shall have the meaning set forth in the Plan.

NOW, THEREFORE, in consideration of the Recitals and the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor, intending to be legally bound hereby, agrees as follows:

ARTICLE 1 **DEFINITIONS**

Section 1.1 Definitions. All capitalized terms used herein without definition shall have the respective meanings ascribed to them in the Note. As used herein, the following terms shall have the following meanings:

(a) **“Event of Default”**: shall have the meaning ascribed to such term in Article 4 hereof.

(b) **“Insolvency Proceeding”**: Any judicial case or proceeding commenced by or against any Borrower, any Obligor or any Subsidiary under the Bankruptcy Code or any debtor relief laws otherwise relating to receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment or composition.

(c) **“Maturity Date”**: (i) November 30, 2020, or (ii) such earlier date on which the Obligations shall be due and payable in full, whether by acceleration, termination of the Note or otherwise.

(d) **“Obligations”**: All obligations and liabilities of the Borrowers, Obligors, Guarantors and their respective Subsidiaries owing to the Unsecured Creditors’ Trust, including, without limitation, (1) the repayment of all amounts outstanding from time to time under the Note and the other Transaction Documents, with such indebtedness maturing on the Maturity Date, including principal, interest (including all interest that, but for the provisions of any Debtor Relief Laws, would have accrued), and other amounts which may now or hereafter be advanced under the Transaction Documents, (2) the full and prompt performance of any and all repayment, fee, and indemnification obligations with respect to any Letters of Credit or Letter of Credit Documents, (3) fees, costs, expenses, charges and indemnification obligations accrued, incurred or arising in connection with any Transaction Documents, (4) all other payment obligations, (5) all "Obligations" under and as defined in the Note, and (6) all fees or expenses that accrue after the filing of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any Insolvency Proceeding.

(e) **“Trust Property”**: All of Grantor’s interest in (1) the fee interest in the real property described in Exhibit A attached hereto and incorporated herein by this reference, together with any greater estate therein as hereafter may be acquired by Grantor (the **“Land”**), (2) all improvements now owned or hereafter acquired by Grantor, now or at any time situated, placed or constructed upon the Land (the **“Improvements”**; the Land and Improvements are collectively referred to herein as the **“Premises”**), (3) all materials, supplies, equipment, apparatus and other items of personal property now owned or

hereafter acquired by Grantor and now or hereafter attached to or installed in any of the Improvements or the Land, fixtures and goods that are or are to become fixtures, and water, gas, electrical, telephone, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the “**Fixtures**”), (4) all reserves, escrows or impounds required under the Note and all deposit accounts maintained by Grantor with respect to the Trust Property (the “**Deposit Accounts**”), (5) all existing and future leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant to any Person a possessory interest in, or the right to use or occupy, all or any part of the Trust Property, whether made before or after the filing by or against Grantor of any petition for relief under any Debtor Relief Laws, together with any extension, renewal or replacement of the same and together with all related security and other deposits (the “**Leases**”), (6) all of the rents, additional rents, revenues, royalties, income, proceeds, profits, early termination fees or payments, security and other types of deposits, and other benefits paid or payable by parties to the Leases for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Trust Property or any part thereof, whether paid or accruing before or after the filing by or against Grantor of any petition for relief under any Debtor Relief Laws (the “**Rents**”), (7) all other agreements, such as construction contracts, architects’ agreements, engineers’ contracts, utility contracts, maintenance agreements, management agreements, service contracts, listing agreements, guaranties, warranties, permits, licenses, certificates and entitlements in any way relating to the construction, use, occupancy, operation, maintenance, enjoyment or ownership of the Trust Property (the “**Property Agreements**”), (8) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, (9) all property tax refunds, utility refunds and rebates, earned or received at any time and irrespective of the time period to which they relate (the “**Tax Refunds**”), (10) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof (the “**Proceeds**”), (11) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Grantor (the “**Insurance**”), (12) all of Grantor’s right, title and interest in and to any awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements or Fixtures (the “**Condemnation Awards**”), (13) all of Grantor’s rights to appear and defend any action or proceeding brought with respect to the Trust Property and to commence any action or proceeding to protect the interest of Grantor in the Trust Property, and (14) all rights, powers, privileges, options and other benefits of Grantor as lessor under the Leases, including, without limitation, the immediate and continuing right to claim for, receive, collect and receive all Rents payable or receivable under the Leases or pursuant thereto (and to apply the same to the payment of the Obligations), and to do all other things which Grantor or any lessor is or may become entitled to do under the Leases. As used in this Deed of Trust, the term “Trust Property” shall mean all or, where the context permits or requires, any portion of the above or any interest therein. THE TERM “TRUST PROPERTY” SHALL NOT INCLUDE ANY ITEMS OF PERSONAL PROPERTY IN WHICH BENEFICIARY HAS OBTAINED AND PERFECTED A SECURITY INTEREST UNDER SEPARATE INSTRUMENTS.

(f) “**UCC**”: The Uniform Commercial Code of the state in which the Land is located or, if the creation, perfection and enforcement of any security interest

herein granted is governed by the laws of a state other than the state in which the Land is located, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

ARTICLE 2 **GRANT**

Section 2.1 Grant. For and in consideration of good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of Grantor herein set forth, to secure the full and timely payment and performance of the Obligations, Grantor GRANTS, BARGAINS, ASSIGNS, SELLS, WARRANTS AND CONVEYS, to Trustee and Trustee's successors and assigns, for the benefit of Beneficiary and the Unsecured Creditors' Trust, the Trust Property, TO HAVE AND TO HOLD the Trust Property and all parts, rights and appurtenances thereof, IN TRUST WITH THE POWER OF SALE, and Grantor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Trust Property unto Trustee.

TO HAVE AND TO HOLD, the Trust Property, together with all and singular the parts, rights, privileges, hereditaments, and appurtenances thereto in any ways belonging or appertaining, to the use, benefit, and behoof of Trustee, its successors and assigns, in trust for the benefit of Beneficiary and the Unsecured Creditors' Trust, in fee simple forever, and Grantor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Trust Property unto Trustee for the benefit of the Beneficiary and the Unsecured Creditors' Trust. Notwithstanding anything to the contrary contained in the immediately preceding sentence, Grantor hereby agrees and acknowledges that this Deed of Trust shall not be canceled by the full and complete repayment of the Obligations, so long as the Note or the other Transaction Documents remain in force and effect.

ARTICLE 3 **WARRANTIES, REPRESENTATIONS AND COVENANTS**

Grantor warrants, represents and covenants to Beneficiary as follows:

Section 3.1 Title to Trust Property and Lien of this Instrument. Grantor (i) has good and indefeasible title to the Trust Property, in fee simple, free and clear of any liens, claims or interests, and (ii) has full power and lawful authority to encumber the Trust Property in the manner and form set forth in this Deed of Trust. This Deed of Trust creates valid, enforceable first priority deed of trust, liens and security interests against the Trust Property. Grantor shall and will warrant and forever defend the title thereto and the quiet use and enjoyment thereof unto the Beneficiary, its successors and assigns, against the lawful claims of all persons whomsoever.

Section 3.2 First Lien Status. Grantor shall preserve and protect the first deed of trust, lien and security interest status of this Deed of Trust. If any lien or security interest is asserted against the Trust Property, Grantor shall promptly, and at its expense, (a)

give Beneficiary a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Note (including the requirement of providing a bond or other security satisfactory to Beneficiary).

Section 3.3 Payment and Performance. Grantor shall pay the Obligations when due under the Transaction Documents and shall perform the Obligations in full when they are required to be performed.

Section 3.4 Replacement of Fixtures. Except as otherwise permitted under the Note or any other Transaction Documents, Grantor shall not, without the prior written consent of Beneficiary, permit any of the Fixtures to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Grantor subject to the liens and security interests of this Deed of Trust and the other Transaction Documents, and free and clear of any other lien or security interest except such as may be permitted under the Note or any other Transaction Documents, or first approved in writing by Beneficiary.

Section 3.5 Inspection. Grantor shall permit Beneficiary and its agents, representatives and employees to inspect the Trust Property and all books and records of Grantor located thereon, and to conduct such environmental and engineering studies as Beneficiary may require. Provided that no Event of Default exists, all such testing and investigation shall be conducted at reasonable times and upon reasonable prior notice to Grantor. Beneficiary shall restore the Trust Property to the condition it was in immediately prior to such testing and investigation.

Section 3.6 Other Covenants. All of the covenants in the Note are incorporated herein by reference and, together with covenants in this Article 3, shall, to the extent applicable, be covenants running with the land.

Section 3.7 Condemnation Awards and Insurance Proceeds.

(a) **Condemnation Awards.** Grantor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Premises or any portion thereof, will notify Beneficiary of the pendency of such proceedings. Beneficiary may participate in any such proceedings and Grantor from time to time will deliver to Beneficiary all instruments requested by it to permit such participation. Grantor assigns all awards and compensation to which it is entitled for any condemnation or other taking, or any purchase in lieu thereof, to Beneficiary and authorizes Beneficiary to collect and receive such awards and compensation and to give proper receipts and acquittances therefor, subject to the terms of the Note. Grantor, upon request by Beneficiary, shall make, execute and deliver any and all instruments requested for the purpose of confirming the assignment of the aforesaid awards and compensation to Beneficiary free and clear of any liens, charges or encumbrances of any kind or nature whatsoever. Notwithstanding the foregoing, provided no Event of

Default then exists, to the extent the Note or any other Transaction Documents would allow Grantor to apply any condemnation proceeds to the repair or restoration of the Trust Property, Grantor may receive such proceeds and apply the same to such repair or restoration.

(b) Insurance Proceeds. Grantor assigns to Beneficiary all proceeds of any insurance policies insuring against loss or damage to the Trust Property. Grantor authorizes Beneficiary to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Beneficiary, instead of to Grantor and Beneficiary jointly, as more specifically described in the Note. In the event that the issuer of such insurance policy fails to disburse directly or solely to Beneficiary but disburses instead either solely to Grantor or to Grantor and Beneficiary, jointly, Grantor shall immediately endorse and transfer such proceeds to Beneficiary. Upon Grantor's failure to do so, Beneficiary may execute such endorsements or transfers from and in the name of Grantor, and Grantor hereby irrevocably appoints Beneficiary as Grantor's agent and attorney-in-fact so to do. Notwithstanding the foregoing, provided no Event of Default then exists, to the extent the Note or any other Transaction Documents would allow Grantor to apply any insurance proceeds to the repair or restoration of the Trust Property, Grantor may receive such proceeds and apply the same to such repair or restoration

Section 3.8 Costs of Defending and Upholding the Title and Lien. If any action or proceeding is commenced to which action or proceeding Trustee or Beneficiary is made a party or in which it becomes necessary for Trustee or Beneficiary to defend or uphold the title and lien of this Deed of Trust including any extensions, renewals, amendments or modifications thereof, Grantor shall, on demand, reimburse Trustee and Beneficiary for all expenses (including, without limitation, reasonable attorneys' fees and reasonable appellate attorneys' fees) incurred by Trustee and Beneficiary in any such action or proceeding and all such expenses shall be secured by this Deed of Trust. In any action or proceeding to foreclose this Deed of Trust or to recover or collect the Obligations, the provisions of law relating to the recovering of costs, disbursements and allowances shall prevail unaffected by this covenant.

Section 3.9 TRANSFER OF THE TRUST PROPERTY. EXCEPT AS EXPRESSLY PERMITTED PURSUANT TO THE TERMS OF THE NOTE OR ANY OTHER TRANSACTION DOCUMENTS, GRANTOR SHALL NOT SELL, TRANSFER, PLEDGE, ENCUMBER, CREATE A SECURITY INTEREST IN, GROUND LEASE, OR OTHERWISE HYPOTHECATE, ALL OR ANY PORTION OF THE TRUST PROPERTY WITHOUT THE PRIOR WRITTEN CONSENT OF BENEFICIARY. THE CONSENT BY BENEFICIARY TO ANY SALE, TRANSFER, PLEDGE, ENCUMBRANCE, CREATION OF A SECURITY INTEREST IN, GROUND LEASE OR OTHER HYPOTHECATION OF, ANY PORTION OF THE TRUST PROPERTY SHALL NOT BE DEEMED TO CONSTITUTE A NOVATION OR A CONSENT TO ANY FURTHER SALE, TRANSFER, PLEDGE, ENCUMBRANCE, CREATION OF A SECURITY INTEREST IN, GROUND LEASE, OR OTHER HYPOTHECATION, OR TO WAIVE THE RIGHT OF BENEFICIARY, AT ITS OPTION, TO DECLARE THE OBLIGATIONS SECURED HEREBY IMMEDIATELY DUE AND PAYABLE, WITHOUT NOTICE TO GRANTOR OR ANY OTHER PERSON OR ENTITY, UPON ANY SUCH SALE, TRANSFER,

PLEDGE, ENCUMBRANCE, CREATION OF A SECURITY INTEREST, GROUND LEASE, OR OTHER HYPOTHECATION TO WHICH BENEFICIARY SHALL NOT HAVE CONSENTED.

Section 3.10 Security Deposits. To the extent required by law, or after an Event of Default has occurred and during its continuance, if required by Beneficiary, all security deposits of tenants of the Trust Property shall be treated as trust funds not to be commingled with any other funds of Grantor. Within twenty (20) days after request by Beneficiary, Grantor shall furnish satisfactory evidence of compliance with this Section 3.10, as necessary, together with a statement of all security deposits deposited by the tenants and copies of all Leases not theretofore delivered to Beneficiary, as requested thereby, certified by Grantor.

ARTICLE 4 **DEFAULT**

Section 4.1 Events of Default. The occurrence of any of the following events shall constitute an event of default under this Deed of Trust (each an “**Event of Default**”):

(a) an “Event of Default” (as such term is defined in the Note) shall have occurred;

(b) the breach or violation of any of the terms contained in Sections 3.5, 3.7, 3.8, 3.9 or 3.10 of this Deed of Trust;

(c) Grantor’s breach of any of the covenants set forth in this Deed of Trust and not referenced in clause (b) above, which breach or failure to comply continues for a period of thirty (30) days or more; provided, however, if such breach or failure to comply would otherwise result in an Event of Default under the Note or any other Transaction Documents, such breach or failure to comply shall result in an Event of Default hereunder concurrently with the occurrence of an Event of Default under the Note or such other Transaction Documents; or

(d) if any statement or representation in any warranty or representation set forth in Article 3 hereof shall now or hereafter prove to be false or misleading in any material respect.

ARTICLE 5 **REMEDIES AND FORECLOSURE**

Section 5.1 Remedies. If an Event of Default exists, Beneficiary may, at Beneficiary’s election and by or through Trustee or otherwise, exercise any or all of the following rights, remedies and recourses:

(a) To the extent permitted under the Note, declare the Obligations to be immediately due and payable, without further notice, presentment, protest, notice of

intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Grantor), whereupon the same shall become immediately due and payable.

(b) Notify all tenants of the Premises and all others obligated on Leases of any part of the Premises that all rents and other sums owing on Leases have been assigned to Beneficiary and are to be paid directly to Beneficiary, and to enforce payment of all obligations owing on Leases, by suit, ejectment, cancellation, releasing, reletting or otherwise, whether or not Beneficiary has taken possession of the Premises, and to exercise whatever rights and remedies Beneficiary may have under any assignment of rents and leases.

(c) As and to the extent permitted by law, enter the Trust Property, either personally or by its agents, nominees or attorneys, and take exclusive possession thereof and thereupon, Beneficiary may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Premises and conduct business thereat; (ii) complete any construction on the Premises in such manner and form as Beneficiary deems advisable in the reasonable exercise of its judgment; (iii) exercise all rights and powers of Grantor with respect to the Premises, whether in the name of Grantor, or otherwise, including, without limitation, the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Premises and every part thereof, which rights shall not be in limitation of Beneficiary's rights under any assignment of rents and leases securing the Obligations; and (iv) pursuant to the provisions of the Note, apply the receipts from the Premises to the payment of the Obligations, after deducting therefrom all expenses (including attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments, insurance and other charges in connection with the Trust Property, as well as just and reasonable compensation for the services of Beneficiary, its counsel, agents and employees.

(d) Hold, lease, develop, manage, operate or otherwise use the Trust Property upon such terms and conditions as Beneficiary may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Beneficiary deems necessary or desirable), and apply all Rents and other amounts collected by Trustee in connection therewith in accordance with the provisions of Section 5.7 hereof.

(e) Require Grantor to assemble any collateral described in any UCC financing statement between Grantor, as debtor, and Beneficiary, as secured party, and make it available to Beneficiary, at Grantor's sole risk and expense, at a place or places to be designated by Beneficiary, in its sole discretion.

(f) Institute proceedings for the complete foreclosure of this Deed of Trust, either by judicial action or by power of sale (as described in Section 10.2 hereof), in which case the Trust Property may be sold for cash or credit in accordance with applicable law in one or more parcels as Beneficiary may determine. Except as otherwise required by applicable law, with respect to any notices required or permitted under the UCC, Grantor

agrees that ten (10) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings, power of sale, or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Grantor shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption, and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Grantor, and against all other Persons claiming or to claim the property sold or any part thereof, by, through or under Grantor. Beneficiary or any of the Unsecured Creditors' Trust may be a purchaser at such sale. If Beneficiary is the highest bidder, Beneficiary may credit the portion of the purchase price that would be distributed to Beneficiary against the Obligations in lieu of paying cash. In the event this Deed of Trust is foreclosed by judicial action, appraisement and valuation of the Trust Property is waived. In the event of any sale made under or by virtue of this Article 5 (whether made by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale) all of the Obligations, if not previously due and payable, immediately thereupon shall become due and payable. The failure to make any such tenants of the Premises party to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Grantor, a defense to any proceedings instituted by Beneficiary to collect the sums secured hereby.

(g) (1) With or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Deed of Trust for the portion of the Obligations then due and payable (if Beneficiary shall have elected not to declare the entire Obligations to be immediately due and owing), subject to the continuing lien and title of this Deed of Trust for the balance of the Obligations not then due; or (2) as and to the extent permitted by law, sell for cash or upon credit the Trust Property or any part thereof and all estate, claim, demand, right, title and interest of Grantor therein, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Trust Property, this Deed of Trust shall continue as a lien on the remaining portion of the Trust Property; or (3) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in any Transaction Document; or (4) to the extent permitted by applicable law, recover judgment on the Note or any other Transaction Documents either before, during or after any proceedings for the enforcement of this Deed of Trust.

(h) Make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Grantor or regard to the adequacy of the Trust Property for the repayment of the Obligations, the appointment of a receiver of the Trust Property, and Grantor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Trust Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 5.7 hereof.

(i) Exercise all other rights, remedies and recourses granted under the Transaction Documents or otherwise available at law or in equity.

Section 5.2 Separate Sales. The Trust Property may be sold in one or more parcels and in such manner and order as Beneficiary in its sole discretion may direct; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 5.3 Remedies Cumulative, Concurrent and Nonexclusive. Beneficiary and Trustee shall have all rights, remedies and recourses granted in the Transaction Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Grantor or others obligated under the Transaction Documents, or against the Trust Property, or against any one or more of them, at the sole discretion of Beneficiary, as the case may be, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Beneficiary or Trustee in the enforcement of any rights, remedies or recourses under the Transaction Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 5.4 Release of and Resort to Collateral. Beneficiary may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Trust Property, any part of the Trust Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interest created in or evidenced by the Transaction Documents or their status as a first and prior lien, title and security interest in and to the Trust Property. For payment of the Obligations, Beneficiary may resort to any other security in such order and manner as Beneficiary may elect.

Section 5.5 Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law, Grantor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Grantor by virtue of any present or future statute of limitations or law or judicial decision exempting the Trust Property from attachment, levy or sale on execution or providing for any stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default or of any election by Trustee or Beneficiary to exercise or the actual exercise of any right, remedy or recourse provided for under the Transaction Documents, except as otherwise specifically set forth in Section 4.1 hereof or elsewhere in this Deed of Trust or any other Transaction Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

Section 5.6 Discontinuance of Proceedings. If Beneficiary or Trustee shall have proceeded to invoke any right, remedy or recourse permitted under the Transaction Documents and shall thereafter elect to discontinue or abandon it for any reason, Beneficiary or Trustee, as the case may be, shall have the unqualified right to do so and, in such an event, Grantor, Beneficiary and Trustee shall be restored to their former positions with respect to the

Obligations, the Transaction Documents, the Trust Property and otherwise, and the rights, remedies, recourses and powers of Beneficiary and Trustee shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Beneficiary or Trustee thereafter to exercise any right, remedy or recourse under the Transaction Documents for such Event of Default.

Section 5.7 Application of Proceeds. The proceeds of any sale made under or by virtue of this Article 5, together with any Rents and other amounts generated by the holding, leasing, management, operation or other use of the Trust Property, shall be applied by Beneficiary or Trustee (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

(a) to the payment of the costs and expenses of taking possession of the Trust Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (1) trustee's and receiver's fees and expenses, including the repayment of the amounts evidenced by any receiver's certificates, (2) court costs, (3) attorneys' and accountants' fees and expenses, (4) costs of advertisement, (5) all costs and expenses incurred by Beneficiary or Trustee to cure defaults of Grantor under this Deed of Trust and the other Transaction Documents, and (6) all costs and expenses incurred by Beneficiary or Trustee to protect or preserve the Trust Property; and

(b) to the payment of the Obligations in such manner and order of preference as set forth in the Note and the other Transaction Documents; and

(c) the balance, if any, to the payment of the Persons legally entitled thereto.

Section 5.8 Occupancy After Foreclosure. Except as otherwise required by applicable law, any sale of the Trust Property or any part thereof in accordance with Section 5.1 hereof will divest all right, title and interest of Grantor in and to the property sold. Subject to applicable law, any purchaser at a foreclosure sale will receive immediate possession of the property purchased. If Grantor retains possession of such property or any part thereof subsequent to such sale, Grantor will be considered a tenant at sufferance of the purchaser, and will, if Grantor remains in possession after demand to remove, be subject to eviction and removal, forcible or otherwise, with or without process of law.

Section 5.9 Additional Advances and Disbursements; Costs of Enforcement.

(a) If any Event of Default exists, Beneficiary shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Grantor. All sums advanced and expenses incurred at any time by Beneficiary under this Section 5.9, or otherwise under this Deed of Trust or any of the other Transaction Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Default Rate (as

defined in the Note), and all such sums, together with interest thereon, shall be secured by this Deed of Trust.

(b) Grantor shall pay all expenses (including reasonable attorneys' fees and expenses and all costs and expenses related to legal work, research and litigation, including fees incurred in appellate proceedings) of or incidental to the perfection and enforcement of this Deed of Trust and the other Transaction Documents, or the enforcement, compromise or settlement of the Obligations or any claim under this Deed of Trust and the other Transaction Documents, and for the curing thereof, or for defending or asserting the rights and claims of Beneficiary in respect thereof, by litigation or otherwise.

Section 5.10 No Beneficiary in Possession. Neither the enforcement of any of the remedies under this Article 5, the assignment of the Rents and Leases under Article 6, the security interests under Article 7, nor any other remedies afforded to Beneficiary under the Transaction Documents, at law or in equity shall cause Beneficiary or Trustee to be deemed or construed to be a mortgagee in possession of the Trust Property, to obligate Beneficiary or Trustee to lease the Trust Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

Section 5.11 WAIVER OF GRANTOR'S RIGHTS. BY EXECUTION OF THIS DEED OF TRUST, GRANTOR EXPRESSLY: (A) ACKNOWLEDGES THE RIGHT OF BENEFICIARY OR RABOBANK TO ACCELERATE THE APPLICABLE INDEBTEDNESS EVIDENCED BY THE NOTE OR OTHER TRANSACTION DOCUMENTS, AS THE CASE MAY BE, UPON THE OCCURRENCE OF AN EVENT OF DEFAULT; (B) TO THE EXTENT ALLOWED BY APPLICABLE LAW, AND EXCEPT AS EXPRESSLY SET FORTH IN SECTION 4.1 HEREOF OR ELSEWHERE IN THIS DEED OF TRUST OR ANY OTHER TRANSACTION DOCUMENTS, WAIVES ANY AND ALL RIGHTS WHICH GRANTOR MAY HAVE UNDER THE CONSTITUTION OF THE UNITED STATES, THE VARIOUS PROVISIONS OF THE CONSTITUTIONS FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY BENEFICIARY OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO BENEFICIARY OR TRUSTEE; (C) ACKNOWLEDGES THAT GRANTOR HAS READ THIS DEED OF TRUST AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO GRANTOR AND GRANTOR HAS CONSULTED WITH LEGAL COUNSEL OF GRANTOR'S CHOICE PRIOR TO EXECUTING THIS DEED OF TRUST; (D) TO THE EXTENT ALLOWED BY NORTH CAROLINA LAW AND EXCEPT AS EXPRESSLY SET FORTH ELSEWHERE IN THIS DEED OF TRUST OR ANY OTHER TRANSACTION DOCUMENTS, WAIVES ANY RIGHT OR REMEDY WHICH GRANTOR MAY HAVE OR BE ABLE TO ASSERT PURSUANT TO ANY PROVISION OF NORTH CAROLINA LAW, INCLUDING, BUT NOT LIMITED TO, THE RIGHTS AND REMEDIES SET FORTH IN SECTION 26-7, ET. SEQ. OF THE NORTH CAROLINA GENERAL STATUTES; AND (E) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF GRANTOR HAVE BEEN MADE KNOWINGLY,

**INTENTIONALLY AND WILLINGLY BY GRANTOR AS PART OF A BARGAINED
FOR LOAN TRANSACTION.**

ARTICLE 6
ASSIGNMENT OF RENTS AND LEASES

Section 6.1 Assignment. In furtherance of and in addition to the assignment made by Grantor in Section 2.1 of this Deed of Trust, Grantor hereby absolutely and unconditionally assigns, sells, transfers and conveys to Trustee (for the benefit of Beneficiary) and to Beneficiary all of its right, title and interest in and to all Leases, whether now existing or hereafter entered into, and all of its right, title and interest in and to all Rents. This assignment is an absolute assignment and not an assignment for additional security only. So long as no Event of Default shall have occurred and be continuing and to the extent not prohibited by the Note, Grantor shall have a revocable license from Trustee and Beneficiary to exercise all rights extended to the landlord under the Leases, including the right to receive and collect all Rents and to hold the Rents in trust for use in the payment and performance of the Obligations and to otherwise use the same. The foregoing license is granted subject to the conditional limitation that no Event of Default shall have occurred and be continuing. Upon the occurrence and during the continuance of an Event of Default, whether or not legal proceedings have commenced, and without regard to waste, adequacy of security for the Obligations or solvency of Grantor, the license herein granted shall automatically expire and terminate, without notice by Trustee or Beneficiary (any such notice being hereby expressly waived by Grantor).

