
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE FISCAL YEAR ENDED DECEMBER 30, 2007

OR

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

For the transition period from _____ to _____ .

Commission File Number 000-51485

RUTH'S CHRIS STEAK HOUSE, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware

(State or Other Jurisdiction of
Incorporation or Organization)

500 International Parkway, Suite 100

Heathrow, Florida

(Address of Principal Executive Offices)

72-1060618

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

32746

(Zip Code)

Registrant's Telephone Number, Including Area Code: (407) 333-7440

Securities Registered Pursuant to Section 12(b) of the Act:

Common stock, par value \$0.01 per share

(Title of class)

The NASDAQ Stock Market LLC

(Name of exchange on which registered)

Securities Registered Pursuant to Section 12(g) of the Act:

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if smaller reporting company)

Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

As of July 1, 2007, the last day of the registrant's most recently completed second fiscal quarter, the aggregate market value of the registrant's common stock, par value \$0.01 per share, held by non-affiliates of the registrant was approximately \$307,270,300.

The number of shares outstanding of the registrant's common stock as of March 10, 2008, was 24,267,580.

DOCUMENTS INCORPORATED BY REFERENCE

The information required by Part III of Form 10-K, to the extent not set forth herein, is incorporated herein by reference to the registrant's Proxy Statement for the 2008 Annual Meeting of Shareholders to be held on May 22, 2008, to be filed with the Securities and Exchange Commission pursuant to Regulation 14A not later than 120 days after the close of the registrant's fiscal year.

TABLE OF CONTENTS

| | | <u>Page</u> |
|----------|---|-------------|
| | PART I | |
| Item 1. | Business | 1 |
| Item 1A. | Risk Factors | 12 |
| Item 1B. | Unresolved Staff Comments | 19 |
| Item 2. | Properties | 19 |
| Item 3. | Legal Proceedings | 21 |
| Item 4. | Submission of Matters to a Vote of Security Holders | 21 |
| | PART II | |
| Item 5. | Market for the Registrant’s Common Stock, Related Stockholder Matters and Issuer Purchases of Equity Securities | 22 |
| Item 6. | Selected Financial Data | 24 |
| Item 7. | Management’s Discussion and Analysis of Results of Operations and Financial Condition | 25 |
| Item 7A. | Quantitative and Qualitative Disclosures About Market Risk | 39 |
| Item 8. | Financial Statements and Supplementary Data | 40 |
| Item 9. | Changes in and Disagreements with Accountants on Accounting and Financial Disclosure | 40 |
| Item 9A. | Controls and Procedures | 40 |
| Item 9B. | Other Information | 42 |
| | PART III | |
| Item 10. | Directors, Executive Officers and Corporate Governance | 42 |
| Item 11. | Executive Compensation | 42 |
| Item 12. | Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters | 42 |
| Item 13. | Certain Relationships and Related Transactions, and Director Independence | 43 |
| Item 14. | Principal Accountant Fees and Services | 43 |
| | PART IV | |
| Item 15. | Exhibits and Financial Statement Schedules | 43 |
| | Signatures | 44 |

FORWARD LOOKING STATEMENTS

This Annual Report on Form 10-K and the materials incorporated by reference herein contain “forward-looking statements” that reflect, when made, the Company’s expectations or beliefs concerning future events that involve risks and uncertainties. Forward-looking statements frequently are identified by the words “believe,” “anticipate,” “expect,” “estimate,” “intend,” “project,” “will be,” “will continue,” “will likely result,” or other similar words and phrases. Similarly, statements herein that describe the Company’s objectives, plans or goals also are forward-looking statements. Actual results could differ materially from those projected, implied or anticipated by the Company’s forward-looking statements. Some of the factors that could cause actual results to differ include: changes in economic conditions and general trends; changes in consumer preferences or discretionary spending; the effect of competition in the restaurant industry; the Company’s ability to achieve and manage its planned expansion; the Company’s ability to integrate the restaurants acquired in the Mitchell’s acquisition; the Company’s ability to execute its business strategy effectively; health concerns about beef or other food products; reductions in the availability of, or increases in the cost of, USDA Prime grade beef, fish and other food items; labor shortages or increases in labor costs; the impact of federal, state or local government regulations relating to Company employees, the sale or preparation of food, the sale of alcoholic beverages and the opening of new restaurants; the Company’s ability to achieve market acceptance, particularly in new markets; harmful actions taken by the Company’s franchisees; the Company’s ability to protect its name and logo and other proprietary information; the impact of litigation; and the loss of key management personnel. For a discussion of these and other risks and uncertainties that could cause actual results to differ from those contained in the forward-looking statements, please see Item 1A. “Risk Factors” in this Annual Report on Form 10-K as well as the Company’s other filings with the Securities and Exchange Commission (the “SEC”), all of which are available on the SEC’s website at www.sec.gov. All forward-looking statements are qualified in their entirety by this cautionary statement, and the Company undertakes no obligation to revise or update this Annual Report on Form 10-K to reflect events or circumstances after the date hereof. Stockholders and other security holders or buyers of the Company’s securities or its other creditors should not assume that material events subsequent to the date of this report have not occurred.

Unless the context otherwise indicates, all references in this report to the “Company,” “Ruth’s Chris,” “we,” “us” or “our” or similar words are to Ruth’s Chris Steak House, Inc., and its wholly owned subsidiaries. Ruth’s Chris Steak House, Inc. is a Delaware corporation, and was originally founded in 1965.

PART I

Item 1. BUSINESS

Our Company

The Company believes that it is the largest upscale steakhouse company in the United States, based on total company- and franchisee-owned restaurants as published in the Technomic, Inc. 2007 Top 100 U.S. Chain Reference Guide. The Ruth's Chris menu features a broad selection of high-quality USDA Prime grade steaks and other premium offerings served in Ruth's Chris' signature fashion—"sizzling" and topped with seasoned butter—complemented by other traditional menu items inspired by its New Orleans heritage. The Company's Ruth's Chris restaurants reflect its more than 40-year commitment to the core values instilled by its founder, Ruth Fertel, of caring for guests by delivering the highest quality food, beverages and service in a warm and inviting atmosphere. The Company believes that Ruth's Chris is currently one of the strongest brands in fine dining.

The Company's restaurants cater to families and special occasion diners, in addition to the business clientele traditionally served by upscale steakhouses, by providing a dining experience designed to appeal to a wide range of guests. The Company believes its focus on creating this broad appeal provides it with opportunities to expand into a wide range of markets, including many markets not traditionally served by upscale steakhouses.

The Company's Ruth's Chris restaurant offer USDA Prime grade steaks that are aged and prepared to exacting company standards and cooked in 1,800-degree broilers. The Company also offers veal, lamb, poultry and seafood dishes, and a broad selection of appetizers, including New Orleans-style barbequed shrimp, mushrooms stuffed with crabmeat, shrimp remoulade, Louisiana seafood gumbo, onion soup au gratin, crabtini and seven salad variations. The Company complements its distinctive food offerings with an award-winning core wine list, featuring bottles priced between \$28 and \$2,000 and many selections offered by the glass.

As of December 30, 2007, there were 118 Ruth's Chris restaurants, of which 61 were company-owned and 57 were franchisee-owned, including twelve international franchisee-owned restaurants in Mexico, China (Hong Kong), Taiwan, Japan and Canada.

On February 19, 2008, the Company acquired all of the operating assets and intellectual property of Columbus, Ohio based Mitchell's Fish Market, which operates 19 restaurants operating under the names Mitchell's Fish Market and Columbus Fish Market, and Cameron's Steakhouse, which operates three restaurants operating under the names Cameron's Steakhouse and Mitchell's Steakhouse from Cameron Mitchell Restaurants, LLC (CMR).

Our History

The Company was founded in 1965 when Ruth Fertel mortgaged her home for \$22,000 to purchase the "Chris Steak House," a 60-seat restaurant located near the New Orleans Fair Grounds racetrack. After a fire destroyed the original restaurant, Ruth relocated her restaurant to a new 160-seat facility nearby. As the terms of the original purchase prevented the use of the "Chris Steak House" name at a new location, Ruth added her name to that of the original restaurant—thus creating the "Ruth's Chris Steak House" brand. The Company's expansion began in 1972, when Ruth opened a second restaurant in Metairie, a suburb of New Orleans. In 1976, the first franchisee-owned Ruth's Chris Steak House opened in Baton Rouge, Louisiana. In July 1999, affiliates of Madison Dearborn Partners LLC ("Madison Dearborn") and certain unaffiliated investors acquired all of the Company's outstanding capital stock. On May 19, 2005, the Company reincorporated in Delaware by merging Ruth's Chris Steak House, Inc., a Louisiana corporation, into a newly formed Delaware subsidiary. In August 2005, the Company and certain selling shareholders completed an initial public offering of the Company's common stock, which is currently listed on the Nasdaq Global Select Market.