Section 6.2 Perfection Upon Recordation. Grantor acknowledges that Beneficiary and Trustee have taken all actions necessary to obtain, and that upon recordation of this Deed of Trust, Beneficiary and Trustee shall have, to the extent permitted under applicable law, a valid and fully perfected, first priority, present assignment of the Rents arising out of the Leases and all security for such Leases. Grantor acknowledges and agrees that upon recordation of this Deed of Trust, Trustee's and Beneficiary's interest in the Rents shall be deemed to be fully perfected, "choate" and enforceable as to Grantor and all third parties, including, without limitation, any subsequently appointed trustee in any case under any Debtor Relief Laws, without the necessity of commencing a foreclosure action with respect to this Deed of Trust, making formal demand for the Rents, obtaining the appointment of a receiver or taking any other affirmative action.

Section 6.3 Bankruptcy Provisions. Without limitation of the absolute nature of the assignment of the Rents hereunder, Grantor, Trustee and Beneficiary agree that (a) this Deed of Trust shall constitute a "security agreement" for purposes of Section 552(b) of the Bankruptcy Code, (b) the security interest created by this Deed of Trust extends to property of Grantor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents and (c) such security interest shall extend to all Rents acquired by the estate after the commencement of any case in bankruptcy.

Section 6.4 No Merger of Estates. So long as part of the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates (if any) to the

Trust Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Grantor, Beneficiary, any tenant or any third party by purchase or otherwise.

ARTICLE 7 **SECURITY AGREEMENT**

Section 7.1 Security Interest. This Deed of Trust constitutes a “security agreement” on personal property within the meaning of the UCC and other applicable law and with respect to the Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards. To this end, Grantor grants to Beneficiary and Trustee on behalf of Beneficiary a first and prior security interest in the Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards and all other Trust Property which is personal property to secure the payment and performance of the Obligations, and agrees that Beneficiary or Trustee on behalf of Beneficiary shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Beneficiary or Trustee on behalf of Beneficiary with respect to the Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards sent to Grantor at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Grantor. THE TERM “TRUST PROPERTY” SHALL NOT INCLUDE ANY ITEMS OF PERSONAL PROPERTY IN WHICH BENEFICIARY HAS OBTAINED AND PERFECTED A SECURITY INTEREST UNDER SEPARATE INSTRUMENTS.

Section 7.2 Financing Statements. Grantor authorizes Beneficiary to file, in form and substance satisfactory to Beneficiary, such financing statements and such further assurances as Beneficiary may, from time to time, reasonably consider necessary to create, perfect and preserve Beneficiary’s security interest hereunder and Beneficiary may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Grantor’s state of organization is the State of North Carolina.

Section 7.3 Fixture Filing. To the extent permitted under the UCC of the state in which the Land is located, this Deed of Trust shall also constitute a “fixture filing” for the purposes of the UCC against all of the Trust Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the address of Debtor (Grantor) and Secured Party (Beneficiary) as set forth in the first paragraph of this Deed of Trust. Debtor (Grantor) is the record owner of the Trust Property.

ARTICLE 8 **CONCERNING THE TRUSTEE**

Section 8.1 Certain Rights. With the approval of Beneficiary, Trustee shall have the right to select, employ and consult with counsel. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or

proposed to be taken by it hereunder, believed by it in good faith to be genuine. Trustee shall be entitled to reimbursement for actual, reasonable expenses incurred by it in the performance of its duties and to reasonable compensation for Trustee's services hereunder as shall be rendered. Grantor shall, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and indemnify, defend and save Trustee harmless against, all liability and reasonable expenses which may be incurred by it in the performance of its duties, including those arising from joint, concurrent, or comparative negligence of Trustee; however, Grantor shall not be liable under such indemnification to the extent such liability or expenses result solely from Trustee's or Beneficiary's gross negligence or willful misconduct. Grantor's obligations under this Section 8.1 shall not be reduced or impaired by principles of comparative or contributory negligence.

Section 8.2 Retention of Money. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any moneys received by him hereunder.

Section 8.3 Successor Trustees. If Trustee or any successor Trustee shall die, resign or become disqualified from acting in the execution of this trust, or Beneficiary shall desire to appoint a substitute Trustee, Beneficiary shall have full power to appoint one or more substitute Trustees and, if preferred, several substitute Trustees in succession who shall succeed to all the estates, rights, powers and duties of Trustee. Such appointment may be executed by any authorized agent of Beneficiary and as so executed, such appointment shall be conclusively presumed to be executed with authority, valid and sufficient, without further proof of any action.

Section 8.4 Perfection of Appointment. Should any deed, conveyance or instrument of any nature be required from Grantor by any successor Trustee to more fully and certainly vest in and confirm to such successor Trustee such estates, rights, powers and duties, then, upon request by such Trustee, all such deeds, conveyances and instruments shall be made, executed, acknowledged and delivered and shall be caused to be recorded and/or filed by Grantor.

Section 8.5 Trustee Liability. In no event or circumstance shall Trustee or any substitute Trustee hereunder be personally liable under or as a result of this Deed of Trust, either as a result of any action by Trustee (or any substitute Trustee) in the exercise of the powers hereby granted or otherwise.

ARTICLE 9 **MISCELLANEOUS**

Section 9.1 Notices. Any notice required or permitted to be given under this Deed of Trust shall be given in accordance with Section 10.1 of the Note.

Section 9.2 Covenants Running with the Land. All Obligations contained in this Deed of Trust are intended by Grantor, Beneficiary and Trustee to be, and shall be construed as, covenants running with the Trust Property. As used herein, "Grantor" shall refer to the party named in the first paragraph of this Deed of Trust and to any subsequent owner of all or any portion of the Trust Property. All Persons who may have or acquire an interest in the Trust Property shall be deemed to have notice of, and be bound by, the terms of the Note and the other Transaction Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Beneficiary.

Section 9.3 Attorney-in-Fact. Grantor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest and with full power of substitution, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, if Grantor shall fail to do so within ten (10) days after written request by Beneficiary, (b) upon the issuance of a deed pursuant to the foreclosure of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Trust Property, and (d) while any Event of Default exists, to perform any obligation of Grantor hereunder, however: (1) Beneficiary shall not under any circumstances be obligated to perform any obligation of Grantor; (2) any sums advanced by Beneficiary in such performance shall be added to and included in the Obligations and shall bear interest at the Default Rate; (3) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (4) Beneficiary shall not be liable to Grantor or any other person or entity for any failure to take any action which it is empowered to take under this Section 9.3. Notwithstanding the foregoing, Beneficiary shall be liable for its gross negligence, willful misconduct, and bad faith in connection with exercising its rights hereunder to the extent determined by a court of competent jurisdiction in a final, non-appealable judgment.

Section 9.4 Successors and Assigns. This Deed of Trust shall be binding upon and inure to the benefit of Beneficiary, Trustee and Grantor and their respective successors and assigns. Grantor shall not, without the prior written consent of Beneficiary, assign any rights, duties or obligations hereunder.

Section 9.5 No Waiver. Any failure by Beneficiary or Trustee to insist upon strict performance of any of the terms, provisions or conditions of the Transaction Documents shall not be deemed to be a waiver of same, and Beneficiary or Trustee shall have the right at any time to insist upon strict performance of all such terms, provisions and conditions.

Section 9.6 Note. If any conflict or inconsistency exists between this Deed of Trust and the Note, the Note shall govern.

Section 9.7 Release or Reconveyance. Upon payment and performance in full of the Obligations and termination of the Note and the other Transaction Documents, Beneficiary, at Grantor's request and expense, shall release the liens and security interests created by this Deed of Trust or reconvey the Trust Property to Grantor.

Section 9.8 Waiver of Stay, Moratorium and Similar Rights. Grantor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Deed of Trust or the Obligations secured hereby, or any agreement between Grantor and Beneficiary or any rights or remedies of Beneficiary or Trustee.

Section 9.9 Applicable Law. The provisions of this Deed of Trust regarding the creation, perfection and enforcement of the liens, security title and security interests herein granted shall be governed by and construed under the laws of the state in which the Land is located, except to the extent the UCC in effect in such jurisdiction provides that perfection of any security interest created under the UCC is governed by another state's law. All other provisions of this Deed of Trust shall be governed by the laws of the State of New York (including, without limitation, Section 5-1401 of the General Obligations Law of the State of New York).

Section 9.10 Headings. The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

Section 9.11 Entire Agreement. This Deed of Trust and the other Transaction Documents embody the entire agreement and understanding between Grantor and Beneficiary and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Transaction Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 9.12 Multisite Real Estate Transaction. Grantor acknowledges that this Deed of Trust is one of a number of other mortgages, deeds to secure debt, deeds of trusts and security documents that secure the Obligations. Grantor agrees that the lien of this Deed of Trust shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Trustee and without limiting the generality of the foregoing, the lien hereof shall not be impaired by any acceptance by Trustee of any security for or guarantees of any of the Obligations hereby secured, or by any failure, neglect or omission on the part of the Trustee to realize upon or protect any Obligations or any collateral security therefor including the other mortgages, deeds to secure debt, deeds of trust and security documents. The lien hereof shall not in any manner be impaired or affected by any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of any of the Obligations or any of the collateral security therefor, including the other

mortgages, deeds to secure debt, deeds of trust and security documents or of any guarantee thereof, and Trustee may at its discretion foreclose, exercise any power of sale, or exercise any other remedy available to it under any or all of the other mortgages, deeds to secure debt, deeds of trust and other security documents without first exercising or enforcing any of its rights and remedies hereunder. Such exercise of Trustee's rights and remedies under any or all of the other mortgages, deeds to secure debt, deeds of trust and other security documents shall not in any manner impair the indebtedness hereby secured or the lien of this Deed of Trust and any exercise of the rights or remedies of Trustee shall not impair the lien of any other mortgages, deeds to secure debt, deeds of trust and other security documents or any of Trustee's rights and remedies thereunder. Grantor specifically consents and agrees that Trustee may exercise its rights and remedies hereunder and under the other mortgages, deeds to secure debt, deeds of trust and other security documents separately or concurrently and in any order that it may deem appropriate and Grantor waives any rights of subrogation.

Section 9.13 Time of Termination.

(a) The maximum amount of principal to be secured at any one time is Five Million Two Hundred and Fifty Thousand Dollars and 00/100 (\$5,250,000.00), plus accrued interest and costs and fees relating thereto. This Deed of Trust is given to secure the Obligations, including the payment and performance of the Note made to Borrowers on the date hereof.

(b) If the outstanding principal balance of the Note is ever reduced to a zero (\$0.00) balance, the lien of this Deed of Trust shall not be released or extinguished by operation of law or implied intent of the parties. This Deed of Trust, the Note and the other Transaction Documents shall remain in full force and effect as to any Obligations under the Transaction Documents made after any such zero balance until the Note is paid in full and all of the Obligations have been satisfied, all agreements of Beneficiary and Unsecured Creditors' Trust have been terminated and this Deed of Trust has been cancelled of record.

Section 9.14 Jury Trial Waiver. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, GRANTOR AND BENEFICIARY EACH HEREBY WAIVES TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS DEED OF TRUST.

Section 9.15 Severability of Invalid Provisions. All rights, powers and remedies provided herein are limited to the extent necessary so that they shall not render this Deed of Trust invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Deed of Trust shall be held to be invalid, illegal or unenforceable, the validity and enforceability of the remaining terms of this Deed of Trust shall in no way be affected thereby.

ARTICLE 10
LOCAL LAW PROVISIONS

Section 10.1 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article 10 and the terms and conditions of this Deed of Trust, the terms and conditions of Article 10 shall control and be binding.

Section 10.2 Power of Sale. Trustee is hereby granted power of sale. Notwithstanding anything in this Deed of Trust to the contrary, no sale of any portion of the Trust Property under the power of sale contained in this Deed of Trust shall occur until Beneficiary and Trustee shall have complied with the provisions of Chapter 45 of the North Carolina General Statutes relating to the power of sale foreclosures, including, without limitation, the requirement for notice and a hearing. Pursuant to Section 25-9-604(a), (b) and (c) of the North Carolina General Statutes (or any amendment thereto), the Trustee is expressly authorized and empowered to expose to sale and sell, together with the Land, any portion of the Trust Property which constitutes personal property. If personal property is sold hereunder, it need not be at the place of sale.

Section 10.3 Trustee Commission. The Trustee shall be entitled to a reasonable Trustee's fee, based on the actual number of hours worked by Trustee at its customary hourly rate, including without limitation for a foreclosure proceeding commenced by the Trustee but terminated prior to its completion.

Section 10.4 Protection of Collateral. This Deed of Trust secures any advance or payment made by Beneficiary to protect the collateral, including payment of taxes, rent, insurance and any prior lien. Additionally, this Deed of Trust secures any advances, including attorney's fees, made by Beneficiary to protect title to the collateral, to remove any cloud, to correct any mistake or error in this Deed of Trust or otherwise protect its lien position and rights in the collateral. The payment of any amount or taking of action by Beneficiary shall not operate as a cure of the default as between Grantor and Beneficiary.

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IN WITNESS WHEREOF, this Deed of Trust has been executed by Grantor on the date of its acknowledgment below to be effective as of the day and year first above written.

GRANTOR:

FIRE MOUNTAIN RESTAURANTS, LLC, an Ohio limited liability company

By: [Signature] (seal)
Name: Peter Donbawand
Title: vice president

State of Texas, County of Bexar

I, Lauren Najarian, a Notary Public, certify that Peter Donbawand personally came before me this day and acknowledged that he or she is vice president of FIRE MOUNTAIN RESTAURANTS, LLC, an Ohio limited liability company, and that he/she as Treasurer and Chief Financial Officer, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this the 12 day of May, 2017.

(Official Seal)

Lauren Najarian
Signature of Notary

Lauren Najarian, Notary Public
Printed or typed name

My commission expires: 9-11-2018

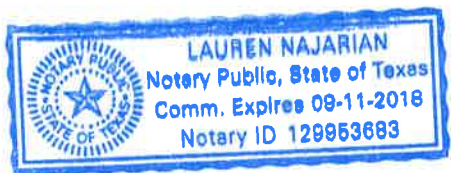


Exhibit A

Legal Description

All that certain piece, parcel or tract of land lying and being in the City of Rocky Mount, Nash County, State of North Carolina located on the northwesterly side of Jeffries Road and having the following metes and bounds to wit:

Commencing at a point formed by the intersection of the northwestern right-of-way of Jeffries Road (SR 1541, 80' right-of-way) and the northeastern right-of-way of Benvenue Road (NC Highway 43, 80' right-of-way); thence along said northwestern right-of-way of Jeffries Road N 56-05-33 E for 262.33 feet to an existing iron pin, said pin being a common corner with Wachovia Bank of NC (Deed Book 1273, Page 409) and being the POINT OF BEGINNING; thence leaving said right-of-way along the common line of Wachovia Bank of NC the following two courses and distances: N 35-47-52 W for 225.01 feet to an existing iron pin; thence S 56-01-45 W for 305.73 feet to an existing iron pin on the northeastern right-of-way of Benvenue Road; thence along said right-of-way N 34-53-21 W for 252.07 feet to an existing iron pin; thence leaving said right-of-way along the common line for H.J. Cobb, Jr. (Deed Book 957, page 477) N 54-52-08 E for 189.26 feet to an existing iron pin; thence along the common line of said H.J. Cobb Jr. and Anne A. Cobb (Deed Book 963, page 879) N 54-57-09 E for 377.65 feet to an existing iron pin; thence along the common line of the John Barrett III Heirs (Deed Book 1001, page 718) S 35-26-00 E for 488.31 feet to an existing iron pin on the northwestern right-of-way of Jeffries Road; thence along said right-of-way S 56-05-33 W for 262.33 feet to an existing iron pin being the Point of Beginning. Said tract contains 4.719 acres or 205,572 square feet more or less.

Prepared By and After Recording Return To:

David Kurzweil
Greenberg Traurig LLP
Terminus 200
3333 Piedmont Road NE, Suite 2500
Atlanta, GA 30305

THE COLLATERAL SUBJECT TO THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING INCLUDES GOODS THAT ARE OR ARE TO BECOME FIXTURES.

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT, AND FIXTURE FILING IS TO BE FILED IN THE REAL PROPERTY RECORDS FOR ANDERSON COUNTY, AND SHALL SERVE AS A FIXTURE FILING FINANCING STATEMENT.

**MORTGAGE, ASSIGNMENT
OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING**

made by

**FIRE MOUNTAIN RESTAURANTS, LLC, an Ohio limited liability company,
“Mortgagor”**

to

**META ADVISORS LLC,
in its capacity as Unsecured Creditors’ Trustee for the Unsecured Creditors’ Trust,
“Mortgagee”**

Dated as of May 18, 2017

**Location: 203 28 By-Pass
City: Anderson
County: Anderson County
State: South Carolina**

**MORTGAGE, ASSIGNMENT OF
RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING
(Anderson County, South Carolina)**

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this “**Mortgage**”) is dated as of May 18, 2017, by and from FIRE MOUNTAIN RESTAURANTS, an Ohio limited liability company, with its principal place of business and mailing address at 120 Chula Vista Drive, San Antonio, TX, 78232 (hereinafter referred to as “**Mortgagor**”) to META ADVISORS LLC (“**Trustee**”) in its capacity as Unsecured Creditors’ Trustee for the Unsecured Creditors’ Trust (each, as defined in the Plan, as defined below), having an office at c/o Kelley Drye & Warren LLP, 101 Park Avenue, New York, NY 10178 (together with its successors and assigns, “**Mortgagee**”).

RECITALS:

WHEREAS, Mortgagor is the fee owner of the real property described in Exhibit A attached hereto; and

WHEREAS, Mortgagor filed petition for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Western District of Texas (the “**Bankruptcy Court**”);

WHEREAS, Mortgagor filed that certain Debtors’ Second Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code, dated as of March 31, 2017 (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the “**Plan**”) establishing the Unsecured Creditors’ Trust;

WHEREAS, the Bankruptcy Court entered an order confirming the Plan on April 27, 2017;

WHEREAS, Mortgagor is indebted to Mortgagee under that certain Promissory Note, dated on or about the date hereof (as it may be amended, restated, supplemented or otherwise modified from time to time, the “**Note**”) and such indebtedness is secured by that certain Security Agreement, dated on or about the date hereof (as it may be amended, restated, supplemented or otherwise modified from time to time, the “**Security Agreement**”; the Note, the Security Agreement, the Plan (as defined below), and any and all documents executed in connection therewith, the “**Transaction Documents**”);

WHEREAS, pursuant to the Security Agreement and the Plan, Mortgagor granted Mortgagee a continuing security interest in all assets of the Mortgagor, including, without limitation, all rights in any real property of the Mortgagor;

WHEREAS, defined terms used herein and not otherwise defined shall have the meaning set forth in the Plan.

NOW, THEREFORE, in consideration of the Recitals and the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor, intending to be legally bound hereby, agrees as follows:

ARTICLE 1 **DEFINITIONS**

Section 1.1 Definitions. All capitalized terms used herein without definition shall have the respective meanings ascribed to them in the Note or the Plan (as applicable). As used herein, the following terms shall have the following meanings:

(a) **“Event of Default”**: shall have the meaning ascribed to such term in Article 4 hereof.

(b) **“Insolvency Proceeding”**: Any judicial case or proceeding commenced by or against any Borrower, any Obligor or any Subsidiary under the Bankruptcy Code or any debtor relief laws otherwise relating to receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment or composition.

(c) **“Maturity Date”**: shall have the meaning ascribed to such term in the Note, or such earlier date on which the Obligations shall be due and payable in full, whether by acceleration, termination of the Note or otherwise.

(d) **“Mortgaged Property”**: All of Mortgagor’s interest in (1) the fee interest in the real property described in Exhibit A attached hereto and incorporated herein by this reference, together with any greater estate therein as hereafter may be acquired by Mortgagor (the **“Land”**), (2) all improvements now owned or hereafter acquired by Mortgagor, now or at any time situated, placed or constructed upon the Land (the **“Improvements”**); the Land and Improvements are collectively referred to herein as the **“Premises”**), (3) all materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by Mortgagor and now or hereafter attached to or installed in any of the Improvements or the Land, fixtures and goods that are or are to become fixtures, and water, gas, electrical, telephone, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the **“Fixtures”**), (4) all reserves, escrows or impounds required under the Note and all deposit accounts maintained by Mortgagor with respect to the Mortgaged Property (the **“Deposit Accounts”**), (5) all existing and future leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant to any Person a possessory interest in, or the right to use or occupy, all or any part of the Mortgaged Property, whether made before or after the filing by or against Mortgagor of any petition for relief under any Debtor Relief Laws, together with any extension, renewal or replacement of the same and together with all related security and other deposits (the **“Leases”**), (6) all of the rents, additional rents, revenues,

royalties, income, proceeds, profits, early termination fees or payments, security and other types of deposits, and other benefits paid or payable by parties to the Leases for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property or any part thereof, whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under any Debtor Relief Laws (the “**Rents**”), (7) all other agreements, such as construction contracts, architects’ agreements, engineers’ contracts, utility contracts, maintenance agreements, management agreements, service contracts, listing agreements, guaranties, warranties, permits, licenses, certificates and entitlements in any way relating to the construction, use, occupancy, operation, maintenance, enjoyment or ownership of the Mortgaged Property (the “**Property Agreements**”), (8) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, (9) all property tax refunds, utility refunds and rebates, earned or received at any time and irrespective of the time period to which they relate (the “**Tax Refunds**”), (10) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof (the “**Proceeds**”), (11) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgagor (the “**Insurance**”), (12) all of Mortgagor’s right, title and interest in and to any awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements or Fixtures (the “**Condemnation Awards**”), (13) all of Mortgagor’s rights to appear and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Mortgagor in the Mortgaged Property, and (14) all rights, powers, privileges, options and other benefits of Mortgagor as lessor under the Leases, including, without limitation, the immediate and continuing right to claim for, receive, collect and receive all Rents payable or receivable under the Leases or pursuant thereto (and to apply the same to the payment of the Obligations), and to do all other things which Mortgagor or any lessor is or may become entitled to do under the Leases. As used in this Mortgage, the term “Mortgaged Property” shall mean all or, where the context permits or requires, any portion of the above or any interest therein. THE TERM “MORTGAGED PROPERTY” SHALL NOT INCLUDE ANY ITEMS OF PERSONAL PROPERTY IN WHICH MORTGAGEE HAS OBTAINED AND PERFECTED A SECURITY INTEREST UNDER SEPARATE INSTRUMENTS.

(e) “**Obligations**”: All obligations and liabilities of the Borrowers, Obligors, Guarantors and their respective Subsidiaries owing to the Unsecured Creditors’ Trust, including, without limitation, (1) the repayment of all amounts outstanding from time to time under the Note and the other Transaction Documents, with such indebtedness maturing on the Maturity Date, including principal, interest (including all interest that, but for the provisions of any Debtor Relief Laws, would have accrued), and other amounts which may now or hereafter be advanced under the Transaction Documents, (2) the full and prompt performance of any and all repayment, fee, and indemnification obligations with respect to any Letters of Credit or Letter of Credit Documents, (3) fees, costs, expenses, charges and indemnification obligations accrued, incurred or arising in connection with any Transaction Documents, (4) all other payment obligations, (5) all “Obligations” under and as defined in the Note, and (6) all fees or expenses that accrue after the filing of an Insolvency Proceeding,

regardless of whether allowed or allowable in whole or in part as a claim in any Insolvency Proceeding.

(f) “UCC”: The Uniform Commercial Code of the state in which the Land is located or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than the state in which the Land is located, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

ARTICLE 2

GRANT

Section 2.1 Grant. For and in consideration of good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of Mortgagor herein set forth, to secure the full and timely payment and performance of the Obligations, Mortgagor GRANTS, BARGAINS, ASSIGNS, SELLS, MORTGAGES, WARRANTS AND CONVEYS, to Mortgagee, for the benefit of the Unsecured Creditors’ Trust, the Mortgaged Property, TO HAVE AND TO HOLD the Mortgaged Property and all parts, rights and appurtenances thereof, to Mortgagee, FOREVER AND WITH THE POWER OF SALE (to the extent permitted by applicable law), and Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Mortgagee.

TO HAVE AND TO HOLD, the Mortgaged Property, together with all and singular the parts, rights, privileges, hereditaments, and appurtenances thereto in any ways belonging or appertaining, to the use, benefit, and behoof of Mortgagee, its successors and assigns, in fee simple forever. Notwithstanding anything to the contrary contained herein, Mortgagor hereby agrees and acknowledges that this Mortgage shall not be canceled by the full and complete repayment of the Obligations, so long as the Note or the other Transaction Documents remain in force and effect.

ARTICLE 3

WARRANTIES, REPRESENTATIONS AND COVENANTS

Mortgagor warrants, represents and covenants to Mortgagee as follows:

Section 3.1 Title to Mortgaged Property and Lien of this Instrument. Mortgagor (i) has good and indefeasible title to the Mortgaged Property, in fee simple, free and clear of any liens, claims or interests, and (ii) has full power and lawful authority to encumber the Mortgaged Property in the manner and form set forth in this Mortgage. This Mortgage creates valid, enforceable first priority mortgage, liens and security interests against the Mortgaged Property. Mortgagor shall and will warrant and forever defend the title thereto and the quiet use and enjoyment thereof unto the Mortgagee, its successors and assigns, against the lawful claims of all persons whomsoever.

Section 3.2 First Lien Status. Mortgagor shall preserve and protect the first mortgage, lien and security interest status of this Mortgage. If any lien or security interest is asserted against the Mortgaged Property, Mortgagor shall promptly, and at its expense, (a) give Mortgagee a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Note (including the requirement of providing a bond or other security satisfactory to Mortgagee).

Section 3.3 Payment and Performance. Mortgagor shall pay the Obligations when due under the Transaction Documents and shall perform the Obligations in full when they are required to be performed.