Our Strengths

The Company believes that the key strengths of its business model are the following:

Premier Upscale Steakhouse Brand

The Company believes that Ruth's Chris is currently one of the strongest brands in the fine dining segment of the restaurant industry. The Company's Ruth's Chris restaurants continue to receive numerous awards at the local and national level. Many continue to be ranked best steakhouse by local publications in the areas in which they operate. In addition, the Company has been recognized for its award-winning core wine list, for which 72 of its restaurants received "Awards of Excellence" from *Wine Spectator* magazine in 2007.

Appealing Dining Experience

The Company seeks to exceed guests' expectations by offering high-quality food with courteous, friendly service in the finest tradition of Southern hospitality. The Company's entire restaurant staff is dedicated to ensuring that guests enjoy a superior dining experience. The Company's team-based approach to table service is designed to enhance the frequency of guest contact and speed of service without intruding on the guest experience.

Broad Appeal

The Company believes that the combination of its high quality food offerings, friendly and attentive service and warm and inviting atmosphere creates a dining experience that appeals to a wide range of guests, including families, special occasion diners and business clientele. The Company believes its focus on creating this broad appeal gives it the opportunity to enter into many new markets, including markets not traditionally served by upscale steakhouses. In addition, the Company believes that the diversity of its customer base may reduce its exposure to fluctuations in the spending habits of any particular group of guests.

Attractive Unit Economics

The Company believes that it has successfully operated restaurants in a wide range of markets and achieved attractive rates of return on invested capital. The Company believes that this historical success provides it with negotiating leverage during the initial phase of new restaurant construction, and has permitted it to open new restaurants at what it believes to be favorable levels of investment. The strength of the Ruth's Chris brand has allowed the Company to generate high unit volumes within one to two years of opening in new markets. The Company's 13 newest company-owned Ruth's Chris restaurants that opened in 2005, 2006 and 2007 generated average unit volumes in excess of \$5.3 million (on an annualized basis of 52 weeks) in fiscal 2007, compared to average unit volumes of approximately \$5.6 million in fiscal 2007 for those restaurants, excluding acquired locations, in its existing Ruth's Chris company-owned restaurant base which have been open for at least fifteen months.

Experienced, Committed Management Team

The members of the Company's senior management team average nearly 20 years of restaurant industry experience. Craig S. Miller, its President, Chief Executive Officer and Chairman of the Board, has over 40 years of industry experience, including periods as the head of publicly traded restaurant corporations, most notably as President and Chief Executive Officer of Uno Restaurant Corporation. Mr. Miller served as Chairman of the National Restaurant Association, the leading business association for the restaurant industry, from May 2005 to May 2006. The Company's management team has a meaningful equity ownership stake in the Company and is committed to growing its business by building on the core strengths of its business model. As of December 30, 2007, the Company's management team collectively owned, through restricted stock and options subject to vesting, approximately 10.2% of the Company's common stock on a fully diluted basis.

Our Strategy

The Company believes there are significant opportunities to grow its business, strengthen its competitive position and enhance its brand through the continued implementation of the following strategies:

Improve Profitability

The Company intends to improve profitability by continuing to implement key operating initiatives. These operating initiatives include:

- ensuring consistency of food quality through more streamlined preparation and presentation;
- increasing emphasis on wine sales by providing wine education for employees;
- enhancing brand awareness through increased marketing at the national, regional and local levels;
- enhancing and/or developing innovative marketing programs, such as its website, www.ruthschris.com, Ruth's Chris gift cards and a recognition program for frequent guests; and
- improving guest traffic through increased focus on table utilization and efficiency, including enhancement of its online reservation and table management system.

Expand Restaurant Base

The Company believes that the 50 most populous markets in the United States could support an additional 75 to 100 company-owned and franchisee-owned Ruth's Chris restaurants, based on its analysis of current demand and its competitors' penetration of those markets. Further, the Company believes there is potential for an additional 25 to 50 Ruth's Chris restaurants in smaller markets in the United States. The Company continues to evaluate opportunities to open new Ruth's Chris restaurants in both new and existing markets.

Company-owned restaurants: The Company currently expects to open six to eight company-owned Ruth's Chris restaurants per year in each of the next several years. The Company opened eight new Ruth's Chris restaurants and acquired three Ruth's Chris restaurants during fiscal 2007. The Company also has outstanding lease commitments for nine new Ruth's Chris restaurant locations that are scheduled to open in fiscal 2008 and fiscal 2009 and continues to negotiate with potential lessors in several other locations in which the Company plans to open new restaurants.

Franchisee-owned restaurants: Ten new Ruth's Chris franchisee-owned restaurants opened during fiscal 2007, and the Company expects six to eight new franchisee-owned Ruth's Chris restaurants to open in each of the next several years. The Company's franchise income, which consists of a 5% royalty fee on all sales from franchisee-owned restaurants and franchise fees, totaled \$12.9 million and comprised approximately 4.1% of its total revenues in fiscal 2007.

Expand Relationships with New and Existing Franchisees

The Company intends to grow its franchising business by developing relationships with a limited number of new franchisees and by expanding the rights of existing franchisees to open new restaurants. The Company believes that building relationships with quality franchisees is a cost-effective way to strengthen the Ruth's Chris brand and generate additional revenues. Franchisees opened twenty-one Ruth's Chris restaurants from 1999 to the end of 2006 and the Company granted ten new franchisee rights during that period. In fiscal 2007, existing and new franchisees opened seven and three restaurants, respectively. During fiscal 2007, the Company also entered into two development agreements with new franchisees. Overall, there are 26 outstanding franchise locations to be built as of December 30, 2007. The Company intends to continue to focus on providing operational guidance to its franchisees, including the sharing of "best practices" from company-owned Ruth's Chris restaurants.

[Table of Contents](#)

Site Selection, Development and Design

The Company's evaluation of prospective restaurant sites includes analysis of population density, potential population growth and demographic characteristics of the surrounding area, as well as research concerning accessibility, visibility, surrounding traffic patterns, the number and proximity of competitive restaurants and the potential return on invested capital.

The costs of opening a new Ruth's Chris Steak House restaurant depend upon, among other things, the location and size of the site and the extent of any renovation required. While the Company generally leases its company-owned restaurant sites, the Company owns the land and building for seven restaurants. The Company's future plans include both leasing and owning restaurant locations, depending upon which alternative provides the highest return on capital. For leased restaurants, the Company currently targets an average cash investment of approximately \$2.5 million to \$4.5 million per restaurant, net of tenant allowances but including pre-opening expenses.

The Company's designers use standard styles in its restaurant interiors, although each location is tailored to reflect local tastes and preferences. The Company's restaurants typically consist of an enhanced bar area and public seating, as well as most of the Company's restaurants also have dining rooms that are available for private dining functions.

Menu

The Ruth's Chris menu features a broad selection of high-quality USDA Prime grade steaks and other premium offerings served in Ruth's Chris signature fashion—"sizzling" and topped with seasoned butter—complemented by other traditional menu items inspired by its New Orleans heritage. USDA Prime is a meat grade label, which refers to the evenly distributed marbling that enhances the flavor of the steak. The Ruth's Chris menu also includes premium quality lamb chops, veal chops, fish, chicken and lobster. Steak and seafood combinations and a vegetable platter are also available at selected restaurants. Dinner entrees are generally priced from \$19.95 to \$45.95. While Ruth's Chris is predominantly open dinner hours only, four select locations open for lunch five days a week and an additional eleven locations open for lunch one day per week. The lunch menu offers entrees generally ranging in price from \$12.95 to \$33.95 and the Ruth's Chris core menu is similar at all of its restaurants. The Company occasionally introduces new items such as specials that allow it to give its guests additional choices while taking advantage of fresh sourcing and advantageous cost opportunities.

The Company's Ruth's Chris restaurants offer eleven to thirteen standard appetizer items, including New Orleans-style barbequed shrimp, mushrooms stuffed with crabmeat, shrimp remoulade, Louisiana seafood gumbo, onion soup au gratin, crabtini, as well as seven different salads. They also offer eight to ten types of potatoes and eight to twelve types of vegetables as side dishes ranging in price from \$6.95 to \$9.50. For dessert, creme brulee, bread pudding with whiskey sauce, chocolate sin cake, fresh seasonal berries with sweet cream sauce and other selections are available for \$6.95 to \$9.95 each.

The Company's core wine list features bottles typically ranging in price from \$28 to \$2,000. Individual restaurants supplement their 250-bottle core wine list with a minimum of 50 additional selections that reflect local market tastes. Most of the Company's Ruth's Chris restaurants also offer approximately 30 to 40 wines-by-the-glass and numerous beers, liquors and alcoholic dessert drinks. Bottled wines account for approximately 70% of total wine sales.

Purchasing

The Company's ability to maintain consistent quality throughout its Ruth's Chris restaurants depends in part upon its ability to acquire food and other supplies from reliable sources in accordance with its specifications. Purchasing at the restaurant level is directed primarily by the executive chef, who is trained in the Company's purchasing philosophy and specifications, and who works with its regional and corporate managers to ensure

[Table of Contents](#)

consistent sourcing of meat, fish, produce and other supplies. Each of the Company's restaurants also has an in-store beverage manager who is responsible for purchasing wines based on guest preferences, market availability and menu content and works directly with the Company's Vice President of Beverage to ensure quality and price efficiency.

During fiscal 2007 the Company purchased more than 82% of the beef it used in its company-owned Ruth's Chris restaurants from one vendor, New City Packing Company, Inc., with which it has no long-term contractual arrangement. In addition, the Company has a long-term distribution arrangement with a national food and restaurant supply distributor, Commissary Operations, Inc., which purchases products for the Company from various suppliers and through which 42 of its company-owned restaurants receive a significant portion of their food supplies.

Restaurant Operations and Management (Ruth's Chris Steak House)

The Company's Chief Operating Officer has primary responsibility for managing its company-owned restaurants and participates in analyzing restaurant-level performance and strategic planning. The Company has eight regional vice presidents that oversee restaurant operations at six to eight company-owned restaurants and two regional vice presidents that have oversight responsibility for franchise-owned restaurants.

The Company's typical company-owned restaurant employs five managers, including a general manager, two front-of-the-house managers, an executive chef and a sous chef. The Company's company-owned restaurants also typically have approximately 70 hourly employees. The general manager of each restaurant has primary accountability for ensuring compliance with the Company's operating standards. The front-of-the-house managers assist the general manager in the day-to-day operations of the restaurant and are directly responsible for the supervision of the bar, host, server, runner and service assistant personnel. The executive chef supervises and coordinates all back-of-the-house operations, including ensuring that its quality standards are being met and maintaining a safe, efficient and productive work environment.

The Company believes that the compensation it pays its managers and employees is comparable to that provided by other fine dining steakhouses, and because many of its restaurants are open during dinner hours only, it pays many of its employees hourly wages that exceed those of many of its competitors. The Company offers participation to eligible employees in its health and other benefit plans, including medical, dental, vision and 401(k) with matching. The Company believes that its compensation and benefits policies allow it to attract quality personnel and retain them at turnover rates considerably lower than those generally experienced by full service restaurants.

Quality Control

The Company strives to maintain quality and consistency in its company-owned Ruth's Chris restaurants through careful training and supervision of personnel and standards established for food and beverage preparation, maintenance of facilities and conduct of personnel. The primary goal of the Company's training and supervision programs is to encourage its employees to display the characteristics of its brand and values that distinguish it from its competitors. Restaurant managers in its company-owned restaurants must complete a training program that is typically seven weeks long, during which they are instructed in multiple areas of restaurant management, including food quality and preparation, guest service, alcoholic beverage service, liquor regulation compliance and employee relations. Restaurant managers also receive operations manuals relating to food and beverage preparation and restaurant operations. The Company instructs chefs and assistants on safety, sanitation, housekeeping, repair and maintenance, product and service specifications, ordering and receiving food products and quality assurance. General managers and certified coaches provide all other employee training at the restaurants. The Company requires that all restaurant-level employees be certified by the Company in order to be able to demonstrate knowledge of its systems, standards and operating philosophy.

On a daily basis at our Ruth's Chris restaurants, the executive chef, together with the restaurant managers, oversees a line check system of quality control and must complete a quality assurance checklist verifying the

[Table of Contents](#)

flavor, presentation and proper temperature of the food and beverages. The Company retains outside consultants to perform quality assessments not less than four times per year of the front-of-the-house operations of company-owned and franchisee-owned restaurants. During these assessments, unidentified two-person teams dine in its restaurants and evaluate food quality, customer service and general restaurant operations through alternating weekday and weekend visits. The consultants complete a standard checklist and provide us with a written critique. Outside consultants are also utilized to perform random visits to all company- and franchisee-owned restaurants throughout the year to perform health inspections that are above and beyond local health inspections. In addition, the Company's regional vice presidents perform system-wide quality assessments of all aspects of restaurant operations, with a focus on back-of-the-house functions, on a regular basis.

Mitchell's Fish Market

On February 19, 2008, the Company acquired 19 Mitchell's Fish Market restaurants, located in the Midwest, Northeast, Florida and Connecticut, and three Cameron's Steakhouse restaurants located in Columbus, Ohio and Birmingham, Michigan.

Mitchell's Fish Market is an award-winning, upscale, yet comfortable, seafood restaurant and bar recognized for its high quality food, contemporary dining atmosphere, and excellent service. Mitchell's Fish Market is committed to fresh seafood and all of its seafood is flown in daily. Although the menu changes frequently based on availability and season, it includes more than 80 seafood choices, including fish from all over the world. The current average check is \$22 at lunch and \$39 at dinner. The Cameron's Steakhouses are a sophisticated 21st century update of the upscale American steakhouse.

The Company believes that Mitchell's is an innovative concept that is compatible with Ruth's Chris. Its focus on upscale casual restaurants with a sophisticated yet comfortable atmosphere and emphasis on fresh seafood is a wonderful complement to our own brand. The Company believes that Mitchell's Fish Market shares many characteristics of the Ruth's Chris model, including strong unit economics, broad guest appeal, a focus on banquet sales, and a robust bar business.

Marketing and Promotions

The goals of the Company's marketing efforts are to increase comparable restaurant sales by attracting new guests, increase the frequency of visits by current guests, improve brand recognition in new markets or markets where it intends to open a restaurant and to communicate the overall uniqueness, value and quality exemplified by the Ruth's Chris brand. The Company uses multiple media channels to accomplish these goals and complements its national advertising with targeted local media such as outdoor and airport directional posters and tourist publications.

Advertising

In fiscal 2007, the Company spent \$8.4 million, or 2.6% of its revenues, in total advertising expenditures compared to \$8.3 million in fiscal 2006. Of its total advertising expenditures in fiscal 2007, \$6.1 million, or 72%, was spent on local media and events, compared to \$5.0 million, or 60%, spent locally in fiscal 2006. This local media and events spending was split between tourist, entertainment and business magazines, outdoor billboards and airport dioramas, radio, internet media and community events such as golf tournaments, arts gatherings and charitable organizations. Direct mail was utilized to highlight specific market incentives. In fiscal 2007, the Company spent approximately \$2.3 million, or 28% of total advertising expenditures, on national media, consisting primarily of national radio, national newspapers (USA Today) and online initiatives. In fiscal 2006, the Company spent \$3.3 million, or 40% of its total advertising expenditures, on national media.

In fiscal 2007, the Company enhanced its online marketing efforts with online advertisements and banner ads placed on highly visited sites. The Company also utilized sponsored searches through such media as Google,

[Table of Contents](#)

Ask.com and Yahoo. The Company also used local online advertising for sites targeted to company and franchise geographic locations. The Company's online strategy also included an increased emphasis on targeted emails with special offers and announcements as well as a promotional e-certificate to its email marketing database. Communication also included seasonal specials, holiday offers, and personalized birthday and anniversary invitations.

The Company's current advertising campaign is integrated into all marketing communications including radio, print and outdoor advertisement. In addition, the Company uses its website, www.ruthschris.com to help increase brand identity and facilitate online reservations and gift card sales. Many of the Company's locations also schedule events to strengthen community ties and increase local market presence. The Company's franchisees also conduct their own local advertising campaigns. The Company will continue the existing advertising for its Mitchell's restaurants and will review potential enhanced strategies in the future.

Gift Cards

The Company sells Ruth's Chris gift cards at its restaurants, through its toll-free reservation system and on its website. Ruth's Chris patrons frequently purchase gift cards for holidays, including Christmas, Hanukkah, Valentine's Day, Mothers' Day and Fathers' Day, and other special occasions such as birthdays, graduations and anniversaries. These gift cards are popular as holiday gifts and among business professionals celebrating promotions. In fiscal 2007, system-wide gift card sales were approximately \$36.4 million. Ruth's Chris gift cards are redeemable at both company- and franchise-owned Ruth's Chris restaurants.