Section 3.4 Replacement of Fixtures. Except as otherwise permitted under the Note or any other Transaction Documents, Mortgagor shall not, without the prior written consent of Mortgagee, permit any of the Fixtures to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Mortgagor subject to the liens and security interests of this Mortgage and the other Transaction Documents, and free and clear of any other lien or security interest except such as may be permitted under the Note or any other Transaction Documents, or first approved in writing by Mortgagee.

Section 3.5 Inspection. Mortgagor shall permit Mortgagee and its agents, representatives and employees to inspect the Mortgaged Property and all books and records of Mortgagor located thereon, and to conduct such environmental and engineering studies as Mortgagee may require. Provided that no Event of Default exists, all such testing and investigation shall be conducted at reasonable times and upon reasonable prior notice to Mortgagor. Mortgagee shall restore the Mortgaged Property to the condition it was in immediately prior to such testing and investigation.

Section 3.6 Other Covenants. All of the covenants in the Note are incorporated herein by reference and, together with covenants in this Article 3, shall, to the extent applicable, be covenants running with the land.

Section 3.7 Condemnation Awards and Insurance Proceeds.

(a) **Condemnation Awards.** Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Premises or any portion thereof, will notify Mortgagee of the pendency of such proceedings. Mortgagee may participate in any such proceedings and Mortgagor from time to time will deliver to Mortgagee all instruments requested by it to permit such participation. Mortgagor assigns all awards and compensation to which it is entitled for any condemnation or other taking, or any purchase in lieu thereof, to Mortgagee and authorizes Mortgagee to collect and receive such awards and compensation and to give proper receipts and acquittances therefor, subject to the terms of the Note. Mortgagor, upon request by Mortgagee, shall make, execute

and deliver any and all instruments requested for the purpose of confirming the assignment of the aforesaid awards and compensation to Mortgagee free and clear of any liens, charges or encumbrances of any kind or nature whatsoever. Notwithstanding the foregoing, provided no Event of Default then exists, to the extent the Note or any other Transaction Documents would allow Mortgagor to apply any condemnation proceeds to the repair or restoration of the Mortgaged Property, Mortgagor may receive such proceeds and apply the same to such repair or restoration.

(b) Insurance Proceeds. Mortgagor assigns to Mortgagee all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property. Mortgagor authorizes Mortgagee to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Mortgagee, instead of to Mortgagor and Mortgagee jointly, as more specifically described in the Note. In the event that the issuer of such insurance policy fails to disburse directly or solely to Mortgagee but disburses instead either solely to Mortgagor or to Mortgagor and Mortgagee, jointly, Mortgagor shall immediately endorse and transfer such proceeds to Mortgagee. Upon Mortgagor's failure to do so, Mortgagee may execute such endorsements or transfers from and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's agent and attorney-in-fact so to do. Notwithstanding the foregoing, provided no Event of Default then exists, to the extent the Note or any other Transaction Documents would allow Mortgagor to apply any insurance proceeds to the repair or restoration of the Mortgaged Property, Mortgagor may receive such proceeds and apply the same to such repair or restoration

Section 3.8 Costs of Defending and Upholding the Title and Lien. If any action or proceeding is commenced to which action or proceeding Mortgagee is made a party or in which it becomes necessary for Mortgagee to defend or uphold the title and lien of this Mortgage including any extensions, renewals, amendments or modifications thereof, Mortgagor shall, on demand, reimburse Mortgagee for all expenses (including, without limitation, reasonable attorneys' fees and reasonable appellate attorneys' fees) incurred by Mortgagee in any such action or proceeding and all such expenses shall be secured by this Mortgage. In any action or proceeding to foreclose this Mortgage or to recover or collect the Obligations, the provisions of law relating to the recovering of costs, disbursements and allowances shall prevail unaffected by this covenant.

Section 3.9 Transfer of the Mortgaged Property. EXCEPT AS EXPRESSLY PERMITTED PURSUANT TO THE TERMS OF THE NOTE OR ANY OTHER TRANSACTION DOCUMENTS, MORTGAGOR SHALL NOT SELL, TRANSFER, PLEDGE, ENCUMBER, CREATE A SECURITY INTEREST IN, GROUND LEASE, OR OTHERWISE HYPOTHECATE, ALL OR ANY PORTION OF THE MORTGAGED PROPERTY WITHOUT THE PRIOR WRITTEN CONSENT OF MORTGAGEE. THE CONSENT BY MORTGAGEE TO ANY SALE, TRANSFER, PLEDGE, ENCUMBRANCE, CREATION OF A SECURITY INTEREST IN, GROUND LEASE OR OTHER HYPOTHECATION OF, ANY PORTION OF THE MORTGAGED PROPERTY SHALL NOT BE DEEMED TO CONSTITUTE A NOVATION OR A CONSENT TO ANY FURTHER SALE, TRANSFER, PLEDGE, ENCUMBRANCE,

CREATION OF A SECURITY INTEREST IN, GROUND LEASE, OR OTHER HYPOTHECATION, OR TO WAIVE THE RIGHT OF MORTGAGEE, AT ITS OPTION, TO DECLARE THE OBLIGATIONS SECURED HEREBY IMMEDIATELY DUE AND PAYABLE, WITHOUT NOTICE TO MORTGAGOR OR ANY OTHER PERSON OR ENTITY, UPON ANY SUCH SALE, TRANSFER, PLEDGE, ENCUMBRANCE, CREATION OF A SECURITY INTEREST, GROUND LEASE, OR OTHER HYPOTHECATION TO WHICH MORTGAGEE SHALL NOT HAVE CONSENTED.

Section 3.10 Security Deposits. To the extent required by law, or after an Event of Default has occurred and during its continuance, if required by Mortgagee, all security deposits of tenants of the Mortgaged Property shall be treated as trust funds not to be commingled with any other funds of Mortgagor. Within twenty (20) days after request by Mortgagee, Mortgagor shall furnish satisfactory evidence of compliance with this Section 3.10, as necessary, together with a statement of all security deposits deposited by the tenants and copies of all Leases not theretofore delivered to Mortgagee, as requested thereby, certified by Mortgagor.

ARTICLE 4 **DEFAULT**

Section 4.1 Events of Default. The occurrence of any of the following events shall constitute an event of default under this Mortgage (each an “**Event of Default**”):

(a) an “Event of Default” (as such term is defined in the Note) shall have occurred;

(b) the breach or violation of any of the terms contained in Sections 3.5, 3.7, 3.8, 3.9 or 3.10 of this Mortgage;

(c) Mortgagor’s breach of any of the covenants set forth in this Mortgage and not referenced in clause (b) above, which breach or failure to comply continues for a period of thirty (30) days or more; provided, however, if such breach or failure to comply would otherwise result in an Event of Default under the Note or any other Transaction Documents, such breach or failure to comply shall result in an Event of Default hereunder concurrently with the occurrence of an Event of Default under the Note or such other Transaction Documents; or

(d) if any statement or representation in any warranty or representation set forth in Article 3 hereof shall now or hereafter prove to be false or misleading in any material respect.

ARTICLE 5 **REMEDIES AND FORECLOSURE**

Section 5.1 Remedies. If an Event of Default exists, Mortgagee may, at Mortgagee’s election, exercise any or all of the following rights, remedies and recourses:

(a) To the extent permitted under the Note, declare the Obligations to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable.

(b) Notify all tenants of the Premises and all others obligated on Leases of any part of the Premises that all rents and other sums owing on Leases have been assigned to Mortgagee and are to be paid directly to Mortgagee, and to enforce payment of all obligations owing on Leases, by suit, ejectment, cancellation, releasing, reletting or otherwise, whether or not Mortgagee has taken possession of the Premises, and to exercise whatever rights and remedies Mortgagee may have under any assignment of rents and leases.

(c) As and to the extent permitted by law, enter the Mortgaged Property, either personally or by its agents, nominees or attorneys, and take exclusive possession thereof and thereupon, Mortgagee may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Premises and conduct business thereat; (ii) complete any construction on the Premises in such manner and form as Mortgagee deems advisable in the reasonable exercise of its judgment; (iii) exercise all rights and powers of Mortgagor with respect to the Premises, whether in the name of Mortgagor, or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Premises and every part thereof, which rights shall not be in limitation of Mortgagee's rights under any assignment of rents and leases securing the Obligations; and (iv) pursuant to the provisions of the Note, apply the receipts from the Premises to the payment of the Obligations, after deducting therefrom all expenses (including attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments, insurance and other charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees.

(d) As and to the extent permitted by law, hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee deems necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 5.7 hereof.

(e) Require Mortgagor to assemble any collateral described in any UCC financing statement between Mortgagor, as debtor, and Mortgagee, as secured party, and make it available to Mortgagee, at Mortgagor's sole risk and expense, at a place or places to be designated by Mortgagee, in its sole discretion.

(f) Institute proceedings for the complete foreclosure of this Mortgage, by judicial action, in which case the Mortgaged Property may be sold for cash or credit in accordance with applicable law in one or more parcels as Mortgagee may determine.

Except as otherwise required by applicable law, with respect to any notices required or permitted under the UCC, Mortgagor agrees that ten (10) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings, power of sale, or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption, and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other Persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor. Mortgagee or any of the Unsecured Creditors' Trust may be a purchaser at such sale. If Mortgagee is the highest bidder, Mortgagee may credit the portion of the purchase price that would be distributed to Mortgagee against the Obligations in lieu of paying cash. In the event this Mortgage is foreclosed by judicial action, appraisal and valuation of the Mortgaged Property is waived. In the event of any sale made under or by virtue of this Article 5 (whether made by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale) all of the Obligations, if not previously due and payable, immediately thereupon shall become due and payable. The failure to make any such tenants of the Premises party to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Mortgagor, a defense to any proceedings instituted by Mortgagee to collect the sums secured hereby.

(g) (1) With or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Obligations then due and payable (if Mortgagee shall have elected not to declare the entire Obligations to be immediately due and owing), subject to the continuing lien, title and security interest of this Mortgage for the balance of the Obligations not then due; or (2) as and to the extent permitted by law, sell for cash or upon credit the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein, pursuant to judicial order, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien on the remaining portion of the Mortgaged Property; or (3) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in any Transaction Document; or (4) to the extent permitted by applicable law, recover judgment on the Note or any other Transaction Documents either before, during or after any proceedings for the enforcement of this Mortgage.

(h) Upon proper notice pursuant to applicable law, make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without regard to the adequacy of the Mortgaged Property for the repayment of the Obligations, the appointment of a receiver of the Mortgaged Property, and Mortgagor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and

otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 5.7 hereof.

(i) Exercise all other rights, remedies and recourses granted under the Transaction Documents or otherwise available at law or in equity.

Section 5.2 Separate Sales. The Mortgaged Property may be sold in one or more parcels and in such manner and order as Mortgagee in its sole discretion may direct; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 5.3 Remedies Cumulative, Concurrent and Nonexclusive. Mortgagee shall have all rights, remedies and recourses granted in the Transaction Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated under the Transaction Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee, as the case may be, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee in the enforcement of any rights, remedies or recourses under the Transaction Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 5.4 Release of and Resort to Collateral. Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interest created in or evidenced by the Transaction Documents or their status as a first and prior lien, title, mortgage and security interest in and to the Mortgaged Property. For payment of the Obligations, Mortgagee may resort to any other security in such order and manner as Mortgagee may elect.

Section 5.5 Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default or of any election by Mortgagee to exercise or the actual exercise of any right, remedy or recourse provided for under the Transaction Documents, except as otherwise specifically set forth in Section 4.1 hereof or elsewhere in this Mortgage or any other Transaction Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

Section 5.6 Discontinuance of Proceedings. If Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Transaction

Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee shall have the unqualified right to do so and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Obligations, the Transaction Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee thereafter to exercise any right, remedy or recourse under the Transaction Documents for such Event of Default.

Section 5.7 Application of Proceeds. The proceeds of any sale made under or by virtue of this Article 5, together with any Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

(a) to the payment of the costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (1) trustee's and receiver's fees and expenses, including the repayment of the amounts evidenced by any receiver's certificates, (2) court costs, (3) attorneys' and accountants' fees and expenses, (4) costs of advertisement, (5) all costs and expenses incurred by Mortgagee to cure defaults of Mortgagor under this Mortgage and the other Transaction Documents, and (6) all costs and expenses incurred by Mortgagee to protect or preserve the Mortgaged Property; and

(b) to the payment of the Obligations in such manner and order of preference as set forth in the Note and the other Transaction Documents; and

(c) the balance, if any, to the payment of the Persons legally entitled thereto.

Section 5.8 Occupancy After Foreclosure. Except as otherwise required by applicable law, any sale of the Mortgaged Property or any part thereof in accordance with Section 5.1 hereof will divest all right, title and interest of Mortgagor in and to the property sold. Subject to applicable law, any purchaser at a foreclosure sale will receive immediate possession of the property purchased. If Mortgagor retains possession of such property or any part thereof subsequent to such sale, Mortgagor will be considered a tenant at sufferance of the purchaser, and will, if Mortgagor remains in possession after demand to remove, be subject to eviction and removal, forcible or otherwise, with or without process of law.

Section 5.9 Additional Advances and Disbursements; Costs of Enforcement.

(a) If any Event of Default exists, Mortgagee shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. All sums advanced and expenses incurred at any time by Mortgagee under this Section 5.9, or otherwise under this Mortgage or any of the other Transaction Documents or applicable law,

shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Default Rate (as defined in the Note), and all such sums, together with interest thereon, shall be secured by this Mortgage.

(b) Mortgagor shall pay all expenses (including reasonable attorneys' fees and expenses and all costs and expenses related to legal work, research and litigation, including fees incurred in appellate proceedings) of or incidental to the perfection and enforcement of this Mortgage and the other Transaction Documents, or the enforcement, compromise or settlement of the Obligations or any claim under this Mortgage and the other Transaction Documents, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee in respect thereof, by litigation or otherwise.

Section 5.10 No Mortgagee in Possession. Neither the enforcement of any of the remedies under this Article 5, the assignment of the Rents and Leases under Article 6, the security interests under Article 7, nor any other remedies afforded to Mortgagee under the Transaction Documents, at law or in equity shall cause Mortgagee to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

Section 5.11 WAIVER OF MORTGAGOR'S RIGHTS. BY EXECUTION OF THIS MORTGAGE, MORTGAGOR EXPRESSLY: (A) ACKNOWLEDGES THE RIGHT OF MORTGAGEE OR RABOBANK TO ACCELERATE THE APPLICABLE INDEBTEDNESS EVIDENCED BY THE NOTE OR OTHER TRANSACTION DOCUMENTS, AS THE CASE MAY BE, UPON THE OCCURRENCE OF AN EVENT OF DEFAULT; (B) TO THE EXTENT ALLOWED BY APPLICABLE LAW, AND EXCEPT AS EXPRESSLY SET FORTH IN SECTION 4.1 HEREOF OR ELSEWHERE IN THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT, WAIVES ANY AND ALL RIGHTS WHICH MORTGAGOR MAY HAVE UNDER THE CONSTITUTION OF THE UNITED STATES, THE VARIOUS PROVISIONS OF THE CONSTITUTIONS FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY MORTGAGEE OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO MORTGAGEE; (C) ACKNOWLEDGES THAT MORTGAGOR HAS READ THIS MORTGAGE AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO MORTGAGOR AND MORTGAGOR HAS CONSULTED WITH LEGAL COUNSEL OF MORTGAGOR'S CHOICE PRIOR TO EXECUTING THIS MORTGAGE; AND (D) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF MORTGAGOR HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY MORTGAGOR AS PART OF A BARGAINED FOR LOAN TRANSACTION.

ARTICLE 6
ASSIGNMENT OF RENTS AND LEASES

Section 6.1 Assignment. In furtherance of and in addition to the assignment made by Mortgagor in Section 2.1 of this Mortgage, Mortgagor hereby absolutely and unconditionally assigns, sells, transfers and conveys to Mortgagee all of its right, title and interest in and to all Leases, whether now existing or hereafter entered into, and all of its right, title and interest in and to all Rents. This assignment is an absolute assignment and not an assignment for additional security only. So long as no Event of Default shall have occurred and be continuing and to the extent not prohibited by the Note, Mortgagor shall have a revocable license from Mortgagee to exercise all rights extended to the landlord under the Leases, including the right to receive and collect all Rents and to hold the Rents in trust for use in the payment and performance of the Obligations and to otherwise use the same. The foregoing license is granted subject to the conditional limitation that no Event of Default shall have occurred and be continuing. Upon the occurrence and during the continuance of an Event of Default, whether or not legal proceedings have commenced, and without regard to waste, adequacy of security for the Obligations or solvency of Mortgagor, the license herein granted shall automatically expire and terminate, without notice by Mortgagee (any such notice being hereby expressly waived by Mortgagor).

Section 6.2 Perfection Upon Recordation. Mortgagor acknowledges that Mortgagee has taken all actions necessary to obtain, and that upon recordation of this Mortgage, Mortgagee shall have, to the extent permitted under applicable law, a valid and fully perfected, first priority, present assignment of the Rents arising out of the Leases and all security for such Leases. Mortgagor acknowledges and agrees that upon recordation of this Mortgage, Mortgagee's interest in the Rents shall be deemed to be fully perfected, "choate" and enforceable as to Mortgagor and all third parties, including, without limitation, any subsequently appointed trustee in any case under any Debtor Relief Laws, without the necessity of commencing a foreclosure action with respect to this Mortgage, making formal demand for the Rents, obtaining the appointment of a receiver or taking any other affirmative action.

Section 6.3 Bankruptcy Provisions. Without limitation of the absolute nature of the assignment of the Rents hereunder, Mortgagor and Mortgagee agree that (a) this Mortgage shall constitute a "security agreement" for purposes of Section 552(b) of the Bankruptcy Code, (b) the security interest created by this Mortgage extends to property of Mortgagor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents and (c) such security interest shall extend to all Rents acquired by the estate after the commencement of any case in bankruptcy.

Section 6.4 No Merger of Estates. So long as part of the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates (if any) to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Mortgagee, any tenant or any third party by purchase or otherwise.

ARTICLE 7

SECURITY AGREEMENT

Section 7.1 Security Interest. This Mortgage constitutes a “security agreement” on personal property within the meaning of the UCC and other applicable law and with respect to the Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards. To this end, Mortgagor grants to Mortgagee a first and prior security interest in the Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards and all other Mortgaged Property which is personal property to secure the payment and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards sent to Mortgagor at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Mortgagor. THE TERM “MORTGAGED PROPERTY” SHALL NOT INCLUDE ANY ITEMS OF PERSONAL PROPERTY IN WHICH MORTGAGEE HAS OBTAINED AND/OR PERFECTED A SECURITY INTEREST UNDER SEPARATE INSTRUMENTS.

Section 7.2 Financing Statements. Mortgagor authorizes Mortgagee to file, in form and substance satisfactory to Mortgagee, such financing statements and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee’s security interest hereunder and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Mortgagor’s state of incorporation is the State of South Carolina.

Section 7.3 Fixture Filing. To the extent permitted under the UCC of the state in which the Land is located, this Mortgage shall also constitute a “fixture filing” for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the address of Debtor (Mortgagor) and Secured Party (Mortgagee) as set forth in the first paragraph of this Mortgage. Debtor (Mortgagor) is the record owner of the Mortgaged Property.

**ARTICLE 8
RESERVED**

**ARTICLE 9
MISCELLANEOUS**

Section 9.1 Notices. Any notice required or permitted to be given under this Mortgage shall be given in accordance with Section 10.1 of the Note.

Section 9.2 Covenants Running with the Land. All Obligations contained in this Mortgage are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, “Mortgagor” shall refer to the party named as such in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Mortgaged Property. All Persons who may have

or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Note and the other Transaction Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

Section 9.3 Attorney-in-Fact. Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest and with full power of substitution, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Mortgaged Property, and (d) while any Event of Default exists, to perform any obligation of Mortgagor hereunder, however: (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee in such performance shall be added to and included in the Obligations and shall bear interest at the Default Rate; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section 9.3. Notwithstanding the foregoing, Mortgagee shall be liable for its gross negligence, willful misconduct, and bad faith in connection with exercising its rights hereunder to the extent determined by a court of competent jurisdiction in a final, non-appealable judgment.

Section 9.4 Successors and Assigns. This Mortgage shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder.

Section 9.5 No Waiver. Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Transaction Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all such terms, provisions and conditions.

Section 9.6 Note. If any conflict or inconsistency exists between this Mortgage and the Note, the Note shall govern.

Section 9.7 Release or Reconveyance. Upon payment and performance in full of the Obligations and termination of the Note and the other Transaction Documents, Mortgagee, at Mortgagor's request and expense, shall release the liens and security interests created by this Mortgage or reconvey the Mortgaged Property to Mortgagor.

Section 9.8 Waiver of Stay, Moratorium and Similar Rights. Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the Obligations secured hereby, or any agreement between Mortgagor and Mortgagee or any rights or remedies of Mortgagee.

Section 9.9 Applicable Law. The provisions of this Mortgage regarding the creation, perfection and enforcement of the liens, title and security interests herein granted shall be governed by and construed under the laws of the state in which the Land is located, except to the extent the UCC in effect in such jurisdiction provides that perfection of any security interest created under the UCC is governed by another state's law. All other provisions of this Mortgage shall be governed by the laws of the State of New York (including, without limitation, Section 5-1401 of the General Obligations Law of the State of New York).

Section 9.10 Headings. The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

Section 9.11 Entire Agreement. This Mortgage and the other Transaction Documents embody the entire agreement and understanding between Mortgagor and Mortgagee and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Transaction Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 9.12 Multisite Real Estate Transaction. Mortgagor acknowledges that this Mortgage is one of a number of other mortgages, deeds to secure debt, deeds of trusts and security documents that secure the Obligations. Mortgagor agrees that the lien of this Mortgage shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Trustee and without limiting the generality of the foregoing, the lien hereof shall not be impaired by any acceptance by Trustee of any security for or guarantees of any of the Obligations hereby secured, or by any failure, neglect or omission on the part of the Trustee to realize upon or protect any Obligations or any collateral security therefor including the other mortgages, deeds to secure debt, deeds of trust and security documents. The lien hereof shall not in any manner be impaired or affected by any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of any of the Obligations or any of the collateral security therefor, including the other mortgages, deeds to secure debt, deeds of trust and security documents or of any guarantee thereof, and Trustee may at its discretion foreclose, exercise any power of sale, or exercise any other remedy available to it under any or all of the other mortgages, deeds to secure debt, deeds of trust and other security documents without first exercising or enforcing any of its rights and remedies hereunder. Such exercise of Trustee's rights and remedies under any or all of the other mortgages, deeds to secure debt, deeds of trust and other security documents

shall not in any manner impair the indebtedness hereby secured or the lien of this Mortgage and any exercise of the rights or remedies of Trustee shall not impair the lien of any other mortgages, deeds to secure debt, deeds of trust and other security documents or any of Trustee's rights and remedies thereunder. Mortgagor specifically consents and agrees that Trustee may exercise its rights and remedies hereunder and under the other mortgages, deeds to secure debt, deeds of trust and other security documents separately or concurrently and in any order that it may deem appropriate and Mortgagor waives any rights of subrogation.

Section 9.13 Mortgagee as Trustee; Successor Trustees.

(a) Trustee has been appointed to act as Trustee hereunder by the Unsecured Creditors' Trust. Trustee shall have the right hereunder to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including, without limitation, the release or substitution of the Mortgaged Property) in accordance with the terms of the Note and any related trustee agreement among Trustee and the Unsecured Creditors' Trust (collectively, as amended, supplemented or otherwise modified or replaced from time to time, the "**Trustee Documents**") and this Mortgage. Mortgagor and all other persons shall be entitled to rely on releases, waivers, consents, approvals, notifications and other acts of Trustee, without inquiry into the existence of required consents or approvals of the Unsecured Creditors' Trust therefor.

(b) Mortgagee shall at all times be the same Person that is Trustee under the Trustee Documents. Written notice of resignation by Trustee pursuant to the Trustee Documents shall also constitute notice of resignation as Trustee under this Mortgage. Removal of Trustee pursuant to any provision of the Trustee Documents shall also constitute removal as Trustee under this Mortgage. Appointment of a successor Trustee pursuant to the Trustee Documents shall also constitute appointment of a successor Trustee under this Mortgage. Upon the acceptance of any appointment as Trustee by a successor Trustee under the Trustee Documents, that successor Trustee shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Trustee as the Mortgagee under this Mortgage, and the retiring or removed Trustee shall promptly, at the expense of Mortgagor (i) assign and transfer to such successor Trustee all of its right, title and interest in and to this Mortgage and the Mortgaged Property, and (ii) execute and deliver to such successor Trustee such assignments and amendments and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Trustee of the liens and security interests created hereunder, whereupon such retiring or removed Trustee shall be discharged from its duties and obligations under this Mortgage. After any retiring or removed Trustee's resignation or removal hereunder as Trustee, the provisions of this Mortgage and the Trustee Documents shall inure to its benefit as to any actions taken or omitted to be taken by it under this Mortgage while it was the Trustee hereunder.

(c) Each reference herein to any right granted to, benefit conferred upon or power exercisable, exercised or action taken by the "Mortgagee" shall be deemed to be a reference to or be deemed to have been so taken, as the case may be, by Mortgagee in its capacity as Trustee pursuant to the Trustee Documents for the benefit of the Unsecured Creditors' Trust all as more fully set forth in the Trustee Documents.

Section 9.14 Time of Termination.

(a) The maximum amount of principal to be secured at any one time is Five Million Two Hundred and Fifty Thousand Dollars and 00/100 (\$5,250,000.00), plus accrued interest and costs and fees relating thereto. This Mortgage is given to secure the Obligations, including the payment and performance of the Note made to Borrowers on the date hereof.

(b) If the outstanding principal balance of the Note is ever reduced to a zero (\$0.00) balance, the lien of this Mortgage shall not be released or extinguished by operation of law or implied intent of the parties. This Mortgage, the Note and the other Transaction Documents shall remain in full force and effect as to any Obligations under the Transaction Documents made after any such zero balance until the Note is paid in full and all of the Obligations have been satisfied, all agreements of Mortgagee and Unsecured Creditors' Trust have been terminated and this Mortgage has been cancelled of record.

Section 9.15 Jury Trial Waiver. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, MORTGAGOR AND MORTGAGEE EACH HEREBY WAIVES TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS MORTGAGE.