Franchise Program and Relationship

The Company's 57 franchise-owned Ruth's Chris restaurants are owned by 23 franchisees with the three largest franchisees owning six, six and five restaurants, respectively. Currently, the Company has open agreements with franchisees for an aggregate of 26 additional Ruth's Chris restaurants. Prior to 2004, each franchisee entered into a ten-year franchise agreement with three ten-year renewal options for each restaurant. Each agreement grants the franchisee territorial protection, with the option to develop a certain number of restaurants in their territory. The Company's franchise agreements generally include termination clauses in the event of nonperformance by the franchisee and non-compete clauses if the agreement is terminated. To date, only two franchisees have had the Company's franchise agreement terminated or a restaurant closed as a result of nonperformance.

Under the Company's franchise program, the Company offers certain services and licensing rights to the franchisee to help maintain consistency in system-wide operations. The Company's services include training of personnel, site selection and construction assistance, providing the new franchisee with standardized operating procedures and manuals, business and financial forms, consulting with the new franchisee on purchasing and supplies and performing supervisory quality control services. The Company conducts reviews of its franchisee-owned restaurants on an ongoing basis, in order to ensure compliance with its standards.

Under the Company's franchise program, each franchise arrangement consists of a development agreement and a separate franchise agreement for each restaurant. The Company's new form of development agreement grants exclusive rights to a franchisee to develop a minimum number of restaurants in a defined area, typically during a five-year period. Individual franchise agreements govern the operation of each restaurant opened and have a 20-year term with two renewal options each for additional 10-year terms if certain conditions are met. The Company's new form of franchise agreement requires franchisees to pay a 5% royalty on gross revenues plus up to a 1% advertising fee applied to national advertising expenditures. Under the Company's prior form of franchise agreement, franchisees pay a 5% royalty on gross revenues, of which the Company has applied 1% to national advertising.

Under the Company's form of development agreement, and unless agreed otherwise, the Company collects a \$50,000 development fee for each restaurant the franchisee has rights to develop. Under the Company's new

[Table of Contents](#)

form of the franchise agreement, it collects up to \$100,000 of the franchise fee at the time of executing the franchise agreement for each restaurant. To date, the Company has used its form of agreement with eleven new franchisees (three of whom are located outside of the United States) and three existing franchisees.

The Company's existing franchise agreements signed before 2004 generally limit the number of restaurants each franchisee can develop to two. The Company expanded its domestic franchise base in 2004 by first offering existing franchisees the opportunity to open additional restaurants in its existing territories. In order to obtain these new rights, existing franchisees were provided a new Uniform Franchise Offering Circular ("UFOC") and were required to sign the Company's new form of development and franchise agreement which commits the franchisee to a store development schedule. New franchise rights will be sold pursuant to the new UFOC and franchise agreement described above, which enables the Company to better manage the growth of its franchise system. The Company anticipates opening six to eight franchise restaurants per year over the next several years.

The Company currently does not have any plans to franchise Mitchell's Fish Market or Cameron's Steakhouse restaurants.

Information Systems and Restaurant Reporting

All of the Company's restaurants use computerized point-of-sale systems, which are designed to improve operating efficiency, provide corporate management timely access to financial and marketing data and reduce restaurant and corporate administrative time and expense. These systems record each order and print the food requests in the kitchen for the cooks to prepare. The data captured for use by operations and corporate management includes gross sales amounts, cash and credit card receipts and quantities of each menu item sold. Sales and receipts information is generally transmitted to the corporate office daily, where it is reviewed and reconciled by the accounting department before being recorded in the accounting system.

The Company's corporate systems provide management with operating reports that show company-owned restaurant performance comparisons with budget and prior year results. These systems allow the Company to monitor company-owned restaurant sales, food and beverage costs, labor expense and other restaurant trends on a regular basis.

Service Marks

The Company has registered the main service marks "Ruth's Chris" and its "Ruth's Chris Steak House, U.S. Prime & Design" logo, as well as other service marks used by its restaurants with the United States Patent and Trademark Office and in the foreign countries in which its restaurants operate. The Company has also registered in other foreign countries on anticipation of new store openings within those countries. The Company is not aware of any infringing uses that could materially affect its business. The Company believes that its service marks are valuable to the operation of its restaurants and are important to its marketing strategy.

As part of the Mitchell's acquisition, which was completed on February 19, 2008, we acquired the federally registered service mark "Mitchell's Fish Market" and the common law service marks "Mitchell's Steakhouse", "Cameron's Steakhouse", "Columbus Fish Market" and "Cameron's Steakhouse" together with any and all other trade names, common law trade and service marks, state registered trade and service marks, and trade dress owned or used by the seller in connection with the steakhouse and seafood restaurants so acquired.

Seasonality

The Company's business is subject to seasonal fluctuations. Historically, the percentage of its annual revenues earned during the first and fourth fiscal quarters have been higher due, in part, to increased restaurant sales during the year-end holiday season.

[Table of Contents](#)

Employees

As of December 30, 2007, the Company employed 4,693 persons, of whom 464 were salaried and 4,229 were hourly personnel, who were employed in the positions set forth in the table below. None of the Company's employees are covered by a collective bargaining agreement. The Company believes that it has good relations with its employees.

| <u>Functional Area</u> | <u>Number of Employees</u> |
|--|----------------------------|
| Senior Officers / Corporate VPs / Operations VPs | 34 |
| General Managers | 60 |
| Managers | 163 |
| Regional Corporate Chefs / Executive Chefs | 64 |
| Sous Chefs | 57 |
| Non-salaried restaurant staff | 4,224 |
| Corporate salaried | 85 |
| Corporate non-salaried | 6 |
| Total number of employees | <u>4,693</u> |

Executive Officers of the Registrant

Certain information regarding our executive officers is provided below:

| <u>Name</u> | <u>Age</u> | <u>Position</u> |
|------------------------|------------|--|
| Craig S. Miller | 58 | President, Chief Executive Officer and Chairman of the Board |
| Geoffrey D. K. Stiles | 54 | Executive Vice President, Operations and Chief Operating Officer |
| David L. Cattell | 58 | Senior Vice President, Chief Development Officer |
| Sarah C. Jackson | 49 | Senior Vice President, Human Resources |
| Damon M. Liever | 53 | Senior Vice President, Marketing |
| Thomas E. O'Keefe | 47 | Senior Vice President, General Counsel and Secretary |
| Thomas J. Pennison, Jr | 40 | Senior Vice President, Chief Financial Officer and Assistant Secretary |

Craig S. Miller has served as the Company's President and Chief Executive Officer and Chairman of the Board since September 2006. From March 2004 to September 2006, Mr. Miller served as the President and Chief Executive Officer and as a member of the board of directors. Prior to that, from October 2002 to March 2004, Mr. Miller was the founder and Chairman of Miller Partners Restaurant Solutions, Inc. From October 2001 to October 2002, Mr. Miller served as President and Chief Executive Officer of Furr's Restaurant Group. In January 2003, Furr's Restaurant Group filed for bankruptcy protection under chapter 11 of the U.S. Bankruptcy Code. From October 1996 to October 2001, Mr. Miller served as President and Chief Executive Officer of Uno Restaurant Corporation. Prior to October 1996, Mr. Miller held various executive level positions with Uno Restaurant Corporation. Mr. Miller is a member of the Board of the National Restaurant Association (the "Association"). Mr. Miller served as Chairman of the Association from May 2005 to May 2006.

Geoffrey D. K. Stiles has served as the Company's Executive Vice President, Operations and Chief Operating Officer since November 2003. From April 2003 to November 2003, Mr. Stiles was employed as a consultant by one of the Company's franchisees. Mr. Stiles previously served as the Company's Director of Operations from January 2001 to April 2003. Prior to joining the Company, Mr. Stiles served in executive and senior management positions at several restaurant groups, including Capitol Restaurant Concepts, Inc., Bertolini's Restaurants Inc., Romano's Macaroni Grill and the Olive Garden.

David L. Cattell has served as the Company's Senior Vice President and Chief Development Officer since November 2005. From September 2004 to November 2005, Mr. Cattell served as the Vice President,

[Table of Contents](#)

Development and Construction and Chief Development Officer. Prior to joining the Company, from January 2000 to January 2004, Mr. Cattell served as Vice President of Restaurant Development at Metromedia Restaurant Group. From 1981 to 1995, Mr. Cattell directed and managed real estate, construction, architecture and engineering functions for Kentucky Fried Chicken as Vice President of Restaurant Development.

Sarah C. Jackson has served as the Company's Senior Vice President, Human Resources since December 2006. From August 2006 to December 2006, Ms. Jackson served as the Vice President of Human Resources. Prior to joining the Company, from April 2004 to July 2006, Ms. Jackson served as the Vice President of Human Resources and Training for Romacorp, Inc. In November 2005, Romacorp, Inc. filed for bankruptcy protection under Chapter 11 of the U.S. Bankruptcy Code. From May 1989 to April 2004, Ms. Jackson held various leadership positions with Darden Restaurants, Inc.

Damon M. Liever has served as the Company's Senior Vice President and Chief Marketing Officer since July 2007. From July 1999 to July 2007, Mr. Liever progressed from the Senior Vice President of Marketing for Wood Dining Services, to the President of the Retail Brand Group of Sodexo USA, when Sodexo USA acquired Wood Dining in January 2002. Prior to that, Mr. Liever held senior leadership positions in marketing with Uno Restaurant Corporation, Black-eyed Pea Restaurants, Taco Bell, Inc. and Frito-Lay, Inc.

Thomas E. O'Keefe has served as the Company's Senior Vice President, General Counsel and Assistant Secretary since November 2005. From March 2005 to November 2005, Mr. O'Keefe served as the Vice President and General Counsel. Prior to joining the Company, from October 2003 to March 2005, Mr. O'Keefe was engaged in the private practice of law as a sole practitioner practicing in the areas of franchise, product distribution, antitrust and general corporate law. From August 1993 to September 2003, Mr. O'Keefe was Vice President and General Counsel to G.C. & K. B. Investments, Inc. d/b/a "SpeeDee Oil Change & Tune-Up," an international franchisor of automobile service centers. From 1991 to 1993, Mr. O'Keefe served as Corporate Counsel to AFCE, Inc. d/b/a "Popeyes and Church's Chicken," an international franchisor of quick-service restaurants. Mr. O'Keefe relinquished his position as Assistant Secretary effective December 2006 and assumed the position of Secretary for the Company.

Thomas J. Pennison, Jr. has served as the Company's Senior Vice President, Chief Financial Officer and Secretary since November 2005. From April 2004 to November 2005, Mr. Pennison served as Vice President, Finance and Chief Financial Officer, and from February 1998 to April 2004, Mr. Pennison served as Vice President, Finance. From October 1996 to January 1998, Mr. Pennison served as the Director of Finance. Prior to joining the Company, from April 1994 to October 1996, Mr. Pennison served as Assistant Corporate Controller of Casino Magic Corp., with primary responsibilities for corporate finance and SEC reporting. From January 1991 to April 1994, Mr. Pennison was at the public accounting firm KPMG LLP. Mr. Pennison relinquished his position as Secretary effective December 2006 and assumed the position of Assistant Secretary for the Company. In December 2007, Mr. Pennison announced that he will be leaving the Company to pursue other business and personal interests.

Government Regulation

The Company is subject to extensive federal, state and local government regulation, including regulations relating to public health and safety, zoning and fire codes and the sale of alcoholic beverages and food. The Company maintains the necessary restaurant, alcoholic beverage and retail licenses, permits and approvals. The development and construction of additional restaurants will also be subject to compliance with applicable zoning, land use and environmental laws. Federal and state laws govern the Company's relationship with its employees, including laws relating to minimum wage requirements, overtime, tips, tip credits and working conditions. A significant number of the Company's hourly employees are paid at rates related to the federal or state minimum wage.

The offer and sale of franchises is subject to regulation by the U.S. Federal Trade Commission ("FTC") and many states. The FTC requires that the Company furnish to prospective franchisees a franchise offering circular containing prescribed information. A number of states also regulate the sale of franchises and require state

[Table of Contents](#)

registration of franchise offerings and the delivery of a franchise offering circular to prospective franchisees. The Company's noncompliance could result in governmental enforcement actions seeking a civil or criminal penalty, rescission of a franchise, and loss of its ability to offer and sell franchises in a state, or a private lawsuit seeking rescission, damages and legal fees.

Competition

The restaurant business is highly competitive and highly fragmented, and the number, size and strength of the Company's competitors vary widely by region. The Company believes that restaurant competition is based on, among other things, quality of food products, customer service, reputation, restaurant location, name recognition and price. The Company's restaurants compete with a number of fine dining steakhouses and upscale seafood restaurants within their markets, both locally owned restaurants and restaurants within regional or national chains. The principal fine dining steakhouses with which the Company competes are Fleming's, The Capital Grille, Smith & Wollensky, The Palm, Del Frisco's and Morton's of Chicago. The principal upscale seafood restaurants with which the Company competes are McCormick & Schmick's, Legal Seafood, Bonefish Grill and The Oceanaire Seafood Room. Many of the Company's competitors are better established in certain of its existing markets and/or markets into which it intends to expand.

Available Information

The Company maintains a website on the Internet at www.ruthschris.com. The Company makes available free of charge, through the investor relations section of its website, its Annual Reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports electronically filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act of 1934. Such information is available as soon as reasonably practicable after it files such reports with the SEC. Additionally, its Code of Ethics may be accessed within the Investor Relations section of its website. Information found on its website is not part of this Annual Report on Form 10-K or any other report filed with the SEC.

Item 1A. RISK FACTORS

In addition to the other information in this Annual Report on Form 10-K, the following risk factors should be considered carefully in evaluating the Company and its business. The risks and uncertainties described below are not the only ones the Company faces. Additional risks and uncertainties not presently known to us or that the Company currently deems immaterial may also impair its business operations. If any of these certain risks and uncertainties were to actually occur, the Company's business, financial condition or results of operations could be materially adversely affected. In such case, the trading price of the Company's common stock could decline and its investors may lose all or part of their investment. These risks and uncertainties include, but are not limited to, the following:

The restaurant industry in general and the fine dining segment in particular are vulnerable to fluctuations in economic conditions, including volatility in levels of consumer discretionary spending.

A significant deterioration in economic conditions in any of the Company's markets would reduce guest traffic or require its affected restaurants to lower their prices, either of which would reduce the Company's total revenues and operating income. For example, the Company's total revenues fell 4.9% and 0.1% in fiscal 2001 and fiscal 2002, respectively, which were years of declining discretionary consumer spending in the United States due in part to the September 11, 2001 attacks. In addition, we cannot predict the length or severity of the current economic downturn. Comparable company-owned restaurant sales decreased 1.0% in fiscal 2007 versus fiscal 2006 due primarily to declining discretionary spending with the economic downturn. In addition, natural disasters, including extreme weather events such as hurricanes, occurring within any of the Company's market territories could cause reductions in revenues and/or disruptions in operations, such as restaurant closures. Any changes in economic conditions, or a continuation or increase in the severity of the current economic downturn would affect the Company's ability to attract guests or price its menu items at favorable levels, which would result in significant reductions in revenue and/or operating income.

Competitive conditions, consumer tastes and unexpected operating expenses could adversely affect the profitability of restaurants that the Company opens in new markets.

The Company's growth strategy includes opening restaurants in markets where it has little or no meaningful operating experience and in which its brand may not be well known. Competitive conditions, consumer tastes and discretionary spending patterns in these new markets may differ from those in its existing markets. The Company may be unable to generate similar acceptance of our brands due to these factors, which may require it to incur significant additional promotion costs in order to increase restaurant sales at these locations. The Company's ability to operate new restaurants profitably will depend on numerous factors, some of which are beyond its control, including, but not limited to, the following:

- locating and securing suitable new restaurant sites on acceptable lease terms;
- construction and development costs;
- obtaining adequate construction financing;
- securing governmental approvals and permits, including liquor licenses;
- hiring, training and retaining skilled management, chefs and other personnel;
- successfully promoting new restaurants and competing in the markets in which new restaurants are located; and
- general economic conditions and conditions specific to the restaurant industry.

Any one of these factors could preclude the Company from operating new restaurants successfully, which could adversely affect growth and profitability.

[Table of Contents](#)

The Company's growth may strain its infrastructure and resources, which could delay the opening of new restaurants and adversely affect its ability to manage existing restaurants.

The Company currently plans to continue its accelerated pace of new restaurant growth. This growth will place increased demands on management resources as well as human resources, purchasing and site management teams. The Company's planned growth in franchisee-owned restaurants will also require additional infrastructure for the development and maintenance of franchise relationships, as well as for the monitoring of those restaurants. In addition, if the Company's current restaurant management systems, financial and management controls and information systems are insufficient to support this expansion, its ability to open new restaurants and to manage existing restaurants would be adversely affected. If the Company fails to continue to improve its infrastructure, the Company may be unable to implement its growth strategy and/or maintain current levels of operating performance in existing restaurants.

We may not be able to successfully integrate into our business the operations of restaurants that we have acquired, which may adversely affect our business, financial condition and results of operations.