Section 9.16 Severability of Invalid Provisions. All rights, powers and remedies provided herein are limited to the extent necessary so that they shall not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Mortgage shall be held to be invalid, illegal or unenforceable, the validity and enforceability of the remaining terms of this Mortgage shall in no way be affected thereby.

ARTICLE 10
LOCAL LAW PROVISIONS

Section 10.1 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article 10 and the terms and conditions of this Mortgage, the terms and conditions of this Article 10 shall control and be binding.

Section 10.2 Limitations Based Upon Applicable Law. Anything to the contrary otherwise contained in this instrument notwithstanding, all provisions of this instrument granting to any party remedies or the benefits of any waiver, self-help or other similar provisions shall be read to provide that the same are available only to the extent permitted by applicable law.

Section 10.3 Waiver of Jury Trial. MORTGAGOR, AFTER CONSULTATION WITH ITS ATTORNEYS, HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT IT MAY HAVE TO A TRIAL BY JURY IN

RESPECT TO ANY ACTION, PROCEEDING, LITIGATION OR COUNTERCLAIM BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE MORTGAGE, THE NOTE, THE TRANSACTION DOCUMENTS AND ANY OTHER AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS, WHETHER VERBAL OR WRITTEN OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE MORTGAGEE ACCEPTING THIS MORTGAGE.

Section 10.4 Interest Secured. Interest secured by this Mortgage may be deferred, capitalized or accrued.

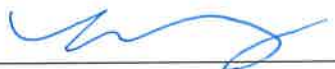
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Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed and delivered under seal by its duly authorized representative all as of the day and year first above written.

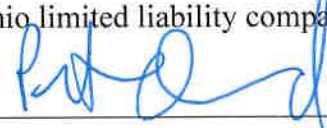
MORTGAGOR:

Signed, sealed and delivered
in the presence of:

 5/12/17
First Witness

 5/12/17
Second Witness

FIRE MOUNTAIN RESTAURANTS, LLC,
an Ohio limited liability company

By:  (seal)

Name: Peter Donbavand

Title: Vice president

[Acknowledgment appears on the following page]

ACKNOWLEDGMENT

STATE OF Texas)
)
COUNTY OF Bexar)

SS.

On May 12, 2017, before me, the undersigned, Notary Public in and for said State and County, personally appeared Peter Donkavut personally known to me (or proved to me on the basis of satisfactory evidence) to be the vice president of FIRE MOUNTAIN RESTAURANTS, LLC, an Ohio limited liability company, whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Lauren Najarian
Notary Public
Name: Lauren Najarian
My Commission Expires: 9-11-2018

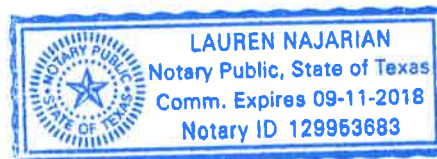


Exhibit A
Legal Description

Anderson County, South Carolina

Tract One:

All that certain lot or tract of land in Centerville Township, Anderson County, South Carolina, and in School District No. Five, containing 1.5 acres, more or less, and being shown on plat made by Clarkson Surveying Company, dated October 13, 1978, of record in the Office of the Clerk of Court for the County of Anderson, SC, in Plat Book 84 at Page 600. Said lot or tract of land fronting on the Northeastern side of S.C. Highway 28 By-Pass for a combined distance of 251.65 feet, and having the following courses and distances: Beginning at a point on S.C. Highway 28 By-Pass at the Southwestern corner of said lot, and running thence N 27-48 E 125.77 feet; thence N 10-31 E 137.63 feet; thence S 55-21 E 274.13 feet; thence S 10-31 W 63.58 feet; thence S 27-48 W 192.08 feet to a point on S.C. Highway 28 By-Pass; thence along said Highway N 56-50 W 101.2 feet; thence continuing N 55-00 W 150.45 feet to the point of beginning.

Also all right, title and interest in and to the strip of land adjoining the above parcel on the East subject to the right of way of Duke Power Company and Seaboard Coastline Railroad as shown on said plat.

LESS AND EXCEPT THEREFROM all that certain piece, parcel or tract of land in Anderson County, S.C. containing 0.06 acres according to the plat prepared by Farmer & Simpson Engineers, and being identified thereon as Tract "A", which plat is recorded in the Office of the Clerk of Court for Anderson County, S.C. in Plat Book 90 at Page 514, reference being made therein for a metes and bounds description.

Tract Two:

All that certain piece, parcel or tract of land in Anderson County, SC, in School District No. 5, containing 0.30 acre according to a plat prepared by Farmer & Simpson Engineers, Anderson, SC, dated July 18, 1983, and being identified thereon as Tract "B", which plat is recorded in the Office of the Clerk of Court for Anderson County, SC, in Plat Book 90 at Page 514, and having, according to said plat, the following metes and bounds, to-wit:

BEGINNING at an iron pin approximately 41 feet in a southeastern direction from the northwesternmost corner of other property of the Grantee and running thence N 31-34 E 40.2 feet to an iron pin placed; thence S 51-34 E 320.7 feet to an iron pin placed at or near the center line of the right-of-way of the Seaboard Coast Line Railway; thence with the center line of said right-of-way S 29-42 W 40.3 feet to an iron pin placed; thence N 51-34 W 322 feet to an iron pin, the point of beginning.

DERIVATION:

Tract 1 – Being the same property conveyed to Ryan's Family Steak Houses, Inc. by Deed of Ryan's family Steak House of Anderson, No. 2 dated May 12, 1982 and recorded in Book 19U, Page 26 of the Anderson County Register of Deeds.

Tract 2 – Being the same property conveyed to Ryan's Family Steak Houses, Inc. by Deed of Gerald R. Terry dated August 17, 1983 and recorded in Book 20B, Page 475 of the Anderson County Register of Deeds.

**THIS INSTRUMENT WAS PREPARED BY,
RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:**

**The maximum principal indebtedness for
Tennessee recording tax purposes is
[\$5,250,000.00.]**

**David Kurzweil
Greenberg Traurig LLP
Terminus 200
3333 Piedmont Road NE, Suite 2500
Atlanta, GA 30305**

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY
AGREEMENT AND FIXTURE FILING**

by and from

**FIRE MOUNTAIN RESTAURANTS, LLC, an Ohio limited liability company,
“Grantor”**

to

**META ADVISORS LLC,,
in its capacity as Unsecured Creditors’ Trustee for the Unsecured Creditors’ Trust,
“Beneficiary”**

Dated as of May 18, 2017

THIS DEED OF TRUST IS ALSO A UNIFORM COMMERCIAL CODE FINANCING STATEMENT FILED AS A FIXTURE FILING IN ACCORDANCE WITH T.C.A. § 47-9-502(C). THE COLLATERAL IS DESCRIBED IN THIS DEED OF TRUST, AND INCLUDES GOODS THAT ARE OR MAY BECOME AFFIXED TO THE REAL PROPERTY DESCRIBED HEREIN. THE NAMES AND ADDRESSES OF THE DEBTOR (GRANTOR) AND THE SECURED PARTY (BENEFICIARY) ARE SET FORTH HEREFTER IN THE INITIAL PARAGRAPH OF THIS DOCUMENT. THE RECORD OWNER OF THE REAL PROPERTY IS GRANTOR.

PURSUANT TO T.C.A. §47-28-104, NOTICE IS HEREBY GIVEN THAT THIS DEED OF TRUST SECURES OBLIGATORY ADVANCES AND IS FOR COMMERCIAL PURPOSES. THIS DEED OF TRUST ALSO SECURES OPTIONAL ADVANCES WHICH ARE NONOBLIGATORY.

PURSUANT TO THE TERMS OF T.C.A. §66-11-108, BENEFICIARY EXPRESSLY DOES NOT CONSENT TO THE PRIORITY OF ANY MECHANICS, MATERIALMEN’S OR OTHER LIENS IMPOSED SUBSEQUENT TO THE DATE OF RECORDATION OF THIS DEED OF TRUST.

**DEED OF TRUST, ASSIGNMENT OF
RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING
(Obion County, Tennessee)**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this “**Deed of Trust**”) is dated as of this 18th day of May, 2017, and is delivered pursuant to the below-described Promissory Note, by and from FIRE MOUNTAIN RESTAURANTS, LLC, an Ohio limited liability company, having a principal office address of 120 Chula Vista Drive, San Antonio, TX, 78232 (“**Grantor**”), to META ADVISORS LLC, (“**Trustee**”) in its capacity as Unsecured Creditors’ Trustee for the Unsecured Creditors’ Trust (each, as defined in the Plan, as defined below), with a mailing address of (together with its successors and assigns, “**Beneficiary**”)

RECITALS:

WHEREAS, Grantor is the fee owner of the real property described in Schedule I attached hereto;

WHEREAS, Mortgagor filed petition for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Western District of Texas (the “**Bankruptcy Court**”);

WHEREAS, Grantor filed that certain Debtors’ Second Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code, dated as of March 31, 2017 (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the “**Plan**”) establishing the Unsecured Creditors’ Trust;

WHEREAS, the Bankruptcy Court entered an order confirming the Plan on April 27, 2017;

WHEREAS, Grantor is indebted to Beneficiary under that certain Promissory Note, dated on or about the date hereof (as it may be amended, restated, supplemented or otherwise modified from time to time, the “**Note**”) and such indebtedness is secured by that certain Security Agreement, dated on or about the date hereof (as it may be amended, restated, supplemented or otherwise modified from time to time, the “**Security Agreement**”; the Note, the Security Agreement, the Plan (as defined below), and any and all documents executed in connection therewith, the “**Transaction Documents**”);

WHEREAS, pursuant to the Security Agreement and the Plan, Grantor granted Beneficiary a continuing security interest in all assets of the Grantor, including, without limitation, all rights in any real property of the Grantor;

WHEREAS, defined terms used herein and not otherwise defined shall have the meaning set forth in the Plan.

NOW, THEREFORE, in consideration of the Recitals and the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor, intending to be legally bound hereby, agrees as follows:

ARTICLE 1 **DEFINITIONS**

Section 1.1 Definitions. All capitalized terms used herein without definition shall have the respective meanings ascribed to them in the Note. As used herein, the following terms shall have the following meanings:

(a) **“Event of Default”**: shall have the meaning ascribed to such term in Article 4 hereof.

(b) **“Insolvency Proceeding”**: Any judicial case or proceeding commenced by or against any Maker (as defined in the Note) under the Bankruptcy Code, or under any other state or federal bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

(c) **“Maturity Date”**: (i) shall mean (i) the “Maturity Date” (as defined in the Note), or (ii) such earlier date on which the Obligations shall be due and payable in full, whether by acceleration, termination of the Note or otherwise.

(d) **“Obligations”**: all of the present and future obligations of Grantor and each other Maker (as defined in the Note) arising from, or owing under, pursuant to, or with respect to this Deed of Trust, the Note, any other Transaction Documents, or other collateral documents, executed in connection therewith, including, reasonable attorneys’ fees and expenses and any interest, fees, or expenses that accrue after the filing of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any Insolvency Proceeding.

(e) **“Trust Property”**: All of Grantor’s interest in (1) the fee interest in the real property described in Exhibit A attached hereto and incorporated herein by this reference, together with any greater estate therein as hereafter may be acquired by Grantor (the **“Land”**), (2) all improvements now owned or hereafter acquired by Grantor, now or at any time situated, placed or constructed upon the Land, and all replacements thereof and additions thereto (collectively, the **“Improvements”**; the Land and Improvements are collectively referred to herein as the **“Premises”**), (3) all materials,

supplies, equipment, apparatus and other goods now owned or hereafter acquired by Grantor and now or hereafter attached to or installed in any of the Improvements or the Land, fixtures and goods that are or are to become fixtures, and water, gas, electrical, telephone, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the “**Fixtures**”), (4) all reserves, escrows or impounds required under the Note and all deposit accounts maintained by Grantor with respect to the Trust Property (the “**Deposit Accounts**”), (5) all existing and future leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant to any Person a possessory interest in, or the right to use or occupy, all or any part of the Trust Property, whether made before or after the filing by or against Grantor of any petition for relief under the Bankruptcy Code, together with any extension, renewal or replacement of the same and together with all related security and other deposits (the “**Leases**”), (6) all of the rents, additional rents, revenues, royalties, income, proceeds, profits, early termination fees or payments, security and other types of deposits, and other benefits paid or payable by parties to the Leases for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Trust Property or any part thereof, whether paid or accruing before or after the filing by or against Grantor of any petition for relief under the Bankruptcy Code (the “**Rents**”), (7) all other agreements, such as construction contracts, architects’ agreements, engineers’ contracts, utility contracts, maintenance agreements, management agreements, service contracts, listing agreements, guaranties, warranties, permits, licenses, certificates and entitlements in any way relating to the construction, use, occupancy, operation, maintenance, enjoyment or ownership of the Trust Property (the “**Property Agreements**”), (8) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, (9) all property tax refunds, utility refunds and rebates, earned or received at any time with respect to the Premises and irrespective of the time period to which they relate (the “**Tax Refunds**”), (10) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof (the “**Proceeds**”), (11) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Grantor (the “**Insurance**”), (12) all of Grantor’s right, title and interest in and to any awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements or Fixtures (the “**Condemnation Awards**”), (13) all of Grantor’s rights to appear in and defend any action or proceeding brought with respect to the Trust Property and to commence any action or proceeding to protect the interest of Grantor in the Trust Property, and (14) all rights, powers, privileges, options and other benefits of Grantor as lessor under the Leases, including, without limitation, the immediate and continuing right to claim for, collect and receive all Rents payable or receivable under the Leases or pursuant thereto (and to apply the same to the payment of the Obligations), and to do all other things which Grantor or any lessor is or may become entitled to do under the Leases. As used in this Deed of Trust, the term “Trust Property” shall mean all or, where the context permits or requires, any portion of the above or any

interest therein. THE TERM "TRUST PROPERTY" SHALL NOT INCLUDE ANY ITEMS OF PERSONAL PROPERTY IN WHICH BENEFICIARY HAS OBTAINED AND PERFECTED A SECURITY INTEREST UNDER SEPARATE INSTRUMENTS.

(f) "UCC": The Uniform Commercial Code of the state in which the Land is located or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than the state in which the Land is located, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

ARTICLE 2

GRANT

Section 2.1 Grant. For and in consideration of good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of Grantor herein set forth and to secure the full and timely payment and performance of the Obligations, Grantor GRANTS, BARGAINS, ASSIGNS, SELLS, WARRANTS, AND CONVEYS, to Trustee and Trustee's successors and assigns, the Trust Property, TO HAVE AND TO HOLD the Trust Property and all parts, rights and appurtenances thereof in any ways belonging or appertaining, to the use, benefit, and behoof of Trustee, IN TRUST, WITH POWER OF SALE, for the benefit of Beneficiary, in fee simple forever, and Grantor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Trust Property unto Trustee, for the benefit of Beneficiary. Notwithstanding anything to the contrary contained in the immediately preceding sentence, Grantor hereby agrees and acknowledges that this Deed of Trust shall not be canceled by the full and complete repayment of the Obligations, so long as the Note or the other Transaction Documents remain in force and effect.

ARTICLE 3

WARRANTIES, REPRESENTATIONS AND COVENANTS

Grantor warrants, represents and covenants to Beneficiary as follows:

Section 3.1 Title to Trust Property and Lien of this Instrument. (a) Grantor has good and indefeasible title to the Trust Property, in fee simple (to the extent that the Trust Property constitutes real property), free and clear of any liens, claims or interests, and (b) Grantor has full power and lawful authority to encumber the Trust Property in the manner and form set forth in this Deed of Trust. This Deed of Trust creates valid, enforceable first priority deed of trust, liens and security interests against the Trust Property.

Section 3.2 First Lien Status. Grantor shall preserve and protect the first lien and security interest status of this Deed of Trust. If any lien or security interest

is asserted against the Trust Property, Grantor shall promptly, and at its expense, (a) give Beneficiary a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Note (including the requirement of providing a bond or other security satisfactory to Beneficiary).

Section 3.3 Payment and Performance. Grantor shall pay the Obligations when due under the Transaction Documents and shall perform the Obligations in full when they are required to be performed.

Section 3.4 Replacement of Fixtures. Except as otherwise permitted under the Note or any other Transaction Documents, Grantor shall not, without the prior written consent of Beneficiary, permit any of the Fixtures to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Grantor subject to the liens and security interests of this Deed of Trust and the other Transaction Documents, and free and clear of any other lien or security interest except such as may be permitted under the Note or any other Transaction Documents, or first approved in writing by Beneficiary.

Section 3.5 Inspection. Grantor shall permit Beneficiary and its agents, representatives and employees to inspect the Trust Property and all books and records of Grantor located thereon, and to conduct such environmental and engineering studies as Beneficiary may require. Provided that no Event of Default exists, all such testing and investigation shall be conducted at reasonable times and upon reasonable prior notice to Grantor. Beneficiary shall restore the Trust Property to the condition it was in immediately prior to such testing and investigation.

Section 3.6 Other Covenants. All of the covenants in the Note are incorporated herein by reference and, together with covenants in this Article 3, shall, to the extent applicable, be covenants running with the land.

Section 3.7 Condemnation and Insurance.

(a) **Condemnation Awards.** Grantor acknowledges that Condemnation Awards have been assigned to Beneficiary, which Condemnation Awards Beneficiary is hereby irrevocably authorized to collect and receive, and to give appropriate receipts and acquittances therefor, and at Beneficiary's option, to apply the same toward the payment of the amount owing on account of the Obligations in such order of application as Beneficiary may elect and whether or not the same may then be due and payable or otherwise adequately secured and any amounts not so applied may held as collateral security therefor. Grantor covenants and agrees that Grantor will give Beneficiary immediate notice of the actual or threatened commencement of any

proceedings under condemnation or eminent domain affecting all or any part of the Trust Property including any easement therein or appurtenance thereof or severance and consequential damage and change in grade of streets, and will deliver to Beneficiary copies of any and all papers served in connection with any such proceedings. Grantor further covenants and agrees to make, execute and deliver to Beneficiary, at any time or times upon request, free, clear and discharged of any encumbrances of any kind whatsoever, any and all further assignments and/or instruments deemed necessary by Beneficiary for the purpose of validly and sufficiently assigning all awards and other compensation heretofore and hereafter to be made to Grantor for any taking, either permanent or temporary, under any such proceeding.

(b) Required Insurance. Grantor will, at its expense, keep all buildings, improvements, equipment and other property now or hereafter constituting part of the Trust Property insured against loss or damage by fire, lightning, windstorm, explosion and such other risks as are usually included under extended coverage policies, or which are usually insured against by owners of like property, in amount sufficient to prevent Grantor or Beneficiary from becoming a co-insurer of any partial loss under applicable policies and in any event not less than the then full insurable value (actual replacement value without deduction for physical depreciation) thereof, as determined at the request of Beneficiary and at Grantor's expense by the insurer or insurers or by an expert approved by Beneficiary, all under insurance policies payable, in case of loss or damage, to Beneficiary, such rights to be evidenced by the usual standard non-contributory form of mortgage clause to be attached to each policy. Grantor shall not carry separate insurance concurrent in kind or form and contributing in the event of loss, with any insurance required hereby. Grantor shall also obtain and maintain public liability, property damage and workmen's compensation insurance in each case in form and content satisfactory to Beneficiary and in amounts as are customarily carried by owners of like property and approved by Beneficiary. Grantor shall also obtain and maintain such other insurance with respect to the Trust Property in such amounts and against such insurable hazards as Beneficiary from time to time may require, including, without limitation, boiler and machinery insurance, insurance against flood risks, host liquor liability, war risk insurance when and to the extent obtainable from the United States Government or any agency thereof, and insurance against loss of rent due to fire and risks now or hereafter embraced by so-called "extended coverage". All insurance required hereby shall be maintained with good and responsible insurance companies satisfactory to Beneficiary and shall not provide for any deductible amount in excess of \$10,000 not approved in writing by Beneficiary, shall provide that any losses shall be payable notwithstanding any act or negligence of Grantor, shall provide that no cancellation thereof shall be effective until at least thirty (30) days after receipt by Grantor and Beneficiary of written notice thereof (ten (10) days in the case of non-payment of premiums), and shall be satisfactory to Beneficiary in all other respects. Upon the execution of this Deed of Trust and thereafter not less than fifteen (15) days prior to the expiration date of any policy delivered pursuant to this Deed of Trust, Grantor

will deliver to Beneficiary certificates of insurance evidencing Grantor's compliance with the foregoing (and, at Beneficiary's request, the originals of any policy or renewal policy, as the case may be, required by this Deed of Trust, bearing notations evidencing the payment of all premiums). In the event of foreclosure, Grantor authorizes and empowers Beneficiary to obtain insurance upon the Trust Property in amounts aforesaid for a period covering the time of redemption from foreclosure sale provided by law, and if necessary therefor to cancel any or all existing insurance policies.

(c) Failure to Maintain Required Insurance. If Grantor does not provide Beneficiary with evidence of the insurance coverage as and when required by this Deed of Trust or the Note, Beneficiary may purchase insurance at Grantor's expense to protect Beneficiary's interests in the Trust Property. This insurance may, but need not, protect Grantor's interests in the Trust Property. The coverage purchased by Beneficiary may exclude any claims that Grantor makes or any claim that is made against Grantor in connection with the Trust Property. Upon Grantor's request, Beneficiary will cancel any such insurance purchased by Beneficiary, after Grantor has provided Beneficiary with evidence that Grantor has obtained insurance as required by this Deed of Trust. If Beneficiary purchases insurance for the Trust Property, Grantor will be responsible for the costs of that insurance, including interest and any other charges that Beneficiary may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance Grantor may be able to obtain on its own.

Section 3.8 Damage to or Destruction of Trust Property.

(a) Notice. In case of any material damage to or destruction of the Trust Property or any part thereof, Grantor shall promptly give written notice thereof to Beneficiary, generally describing the nature and extent of such damage or destruction.

(b) Restoration. In case of any damage to or destruction of the Trust Property or any part thereof, Grantor, whether or not the insurance proceeds, if any, received on account of such damage or destruction shall be sufficient for the purpose, Grantor, at its expense, will promptly commence and complete (subject to unavoidable delays occasioned by strikes, lockouts, acts of God, inability to obtain labor or materials, governmental restrictions and similar causes beyond the reasonable control of Grantor) the restoration, replacement or rebuilding of the Trust Property as nearly as possible to its value, condition and character immediately prior to such damage or destruction.

(c) Adjustment of Loss. Grantor hereby authorizes Beneficiary, at Beneficiary's option, to adjust and compromise any losses under any insurance afforded, but unless Beneficiary elects to adjust the losses as aforesaid, said adjustment and/or compromise shall be made by Grantor, subject to final approval of Beneficiary in the case of losses exceeding \$25,000.

(d) Application of Insurance Proceeds. Subject to the provisions of Section 9(e) of the Note, net insurance proceeds received by Beneficiary under the provisions of this Deed of Trust or any instruments supplemental hereto or thereto or under any policy or policies of insurance covering the Trust Property or any part thereof may be applied toward the payment of the amount owing on the Obligations in such order of application as Beneficiary may elect whether or not the same may then be due or be otherwise adequately secured and any amounts not so applied shall be held as collateral security therefor; provided, however, that Beneficiary shall have the right, but not the duty, to release the proceeds thereof for use in restoring the Trust Property or any part thereof for or on behalf of Grantor in lieu of applying said proceeds to the Obligations and for such purpose may do all acts necessary to complete such restoration, including advancing additional funds, and any additional funds so advanced shall constitute part of the Obligations and shall be payable on demand with interest at the Default Rate. In the event that Beneficiary elects to apply such insurance proceeds toward payment of the amount owing on the Obligations and Grantor does not have sufficient funds to restore the Trust Property as provided in Section 3.8(b) above, Grantor is not required to commence such restoration until it has obtained sufficient funds to complete such restoration.

Section 3.9 Costs of Defending and Upholding the Title and Lien. If any action or proceeding is commenced to which action or proceeding Trustee or Beneficiary is made a party or in which it becomes necessary for Trustee or Beneficiary to defend or uphold the lien of this Deed of Trust including any extensions, renewals, amendments or modifications thereof, Grantor shall, on demand, reimburse Trustee and Beneficiary for all expenses (including, without limitation, reasonable attorneys' fees and reasonable appellate attorneys' fees) incurred by Trustee and Beneficiary in any such action or proceeding and all such expenses shall be secured by this Deed of Trust. In any action or proceeding to foreclose this Deed of Trust or to recover or collect the Obligations, the provisions of law relating to the recovering of costs, disbursements and allowances shall prevail unaffected by this covenant.

Section 3.10 TRANSFER OF THE TRUST PROPERTY. EXCEPT AS EXPRESSLY PERMITTED PURSUANT TO THE TERMS OF THE NOTE OR ANY OTHER TRANSACTION DOCUMENT, GRANTOR SHALL NOT SELL, TRANSFER, PLEDGE, ENCUMBER, CREATE A SECURITY INTEREST IN, GROUND LEASE, OR OTHERWISE HYPOTHECATE, ALL OR ANY PORTION OF THE TRUST PROPERTY WITHOUT THE PRIOR WRITTEN CONSENT OF BENEFICIARY. THE CONSENT BY BENEFICIARY TO ANY SALE, TRANSFER, PLEDGE, ENCUMBRANCE, CREATION OF A SECURITY INTEREST IN, GROUND LEASE OR OTHER HYPOTHECATION OF, ANY PORTION OF THE TRUST PROPERTY SHALL NOT BE DEEMED TO CONSTITUTE A NOVATION OR A CONSENT TO ANY FURTHER SALE, TRANSFER, PLEDGE, ENCUMBRANCE, CREATION OF A SECURITY INTEREST IN, GROUND LEASE, OR OTHER HYPOTHECATION, OR TO WAIVE THE RIGHT OF BENEFICIARY,

AT ITS OPTION, TO DECLARE THE OBLIGATIONS SECURED HEREBY IMMEDIATELY DUE AND PAYABLE, WITHOUT NOTICE TO GRANTOR OR ANY OTHER PERSON OR ENTITY, UPON ANY SUCH SALE, TRANSFER, PLEDGE, ENCUMBRANCE, CREATION OF A SECURITY INTEREST, GROUND LEASE, OR OTHER HYPOTHECATION TO WHICH BENEFICIARY SHALL NOT HAVE CONSENTED.

Section 3.11 Security Deposits. To the extent required by law, or after an Event of Default has occurred and during its continuance, if required by Beneficiary, all security deposits of tenants of the Trust Property shall be treated as trust funds not to be commingled with any other funds of Grantor. Within twenty (20) days after request by Beneficiary, Grantor shall furnish satisfactory evidence of compliance with this Section 3.11, as necessary, together with a statement of all security deposits deposited by the tenants and copies of all Leases not theretofore delivered to Beneficiary, as requested thereby, certified by Grantor.

ARTICLE 4 **DEFAULT**

Section 4.1 Events of Default. The occurrence of any of the following events shall constitute an event of default under this Deed of Trust (each an “**Event of Default**”):

(a) an “Event of Default” (as such term is defined in the Note) shall have occurred;

(b) the breach or violation of any of the terms contained in Sections 3.2, 3.4, 3.5, 3.7, 3.8, 3.9, 3.10 or 3.11 of this Deed of Trust;

(c) Grantor’s breach of any of the covenants set forth in this Deed of Trust and not referenced in clause (b) above, which breach or failure to comply continues for a period of thirty (30) days or more; provided, however, if such breach or failure to comply would otherwise result in an Event of Default under the Note or any other Transaction Documents, such breach or failure to comply shall result in an Event of Default hereunder concurrently with the occurrence of an Event of Default under the Note or such other Transaction Documents; or

(d) if any statement or representation in any warranty or representation set forth in Article 3 hereof shall now or hereafter prove to be false or misleading in any material respect.

ARTICLE 5 **REMEDIES AND FORECLOSURE**

Section 5.1 Remedies. If an Event of Default exists, Beneficiary may, at Beneficiary's election and by or through Trustee or otherwise, exercise any or all of the following rights, remedies and recourses:

(a) To the extent permitted under the Note, declare the Obligations to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Grantor), whereupon the same shall become immediately due and payable.

(b) Notify all tenants of the Premises and all others obligated on Leases of any part of the Premises that all rents and other sums owing on Leases have been assigned to Beneficiary and are to be paid directly to Beneficiary, and to enforce payment of all obligations owing on Leases, by suit, ejectment, cancellation, releasing, reletting or otherwise, whether or not Beneficiary has taken possession of the Premises, and to exercise whatever rights and remedies Beneficiary may have under any assignment of rents and leases.

(c) As and to the extent permitted by law, enter the Trust Property, either personally or by its agents, nominees or attorneys, and take exclusive possession thereof and thereupon, Beneficiary may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Premises and conduct business thereat; (ii) complete any construction on the Premises in such manner and form as Beneficiary deems advisable in the reasonable exercise of its judgment; (iii) exercise all rights and power of Grantor with respect to the Premises, whether in the name of Grantor, or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Premises and every part thereof, which rights shall not be in limitation of Beneficiary's rights under any assignment of rents and leases securing the Obligations; and (iv) pursuant to the provisions of the Note, apply the receipts from the Premises to the payment of the Obligations, after deducting therefrom all expenses (including attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments, insurance and other charges in connection with the Trust Property, as well as just and reasonable compensation for the services of Beneficiary, its counsel, agents and employees.

(d) Hold, lease, develop, manage, operate or otherwise use the Trust Property upon such terms and conditions as Beneficiary may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Beneficiary deems necessary or desirable), and apply all Rents and other amounts collected by Beneficiary or Trustee in connection therewith in accordance with the provisions of Section 5.7 hereof.

(e) Require Grantor to assemble any collateral described in any UCC financing statement between Grantor, as debtor, and Beneficiary, as secured party, and make it available to Beneficiary, at Grantor's sole risk and expense, at a place or places to be designated by Beneficiary, in its sole discretion.

(f) Institute proceedings for the complete foreclosure of this Deed of Trust, either by judicial action or by power of sale (as described in Section 10.2 hereof), in which case the Trust Property may be sold for cash or credit in one or more parcels as Beneficiary may determine. Except as otherwise required by applicable law, with respect to any notices required or permitted under the UCC, Grantor agrees that ten (10) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings, power of sale, or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Grantor shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption, and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Grantor, and against all other Persons claiming or to claim the property sold or any part thereof, by, through or under Grantor. Beneficiary may be a purchaser at such sale. If Beneficiary is the highest bidder, Beneficiary may credit the portion of the purchase price that would be distributed to Beneficiary against the Obligations in lieu of paying cash. In the event this Deed of Trust is foreclosed by judicial action, appraisal and valuation of the Trust Property is waived to the extent permitted by applicable law. In the event of any sale made under or by virtue of this Article 5 (whether made by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale) all of the Obligations, if not previously due and payable, immediately thereupon shall become due and payable. The failure to make any such tenants of the Premises party to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Grantor, a defense to any proceedings instituted by Beneficiary to collect the sums secured hereby.

(g) (1) With or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Deed of Trust for the portion of the Obligations then due and payable (if Beneficiary shall have elected not to declare the entire Obligations to be immediately due and owing), subject to the continuing lien of this Deed of Trust for the balance of the Obligations not then due; or (2) as and to the extent permitted by law, sell for cash or upon credit the Trust Property or any part thereof and all estate, claim, demand, right, title and interest of Grantor therein, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Trust Property, this Deed of Trust shall continue as a lien on the remaining portion of the Trust Property; or (3) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in any Transaction Documents; or

(4) to the extent permitted by applicable law, recover judgment on the Note or any other Transaction Documents either before, during or after any proceedings for the enforcement of this Deed of Trust.

(h) Make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Grantor or regard to the adequacy of the Trust Property for the repayment of the Obligations, the appointment of a receiver of the Trust Property, and Grantor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Trust Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 5.7 hereof.

(i) Exercise all other rights, remedies and recourses granted under the Transaction Documents or otherwise available at law or in equity.

Section 5.2 Separate Sales. The Trust Property may be sold in one or more parcels and in such manner and order as Beneficiary in its sole discretion may direct; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 5.3 Remedies Cumulative, Concurrent and Nonexclusive. Beneficiary and Trustee shall have all rights, remedies and recourses granted in the Transaction Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Grantor or others obligated under the Transaction Documents, or against the Trust Property, or against any one or more of them, at the sole discretion of Beneficiary, as the case may be, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Beneficiary or Trustee in the enforcement of any rights, remedies or recourses under the Transaction Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 5.4 Release of and Resort to Trust Property. Beneficiary may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Trust Property, any part of the Trust Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interest created in or evidenced by the Transaction Documents or their status as a first and prior lien and security interest in and to the Trust Property. For payment of the Obligations, Beneficiary may resort to any other security in such order and manner as Beneficiary may elect.

Section 5.5 Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law, Grantor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Grantor by virtue of any present or future statute of limitations or law or judicial decision exempting the Trust Property from attachment, levy or sale on execution or providing for any stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default or of any election by Trustee or Beneficiary to exercise or the actual exercise of any right, remedy or recourse provided for under the Transaction Documents, except as otherwise specifically set forth in Section 4.1 hereof or elsewhere in this Deed of Trust or any other Transaction Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

Section 5.6 Discontinuance of Proceedings. If Beneficiary or Trustee shall have proceeded to invoke any right, remedy or recourse permitted under the Transaction Documents and shall thereafter elect to discontinue or abandon it for any reason, Beneficiary or Trustee, as the case may be, shall have the unqualified right to do so and, in such an event, Grantor, Beneficiary and Trustee shall be restored to their former positions with respect to the Obligations, the Transaction Documents, the Trust Property and otherwise, and the rights, remedies, recourses and powers of Beneficiary and Trustee shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Beneficiary or Trustee thereafter to exercise any right, remedy or recourse under the Transaction Documents for such Event of Default.

Section 5.7 Application of Proceeds. The proceeds of any sale made under or by virtue of this Article 5, together with any Rents and other amounts generated by the holding, leasing, management, operation or other use of the Trust Property, shall be applied by Beneficiary or Trustee (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

(a) to the payment of the costs and expenses of taking possession of the Trust Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (1) trustee's and receiver's fees and expenses, including the repayment of the amounts evidenced by any receiver's certificates, (2) court costs, (3) attorneys' and accountants' fees and expenses, (4) costs of advertisement, (5) all costs and expenses incurred by Beneficiary or Trustee to cure defaults of Grantor under this Deed of Trust and the other Transaction Documents, and (6) all costs and expenses incurred by Beneficiary or Trustee to protect or preserve the Trust Property;

(b) to the payment of the Obligations in such manner and order of preference as set forth in the Note and the other Transaction Documents; and

(c) the balance, if any, to the payment of the Persons legally entitled thereto.

Section 5.8 Occupancy After Foreclosure. Except as otherwise required by applicable law, any sale of the Trust Property or any part thereof in accordance with Section 5.1(f) or Section 5.1(g) hereof will divest all right, title and interest of Grantor in and to the property sold. Subject to applicable law, any purchaser at a foreclosure sale will receive immediate possession of the property purchased. If Grantor retains possession of such property or any part thereof subsequent to such sale, Grantor will be considered a tenant at sufferance of the purchaser, and will, if Grantor remains in possession after demand to remove, be subject to eviction and removal, forcible or otherwise, with or without process of law.

Section 5.9 Additional Advances and Disbursements; Costs of Enforcement.

(a) If any Event of Default exists, Beneficiary shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Grantor. All sums advanced and expenses incurred at any time by Beneficiary under this Section 5.9, or otherwise under this Deed of Trust or any of the other Transaction Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Default Rate, and all such sums, together with interest thereon, shall be secured by this Deed of Trust.

(b) Grantor shall pay all expenses (including reasonable attorneys' fees and expenses and all costs and expenses related to legal work, research and litigation, including fees incurred in appellate proceedings) of or incidental to the perfection and enforcement of this Deed of Trust and the other Transaction Documents, or the enforcement, compromise or settlement of the Obligations or any claim under this Deed of Trust and the other Transaction Documents, and for the curing thereof, or for defending or asserting the rights and claims of Beneficiary in respect thereof, by litigation or otherwise.

Section 5.10 No Beneficiary in Possession. Neither the enforcement of any of the remedies under this Article 5, the assignment of the Rents and Leases under Article 6, the security interests under Article 7, nor any other remedies afforded to Beneficiary under the Transaction Documents, at law or in equity shall cause Beneficiary or Trustee to be deemed or construed to be a mortgagee in possession of the Trust Property, to obligate Beneficiary or Trustee to lease the Trust Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

Section 5.11 WAIVER OF GRANTOR'S RIGHTS. BY EXECUTION OF THIS DEED OF TRUST, GRANTOR EXPRESSLY: (A) ACKNOWLEDGES THE RIGHT OF BENEFICIARY TO ACCELERATE THE APPLICABLE INDEBTEDNESS EVIDENCED BY THE NOTE OR OTHER TRANSACTION DOCUMENTS, AS THE CASE MAY BE, UPON THE OCCURRENCE OF AN EVENT OF DEFAULT; (B) TO THE EXTENT ALLOWED BY APPLICABLE LAW, AND EXCEPT AS EXPRESSLY SET FORTH IN SECTION 4.1 HEREOF OR ELSEWHERE IN THIS DEED OF TRUST OR ANY OTHER TRANSACTION DOCUMENT, WAIVES ANY AND ALL RIGHTS WHICH GRANTOR MAY HAVE UNDER THE CONSTITUTION OF THE UNITED STATES, THE VARIOUS PROVISIONS OF THE CONSTITUTIONS FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY BENEFICIARY OR TRUSTEE OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO BENEFICIARY OR TRUSTEE; (C) ACKNOWLEDGES THAT GRANTOR HAS READ THIS DEED OF TRUST AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO GRANTOR AND GRANTOR HAS CONSULTED WITH LEGAL COUNSEL OF GRANTOR'S CHOICE PRIOR TO EXECUTING THIS DEED OF TRUST; AND (D) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF GRANTOR HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY GRANTOR AS PART OF A BARGAINED FOR TRANSACTION.

ARTICLE 6
ASSIGNMENT OF RENTS AND LEASES

Section 6.1 Assignment. In furtherance of and in addition to the assignment made by Grantor in Section 2.1 of this Deed of Trust, Grantor hereby absolutely and unconditionally assigns, sells, transfers and conveys to Trustee (for the benefit of Beneficiary) and to Beneficiary all of its right, title and interest in and to all Leases, whether now existing or hereafter entered into, and all of its right, title and interest in and to all Rents. This assignment is an absolute assignment and not an assignment for additional security only. So long as no Event of Default shall have occurred and be continuing and to the extent not prohibited by the Note, Grantor shall have a revocable license from Trustee and Beneficiary to exercise all rights extended to the landlord under the Leases, including the right to receive and collect all Rents and to hold the Rents in trust for use in the payment and performance of the Obligations and to otherwise use the same. The foregoing license is granted subject to the conditional limitation that no Event of Default shall have occurred and be continuing. Upon the occurrence and during the continuance of an Event of Default, whether or not legal proceedings have commenced, and without regard to waste, adequacy of security for the Obligations or solvency of Grantor, the license herein granted shall automatically expire

and terminate, without notice by Trustee or Beneficiary (any such notice being hereby expressly waived by Grantor).

Section 6.2 Perfection Upon Recordation. Grantor acknowledges that Beneficiary and Trustee have taken all actions necessary to obtain, and that upon recordation of this Deed of Trust Beneficiary and Trustee shall have, to the extent permitted under applicable law, a valid and fully perfected, first priority, present assignment of the Rents arising out of the Leases and all security for such Leases. Grantor acknowledges and agrees that upon recordation of this Deed of Trust Trustee's and Beneficiary's interest in the Rents shall be deemed to be fully perfected, "choate" and enforceable as to Grantor and all third parties, including, without limitation, any subsequently appointed trustee in any case under the Bankruptcy Code, without the necessity of commencing a foreclosure action with respect to this Deed of Trust, making formal demand for the Rents, obtaining the appointment of a receiver or taking any other affirmative action.

Section 6.3 Bankruptcy Provisions. Without limitation of the absolute nature of the assignment of the Rents hereunder, Grantor, Trustee and Beneficiary agree that (a) this Deed of Trust shall constitute a "security agreement" for purposes of Section 552(b) of the Bankruptcy Code, (b) the security interest created by this Deed of Trust extends to property of Grantor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents and (c) such security interest shall extend to all Rents acquired by the estate after the commencement of any case in bankruptcy.

Section 6.4 No Merger of Estates. So long as part of the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates (if any) to the Trust Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Grantor, Beneficiary, any tenant or any third party by purchase or otherwise.

ARTICLE 7

SECURITY AGREEMENT

Section 7.1 Security Interest. This Deed of Trust constitutes a "security agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards. To this end, Grantor grants to Beneficiary and Trustee on behalf of Beneficiary a first and prior security interest in the Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards and all other Trust Property which is personal property to secure the payment and performance of the Obligations, and agrees that Beneficiary or Trustee on behalf of Beneficiary shall have all the rights and remedies of a secured party under the UCC with respect to such property.

Any notice of sale, disposition or other intended action by Beneficiary or Trustee on behalf of Beneficiary with respect to the Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards sent to Grantor at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Grantor. THE TERM "TRUST PROPERTY" SHALL NOT INCLUDE ANY ITEMS OF PERSONAL PROPERTY IN WHICH BENEFICIARY HAS OBTAINED AND PERFECTED A SECURITY INTEREST UNDER SEPARATE INSTRUMENTS.

Section 7.2 Financing Statements. Grantor authorizes Beneficiary to file, in form and substance satisfactory to Beneficiary, such financing statements and such further assurances as Beneficiary may, from time to time, reasonably consider necessary to create, perfect and preserve Beneficiary's security interest hereunder and Beneficiary may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. The state of organization of Grantor is the State of Delaware.

Section 7.3 Fixture Filing. To the extent permitted under the UCC of the state in which the Land is located, this Deed of Trust shall also constitute a "fixture filing" for the purposes of the UCC against all of the Trust Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Grantor) and Secured Party (Beneficiary) as set forth in the first paragraph of this Deed of Trust. Debtor (Grantor) is the record owner of the Trust Property.

ARTICLE 8

CONCERNING THE TRUSTEE

Section 8.1 Certain Rights. With the approval of Beneficiary, Trustee shall have the right to select, employ and consult with counsel. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. Trustee shall be entitled to reimbursement for actual, reasonable expenses incurred by it in the performance of its duties and to reasonable compensation for Trustee's services hereunder as shall be rendered. Grantor shall, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and indemnify, defend and save Trustee harmless against, all liability and reasonable expenses which may be incurred by it in the performance of its duties, including those arising from joint, concurrent, or comparative negligence of Trustee; however, Grantor shall not be liable under such indemnification to the extent such liability or expenses result solely from Trustee's or Beneficiary's gross negligence or willful misconduct. Grantor's obligations under this Section 8.1 shall not be reduced or impaired by principles of comparative or contributory negligence.

Section 8.2 Retention of Money. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any moneys received by him hereunder.

Section 8.3 Successor Trustees. Beneficiary shall at any time and from time to time have the irrevocable right to remove Trustee herein named without notice to any person or cause and to appoint his successor by an instrument in writing, duly acknowledged, in such form as to entitle such written instrument to be recorded in Tennessee, and in the event of the death or resignation of Trustee herein named, Beneficiary shall have the right to appoint his successor by such written instrument, and, without conveyance of the Trust Property, any Trustee so appointed (“**Substitute Trustee**”) shall be vested with the title to the Trust Property, and shall possess all the powers, duties and obligations herein conferred on Trustee in the same manner and to the same extent as though he were named herein as Trustee. Neither the original Trustee nor any Substitute Trustee shall be required to make bond, oath or file an inventory.

Section 8.4 Perfection of Appointment. Should any deed, conveyance or instrument of any nature be required from Grantor by any successor Trustee to more fully and certainly vest in and confirm to such successor Trustee such estates, rights, powers and duties, then, upon request by such Trustee, all such deeds, conveyances and instruments shall be made, executed, acknowledged and delivered and shall be caused to be recorded and/or filed by Grantor.

Section 8.5 Trustee Liability. In no event or circumstance shall Trustee or any substitute Trustee hereunder be personally liable under or as a result of this Deed of Trust, either as a result of any action by Trustee (or any substitute Trustee) in the exercise of the powers hereby granted or otherwise.

ARTICLE 9 **MISCELLANEOUS**

Section 9.1 Notices. Any notice required or permitted to be given under this Deed of Trust shall be given in accordance with Section 12(a) of the Note.

Section 9.2 Covenants Running with the Land. All Obligations contained in this Deed of Trust are intended by Grantor, Beneficiary and Trustee to be, and shall be construed as, covenants running with the Trust Property. As used herein, “Grantor” shall refer to the party named as such in the first paragraph of this Deed of Trust and to any subsequent owner of all or any portion of the Trust Property. All Persons who may have or acquire an interest in the Trust Property shall be deemed to have notice of, and be bound by, the terms of the Note and the other Transaction

Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Beneficiary.

Section 9.3 Attorney-in-Fact. Grantor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest and with full power of substitution, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, if Grantor shall fail to do so within ten (10) days after written request by Beneficiary, (b) upon the issuance of a deed pursuant to the foreclosure of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Trust Property, and (d) while any Event of Default exists, to perform any obligation of Grantor hereunder, however: (1) Beneficiary shall not under any circumstances be obligated to perform any obligation of Grantor; (2) any sums advanced by Beneficiary in such performance shall be added to and included in the Obligations and shall bear interest at the Default Rate; (3) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (4) Beneficiary shall not be liable to Grantor or any other person or entity for any failure to take any action which it is empowered to take under this Section 9.3. Notwithstanding the foregoing, Beneficiary shall be liable for its gross negligence, willful misconduct, and bad faith in connection with exercising its rights hereunder to the extent determined by a court of competent jurisdiction in a final, non-appealable judgment.

Section 9.4 Successors and Assigns. This Deed of Trust shall be binding upon and inure to the benefit of Beneficiary, Trustee and Grantor and their respective successors and assigns. Grantor shall not, without the prior written consent of Beneficiary, assign any rights, duties or obligations hereunder.

Section 9.5 No Waiver. Any failure by Beneficiary or Trustee to insist upon strict performance of any of the terms, provisions or conditions of the Transaction Documents shall not be deemed to be a waiver of same, and Beneficiary or Trustee shall have the right at any time to insist upon strict performance of all such terms, provisions and conditions.

Section 9.6 Note. If any conflict or inconsistency exists between this Deed of Trust and the Note, the Note shall govern.

Section 9.7 Release or Reconveyance. Upon payment and performance in full of the Obligations and termination of the Note and the other

Transaction Documents, this Deed of Trust shall cease and be null and void, and Beneficiary, shall release the liens and security interests created by this Deed of Trust, in accordance with the laws of the State of Tennessee.

Section 9.8 Waiver of Stay, Moratorium and Similar Rights.

Grantor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Deed of Trust or the Obligations secured hereby, or any agreement between Grantor and Beneficiary or any rights or remedies of Beneficiary or Trustee.

Section 9.9 Applicable Law. The provisions of this Deed of Trust regarding the creation, perfection and enforcement of the liens, security title and security interests herein granted shall be governed by and construed under the laws of the state in which the Trust Property is located. All other provisions of this Deed of Trust shall be governed by the laws of the State of Florida.

Section 9.10 Headings. The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

Section 9.11 Entire Agreement. This Deed of Trust and the other Transaction Documents embody the entire agreement and understanding between Grantor and Beneficiary and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Transaction Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 9.12 Severability of Invalid Provisions. All rights, powers and remedies provided herein are limited to the extent necessary so that they shall not render this Deed of Trust invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Deed of Trust shall be held to be invalid, illegal or unenforceable, the validity and enforceability of the remaining terms of this Deed of Trust shall in no way be affected thereby.

Section 9.13 Jury Trial Waiver. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, GRANTOR AND BENEFICIARY EACH HEREBY WAIVES TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS DEED OF TRUST.

ARTICLE 10
LOCAL LAW PROVISIONS

Section 10.1 Inconsistencies. In the event of any inconsistencies between the terms and conditions of this Article 10 and the other terms and conditions of this Deed of Trust, the terms and conditions of Article 10 shall control and be binding.

Section 10.2 Foreclosure – Power of Sale. As provided in Section 5.1(f), following an Event of Default, Beneficiary may elect to foreclose this Deed of Trust, in accordance with the provisions of this Section 10.2.

(a) If an Event of Default shall occur, the Trustee hereunder, or its agent or successors, at the request of the Beneficiary, or the representatives or assigns of the Beneficiary, after giving notice of the time and place of sale by publication of such at least three (3) different times in some newspaper published in the county in which the Trust Property is primarily situated (the “**County**”), the first of which publications shall be at least twenty (20) days previous to said sale, shall, at the date and time stated in the notice, and at the door of the County Courthouse in said County at which foreclosure sales are customarily held (or at such other location where foreclosure sales are customarily conducted in said County) or at the election of Beneficiary at the Trust Property, proceed to sell the Trust Property at public auction for cash (or for credit against the Obligations if the Beneficiary is the highest bidder) or upon such other terms that are satisfactory to Trustee and Beneficiary, and in bar of the equity of redemption and all rights of redemption, statutory or otherwise (including, without limitation, those rights of redemption contained in Tennessee Code Annotated Section 66-8-101 et seq.), homestead, dower, elective or distributive share, rights of appraisal or valuation, and all other rights and exemptions of every kind, all of which are hereby waived.

(b) The foreclosure sale may be adjourned, postponed or continued from time to time by Trustee, or his agent or successors, at the place of sale on the date the sale is originally set, or on the date of any adjournment, postponement or continuation thereof, and may be reset at a later date or dates, by announcement without any additional publication.

(c) Trustee may delegate, in his sole discretion, any authority possessed under this instrument, including the authority to conduct a foreclosure sale. Without limiting the foregoing, Trustee may retain a professional auctioneer to preside over the bidding, and the customary charge for the auctioneer’s services shall be paid from sale proceeds as an expense of sale.

(d) Following a Trustee’s sale of the Trust Property, Trustee shall deliver to the purchaser a Trustee’s Deed conveying the property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee’s Deed shall be prima facie evidence of the truth of the statements made therein.

(e) Trustee is hereby authorized to divide, parcel and sell all or any portion of the Trust Property in such parcels, manner or order as Beneficiary may deem advisable, in Beneficiary's sole discretion, and one or more exercises of the power of sale provided for herein shall not extinguish or exhaust said power until the entire Trust Property has been sold or the Obligations have been paid in full. Trustee is specifically empowered to make one or more successive sales under such power until the whole of the Trust Property shall be sold; and if the proceeds of such sale or sales of less than the whole of the Trust Property shall be less than the Obligations, this Deed of Trust, and the lien, security interest and assignment hereof, shall remain in full force and effect as to the unsold portion of the Trust Property; provided, however, that Grantor shall never have any right to require the sale or sales of less than the whole of the Trust Property, but Beneficiary shall have the right, at its sole election, to request the Trustee to sell less than the whole of the Trust Property. Trustee is hereby released from all obligations imposed by statute which can be waived, including any requirement of qualification or bond.

(f) The foreclosure sale of the Trust Property shall be conducted for cash to be tendered upon the conclusion of the bidding (or for credit against the Obligations if the Beneficiary is the highest bidder); provided, however, (1) Trustee may accept a cashier's check issued by a local bank as consideration for the sale (or other consideration upon terms that are satisfactory to Trustee and Beneficiary) and (2) if, in Trustee's sole discretion, Trustee announces before or after bidding that, upon the failure of the high bidder to complete the sale within one (1) hour, the Trust Property may be sold to the second highest bidder, and if the high bidder should subsequently fail to complete the purchase within that time, then Trustee may, at Trustee's option, close the sale of the Trust Property to the second highest bidder.

(g) Beneficiary, at its option, is authorized to have Trustee foreclose this Deed of Trust subject to the rights of any tenants of the Trust Property, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Grantor, a defense to any proceeding instituted by Beneficiary to collect the sums secured hereby.

(h) In the event of any such sale or sales, Grantor shall be deemed to be a tenant at will and shall forthwith surrender and deliver possession to the purchaser or purchasers at such sale or sales, or be summarily dispossessed according to provisions of law applicable to tenants at will.

Section 10.3 Definitions of Obligatory Advance and Optional Advance. As used in this Deed of Trust, the terms "Obligatory Advance" and "Optional Advance" shall have the same meaning as used in Tennessee Code Annotated Section 47-28-101.