On February 19, 2008, the Company completed the acquisition of the Mitchell's Fish Market, operating under the names Mitchell's Fish Market and Columbus Fish Market, and Cameron's Steakhouse, operating under the names Cameron's Steakhouse and Mitchell's Steakhouse from Cameron Mitchell Restaurants, LLC (CMR). These restaurants will be the first the Company owns that focus primarily of serving seafood and that do not have the "Ruth's Chris" brand. Achieving the expected benefits of these restaurants and any other restaurants that the Company acquires will depend in a large part on our ability to successfully integrate the operations of the acquired restaurants and personnel in a timely and efficient manner and develop their brands. The risks involved in the integration of this acquisition include:

- the development of a new brand and the operation of restaurants that serve a seafood-based menu as opposed to the Company's current steak-based menu;
- challenges and costs associated with the acquisition and integration of restaurant operations located in markets where Ruth's Chris has limited or no experience;
- possible disruption to the Company's business as a result of the diversion of management's attention from its normal operational responsibilities and duties; and
- consolidation of the corporate, information technology, accounting and administrative infrastructure and resources of the acquired restaurants into the Company's business.

If Ruth's Chris cannot overcome the challenges and risks that we face in integrating the operations of newly acquired restaurants, our business, financial condition and results of operations could be adversely affected.

Negative publicity surrounding the Company's restaurants or the consumption of beef generally, or shifts in consumer tastes, could reduce sales in one or more of its restaurants and make its brand less valuable.

The Company's success depends, in large part, upon the popularity of its menu offerings. Negative publicity resulting from poor food quality, illness, injury or other health concerns (including e-coli, Bovine Spongiform Encephalopathy (mad cow disease), Hepatitis A and foot and mouth disease), whether related to one of the Company's restaurants or to the beef or seafood industries in general, or operating problems related to one or more restaurants, could make the Company's menu offerings less appealing to consumers and reduce demand in its restaurants. In addition, any other shifts in consumer preferences away from the kinds of food the Company offers, particularly beef and seafood, whether because of dietary or other health concerns or otherwise, would make its restaurants less appealing and adversely affect revenues.

In addition, some types of seafood have been subject to adverse publicity due to certain levels of contamination at their source, which can adversely affect both supply and market demand. The Company's Mitchell's restaurants maintain an in-house inspection program for our seafood purchases and, in the past, have

[Table of Contents](#)

not experienced any detriment from contaminated seafood. However, in the future seafood contamination or inadequate supplies of seafood could have a significant and materially adverse effect on the Company's operating results and profitability.

The Company may not be able to compete successfully with other restaurants, which could reduce its revenues.

The restaurant industry is intensely competitive with respect to price, service, location, food quality, atmosphere and overall dining experience. The Company's competitors include a large and diverse group of well-recognized fine dining and upscale casual restaurant chains, including fine dining steakhouse and seafood chains as well as restaurants owned by independent local operators. Some of the Company's competitors may have substantially greater financial, marketing and other resources, and may be better established in the markets where its restaurants are or may be located. If the Company cannot compete effectively in one or more of its markets, the Company may be unable to maintain recent levels of comparable restaurant sales growth and/or may be required to close existing restaurants.

If the Company's vendors or distributors do not deliver food and beverages in a timely fashion it may experience short-term supply shortages and/or increased food and beverage costs.

The Company's ability to maintain consistent quality throughout company-owned restaurants depends in part upon its ability to purchase USDA Prime and Choice grade beef, seafood and other food products in accordance with its rigid specifications. During fiscal 2007, the Company purchased more than 82% of the beef it used in company-owned restaurants from one vendor, New City Packing Company, Inc., with which the Company has no long-term contractual arrangement. In addition, the Company currently has a long-term arrangement with a distributor, Commissary Operations, Inc., which purchases products for it from various suppliers, and through which 42 of its company-owned restaurants receive a significant portion of their food supplies. If these or other vendors or distributors cease doing business with the Company, it could experience short-term supply shortages in certain company-owned restaurants and could be required to purchase supplies at higher prices until the Company is able to secure an alternative supply source. Any delay the Company experiences in replacing vendors or distributors on acceptable terms could increase food costs or, in extreme cases, require it to temporarily remove items from the menu of one or more restaurants.

Increases in the prices of, or reductions in the availability of, any of our core food products could reduce the Company's operating margins and revenues.

The Company purchases large quantities of beef, particularly USDA Prime grade beef, which is subject to extreme price fluctuations due to seasonal shifts, climate conditions, industry demand and other factors. The Company's beef costs represented approximately 51.3% of its food and beverage costs during fiscal 2007 and the Company historically has not had any long-term contractual arrangements, nor does it use future contracts or other financial risk management strategies to reduce exposure to potential price fluctuations. For fiscal 2008, the Company expects to enter into contracts with beef suppliers to establish set pricing on a portion of its anticipated beef purchases. The market for USDA Prime grade beef is particularly volatile. For example, in late 2003, increased demand, together with the impact of supply rationalization during late 2001 and 2002, resulted in shortages of USDA Prime grade beef, requiring the Company to pay significantly higher prices for the USDA Prime grade beef it purchased. If prices for the types of beef the Company uses in its restaurants increase in the future and it chooses not to pass, or cannot pass, these increases on to its guests, the Company's operating margins would decrease. If certain kinds of beef become unavailable for the Company to purchase, its revenues would decrease as well.

In the recent past, certain types of seafood have experienced fluctuations in availability. Seafood is also subject to fluctuations in price based on availability, which is often seasonal. If certain types of seafood are unavailable, or if our costs increase, our results of operations could be adversely affected.

Labor shortages or increases in labor costs could slow the Company's growth or harm its business.

The Company's success depends in part upon its ability to continue to attract, motivate and retain employees with the qualifications to succeed in its industry and the motivation to apply the Company's core service philosophy, including regional operational managers, restaurant general managers and chefs. If the Company is unable to continue to recruit and retain sufficiently qualified individuals, its business and growth could be adversely affected. Competition for these employees could require the Company to pay higher wages, which could result in higher labor costs. In addition, the Company has a substantial number of hourly employees who are paid wage rates at or based on the federal or state minimum wage and who rely on tips as a large portion of their income. Increases in the minimum wage or decreases in allowable tip credits would increase the Company's labor costs. The Company may be unable to increase its prices in order to pass these increased labor costs on to its guests, in which case its margins would be negatively affected.

Regulations affecting the operation of the Company's restaurants could increase operating costs and restrict growth.

Each of the Company's restaurants must obtain licenses from regulatory authorities allowing it to sell liquor, beer and wine, and each restaurant must obtain a food service license from local health authorities. Each restaurant's liquor license must be renewed annually and may be revoked at any time for cause, including violation by the Company or its employees of any laws and regulations relating to the minimum drinking age, advertising, wholesale purchasing and inventory control. In certain states, including states where the Company has a large number of restaurants or where it plans to open restaurants in the near term, the number of liquor licenses available is limited and licenses are traded at market prices. If the Company is unable to maintain existing licenses, or if it chooses to open a restaurant in those states, the cost of a new license could be significant. Obtaining and maintaining licenses is an important component of each of the Company's restaurant's operations, and the failure to obtain or maintain food and liquor licenses and other required licenses, permits and approvals would materially adversely impact existing restaurants or the Company's growth strategy.

The Company is also subject to a variety of federal and state labor laws, such as minimum wage and overtime pay requirements, unemployment tax rates, workers' compensation rates and citizenship requirements. Government-mandated increases in minimum wages, overtime pay, paid leaves of absence and mandated health benefits, or increased tax reporting and tax payment requirements for employees who receive gratuities, or a reduction in the number of states that allow tips to be credited toward minimum wage requirements could increase the Company's labor costs and reduce its operating margins. In addition, the Federal Americans with Disabilities Act prohibits discrimination on the basis of disability in public accommodations and employment. Although the Company's restaurants are designed to be accessible to the disabled, it could be required to make modifications to its restaurants to provide service to, or make reasonable accommodations for, disabled persons.

The Company's strategy to open additional company-owned and franchisee-owned restaurants subjects it to extensive government regulation, compliance which might increase its investment costs and restrict its growth.

The Company is subject to the rules and regulations of the FTC, and various state laws regulating the offer and sale of franchises. The FTC requires that the Company furnish to prospective franchisees a franchise offering circular containing prescribed information and can restrict its ability to sell franchises. A number of states also regulate the sale of franchises and require the obtaining of a permit and/or registration of the franchise offering circular with state authorities and the delivery of the franchise offering circular to prospective franchisees. Noncompliance with those laws could result in governmental enforcement actions seeking a civil or criminal penalty, rescission of a franchise, and loss of the Company's ability to offer and sell franchises in a state, or a private lawsuit seeking rescission, damages and legal fees, which could have a material adverse effect on its business.