Section 10.4 No Consent by Beneficiary. Beneficiary has not consented, and will not consent: (i) to the granting of any security interest by Grantor to

any party other than Beneficiary in any goods constituting part of the Trust Property which are or are to become fixtures which would have the effect of giving such security interest priority over the security interest of Beneficiary in said fixtures under Tennessee Code Annotated §47-9-334(f), or otherwise, or (ii) to any contract, or to any work, or to the furnishing of any materials which might be deemed to create a lien or liens superior to the lien of this Deed of Trust, either under Tennessee Code Annotated §66-11-108, or otherwise.

Section 10.5 Security Agreement. Upon the occurrence of any Event of Default, Beneficiary (or Trustee, on behalf of Beneficiary) may, at its option, pursuant to Tennessee Code Annotated §47-9-604, proceed against any portion of the Trust Property consisting of personal property or fixtures in accordance with the provisions of the UCC, or Beneficiary (or Trustee, on behalf of Beneficiary) may proceed as to both the real property and the personal property and fixtures comprising the Trust Property in accordance with this Deed of Trust, or as otherwise provided at law or in equity.

Section 10.6 Leases and Rents. Upon the occurrence of an Event of Default, Beneficiary may, at its option, notify any tenant of the Trust Property of its intent to exercise its rights under this Deed of Trust, and Grantor agrees that commencing upon delivery of such notice from Beneficiary each and every tenant of the Trust Property receiving such notice shall thereafter pay all accrued and subsequent Rents to Beneficiary or Beneficiary's agents until further notice from Beneficiary to the contrary, without any liability on the part of the tenant to inquire further as to the existence of a default by Grantor, and Grantor further agrees that to the extent that such payments to Beneficiary are made in the amounts and at the time required under such tenant's Lease, that such payments will be deemed to fulfill such tenant's obligations under such tenant's Lease with respect to such payments.

Section 10.7 Greater Estate. In the event that Grantor is the owner of a leasehold estate or any other estate less than a fee simple estate with respect to any portion of the Trust Property and, prior to the satisfaction of the Obligations secured by this Deed of Trust and the cancellation of this Deed of Trust of record, Grantor obtains any greater estate or interest in the Trust Property, then such greater estate shall automatically and without further action of any kind on the part of Grantor pass to Trustee, and be and become subject to the lien and all the terms of this Deed of Trust.

Section 10.8 Sale by Foreclosure of Prior Encumbrances. In the event that this Deed of Trust shall now or at any time after the date hereof be subordinate to any other encumbrance on the Trust Property, Grantor hereby agrees that the lien of this conveyance shall extend to the entire interest of Grantor in the Trust Property conveyed hereby, and shall extend to the interest of Grantor in the proceeds from any sale of the Trust Property, whether by foreclosure of any such prior encumbrance or otherwise, to the extent any such proceeds exceed the amount necessary to satisfy such prior encumbrance(s). Any trustee or other person conducting any such sale or

foreclosure is hereby directed to pay such excess proceeds to Beneficiary to the extent necessary to pay the Obligations secured by this Deed of Trust in full, notwithstanding any provision to the contrary contained in any prior encumbrance.

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IN WITNESS WHEREOF, Grantor has caused this Deed of Trust to be executed and delivered by its duly authorized representative all as of the day and year first above written.

GRANTOR:

FIRE MOUNTAIN RESTAURANTS, LLC, an
Ohio limited liability company

By: _____

Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

SS.

Personally appeared before me, a Notary Public having authority within the State and County aforesaid, Peter Donbavand, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged him/herself to be the vice president of FIRE MOUNTAIN RESTAURANTS, LLC, the within named bargainor, an Ohio limited liability company, and that he/she as such vice president, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the company by him/herself as such vice president.

WITNESS my hand, at office, this 12 day of May, 2017.



(Seal, if any)

Lauren Najarian
Official Signature of Notary

Lauren Najarian
Notary's printed or typed name

Notary Public in and for the State of TX,

My commission expires: 9-11-2018

Deed of Trust for Union City, T (Obion County)

Schedule I

Legal Description

290 Union City, Obion County, TN

This is improved property known as 1225 East Reelfoot Union City, TN 38261 and being further described as.

BEGINNING at a found 'P-K' nail, located in the north line of 300 00 foot wide right-of-way, belonging to U S Highway No 51, said nail located 150 00 feet northwest of the centerline of said highway, and being an inside corner of the north right-of-way of said highway; thence, South 76 deg. 11 min. 49 sec West, with said right-of-way, for a distance of 123.65 feet, to an iron pin, said pin located in the north bank of a ditch, and being 150 00 feet northwest of the centerline of said highway; thence, North 89 deg. 14 min. 35 sec. West, with said right-of-way, for a distance of 196 17 feet, to a 'P-K' nail, said nail located in the east edge of an asphalt drive and being the southeast corner of a tract belonging to Holland's Dixie Barn, Inc ; thence, North 02 deg. 34 min. 53 sec East, with an east line of Holland's Dixie Barn, Inc., for a distance 368.03 feet, to an iron pin, said pin being a northeast corner of Holland's Dixie Barn, Inc. and located in a south line of a tract belonging to Royce Barker; thence South 86 deg. 18 min. 09 sec East, with a south line of Barker, for a distance of 313.46 feet, to an iron pipe, said pipe being a southeast corner of Barker and located in a west line of a tract belonging to Cultra Motor Inn, thence South 02 deg. 20 min. 56 sec. West, with a west line of Cultra Motor Inn and continuing with a west line of the right-of-way, belonging to U S Highway No 51, for a total distance of 320 80 feet, to the point-of-beginning, and containing 2.553 acres, according to a survey by Robert L. Nichols, TN RLS No. 1009, on June 24, 1996, with all bearings based upon Magnetic North.

Being that same property conveyed to the Grantor by First State Bank, Kenton, Tennessee, in that certain Warranty Deed dated October 7, 1996 and recorded October 7, 1996 in Deed Book 24-H, pages 615-616 in the records of Obion County, Tennessee

LESS AND EXCEPT THE FOLLOWING:

That particular tract of land conveyed to Green Acres Mobile Homes, Inc., a Tennessee Corporation in that certain Limited and Special Warranty Deed dated September 11, 1997 and recorded on September 17, 1997 in Deed Book 24-L, Pages 570-573 in the records of Obion County, Tennessee, and more particularly described as follows:

BEGINNING at a found 'P-K' nail in the north right-of-way of Reelfoot Avenue, said nail being 150 feet north of the center of Reelfoot Avenue and also being at an offset of said right-of-way, said nail also being the original southeast corner of the Ryan's property; then South 76 deg. 11 min. 49 sec. West, with the north right-of-way of Reelfoot Avenue, for a distance of 91.48 feet to an iron pin; thence North 02 deg. 34 min. 53 sec. East, making a new line through Ryan's for a distance of 348.29 feet to an iron pin in the original north line of Ryan's, said pin also being in the south line of a tract belonging to Larry Edington, thence South, 86 deg. 18 min. 09 sec East, with the south line of Edington, for a distance of 86.48 feet to a found iron pipe at the southeast corner of Edington, said pipe also being the original northeast corner of Ryan's and being in the west line of a tract belonging to Green Acres Mobile Homes, Inc ; thence South 02 deg. 20 min. 56 sec. West, with the west line of Green Acres, and continuing with the west line of the right-of-way of Reelfoot Avenue, for a total distance of 320 80 feet to the point-of-beginning, and containing 0.669 acres, according to a survey by Robert L. Nichols, TN RLS No. 1009, on August 7, 1997, with all bearings based upon Magnetic North.

Being that same property conveyed to the Grantor by First State Bank, Kenton, Tennessee, in that certain Warranty Deed dated October 7, 1996 and recorded on October 7, 1996 in Deed Book 24-H, Pages 615-616 in the records of Obion County, Tennessee.

**First Lien Mortgage, Security
Agreement, Assignment of Rents,
And Fixture Filing**

Document Number

Recording Area

Name and Return Address

David Kurzweil
Greenberg Traurig LLP
Terminus 200
3333 Piedmont Road NE, Suite 2500
Atlanta, GA 30305

33-05212A

Parcel Identification Number (PIN)

**FIRST LIEN MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS,
AND FIXTURE FILING**

by and from

**OCB RESTAURANT COMPANY, LLC, a Minnesota limited liability company,
“Mortgagor”**

to

**META ADVISORS LLC,
in its capacity as Unsecured Creditors’ Trustee for the Unsecured Creditors’ Trust,
“Mortgagee”**

Dated as of May 18, 2017

**Address: 1915 East 29th Street
Marshfield, Wisconsin 54449
County: Wood**

**FIRST LIEN MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS, AND FIXTURE
FILING**

This FIRST LIEN MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS, AND FIXTURE FILING (this “**Mortgage**”) is dated as of May 18, 2017, by and from OCB RESTAURANT COMPANY, LLC, a Minnesota limited liability company, with its principal place of business and mailing address at 120 Chula Vista Drive, San Antonio, TX, 78232 (hereinafter referred to as “**Mortgagor**”) to META ADVISORS LLC (“**Trustee**”) in its capacity as Unsecured Creditors’ Trustee for the Unsecured Creditors’ Trust (each, as defined in the Plan, as defined below), having an office at c/o Kelley Drye & Warren LLP, 101 Park Avenue, New York, NY 10178 (together with its successors and assigns, “**Mortgagee**”);

W I T N E S S E T H:

WHEREAS, Mortgagor is the fee owner of the real property described in Schedule I attached hereto;

WHEREAS, Mortgagor filed petition for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Western District of Texas (the “**Bankruptcy Court**”);

WHEREAS, Mortgagor filed that certain Debtors’ Second Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code, dated as of March 31, 2017 (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the “**Plan**”) establishing the Unsecured Creditors’ Trust;

WHEREAS, the Bankruptcy Court entered an order confirming the Plan on April 27, 2017;

WHEREAS, Mortgagor is indebted to Mortgagee under that certain Promissory Note, dated on or about the date hereof (as it may be amended, restated, supplemented or otherwise modified from time to time, the “**Note**,” and the obligations thereunder, the “**Obligations**”), and such indebtedness is secured by that certain Security Agreement, dated on or about the date hereof (as it may be amended, restated, supplemented or otherwise modified from time to time, the “**Security Agreement**”; the Note, the Security Agreement, the Plan (as defined below), and any and all documents executed in connection therewith, the “**Transaction Documents**”);

WHEREAS, pursuant to the Security Agreement and the Plan, Mortgagor granted Mortgagee a continuing security interest in all assets of the Mortgagor, including, without limitation, all rights in any real property of the Mortgagor;

WHEREAS, defined terms used herein and not otherwise defined shall have the meaning set forth in the Plan.

NOW, THEREFORE, for and in consideration of the execution and delivery by the Unsecured Creditors’ Trust of the Note, and other good and valuable consideration, receipt whereof is hereby acknowledged, in order to secure (i) the payment of the principal and premium, if any, of and interest on the Note as and when the same become due and payable

(whether by lapse of time, acceleration or otherwise), (ii) the payment of all sums due or owing with respect to the Obligations, (iii) the payment and performance of all obligations arising under any Transaction Documents, (iv) the payment of all other indebtedness, obligations and liabilities which this Mortgage secures pursuant to any of its terms, and (v) the performance and observance of the covenants and agreements contained in this Mortgage, the Note, the Security Agreement, and the other Transaction Documents (all of such indebtedness, obligations, agreements and liabilities described in clauses (i), (ii), (iii), (iv), and (v) above being hereinafter collectively referred to as the “**Secured Obligations**” and the Secured Obligations described in clauses (i), (ii), (iii), and (iv) above being hereinafter collectively referred to as the “**Secured Indebtedness**”), Mortgagor, intending to be legally bound hereby, does hereby grant, bargain, sell, convey, mortgage, warrant, assign, and pledge unto Mortgagee, for the benefit of the Unsecured Creditors’ Trust, their successors and assigns, and grant to Mortgagee, its successors and assigns, for the benefit of the Unsecured Creditors’ Trust, a continuing security interest in, all and singular the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V, VI, VII and VIII below, all of the same being collectively referred to herein as the “**Mortgaged Premises**”:

GRANTING CLAUSE I

That certain real estate lying and being in Marshfield, County of Wood and State of Wisconsin more particularly described in Schedule I attached hereto and made a part hereof.

GRANTING CLAUSE II

All right, title and interest of Mortgagor now owned or hereafter acquired in and to all buildings and improvements of every kind and description heretofore or hereafter erected or placed on the property described in Granting Clause I and all materials intended for construction, reconstruction, alteration and repairs of the buildings and improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises immediately upon the delivery thereof to the said real estate, and all fixtures, machinery, apparatus, equipment, fittings and articles of personal property of every kind and nature whatsoever now or hereafter attached to or contained in or used or useful in connection with said real estate and the buildings and improvements now or hereafter located thereon and the operation, maintenance and protection thereof, including, but not limited to, all machinery, motors, fittings, radiators, awnings, shades, screens, all gas, coal, steam, electric, oil and other heating, cooking, power and lighting apparatus and fixtures, all fire prevention and extinguishing equipment and apparatus, all cooling and ventilating apparatus and systems, all plumbing, incinerating, and sprinkler equipment and fixtures, all elevators and escalators, all communication and electronic monitoring equipment, all window and structural cleaning rigs and all other machinery and equipment of every nature and fixtures and appurtenances thereto and all items of furniture, appliances, draperies, carpets, other furnishings, equipment and personal property used or useful in the operation, maintenance and protection of the said real estate and the buildings and improvements now or hereafter located thereon and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to said real estate, buildings or improvements in any manner, and all proceeds thereof; it being mutually agreed, intended and declared that all the aforesaid property shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and, for the purpose of this Mortgage, to be

real estate and covered by this Mortgage; and as to the balance of the property aforesaid, this Mortgage is hereby deemed to be as well a security agreement under the provisions of the Uniform Commercial Code of the State of Wisconsin (the “**Uniform Commercial Code**”) for the purpose of creating hereby a security interest in said property, which is hereby granted by Mortgagor as debtor to Mortgagee as secured party, securing the Secured Obligations. Mortgagor authorizes Mortgagee to file, in form and substance complying with applicable Legal Requirements and otherwise reasonably satisfactory to Mortgagee, such financing statements and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee’s security interest hereunder and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by applicable Legal Requirements to so create, perfect and preserve such security interest. To the extent permitted under the Uniform Commercial Code, this Mortgage shall also constitute a “fixture filing” for the purposes of the Uniform Commercial Code against all of the Mortgaged Premises which is or is to become fixtures. The addresses of Mortgagor (debtor) and Mortgagee (secured party) appear at the beginning hereof. Mortgagor is a Minnesota limited liability company and Mortgagor’s organizational registration number is 41-1777607.

GRANTING CLAUSE III

All right, title and interest of Mortgagor now owned or hereafter acquired in and to all and singular the estates, tenements, hereditaments, privileges, easements, licenses, franchises, appurtenances and royalties, mineral, oil, and water rights belonging or in any wise appertaining to the property described in the preceding Granting Clause I and the buildings and improvements now or hereafter located thereon and the reversions, rents, issues, revenues and profits thereof, including all interest of Mortgagor in all rents, issues and profits of the aforementioned property and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (including all deposits of money as advanced rent or for security) under any and all leases or subleases and renewals thereof, or under any contracts or options for the sale of all or any part of, said property (including during any period allowed by applicable Legal Requirements for the redemption of said property after any foreclosure or other sale), together with the right, but not the obligation, to collect, receive and receipt for all such rents and other sums and apply them to the Secured Indebtedness and to demand, sue for and recover the same when due or payable; provided that the assignments made hereby shall not impair or diminish the obligations of Mortgagor under the provisions of such leases or other agreements nor shall such obligations be imposed upon Mortgagee. By acceptance of this Mortgage, Mortgagee agrees, not as a limitation or condition hereof, but as a personal covenant available only to Mortgagor that until an Event of Default (as hereinafter defined) shall occur giving Mortgagee the right to foreclose this Mortgage, Mortgagor may collect, receive (but not more than thirty (30) days in advance) and enjoy such rents.

GRANTING CLAUSE IV

All right, title and interest of Mortgagor in and to all plans, specifications, working drawings and like materials prepared in connection with improvements constituting part of the Mortgaged Premises, all rights of Mortgagor against vendors or manufacturers in connection with equipment located upon the Mortgaged Premises, whether arising by virtue of warranty or

otherwise, all rights against contractors, sub-contractors and materialmen arising in connection with work performed at or on the Mortgaged Premises or with materials furnished for the construction of improvements at or on the Mortgaged Premises, and all rights of Mortgagor under contracts to provide any of the foregoing, in each case whether now owned or existing or hereafter arising or acquired.

GRANTING CLAUSE V

All judgments, awards of damages, settlements and other compensation heretofore or hereafter made resulting from condemnation proceedings or the taking of the property described in Granting Clause I or any part thereof or any building or other improvement now or at any time hereafter located thereon or any easement or other appurtenance thereto under the power of eminent domain, or any similar power or right (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for the payment thereof), whether permanent or temporary, or for any damage (whether caused by such taking or otherwise) to said property or any part thereof or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including severance and consequential damages, and any award for change of grade of streets (collectively, "**Condemnation Awards**"); and all right, title, and interest in all insurance policies maintained in connection with the property described in Granting Clause I or any part thereof or any building or other improvement now or at any time hereafter located thereon or any easement or other appurtenance thereto or for any damage to said property or any part thereof or the improvements thereon or any part thereof, or to any rights appurtenant thereto.

GRANTING CLAUSE VI

All property and rights, if any, which are, by the express provisions of this Mortgage, required to be subjected to the lien hereof and any additional property and rights that may from time to time hereafter be subjected to the lien hereof by Mortgagor or by anyone on Mortgagor's behalf.

GRANTING CLAUSE VII

All rights in and to common areas and access roads on adjacent properties heretofore or hereafter granted to Mortgagor and any after-acquired title or reversion in and to the beds of any ways, roads, streets, avenues and alleys adjoining the property described in Granting Clause I or any part thereof.

GRANTING CLAUSE VIII

All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or other liquidated claims, including, without limitation, all proceeds of insurance.

TO HAVE AND TO HOLD the Mortgaged Premises and the properties, rights and privileges hereby granted, bargained, sold, conveyed, mortgaged, warranted, pledged and assigned, and in which a security interest is granted, or intended so to be, unto Mortgagee, its successors and assigns, forever; *provided, however*, that this Mortgage is granted upon the express condition that if the Secured Obligations shall be fully paid and performed and all commitments contained in

the Note and the other Transaction Documents to extend credit thereunder shall have terminated, then this Mortgage and the estate and rights hereby granted shall cease, and this Mortgage shall be released by Mortgagee upon the written request and at the expense of Mortgagor, otherwise to remain in full force and effect.

The lien of this Mortgage shall be valid as to all Secured Indebtedness from the time of its filing for record in the recorder's or registrar's office in the county in which the Mortgaged Premises are located. This Mortgage shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Premises.

Mortgagor hereby covenants and agrees with Mortgagee as follows:

1. *Payment of the Secured Indebtedness.* The Secured Indebtedness will be promptly paid as and when the same becomes due.

2. *Further Assurances.* Mortgagor will execute and deliver such further instruments and do such further acts as may be necessary or proper to carry out more effectively the purpose of this Mortgage and, without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered by the Granting Clauses hereof or intended so to be.

3. *Ownership of Mortgaged Premises.* Mortgagor covenants and warrants that it is lawfully seized of and has good and marketable title to the Mortgaged Premises free and clear of all liens, charges and encumbrances whatever, and Mortgagor has good right, full power and authority to convey, transfer and mortgage the same to Mortgagee for the uses and purposes set forth in this Mortgage; and Mortgagor will warrant and forever defend the title to the Mortgaged Premises against all claims and demands whatsoever.

4. *Possession.* Provided no Event of Default (as defined below) has occurred and is continuing hereunder, Mortgagor shall be suffered and permitted to remain in full possession, enjoyment and control of the Mortgaged Premises, subject always to the observance and performance of the terms of this Mortgage.

5. *Payment of Taxes.* Mortgagor shall pay before any penalty attaches, all general taxes and all special taxes, special assessments, water, drainage and sewer charges and all other charges of any kind whatsoever, ordinary or extraordinary, which may be levied, assessed, imposed or charged on or against the Mortgaged Premises or any part thereof and which, if unpaid, might become a lien or charge upon the Mortgaged Premises or any part thereof pursuant to applicable Legal Requirements, and shall, upon written request, exhibit to Mortgagee official receipts evidencing such payments, except that, unless and until foreclosure, distraint, sale or other similar proceedings shall have been commenced, no such charge or claim need be paid if being contested (except to the extent any full or partial payment shall be required by applicable Legal Requirements), after notice to Mortgagee, by appropriate proceedings which shall operate to prevent the collection thereof or the sale or forfeiture of the Mortgaged Premises or any part thereof to satisfy the same, conducted in good faith and with due diligence and if Mortgagor

shall have furnished such security, if any, as may be required in the proceedings or requested by Mortgagee.

6. *Payment of Taxes on Note, Transaction Documents, Mortgage or Interest of Mortgagee or Unsecured Creditors' Trust.* Mortgagor agrees that if any tax, assessment or imposition upon this Mortgage, the Secured Indebtedness, the Note, or the interest of Mortgagee or the Unsecured Creditors' Trust, or upon Mortgagee or the Unsecured Creditors' Trust by reason of or as a holder of any of the foregoing (including, without limitation, corporate privilege, franchise and excise taxes, but excepting therefrom any income tax, however denominated (including if denominated as franchise or corporate excise tax), on interest payments on the principal portion of the Secured Indebtedness imposed by the United States or any state or country, whether foreign or domestic) is levied, assessed or charged, then, unless all such taxes are paid by Mortgagor to, for or on behalf of Mortgagee or the Unsecured Creditors' Trust as they become due and payable (which Mortgagor agrees to do upon demand of Mortgagee, to the extent permitted by applicable Legal Requirements), or Mortgagee or the Unsecured Creditors' Trust, as the case may be, is reimbursed for any such sum advanced by Mortgagee or the Unsecured Creditors' Trust, all sums hereby secured shall become immediately due and payable, at the option of Mortgagee or the Unsecured Creditors' Trust upon thirty (30) days' notice to Mortgagor, notwithstanding anything contained herein or in any Legal Requirement, including any provision thereof forbidding Mortgagor from making any such payment. Mortgagor agrees to exhibit to Mortgagee upon request, official receipts showing payment of all taxes and charges which Mortgagor is required to pay hereunder.

7. *Recordation and Payment of Taxes and Expenses Incident Thereto.* Mortgagor will cause this Mortgage, all amendments hereto, all mortgages supplemental hereto and any financing statement or other notice of a security interest required by Mortgagee at all times to be kept, recorded and filed at its own expense in such manner and in such places as may be required by applicable Legal Requirements for the recording and filing or for the rerecording and refiling of a mortgage, security interest, assignment or other lien or charge upon the Mortgaged Premises, or any part thereof, in order fully to preserve and protect the rights of Mortgagee hereunder and, without limiting the foregoing, Mortgagor will pay or reimburse Mortgagee for the payment of any and all taxes, fees or other charges incurred in connection with any such recordation or rerecording, including any documentary stamp tax, intangibles tax or tax imposed upon the privilege of having this Mortgage or any instrument issued pursuant hereto recorded.

8. *Insurance.* Mortgagor will, at its expense, keep all buildings, improvements, equipment and other property now or hereafter constituting part of the Mortgaged Premises insured against loss or damage by fire, lightning, windstorm, explosion and such other risks as are usually included under extended coverage policies, or which are usually insured against by owners of like property, in amount sufficient to prevent Mortgagor or Mortgagee from becoming a co-insurer of any partial loss under applicable policies and in any event not less than the then full insurable value (actual replacement value without deduction for physical depreciation) thereof, as determined at the request of Mortgagee and at Mortgagor's expense by the insurer or insurers or by an expert approved by Mortgagee, all under insurance policies payable, in case of loss or damage, to Mortgagee, such rights to be evidenced by the usual standard non-contributory form of mortgage clause to be attached to each policy. Mortgagor shall not carry separate

insurance concurrent in kind or form and contributing in the event of loss, with any insurance required hereby. Mortgagor shall also obtain and maintain public liability, property damage and workmen's compensation insurance in each case in form and content satisfactory to Mortgagee and in amounts as are customarily carried by owners of like property and approved by Mortgagee. Mortgagor shall also obtain and maintain such other insurance with respect to the Mortgaged Premises in such amounts and against such insurable hazards as Mortgagee from time to time may require, including, without limitation, boiler and machinery insurance, insurance against flood risks, host liquor liability, war risk insurance when and to the extent obtainable from the United States Government or any agency thereof, and insurance against loss of rent due to fire and risks now or hereafter embraced by so-called "*extended coverage*". All insurance required hereby shall be maintained with good and responsible insurance companies satisfactory to Mortgagee and shall not provide for any deductible amount in excess of \$200,000 not approved in writing by Mortgagee, shall provide that any losses shall be payable notwithstanding any act or negligence of Mortgagor, shall provide that no cancellation thereof shall be effective until at least thirty (30) days after receipt by Mortgagor and Mortgagee of written notice thereof, and shall be satisfactory to Mortgagee in all other respects. Upon the execution of this Mortgage and thereafter not less than fifteen (15) days prior to the expiration date of any policy delivered pursuant to this Mortgage, Mortgagor will deliver to Mortgagee originals of any policy or renewal policy, as the case may be, required by this Mortgage, bearing notations evidencing the payment of all premiums. In the event of foreclosure, Mortgagor authorizes and empowers Mortgagee to effect insurance upon the Mortgaged Premises in amounts aforesaid for a period covering the time of redemption from foreclosure sale provided by law, and if necessary therefor to cancel any or all existing insurance policies.

9. *Damage to or Destruction of Mortgaged Premises.*

(a) *Notice.* In case of any material damage to or destruction of the Mortgaged Premises or any part thereof, Mortgagor shall promptly give written notice thereof to Mortgagee, generally describing the nature and extent of such damage or destruction.

(b) *Restoration.* In case of any damage to or destruction of the Mortgaged Premises or any part thereof, Mortgagor, whether or not the insurance proceeds, if any, received on account of such damage or destruction shall be sufficient for the purpose, at Mortgagor's expense, will promptly commence and complete (subject to unavoidable delays occasioned by strikes, lockouts, acts of God, inability to obtain labor or materials, governmental restrictions and similar causes beyond the reasonable control of Mortgagor) the restoration, replacement or rebuilding of the Mortgaged Premises as nearly as possible to its value, condition and character immediately prior to such damage or destruction.

(c) *Adjustment of Loss.* Mortgagor hereby authorizes Mortgagee, at Mortgagee's option, to adjust and compromise any losses under any insurance afforded, but unless Mortgagee elects to adjust the losses as aforesaid, said adjustment and/or compromise shall be made by Mortgagor, subject to final approval of Mortgagee in the case of losses exceeding \$200,000.

(d) *Application of Insurance Proceeds.* Net insurance proceeds received by Mortgagee under the provisions of this Mortgage or any instruments supplemental hereto or thereto or under any policy or policies of insurance covering the Mortgaged Premises or any part thereof shall first be applied as a prepayment on the Secured Indebtedness (and Mortgagee is hereby irrevocably authorized and directed to make such an application whether or not the Secured Indebtedness may then be due or otherwise adequately secured) and shall thereafter be applied to the reduction of the Secured Indebtedness; *provided, however*, that such proceeds shall be made available for the restoration of the portion of the Mortgaged Premises damaged or destroyed if written application for such use is made within thirty (30) days of receipt of such proceeds and the following conditions are satisfied: (i) Mortgagor has in effect business interruption insurance covering the income to be lost during the restoration period as a result of the damage or destruction to the Mortgaged Premises or provides Mortgagee with other evidence satisfactory to it that Mortgagor has resources sufficient to pay its obligations during the restoration period; (ii) the effect of the damage to or destruction of the Mortgaged Premises giving rise to receipt of the insurance proceeds is not to terminate, or give a lessee the option to terminate, any lease of all or any portion of the Mortgaged Premises; (iii) no Event of Default, or event which, with the lapse of time, the giving of notice, or both, would constitute an Event of Default, shall have occurred or be continuing (and if such an event shall occur during restoration Mortgagee may, at its election, apply any insurance proceeds then remaining in its hands to the reduction of the indebtedness evidenced by the Secured Indebtedness); (iv) if such proceeds exceed \$200,000, Mortgagor shall have submitted to Mortgagee plans and specifications for the restoration which shall be satisfactory to Mortgagee; and (v) Mortgagor shall submit to Mortgagee fixed price contract or guaranteed maximum price contracts with good and responsible contractors and materialmen covering all work and materials necessary to complete restoration and providing for a total completion price not in excess of the amount of insurance proceeds available for restoration, or, if a deficiency shall exist, Mortgagor shall have deposited the amount of such deficiency with Mortgagee. Any amounts deposited with Mortgagee shall be disbursed from time to time as restoration progresses to pay for restoration work completed and in place and such disbursements may at Mortgagee's option be made directly to Mortgagor or to or through any contractor or materialman to whom payment is due or to or through a construction escrow to be maintained by a title insurer acceptable to Mortgagee; *provided, however*, if the aggregate amount of such insurance proceeds is less than \$200,000, then such proceeds shall be disbursed by the Mortgagee directly to Mortgagor. Mortgagee may impose such further conditions upon the release of insurance proceeds (including the receipt of title insurance) as are customarily imposed by prudent construction lenders to insure the completion of the restoration work free and clear of all liens or claims for lien. All title insurance charges and other costs and expenses paid to or for the account of Mortgagor in connection with the release of such insurance proceeds shall constitute so much additional Secured Indebtedness to be payable upon demand with interest at the rate applicable to the Obligations under the Note). Mortgagee may deduct any such costs and expenses from insurance proceeds at any time standing in its hands. If Mortgagor fails to request that insurance proceeds be applied to the restoration of the improvements or if Mortgagor makes such a request but fails to complete restoration within a reasonable

time, Mortgagee shall have the right, but not the duty, to restore or rebuild said Mortgaged Premises or any part thereof for or on behalf of Mortgagor in lieu of applying said proceeds to the Secured Indebtedness and for such purpose may do all necessary acts, including using funds deposited by Mortgagor as aforesaid and advancing additional funds for the purpose of restoration, all such additional funds to constitute part of the Secured Indebtedness payable upon demand with interest at the Default Rate (as used in this Mortgage, such term shall have the meaning set forth in Section 30 below).

10. *Eminent Domain.* Mortgagor acknowledges that Condemnation Awards have been assigned to Mortgagee, which awards Mortgagee is hereby irrevocably authorized to collect and receive, and to give appropriate receipts and acquittances therefor, and at Mortgagee's option, to apply the same toward the payment of the amount owing on account of the Secured Indebtedness in such order of application as Mortgagee may elect and whether or not the same may then be due and payable or otherwise adequately secured; *provided, however*, that a Condemnation Award in respect of any taking of a portion (but not all or any material portion) of the Mortgaged Premises shall be made available for the restoration of such Mortgaged Premises in the same manner and subject to the same conditions as are imposed on the release of insurance proceeds set forth in Section 9(d) hereof as if the Mortgaged Premises so taken were destroyed and the Condemnation Award for such taking was actually insurance proceeds in respect of the Mortgaged Premises so deemed as having been destroyed. In the event that any proceeds of a Condemnation Award shall be made available to Mortgagor for restoring the Mortgaged Premises so taken, Mortgagor hereby covenants to promptly commence and complete such restoration of the Mortgaged Premises as nearly as possible to its value, condition and character immediately prior to such taking. Mortgagor covenants and agrees that Mortgagor will give Mortgagee immediate notice of the actual or threatened commencement of any proceedings under condemnation or eminent domain affecting all or any part of the Mortgaged Premises including any easement therein or appurtenance thereof or severance and consequential damage and change in grade of streets, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor further covenants and agrees to make, execute and deliver to Mortgagee, at any time or times upon request, free, clear and discharged of any encumbrances of any kind whatsoever, any and all further assignments and/or instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning all awards and other compensation heretofore and hereafter to be made to Mortgagor for any taking, either permanent or temporary, under any such proceeding.

11. *Construction, Repair, Waste, Etc.* Mortgagor agrees (i) that no building or other improvement on the Mortgaged Premises and constituting a part thereof shall be altered, removed or demolished nor shall any fixtures or appliances on, in or about said buildings or improvements be severed, removed, sold or mortgaged, without the consent of Mortgagee and in the event of the demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property covered hereby, Mortgagor covenants that the same will be replaced promptly by similar fixtures, chattels and articles of personal property at least equal in quality and condition to those replaced, free from any security interest in or encumbrance thereon or reservation of title thereto; (ii) to permit, commit or suffer no waste, impairment or deterioration of the Mortgaged Premises or any part thereof; (iii) to keep and maintain said Mortgaged Premises and every part thereof in good and first class repair and condition (ordinary wear and tear excepted); (iv) to effect such repairs as Mortgagee may reasonably require and from time to

time to make all needful and proper replacements and additions so that said buildings, fixtures, machinery and appurtenances will, at all times, be in good and first class condition, fit and proper for the respective purposes for which they were originally erected or installed (ordinary wear and tear excepted); (v) to comply with all statutes, orders, requirements or decrees relating to the Mortgaged Premises by any federal, state or municipal authority except any that are being contested in good faith and by appropriate proceedings which shall operate to prevent the sale or forfeiture of the Mortgaged Premises, are conducted in good faith and with due diligence; (vi) to observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions and non-conforming uses), privileges, franchises and concessions which are applicable to the Mortgaged Premises or which have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the Mortgaged Premises or any part thereof, (provided that Mortgagor may contest any of the same in good faith and by appropriate proceedings, upon reasonable notice to Mortgagee and provided that (A) no Event of Default then exists and (B) such contest shall operate to prevent the sale or forfeiture of the Mortgaged Premises and shall be conducted in good faith and with due diligence), (vii) not to initiate or acquiesce in any changes to or terminations of any of the rights, licenses, permits (including, but not limited to, zoning variances, special exceptions and non-conforming uses), privileges, franchises and concessions or of zoning classifications referenced in the foregoing clause (vi) without the prior written consent of Mortgagee; and (viii) to make no material alterations in or improvements or additions to the Mortgaged Premises except as required by governmental authority or as permitted by Mortgagee.

12. *Liens and Encumbrances.* Mortgagor will not, without the prior written consent of Mortgagee, directly or indirectly, create or suffer to be created or to remain and will discharge or promptly cause to be discharged any mortgage, lien, encumbrance or charge on, pledge of, or conditional sale or other title retention agreement with respect to, the Mortgaged Premises or any part thereof, whether superior or subordinate to the lien hereof, except for this Mortgage.

13. *Right of Mortgagee to Perform Mortgagor's Covenants, Etc.* If Mortgagor shall fail to make any payment or perform any act required to be made or performed hereunder, Mortgagee, without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Mortgagor, and may enter upon the Mortgaged Premises (upon reasonable notice if no Event of Default then exists) or any part thereof for such purpose and take all such action thereon as, in the opinion of Mortgagee, may be necessary or appropriate therefor. All sums so paid by Mortgagee and all costs and expenses (including, without limitation, attorneys' fees and expenses) so incurred, together with interest thereon from the date of payment or incurrence at the Default Rate, shall constitute so much additional Secured Indebtedness and shall be paid by Mortgagor to Mortgagee on demand. Mortgagee in making any payment authorized under this Section relating to taxes or assessments that Mortgagor is not contesting in good faith and by appropriate proceedings may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien or title or claim thereof. Mortgagee, in performing any act hereunder, shall be the sole judge of whether Mortgagor is required to perform the same under the terms of this Mortgage.

14. *After-Acquired Property.* Any and all property hereafter acquired which is of the kind or nature herein provided, or intended to be and become subject to the lien hereof, shall ipso facto, and without any further conveyance, assignment or act on the part of Mortgagor, become and be subject to the lien of this Mortgage as fully and completely as though specifically described herein; but nevertheless Mortgagor shall from time to time, if requested by Mortgagee, execute and deliver any and all such further assurances, conveyances and assignments as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting to the lien of this Mortgage all such property.

15. *Inspection by Mortgagee.* Mortgagee, the Unsecured Creditors' Trust, their respective representatives and any participant in the Secured Indebtedness shall have the right to inspect the Mortgaged Premises at all reasonable times (in accordance with the terms of the Note), and access thereto shall be permitted for that purpose.

16. *Subrogation.* Mortgagor acknowledges and agrees that Mortgagee shall be subrogated to any lien discharged out of the proceeds of any Secured Indebtedness, irrespective of whether or not any such lien may have been released of record.

17. *Events of Default.* Any one or more of the following shall constitute an “**Event of Default**” hereunder:

(a) an “*Event of Default*” (as defined therein) shall occur under the Note; or

(b) the Mortgaged Premises or any part thereof shall be sold, transferred, or conveyed, whether voluntarily or involuntarily, by operation of law or otherwise, except for sales of obsolete, worn out or unusable fixtures or personal property which are concurrently replaced with similar fixtures or personal property at least equal in quality and condition to those sold and owned by Mortgagor free of any lien, charge or encumbrance other than the lien hereof; or

(c) any proceedings are commenced to foreclose or otherwise realize upon any lien or charge on the Mortgaged Premises (except to the extent such proceedings are being contested in good faith and with due diligence by appropriate proceedings which operate to prevent the sale or forfeiture of the Mortgaged Premises); or

(d) the Mortgaged Premises are abandoned, except with respect to any portion of the Mortgaged Premises which, in the reasonable business judgment of Mortgagor, is no longer necessary for the proper conduct of Mortgagor's business (and, in such event, the failure of Mortgagor to maintain, preserve, and keep such property in good repair, working order and condition or to make all needful and proper repairs, renewals, replacements, additions, and betterments thereto shall similarly not constitute an Event of Default).

18. *Remedies.* When any Event of Default has happened and is continuing (regardless of the pendency of any proceeding which has or might have the effect of preventing Mortgagor from complying with the terms of this instrument and of the adequacy of the security for the Secured Obligations) and in addition to such other rights as may be available under the

Transaction Documents or applicable Legal Requirements, but subject at all times to any mandatory Legal Requirements:

(a) *Acceleration.* Mortgagee may, by written notice to Mortgagor, declare the unpaid Secured Indebtedness to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind.

(b) *Uniform Commercial Code.* Mortgagee shall, with respect to any part of the Mortgaged Premises constituting property of the type in respect of which realization on a lien or security interest granted therein is governed by the Uniform Commercial Code, have all the rights, options and remedies of a secured party under the Uniform Commercial Code, including without limitation, the right to the possession of any such property, or any part thereof, and the right to enter without legal process any premises where any such property may be found. Any requirement of said Uniform Commercial Code for reasonable notification shall be met by mailing written notice to Mortgagor at its address above set forth at least ten (10) days prior to the sale or other event for which such notice is required. The costs and expenses of retaking, selling, and otherwise disposing of said property, including reasonable attorneys' fees and legal expenses incurred in connection therewith, shall constitute so much additional Secured Indebtedness and shall be payable upon demand with interest at the Default Rate at the time the expense is incurred.

(c) *Foreclosure.* Mortgagee may proceed to protect and enforce the rights of Mortgagee hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by applicable Legal Requirements, or (ii) by the foreclosure of this Mortgage.

(d) *Appointment of Receiver.* Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Mortgagor or the then value of the Mortgaged Premises, be entitled to have a receiver appointed of all or any part of the Mortgaged Premises and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable Legal Requirements, without notice, enter upon and take possession of the Mortgaged Premises or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove Mortgagor or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

(e) *Taking Possession, Collecting Rents, Etc.* Mortgagee may enter and take possession of the Mortgaged Premises or any part thereof and manage, operate, insure, repair and improve the same and take any action that, in Mortgagee's judgment, is

necessary or proper to conserve the value of the Mortgaged Premises. Mortgagee may also take possession of, and for these purposes use any and all personal property contained in the Mortgaged Premises and used in the operation, rental or leasing thereof or any part thereof. Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues and profits of the Mortgaged Premises or any part thereof (and for such purpose Mortgagor does hereby irrevocably constitute and appoint Mortgagee its true and lawful attorney-in-fact (exercisable during the occurrence and continuance of an Event of Default) for it and in its name, place and stead to receive, collect and receipt for all of the foregoing, Mortgagor irrevocably acknowledging that any payment made to Mortgagee hereunder shall be a good receipt and acquittance against Mortgagor to the extent so made) and to apply same to the reduction of the Secured Indebtedness. The right to enter and take possession of the Mortgaged Premises and use any personal property therein, to manage, operate and conserve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Mortgagee hereunder or afforded by applicable Legal Requirements, and may be exercised concurrently therewith or independently thereof. The costs and expenses (including any receiver's fees, reasonable counsels' fees, costs and reasonable agent's compensation) incurred pursuant to the powers herein contained shall be so much additional Secured Indebtedness which Mortgagor promises to pay upon demand together with interest at the Default Rate. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto other than to account for any rents actually received by Mortgagee. Without taking possession of the Mortgaged Premises, Mortgagee may, in the event the Mortgaged Premises becomes vacant or is abandoned take such steps as it deems appropriate to protect and secure the Mortgaged Premises (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional Secured Indebtedness payable upon demand with interest thereon at the Default Rate.

19. *Waiver of Right to Redeem From Sale; Waiver of Appraisalment, Valuation, Etc.* Mortgagor shall not and will not apply for or avail itself of any appraisalment, valuation, stay, extension or exemption laws, or any so-called "*Moratorium Laws*", now existing or hereafter enacted in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Premises sold as an entirety. In the event of any sale made under or by virtue of this Mortgage, the whole of the Mortgaged Premises may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as Mortgagee may determine. Mortgagee or the Unsecured Creditors' Trust shall have the right to become the purchaser at any sale made under or by virtue of this Mortgage and Mortgagee or the Unsecured Creditors' Trust so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Mortgagee or the Unsecured Creditors' Trust with the amount payable to Mortgagee or the Unsecured Creditors' Trust out of the net proceeds of such sale. In the event of any such sale, the Secured Indebtedness, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Mortgagor hereby waives any and all rights of redemption prior to or from sale under any order or decree of foreclosure pursuant to rights herein granted, on behalf of Mortgagor, and each and every person acquiring any interest in, or title to the Mortgaged Premises described herein subsequent to the

date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable Legal Requirements.

20. *Costs and Expenses of Foreclosure.* In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee and the Unsecured Creditors' Trust for reasonable attorneys' fees, appraisers' fees, environmental auditors' fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as the items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, Torrens certificates and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Premises, all of which expenditures shall become so much additional Secured Indebtedness which Mortgagor agrees to pay and all of such shall be immediately due and payable with interest thereon from the date of expenditure until paid at the Default Rate.

21. *Application of Proceeds.* The proceeds of any foreclosure sale of the Mortgaged Premises or of any sale of property pursuant to Section 18(b) hereof shall be distributed in the following order of priority: First, on account of all costs and expenses incident to the foreclosure or other proceedings, including all such items as are mentioned in Sections 18(b) and 20 hereof; and Second, to all other items which under the terms hereof constitute Secured Indebtedness to be applied in such order and manner as the Mortgagee shall determine pursuant to the terms of the Note, with any surplus to whomsoever Mortgagee shall reasonably determine to be lawfully entitled to the same.

22. *Deficiency Decree.* If, at any foreclosure proceeding, the Mortgaged Premises shall be sold for a sum less than the total amount of indebtedness for which judgment is therein given, the judgment creditor shall be entitled to the entry of a deficiency decree against Mortgagor and against the property of Mortgagor for the amount of such deficiency; and Mortgagor does hereby irrevocably consent to the appointment of a receiver for the Mortgaged Premises and the property of Mortgagor and of the rents, issues and profits thereof after such sale and until such deficiency decree is satisfied in full.

23. *Mortgagee's and Unsecured Creditors' Trust's Remedies Cumulative - No Waiver.* No remedy or right of Mortgagee or the Unsecured Creditors' Trust shall be exclusive of any other right or remedy but shall be cumulative and in addition to every other remedy or right now or hereafter existing at law or in equity or by statute or otherwise. No delay in the exercise or omission to exercise any remedy or right accruing on any default shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Mortgagee.

24. *Mortgagee or Unsecured Creditors' Trust Party to Suits.* Mortgagee shall have the power and authority (but not the duty) to institute and maintain any suits and proceedings as Mortgagee may deem advisable (a) to prevent any impairment of the Mortgaged Premises by any

acts which may be unlawful or which violate the terms of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Premises or (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Mortgagee's or the Unsecured Creditors' Trust's interest. If Mortgagee or the Unsecured Creditors' Trust shall be made a party to or in accordance with the other provisions of this Mortgage shall intervene in any action or proceeding affecting the Mortgaged Premises or the title thereto or the interest of Mortgagee or the Unsecured Creditors' Trust under this Mortgage (including probate and bankruptcy proceedings), or if Mortgagee or the Unsecured Creditors' Trust employs an attorney to collect any or all of the Secured Indebtedness or to enforce any of the terms hereof or realize hereupon or to protect the lien hereof, or if Mortgagee or the Unsecured Creditors' Trust shall incur any costs or expenses in preparation for the commencement of any foreclosure proceedings or for the defense of any threatened suit or proceeding which might affect the Mortgaged Premises or the security hereof, whether or not any such foreclosure or other suit or proceeding shall be actually commenced, then in any such case, to the extent not prohibited by mandatory provisions of applicable Legal Requirements, Mortgagor agrees to pay to Mortgagee or the Unsecured Creditors' Trust, immediately and without demand, all reasonable costs, charges, expenses and attorney's fees incurred by Mortgagee or the Unsecured Creditors' Trust in any such case, and the same shall constitute so much additional Secured Indebtedness payable upon demand with interest at the Default Rate.

25. *Modifications Not to Affect Lien.* Mortgagee, without notice to anyone (except the Unsecured Creditors' Trust), and without regard to the consideration, if any, paid therefor, or the presence of other liens on the Mortgaged Premises, may, in its discretion, release any part of the Mortgaged Premises or any person liable for any of the Secured Obligations, may extend the time of payment of any of the Secured Indebtedness and may grant waivers or other indulgences with respect hereto and thereto, and may agree with Mortgagor to modifications to the terms and conditions contained herein or otherwise applicable to any of the Secured Obligations (including modifications in the rates of interest applicable thereto), without in any way affecting or impairing the liability of any party liable upon any of the Secured Obligations or the priority of the lien of this Mortgage upon all of the Mortgaged Premises not expressly released, and any party acquiring any direct or indirect interest in the Mortgaged Premises shall take same subject to all of the provisions hereof.

26. *Notices.* All communications provided for herein shall be in writing and shall be deemed to have been given when delivered personally or mailed by first class mail, postage prepaid, addressed to the parties hereto at their addresses as shown at the beginning of this Mortgage or to such other and different address as Mortgagor or Mortgagee may designate pursuant to a written notice sent in accordance with the provisions of this Section and within the time frames specified in the Note.

27. *Liens Absolute, Etc.* Mortgagor acknowledges and agrees that the liens and security interests hereby created are absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Mortgagee or any other holders of any of the Secured Indebtedness, and without limiting the generality of the foregoing, the lien and security hereof shall not be impaired by any acceptance by Mortgagee or any other holder of

any of the Secured Indebtedness of any other security for or guarantees upon any of the Secured Indebtedness or by any failure, neglect or omission on the part of Mortgagee or any other holder of any of the Secured Indebtedness to realize upon to protect any of the Secured Indebtedness or any collateral security therefor. The lien and security hereof shall not in any manner be impaired or affected by any sale, pledge, surrender, compromise, settlement, release, renewal, extension, indulgence, alteration, substitution, exchange, change in, modification or disposition of any of the Secured Obligations, or of any collateral security therefor, or of any guaranty thereof, or of any credit agreement executed in connection therewith. Mortgagee may at its discretion at any time grant credit to Borrower without notice to Mortgagor in such amounts and on such terms as Mortgagee may elect (all of such to constitute additional Secured Indebtedness) without in any manner impairing the lien and security interest created and provided for herein. In order to realize hereon and to exercise the rights granted Mortgagee hereby and under applicable Legal Requirements, there shall be no obligation on the part of Mortgagee or any other holder of any of the Secured Indebtedness at any time to first resort for payment to the obligor on any note evidencing any of the Secured Indebtedness or to any guaranty of any of the Secured Obligations or any part thereof or to resort to any other collateral security, property, liens or any other rights or remedies whatsoever, and Mortgagee shall have the right to enforce this instrument irrespective of whether or not other proceedings or steps are pending seeking resort to or realization upon or from any of the foregoing.

28. *Recovery Limitation.* Notwithstanding anything in this Mortgage to the contrary, the right of recovery against Mortgagor under this Mortgage shall not exceed \$1.00 less than the lowest amount which would render Mortgagor's obligations under this Mortgage void or voidable under applicable Legal Requirements, including fraudulent conveyance law.

29. *Multisite Real Estate Transaction.* Mortgagor acknowledges that this Mortgage is one of several mortgages and other security documents (the aforesaid being together called the "**Other Security Documents**") which secure the Secured Obligations. Mortgagor agrees that the lien of this Mortgage shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Mortgagee or any other holder of any of the Secured Indebtedness, and without limiting the generality of the foregoing, the lien and security hereof shall not be impaired by any acceptance by Mortgagee or any other holder of any of the Secured Indebtedness of any security for or guarantors upon any of the Secured Indebtedness or by any failure, neglect or omission on the part of Mortgagee or any other holder of any of the Secured Indebtedness to realize upon or protect any of the Secured Indebtedness or any collateral or security therefor including the Other Security Documents. The lien and security interest hereof shall not in any manner be impaired or affected by any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, substitution, exchange, change in, modification or disposition of any of the Secured Obligations, or of any of the collateral or security therefor, including, without limitation, the Other Security Documents or of any guaranty thereof, or of any instrument or agreement setting forth the terms and conditions pertaining to any of the foregoing. Mortgagee may at its discretion foreclose, exercise any power of sale, or exercise any other remedy available to it under any or all of the Other Security Documents without first exercising or enforcing any of its rights and remedies hereunder. Such exercise of Mortgagee's rights and remedies under any or all of the Other Security Documents shall not in any manner impair the Secured Obligations, except to the extent of payment, or the lien of this Mortgage and any

exercise of the rights or remedies of the Mortgagee hereunder shall not impair the lien of any of the Other Security Documents or any of Mortgagee's rights and remedies thereunder. Mortgagor specifically consents and agrees that Mortgagee may exercise its rights and remedies hereunder and under the Other Security Documents separately or concurrently and in any order that it may deem appropriate.

30. *Default Rate.* For purposes of this Mortgage, the term "**Default Rate**" means, for any day, the rate per annum determined by adding three percent (3%) to the Interest Rate on Obligations outstanding under the Note then in effect.

31. *Governing Law.* The creation of this Mortgage, the perfection of the lien and security interest in the Mortgaged Premises, and the rights and remedies of Mortgagee with respect to the Mortgaged Premises, as provided herein and by the Legal Requirements of the state in which the Mortgaged Premises is located, shall be governed by and construed in accordance with the internal Legal Requirements of the state in which the Mortgaged Premises are located without regard to principles of conflicts of law. All other provisions of this Mortgage, any claim or controversy arising out of the subject matter hereof, whether sounding in contract law, tort law or otherwise, and the rights and obligations of Mortgagor and Mortgagee shall be governed by, and shall be construed and enforced in accordance with, the Legal Requirements of the State of Texas, without regard to the conflict of laws principles thereof, to the extent the application of the Legal Requirements of another jurisdiction would be required thereby.

32. *Partial Invalidity.* All rights, powers and remedies provided herein are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable Legal Requirement. If any term of this Mortgage shall be held to be invalid, illegal or unenforceable, the validity and enforceability of the other terms of this Mortgage shall in no way be affected thereby.

33. *Successors and Assigns.* Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Mortgage contained by or on behalf of Mortgagor, or by or on behalf of Mortgagee, shall bind and inure to the benefit of the respective successors and assigns of such parties, whether so expressed or not.

34. *Headings.* The headings in this instrument are for convenience of reference only and shall not limit or otherwise affect the meaning of any provision hereof.

35. *Changes, Etc.* This instrument and the provisions hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

36. *Trustee.* Mortgagee has been appointed as Trustee of the Unsecured Creditors' Trust pursuant to the Note. In acting under or by virtue of this Mortgage, Mortgagee shall be entitled to all the rights, authority, privileges and immunities provided in the Note, all of which provisions are incorporated by reference herein with the same force and effect as if set forth

herein. Mortgagee hereby disclaims any representation or warranty to the Unsecured Creditors' Trust concerning the perfection of the mortgage lien and security interest granted hereunder or the value of the Mortgaged Premises.