The Company's development and construction of additional restaurants must comply with applicable zoning, land use and environmental regulations. More stringent and varied requirements of local government

[Table of Contents](#)

bodies with respect to zoning, land use and environmental factors could delay construction of new restaurants and add to their cost in the future which could adversely affect the Company's future operating results. In addition, difficulties or failure in obtaining the required licenses and approvals could delay, or result in its decision to cancel, the opening of new restaurants.

The Company's franchisees could take actions that harm its reputation and reduce its royalty revenues.

The Company does not exercise control over the day-to-day operations of its franchisee-owned restaurants. While the Company attempts to ensure that franchisee-owned restaurants maintain the same high operating standards that it demands of company-owned restaurants, one or more of these restaurants may fail to maintain these standards. Any operational shortcomings of the Company's franchisee-owned restaurants are likely to be attributed to its system-wide operations and could adversely affect its reputation and damage its brand as well as have a direct negative impact on the royalty income it receives from those restaurants.

You should not rely on past increases in the Company's average unit volumes or its comparable restaurant sales as an indication of future operating results, because they may fluctuate significantly, which could have an adverse effect on the market price of its stock.

For a number of reasons, including but not limited to, those described below and elsewhere in this Annual Report on Form 10-K, the Company's operating results, revenues and expenses have in the past varied and may in the future vary significantly from quarter-to-quarter or year-to-year. These fluctuations could have an adverse effect on the market price of the Company's common stock. A number of factors historically have affected, and are likely to continue to affect, the Company's average unit volumes and/or comparable restaurant sales, including, among other factors:

- the Company's ability to execute its business strategy effectively;
- initial sales performance by new restaurants;
- levels of competition in one or more of its markets;
- consumer trends impacting levels of beef and seafood consumption; and
- general economic conditions.

The Company's average unit volumes and comparable restaurant sales may not increase at rates achieved over recent periods. Changes in its average unit volumes and comparable restaurant sales could cause the price of the Company's common stock to fluctuate substantially.

The Company's failure to enforce its service marks or other proprietary rights could adversely affect its competitive position or the value of its brands.

The Company owns certain common law service mark rights and a number of federal and international service mark registrations, most importantly the Ruth's Chris Steak House, Mitchell's and Cameron's names and logos, copyrights relating to text and print uses, and other proprietary intellectual property rights. The Company believes that its service marks, copyrights and other proprietary rights are important to its success and competitive position. Protective actions the Company takes with respect to these rights may fail to prevent unauthorized usage or imitation by others, which could harm the Company's reputation, brand or competitive position and, if the Company commences litigation to enforce its rights, cause us to incur significant legal expenses.

Contracts with certain of the Company's franchisees limit its ability to grow the Ruth's Chris brand in attractive markets.

The Company has granted exclusive development rights for some of the United States' largest markets, including Atlanta, Philadelphia and Las Vegas, to franchisees. The terms of the Company's agreements with

[Table of Contents](#)

these franchisees prevent the Company from opening company-owned restaurants in these markets. While the Company is currently working with these franchisees in order to create additional opportunities for growth, it may be unable to open additional company-owned or franchisee-owned restaurants in these markets. The Company's failure to grow within these large markets could harm its long-term competitive position in these markets and/or prevent it from sustaining its growth. In addition, the Company's failure to grow the Ruth's Chris brand in these markets by opening additional restaurants could limit the visibility of its brand in these large markets, resulting in lower guest traffic in existing restaurants in these markets.

Litigation concerning food quality, health and other issues could require the Company to incur additional liabilities and/or cause guests to avoid its restaurants.

Occasionally, the Company's guests file complaints or lawsuits against it alleging that the Company is responsible for some illness or injury they suffered at or after a visit to its restaurants. The Company is also subject to a variety of other claims arising in the ordinary course of its business, including personal injury claims, contract claims, claims from franchisees and claims alleging violations of federal and state law regarding workplace and employment matters, discrimination and similar matters. In addition, the Company could become subject to class action lawsuits related to these matters in the future. For example, in fiscal 2005 the Company settled a class-action claim based on violation of wage and hour laws in California. The restaurant industry has also been subject to a growing number of claims that the menus and actions of restaurant chains have led to the obesity of certain of their guests. In addition, the Company is subject to "dram shop" statutes. These statutes generally allow a person injured by an intoxicated person to recover damages from an establishment that wrongfully served alcoholic beverages to the intoxicated person. Recent litigation against restaurant chains has resulted in significant judgments, including punitive damages, under dram shop statutes. Regardless of whether any claims against the Company are valid or whether it is liable, claims may be expensive to defend and may divert time and money away from the Company's operations and hurt its performance. A judgment significantly in excess of the Company's insurance coverage for any claims would materially adversely affect its financial condition and results of operations. Adverse publicity resulting from these claims may negatively impact revenues at one or more of the Company's restaurants.

Continued expansion in the segment of the restaurant industry in which the Company operates could prevent the Company from realizing anticipated benefits from new restaurant growth or continued growth in comparable restaurant sales.

The Company's competitors have opened many upscale steakhouses and seafood restaurants in recent years, and a key element of its strategy is to continue to accelerate the opening of new company-owned and franchisee-owned restaurants in both new and existing markets. If the Company overestimates demand for its restaurants or underestimates the popularity of competitors' restaurants in these markets, the Company may be unable to realize anticipated revenues from these new restaurants. Similarly, if one or more of its competitors open new restaurants in any of these new markets, or in markets where the Company already has an established presence, sales in its restaurants may be lower than it expects. Any unanticipated slowdown in demand in any of its restaurants due to this industry growth could reduce the Company's average unit volumes and comparable restaurant sales, as well as its franchisee royalty revenues.

The terms of the Company's senior credit agreement may restrict its ability to operate its business and to pursue its business strategies.

The Company's senior credit agreement contains, and any agreements governing future indebtedness would likely contain, a number of restrictive covenants that impose significant operating and financial restrictions on it. The Company's senior credit agreement limits its ability, among other things, to:

- pay dividends or purchase stock and other restricted payments to shareholders;
- borrow money or issue guarantees;
- make investments;

Table of Contents

- use assets as security in other transactions;
- sell assets or merge with or into other companies;
- enter into transactions with affiliates;
- sell stock in its subsidiaries; and
- create or permit restrictions on its subsidiaries' ability to make payments to us.

The Company's ability to engage in these types of transactions is limited even if it believes that a specific transaction would contribute to its future growth or improve its operating results. The Company's senior credit agreement also requires it to achieve specified financial and operating results and maintain compliance with certain financial ratios. The Company's ability to comply with these ratios may be affected by events outside of its control. Any non-compliance would result in a default under its senior credit agreement and could result in its lenders declaring the Company's senior debt immediately due and payable, which would have a material adverse effect on its ability to operate as a going concern.

Approximately 17.7% of the Company's voting power is controlled by one principal stockholder whose interests may conflict with those of its other stockholders.

Affiliates of Madison Dearborn hold approximately 17.7% of the Company's voting power. As a result of this ownership, as well as the fact that a representative of Madison Dearborn serves on the Company's board of directors, Madison Dearborn has significant influence in the consideration of all matters requiring the approval of its stockholders and/or its board of directors. These matters include the election of directors, the adoption of amendments to the Company's amended and restated certificate of incorporation and by-laws and approval of mergers or sales of substantially all of its assets. This influence may also have the effect of delaying or preventing a change in control of the Company or discouraging others from making tender offers for its shares, which could prevent stockholders from receiving a premium for their shares. So long as affiliates of Madison Dearborn continue to own a significant amount of the outstanding shares of the Company's common stock and a representative of Madison Dearborn continues to serve on its board of directors, they will continue to be able to influence the Company's decisions and may pursue corporate actions that conflict with the interests of its other stockholders. The Company's amended and restated certificate of incorporation also provides that affiliates of Madison Dearborn and their representatives are not required to offer any corporate opportunity of which they become aware to the Company and therefore they could take any such opportunity for themselves or offer it to other companies in which they have an investment.

The Company's amended and restated certificate of incorporation, its by-laws and Delaware law contain provisions that could discourage another company from acquiring it and may prevent attempts by its stockholders to replace or remove its current management.