37. *Restrictions on the Unsecured Creditors' Trust Right to Enforce.* The Unsecured Creditors' Trust shall not have the right to institute any suit, action or proceeding in equity or at law for the foreclosure of this Mortgage or for the execution of any trust or power hereof or for the appointment of a receiver, or for the enforcement of any other remedy under or upon this Mortgage; it being understood and intended that no one or more of the Unsecured Creditors' Trust shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Mortgage by its or their action or to enforce any right hereunder, and that all proceedings at law or in equity shall be instituted, had and maintained by the Mortgagee in the manner herein provided and for the ratable benefit of the Unsecured Creditors' Trust.

38. *No Liability on Mortgagee.* Notwithstanding anything contained herein, this Mortgage is only intended as security for the Secured Obligations, and Mortgagee shall not be obligated to perform or discharge, and Mortgagee does not hereby undertake to perform or discharge, any obligation, duty or liability of Mortgagor with respect to any of the Mortgaged Premises. No liability shall be enforced or asserted against Mortgagee in their exercise of the powers herein respectively granted to them, and Mortgagor expressly waives and releases any such liability. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under or by reason of the exercise of its rights hereunder and of and from any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligations or undertakings on any or their parts to perform or discharge any of the terms, covenants or agreements of Mortgagor contained herein or with respect to any of the Mortgaged Premises, except in the case of actions by the Mortgagee that constitute gross negligence or willful misconduct. Mortgagee shall not have responsibility for the control, care, management or repair of the Mortgaged Premises, nor shall it be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Mortgaged Premises resulting in loss or injury or death to any licensee, employee, tenant or stranger. Without limiting the foregoing, Mortgagee shall not be responsible for any recitals herein or for insuring the Mortgaged Premises, or for the recording, filing or refiling of this Mortgage; nor shall the Mortgagee be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of the Mortgagor contained herein.

39. *Jury Trial Waiver.* TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, MORTGAGOR AND, BY ITS ACCEPTANCE OF THIS MORTGAGE, MORTGAGEE HEREBY WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS MORTGAGE.

40. *Access Laws.*

(a) Mortgagor agrees that the Mortgaged Premises shall at all times comply with the applicable requirements of the Americans with Disabilities Act of 1990

(including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities); the Fair Housing Amendments Act of 1988, if applicable; all other applicable federal and state and local laws and ordinances related to disabled access; and all rules, regulations, and orders issued pursuant thereto; all as amended from time to time (collectively the “**Access Laws**”), to the extent that any non-compliance with Access Laws, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(b) Mortgagor agrees to give prompt notice to Mortgagee of any claims of violations of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with any of the Access Laws.

(c) Mortgagor shall indemnify and hold harmless Mortgagee from and against any and all claims, demands, damages, costs, expenses, losses, liabilities, penalties, fines, and other proceedings, including without limitation reasonable attorney fees and expenses arising directly or indirectly from or out of or in any way connected with any failure of the Mortgaged Premises to comply with any of the Access Laws. The obligations and liabilities of Mortgagor under this Section shall survive any termination, satisfaction, assignment, judicial or nonjudicial foreclosure, or delivery of a deed in lieu of foreclosure but only to the extent the claim arose prior to foreclosure or Mortgagee’s acceptance of a deed in lieu of foreclosure.

41. *Local Law Provisions.* In the event of any inconsistency between the terms and conditions of the other sections and provisions of this Mortgage and the terms and provisions of this Section 41, the terms and provisions of this Section 41 shall control and be binding.

(a) *Wisconsin Foreclosure.* Borrower agrees that, to the extent permitted by applicable Legal Requirements, upon waiving the right to a deficiency judgment, this Mortgage may be foreclosed by Mortgagee, at its option, pursuant to the provisions of Section 846.103(2) of Wisconsin Statutes, or any successor thereof.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Mortgagor has caused these presents to be signed the day and year first above written.

OCB RESTAURANT COMPANY, LLC

By: Peter Donbavand

NAME: Peter Donbavand

TITLE: vice president

STATE OF Texas

)

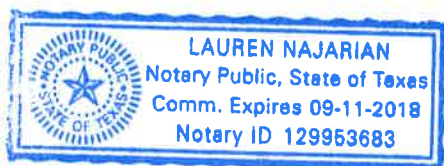
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COUNTY OF Bexar

)

On this 12 day of May, 2017, before me, the undersigned Notary Public in and for the said County in the said State, personally appeared Peter Donbavand, known to me to be the vice president of OCB Restaurant Company, LLC, and personally known to me to be the person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such _____, he/she signed and delivered the said instrument, pursuant to authority given by said entity, as their free and voluntary act, and as the free and voluntary act of said entity, for the uses and purposes therein set forth.

Given under my hand and official seal this 12 day of May, 2017.



Lauren Najarian

Notary Public

Print Name: Lauren Najarian

My Commission Expires: 9-11-2018

First Lien Mortgage for Marshfield, Wisconsin (Wood County)

SCHEDULE I

LEGAL DESCRIPTION

The East 544.5 feet of the West 1,444.5 feet of Lot 1, and also immediately adjacent to the East thereof, the North 20 feet of the East 170 feet of the West 1,614.5 feet of said Lot 1, all being in Block 1 of Industrial Park Subdivision, City of Marshfield, Wood County, Wisconsin.

Tax Key No. 33-05212A.

EXHIBIT O
Management Agreement

MANAGEMENT AGREEMENT

THIS AGREEMENT is entered into and is effective as of May 18, 2017, by and between Buffets, LLC, LLC ("Company") and TXFMP Management, LLC("Manager").

WHEREAS, the Company is engaging in the buffet-style restaurant business, principally the operation of its concepts include five buffet restaurant chains and a full service steakhouse. The Company's buffet restaurants principally operate under the names Old Country Buffet®, Country Buffet®, HomeTown® Buffet, Ryan's® and Fire Mountain® by the Company and its relevant subsidiaries. These locations primarily offer self-service buffets with entrees, sides, and desserts for an all-inclusive price. In addition, one of Company's subsidiaries owns and operates a 10-unit full service, casual dining chain under the name Tahoe Joe's Famous Steakhouse® (collectively the "Business");

WHEREAS, the Manager has the resources, expertise and experience to provide support services to the Business and the Company and to provide specific accounting reporting services to the Company; and

WHEREAS, Manager has the resources, expertise and experience to provide the support services including training and financial and administrative services for the Business and the Company and financial reporting services to the Company all in accordance with the terms and conditions hereof; and

WHEREAS, the Manager has the resources, expertise and experience in providing the back office and management support services of restaurant companies such as the Business; and

WHEREAS, the Company desires to retain the services of Manager to provide management services to the Company in the operation of the Business;

NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable consideration the receipt of which is hereby acknowledged, the parties agree as follows:

1. Engagement. The Company hereby retains the Manager, and the Manager hereby agrees to be retained by the Company, to provide "Management Services" (as defined herein) to the Company upon the terms and conditions and for the compensation set forth herein.

2. Maintenance of Control. The Company shall be the entity owning the Business and responsible for its operations and the holder of all licenses, contracts and certificates related to the Business, shall be the party to all third party contracts and agreements related to the Business.

3. Management Services.

Duties. Subject to the direction and control of the Company and its members or managers (which shall retain ultimate decision-making authority and responsibility for the Company and the Business, as provided in the organizational documents of the Company), Manager shall provide, perform and discharge day-to-day managerial duties, responsibilities and functions of the Business

(“Management Services”), in each case, however utilizing the services of non-managerial staff employees of the Company (or, with the prior consent of the Company, of any separate payroll company retained by the Company to employ and arrange and provide benefits for the staff, regional and field employees supporting the operations of the Company, any such payroll company being referred to herein as “Payroll Company”) to the extent the completion or fulfillment of any such services for the Company shall reasonably require the use of non-managerial staff as well, and in such case the Company shall make such non-managerial personnel available to Manager at Company’s sole cost and expense. Subject to the following provision, the Management Services to be provided hereunder shall include, without limitation, the following managerial level services related to the Business: (i) billings and collections, (ii) causing the Business to comply in all material respects with the permitting, licensing and other requirements of applicable laws, rules, regulations and orders of any governmental authority applicable to the Company (with respect to the Business) or the Business (except Manager shall not be generally responsible for assuring compliance at the unit operational level except to the extent consistent with its general supervisory responsibilities); (iii) internal accounting (provided that the Manager shall not provide professional accounting services, any expense of which shall be paid separately and independently by the Company), (iv) risk management services, (v) marketing and advertising and development of marketing and advertising materials (for avoidance of doubt, this does not include the cost of print drops, photo shoots, television advertising or other actual third party cost of marketing), (vi) management of financing and cash management activities, (vii) budgeting, (viii) purchasing and provision of equipment, inventory and supplies and payables management with respect thereto, (ix) supervision of personnel, payroll, employment and benefit matters, subject to the delegation of particular responsibilities therefor to any Payroll Company, (xi) administrative and tax matters, (xii) information technology services, (xiii) recruiting and training services, (xiv) human resources services, (xv) training services, (xvi) operational management support, (xvii) research and development, and (xvi) performing all other managerial functions customarily performed by or on behalf of an internal employee-manager of a restaurant business, all as reasonably contemplated by this Agreement and which are necessary for the conduct of the Business; provided, however, Company and Manager shall regularly consult during the term hereof on the most efficient way to discharge management functions related to the Business, and Company shall instead retain outside professional advisers or consultants in such circumstances as they may determine and for which outside professional advisors and consultants would customarily be obtained by a company with a managerial-employee staff. In addition, Manager may, in its sole and absolute discretion, provide such other services to the Company as may be reasonably requested by the Company from time to time, and agreed to by the Manager. Manager shall perform its duties in a reasonable and customary manner and shall operate in accordance with all laws, rules and regulations applicable to the Manager’s performance of the Management Services.

(a) Insurance. After consultation with the Company as to its insurance requirements, Manager shall maintain, for the benefit of the Company and at the Company’s expense (and in the name of the Company as the insured entity under such policies), insurance coverages that are usual and customary in the restaurant and food manufacturing and distribution industries. Such coverages may include but shall not be limited to the following: Commercial General Liability Insurance, Excess/Umbrella Liability Insurance, “All Risk” Property Insurance, and other insurance coverages as may be necessary and appropriate to the prudent management of the Business. The Manager shall be an additional named insured on all insurance policies of the

Company, consistent with the Company indemnification responsibilities to the Manager set forth hereunder.

(b) Operating Accounts. All funds received in connection with the operation of the Business shall be deposited in one or more accounts in the name of the Company with a bank or banks designated by the Manager, from which sums shall be withdrawn in accordance with this Agreement (the "Operating Accounts"). The Manager shall have access to the Operating Account, and the Manager shall be entitled to pay out of the Operating Account all Office Expenses (as hereinafter defined) and all fees, charges, reimbursements and other amounts due the Manager under Section 4(d) of this Agreement. Checks or other documents of withdrawal drawn upon the Operating Accounts shall be signed by representatives of Manager or employees designated by the Manager. In addition to the Operating Accounts, the Manager shall be entitled to maintain such funds as deemed by Manager to be reasonably necessary in petty cash (subject also to the Company's commitments to the Agent), but in no event to exceed \$10,000 in petty cash at any time.

(c) Power and Authority. Subject to and consistent with the provisions of this Agreement, and subject also to any over-riding direction by the members or managers of the Company from time to time on any of the following matters, Manager shall have supervision, control and discretion in the provision of the Management Services including, but not limited to, the right, power and authority to (i) negotiate such contracts and agreements on behalf of and at the expense of the Company as Manager may deem to be reasonably necessary or advisable in connection with management, administration and operation of the Business in the ordinary course of business, but subject to the commitments and obligations the Company has made to all third parties with which the Company has contractual or other commitments and obligations; (ii) negotiate and administer leases and contracts relating to the Business on behalf of the Company; (iii) determine and implement terms of providing services in connection with the Business; (iv) determine and implement all phases of marketing, advertising, promotion and publicity relating to the Business; (v) determine and implement employment policies including, but not limited to, salaries, wage rates, employee benefits and other compensation, and the hiring and discharge of employees; (vi) receive, hold and disburse funds, maintain bank accounts, procure inventories, equipment, supplies and services relating to the Business; (vii) engage independent contractors to provide legal, accounting and/or other professional or technical services in connection with the operation of the Business; (viii) manage, direct and resolve any ordinary course disputes involving the Business including, after consultation with the Company, retaining counsel on the Company's behalf for purposes of instituting and defending lawsuits involving the Company, and (ix) generally manage and direct all activities incidental to the operation of the Business in the ordinary course of business. Notwithstanding any of the foregoing, the Manager shall have the right, but not the obligation, to take all necessary actions as agent and on behalf of the Company to perform and fulfill any covenant of the Company contained herein. For purposes of effectuating the preceding grants of authority, Company hereby grants Company a power-of-attorney to execute contracts and agreements on its behalf in the ordinary course of the Business, but only to the extent not exceeding any express limitations on authority set forth above or from time to time established by the Company.

(d) Equipment and Supplies. Manager, at Company's cost, shall procure all equipment, fixtures, office supplies, furniture and furnishings as Manager in its sole discretion deems necessary for the operation of the Business.

(e) Contract Negotiations. Manager shall evaluate, assist in negotiations, and administer all contractual arrangements with third parties as are reasonably necessary and appropriate for the operation of the Business, and Manager is hereby granted a power-of-attorney to execute contracts and agreements on its behalf in the ordinary course of the Business, but only to the extent not exceeding any express limitations on authority set forth above or from time to time established by the Company.

(f) No Warranty or Representations of Financial Performance. **Company acknowledges that Manager has not made and will not make any express or implied warranties or representations that the Management Services provided by Manager will result in any particular amount or level of income to the Company being generated by the Business.**

4. Compensation and Reimbursement.

(a) Management Fee. As full compensation for the Management Services to be rendered hereunder, Manager shall be entitled to receive from the Company a management fee (the "Management Fee"), payable every week during the term hereof, in the amount of four percent (4%) of the Company's net consolidated revenues, and minus all sales tax, realized during the preceding week, computed and paid on the last day of each week. Payment of such Management Fee shall be made to: TXFMP Management, LLC, or such successor entity as Manager may designate from time to time, 120 Chula Vista, San Antonio, TX 78232 or shall be wired to a bank account designated from time to time by Manager as set forth on Exhibit A, as it may be unilaterally amended from time to time by Manager.

(b) Reasonable Value. Payment of the Management Fee is acknowledged as the parties' negotiated agreement as to the reasonable fair market value of the Management Services furnished by Manager pursuant to this Agreement, considering the nature and volume of the services required and the risks assumed by Manager related thereto. The parties recognize and acknowledge that the performance of such Management Services will require a substantial commitment of time and effort by senior management personnel of Manager and that Manager will incur substantial costs and business risks in providing the support services, personnel, marketing, management, administration, and other items and services that are the subject matter of this Agreement. It is the intent of the parties that the Management Fee reasonably compensate Manager for the value to the Company of Manager's administrative expertise, given the time and effort and business risk to Manager in providing the Management Services that are the subject of this Agreement.

(c) Payment of Management Fee. To facilitate the payment of the Management Fee as provided in Section 4(a) hereof, the Company hereby expressly authorizes Manager to make withdrawals of the Management Fee from the Operating Accounts as such fee becomes due and payable during the Term and after termination as provided in Section 6(d)(i) of this Agreement. Manager shall deliver to the Company an invoice with respect to the payment of

each portion of the Management Fee hereunder, accompanied by a reasonably detailed statement of the applicable revenues upon which the Management Fee calculation is based.

(d) Additional Direct or Reimbursable Expenses. Subject to the following proviso, Manager shall be entitled to charge directly to the Company or to obtain reimbursement for the following reasonable costs and expenses incurred by the Manager in the provision of Management Services related to the Business (the "Reimbursable Expenses"):

(i) (i) the direct cost of any adviser, professional or consultant that provides services for improved Business performance, such as management, billing and collections, business office consultation, and accounting and legal services;

(ii) (ii) the expense of using, leasing, purchasing or otherwise procuring and maintaining equipment for the purposes of providing Management Services that is not customarily maintained by the Manager on behalf of its other managed concepts and is not of a nature such as would be customarily maintained by or on behalf of an internal employee-managed corporate staff of a restaurant business; and

(iii) (iii) Manager shall have the right, but not the obligation, to advance funds or pay expenses incurred on behalf of the Company and, in such event, shall be entitled to received prompt payment or reimbursement for such advanced funds or paid expenses accompanied by a reasonably detailed invoice and backup therefor;

5. Term. The Term of this Agreement will be for an initial period of five (5) years after the effective date, and shall be automatically renewed for successive one (1) year periods thereafter, the Manager or the Company may give notice of its desire not to renew this Agreement if given at least sixty (60) days before the end of the initial term or any renewal term (otherwise terminated as provided in Section 6).

6. Termination.

(a) Termination by the Company. Upon written notice pursuant to Section 7, Company may terminate this Agreement for the following reasons:

(i) Immediately if Manager becomes insolvent by reason of its inability to pay its debts as they mature; is adjudicated bankrupt or insolvent; files a petition in bankruptcy, reorganization or similar proceeding under the bankruptcy laws of the United States or shall have such a petition filed against it which is not discharged within thirty (30) days; has a receiver or other custodian, permanent or temporary, appointed for its business, assets or property; makes a general assignment for the benefit of creditors; has its bank accounts, property or accounts attached; has execution levied against its business or property; or voluntarily dissolves or liquidates or has a petition filed for corporate dissolution and such petition is not dismissed within thirty (30) days;

(ii) If the Manager fails to comply with any material provision of this Agreement and does not correct such failure within thirty (30) days after written notice of such

failure to comply is delivered by the Company specifying the nature of the breach in reasonable detail; or

(iii) Immediately if Manager commits any act of fraud, misappropriation or embezzlement, or any other felony and as a result Manager is unable to substantially perform under the terms of this Agreement.

(b) Termination by Manager. Upon written notice pursuant to Section 7, Manager may terminate this Agreement for the following reasons:

(i) Immediately if the Company becomes insolvent by reason of its inability to pay its debts as they mature; is adjudicated bankrupt or insolvent; files a petition in bankruptcy, reorganization or similar proceeding under the bankruptcy laws of the United States or shall have such a petition filed against it which is not discharged within thirty (30) days; has a receiver or other custodian, permanent or temporary, appointed for its business, assets or property; makes a general assignment for the benefit of creditors; has its bank accounts, property or accounts attached; has execution levied against its business or property; or voluntarily dissolves or liquidates or has a petition filed for corporate dissolution and such petition is not dismissed within thirty (30) days;

(ii) If the Company fails to comply with any material provision of this Agreement and does not correct such failure within thirty (30) days after written notice of such failure to comply is delivered by Manager to the Company and the Agent specifying the breach; or

(iii) Immediately if the Company commits any act of fraud or embezzlement with respect to the performance of its duties hereunder, or any felony and as a result in the latter case the Company is unable to substantially perform under the terms of this Agreement.

(c) Obligation After Termination. Upon termination of this Agreement, as hereinabove provided, neither party shall have any further obligations hereunder except for:

(i) obligations accruing prior to the date of termination, including, without limitation, payment of the Management Fee and all reimbursable expenses relating to services provided or assets acquired or procured prior to the termination of this Agreement;

(ii) obligations, promises, or covenants set forth herein that are expressly made to extend beyond the Term, including, without limitation, insurance and indemnity provisions, which provisions shall survive the expiration or termination of this Agreement;

(iii) the obligation of the parties described in Section 9; and

(iv) the obligation of the Company to repay amounts advanced by Manager to the Company.

(d) Surrender of Books After Termination. Upon the expiration or termination of this Agreement for any reason or cause whatsoever, Manager shall surrender to the Company all books and records pertaining to the Business, although Manager shall be entitled to retain a copy

of any such records to the extent pertinent to Manager's own performance, tax or regulatory reporting obligations or related to other reasonable and customary needs or requirements of Manager.

7. Notices. All notices or requests or approvals provided for or permitted to be given pursuant to this Agreement must be in writing and may be given by depositing same in the United States mail, addressed to the party to be notified, postpaid, and registered or certified with return receipt requested or by overnight delivery or by delivering such notice in person to such party. Notices shall conclusively be deemed for all purposes of this Agreement to have been received and to be effective (i) if mailed in accordance with the provisions of the immediately preceding sentence, upon the expiration of five (5) business days after its deposit in the mail or (ii) if by overnight delivery or if personally delivered, upon the actual receipt of such notice by the party to be notified. For purposes of notice, the address of each party shall be the address specified below:

If to COMPANY: Buffets, LLC,
Attn: Peter Donbavand
120 Chula Vista
San Antonio, TX 78232

If to MANAGER: TXFMP Management, LLC

Attn: Jason Kemp
120 Chula Vista
San Antonio, TX 78232

Each party may change its address for notice by the giving of fifteen (15) days notice thereof to the other parties in the manner hereinabove stated.

8. Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns; provided, however, Manager may not assign all of its duties and responsibilities hereunder without the prior written consent of Company, except that Manager shall be permitted to assign its rights and duties to an affiliated entity under the control of, or under common control with, TXFMP Management, LLC upon 15 days prior written notice to Company ; furthermore, Manager shall be entitled to delegate particular duties and responsibilities to outside professionals or as otherwise provided in the description of particular Management Services.

9. Indemnification. To the fullest extent permitted by applicable law, the Company agrees to (i) indemnify the Manager against any loss, damage, claim, expenses (including attorneys' fees), judgments, fines and amounts paid in settlement or otherwise actually incurred by the Manager in connection with or by reason of (a) any act or omission performed or omitted by the Manager on behalf of the Company in connection with the Manager's duties hereunder or (b) any threatened, pending or completed action, suit or proceeding by reason of the fact that it is or was a consultant or agent of the Company, and (ii) advance to the Manager all of the expenses (including reasonable attorneys' fees) incurred by it in defending any such action, suit or proceeding; provided, however, the Manager shall not be entitled to such indemnification to the

extent of any loss or liability finally judicially or by agreement determined to be attributable to the gross negligence or willful misconduct of Manager. The Manager shall be an additional named insured on all insurance policies of the Company. The provisions of this section shall survive any termination or expiration of this Agreement.

10. Status of Independent Contractor. The Company and Manager are not, and shall not be deemed to be by virtue of this Agreement, joint venturers, partners, employees or agents of each other (except as expressly provided in this Agreement). Except as may be expressly provided herein, neither party shall have any authority to bind the other without the other's express written consent; and then only to the extent of the authority conferred by such express written consent. Each party is an independent contractor. Each party shall be solely responsible for and shall comply with all state and federal laws applicable to that party pertaining to employment taxes, income tax withholding, unemployment compensation contributions, and other employment related matters.

11. Other Activities. The parties acknowledge that Manager and its executives have significant restaurant and other business activities and that no full-time or other minimum time commitment is required in connection herewith and further acknowledge and agree that during its term as Manager hereunder the Manager may conduct and enter into other restaurant and other activities and businesses without restriction.

12. Amendment; Modification. Neither this Agreement nor any provision hereof shall be amended or modified (or deemed amended or modified), except upon written approval of the Manager, the Company and the Agent.

13. Governing Law. All matters affecting the interpretation of this Agreement and the rights of the parties hereto shall be governed by the laws of the State of Texas.

14. Jurisdiction and Venue. Manager and the Company hereby consent to the personal jurisdiction and venue of the state and federal courts in San Antonio, Bexar County, Texas, and do hereby waive all questions of personal jurisdiction and venue, including, without limitation, the claim or defense that such courts constitute an inconvenient forum.

15. Gender and Number. Whenever the context of this Agreement requires, the gender of all words herein shall include the masculine, feminine, and neuter, and the number of all words herein shall include the singular and plural.

16. Enforcement. In the event either party resorts to legal action to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover the costs and expenses of such action so incurred, including, without limitation, reasonable attorneys' fees.

17. Consents, Approvals, and Exercise of Discretion. Whenever this Agreement requires any consent or approval to be given by either party hereto, or either party must or may exercise discretion, and except where specifically set forth to the contrary, the parties agree that such consent or approval shall not be unreasonably withheld or delayed, and that such discretion shall be reasonably exercised.

18. No Waivers, Etc. No waivers, express or implied, by either party of any breach of any of the covenants, agreements or duties hereunder of the other party shall be deemed to be a waiver of any other breach thereof or the waiver of any other covenant, agreement or duty.

19. Entire Understanding. This Agreement supersedes all oral and written agreements heretofore made relating to the subject matter hereof and constitutes the entire agreement of the parties with respect to the subject matter hereof.

20. Severability. The parties hereto have negotiated and prepared the terms of this Agreement in good faith with the intent that each and every one of the terms, covenants and conditions herein be binding upon and inure to the benefit of the respective parties. Accordingly, if any one or more of the terms, provisions, promises, covenants or conditions of this Agreement or the application thereof to any person or circumstance shall be adjudged or rendered to any extent invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, an arbitration tribunal, a regulatory agency, or statute, such provision shall be reformed, construed and enforced as if such unenforceable provision had not been contained herein, and each and all of the remaining terms, provisions, promises, covenants and conditions of this Agreement or their application to other persons or circumstances shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law. To the extent this Agreement is in violation of applicable law, then the parties agree to negotiate in good faith to amend the Agreement, to the extent possible consistent with its purposes, to conform to law.

21. Force Majeure. Neither party hereto shall be liable or deemed to be in default for any delay or failure in performance under this Agreement or other interruption of service deemed to result, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, acts of terrorism, accidents, fires, explosions, earthquakes, floods, failure of transportation, strikes or other work interruptions by either party's employees, or any other similar cause beyond the reasonable control of either party unless such delay or failure in performance is expressly addressed elsewhere in this Agreement. Notwithstanding the same, the parties hereto agree to continue this Agreement to the best degree they can so long as reasonably possible and the Company shall in no event be excused from its obligations under Section 9 pursuant to this Section 21.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date
and year first above written.

Company: BUFFETS, LLC, LLC

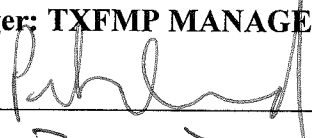
By: 

Name: Peter Donbaurd

Title: Vice President

Date: _____

Manager: TXFMP MANAGEMENT, LLC

By: 

Name: Peter Donbaurd

Title: Vice President

Date: _____