Provisions of the Delaware General Corporation Law (the "DGCL"), the Company's amended and restated certificate of incorporation and its by-laws may discourage, delay or prevent a merger or acquisition that the Company's stockholders may consider favorable. In addition, these provisions may frustrate or prevent any attempts by its stockholders to replace or remove the Company's current management by making it more difficult for stockholders to replace or remove its board of directors. Such provisions in the Company's amended and restated certificate of incorporation and by-laws include:

- limitations on the ability of stockholders to amend its charter documents, including stockholder supermajority voting requirements;
- the inability of stockholders to act by written consent or to call special meetings after such time as the existing stockholders own less than a majority of its common stock;
- advance notice requirements for nominations for election to the board of directors and for stockholder proposals; and

[Table of Contents](#)

- the authority of its board of directors to issue, without stockholder approval, up to 10,150,000 shares of preferred stock with such terms as the board of directors may determine and to issue additional shares of its common stock.

The Company is also afforded the protections of Section 203 of the DGCL, which prevents it from engaging in a business combination with a person who acquires at least 15% of its common stock for a period of three years from the date such person acquired such common stock, unless board or stockholder approval is obtained.

Item 1B. UNRESOLVED STAFF COMMENTS

None.

Item 2. PROPERTIES

The Company's company-owned restaurants are generally located in spaces leased by wholly-owned direct or indirect subsidiaries of Ruth's Chris Steak House Inc. Restaurant lease expirations, including renewal options, range from approximately two years to 30 years. Sixty of its leases, including those not yet commenced, provide for an option to renew for terms ranging from approximately five years to 15 years. Historically, the Company has not had difficulty in renewing its leases in a timely manner. Restaurant leases provide for a specified annual rent, and some leases call for additional or contingent rent based on sales volumes over specified levels.

The Company currently owns the real estate for seven operating restaurants: Metairie, Louisiana (8,000 square feet); Ft. Lauderdale (7,800 square feet), Palm Beach (7,200 square feet) and Sarasota (7,400 square feet), Florida; Houston, Texas (7,200 square feet); Columbus, Ohio (8,100 square feet); and Palm Desert, California (6,800 square feet).

In addition to the restaurants set forth in the table below, the Company owns an office building of approximately 75,860 square feet in Heathrow, Florida, which houses its corporate headquarters, and an office building in Metairie, Louisiana of approximately 22,000 square feet.

The following table sets forth information about the Company's existing company-owned and franchisee-owned restaurants as of December 30, 2007. As of December 30, 2007, the Company operated 61 company-owned restaurants and its franchisees operated 57 restaurants. Company-owned Ruth's Chris restaurants range in size from approximately 6,000 to approximately 13,000 square feet. The Company expects that future restaurants will range in size from 8,000 to 10,000 square feet with approximately 230 to 250 seats.

| Company-Owned Restaurants | | | Franchisee-Owned Restaurants | | |
|---------------------------|---------------------|---------------------------------|------------------------------|------------------------|--|
| <u>Year Opened</u> | <u>Locations</u> | <u>Property Leased or Owned</u> | <u>Year Opened</u> | <u>Locations</u> | |
| 1972 | Metairie, LA | Owned | 1976 | Baton Rouge, LA | |
| 1977 | Lafayette, LA | Leased | 1985 | Austin, TX | |
| 1977 | Houston, TX | Owned | 1985 | Mobile, AL | |
| 1983 | Washington, D.C. | Leased | 1986 | Atlanta (Buckhead), GA | |
| 1984 | Beverly Hills, CA | Leased | 1987 | Pittsburgh, PA | |
| 1985 | Fort Lauderdale, FL | Owned | 1987 | Hartford, CT | |
| 1986 | Phoenix, AZ | Leased | 1988 | Philadelphia, PA | |
| 1986 | Nashville, TN | Leased | 1989 | Honolulu, HI | |
| 1987 | San Francisco, CA | Leased | 1989 | Las Vegas, NV | |
| 1987 | N. Palm Beach, FL | Owned | 1991 | Richmond, VA | |
| 1988 | Seattle, WA * | Leased | 1992 | Baltimore, MD | |
| 1989 | Memphis, TN | Leased | 1993 | Birmingham, AL | |
| 1990 | Weehawken, NJ | Leased | 1993 | San Antonio, TX | |
| 1990 | Scottsdale, AZ | Leased | 1993 | Taipei, Taiwan | |
| 1992 | Palm Desert, CA | Owned | 1993 | Cancun, Mexico | |
| 1992 | Minneapolis, MN | Leased | 1993 | Sandy Springs, GA | |
| 1992 | Chicago, IL | Leased | 1994 | Las Vegas, NV | |

Table of Contents

| Company-Owned Restaurants | | | Franchisee-Owned Restaurants | | |
|---------------------------|--------------------------|--------------------------|------------------------------|-------------------------------|--|
| Year Opened | Locations | Property Leased or Owned | Year Opened | Locations | |
| 1993 | Arlington, VA | Leased | 1994 | Indianapolis, IN | |
| 1993 | Manhattan, NY | Leased | 1995 | Denver, CO | |
| 1994 | San Juan, Puerto Rico | Leased | 1995 | Long Island, NY | |
| 1994 | San Diego, CA | Leased | 1995 | Toronto, Canada | |
| 1995 | Westchester, NY | Leased | 1996 | Taichung, Taiwan | |
| 1996 | Dallas, TX | Leased | 1996 | Indianapolis, IN | |
| 1996 | Troy, MI | Leased | 1997 | Hong Kong | |
| 1996 | Tampa, FL | Leased | 1997 | Raleigh, NC | |
| 1996 | Bethesda, MD | Leased | 1998 | Annapolis, MD | |
| 1997 | Kansas City, MO | Leased | 1998 | Maui, HI | |
| 1997 | Irvine, CA | Leased | 1999 | Atlanta (Centennial Park), GA | |
| 1997 | Portland, OR * | Leased | 2000 | Pikesville, MD | |
| 1997 | Jacksonville, FL | Leased | 2000 | San Antonio (Sunset), TX | |
| 1998 | Louisville, KY | Leased | 2000 | Wailea, HI | |
| 1998 | Parsippany, NJ | Leased | 2001 | Kaohsiung, Taiwan | |
| 1998 | Northbrook, IL | Leased | 2001 | King of Prussia, PA | |
| 1999 | Columbus, OH | Owned | 2001 | Queensway, Hong Kong | |
| 1999 | Coral Gables, FL | Leased | 2001 | Cabo San Lucas, Mexico | |
| 1999 | Ponte Vedra, FL | Leased | 2003 | Mississauga, Canada | |
| 1999 | Winter Park, FL | Leased | 2005 | Virginia Beach, VA | |
| 2000 | Sarasota, FL | Owned | 2005 | Baltimore, MD | |
| 2000 | Del Mar, CA | Leased | 2005 | Atlantic City, NJ | |
| 2000 | Boca Raton, FL | Leased | 2005 | Charlotte, NC (SouthPark) | |
| 2001 | Orlando, FL | Leased | 2006 | St. Louis, MO | |
| 2001 | Greensboro, NC | Leased | 2006 | Ocean City, MD | |
| 2002 | Woodland Hills, CA | Leased | 2006 | Destin, FL | |
| 2002 | Fairfax, VA | Leased | 2006 | Salt Lake City, UT | |
| 2002 | Bellevue, WA * | Leased | 2006 | Mauna Lani, HI | |
| 2002 | Washington, D.C. (Conv.) | Leased | 2006 | Huntsville, AL | |
| 2003 | Walnut Creek, CA | Leased | 2006 | Edmonton, Canada | |
| 2005 | Roseville, CA | Leased | 2007 | Aspen, CO | |
| 2005 | Boston, MA | Leased | 2007 | Charlotte, NC (Uptown) | |
| 2005 | Sacramento, CA | Leased | 2007 | Waikiki, HI | |
| 2006 | Pasadena, CA | Leased | 2007 | Columbia, SC | |
| 2006 | Bonita Springs, FL | Leased | 2007 | Mishawaka, IN | |
| 2006 | Providence, RI | Leased | 2007 | Tokyo, Japan | |
| 2007 | Lake Mary, FL** | Land Leased | 2007 | Madison, WI | |
| 2007 | Naples, FL | Leased | 2007 | Calgary, Canada | |
| 2007 | Anaheim, CA** | Land Leased | 2007 | Rogers, AR | |
| 2007 | Biloxi, MS | Leased | 2007 | Park City, UT | |
| 2007 | Knoxville, TN | Leased | | | |
| 2007 | Tyson's Corner, VA | Leased | | | |
| 2007 | Santa Barbara, CA | Leased | | | |
| 2007 | West Palm Beach, FL | Leased | | | |

* These restaurants were previously franchisee-owned and were acquired by the Company in fiscal 2007.

** The Company owns the building and leases the land pursuant to a long-term ground lease.

On July 10, 2006, October 8, 2006 and October 30, 2006, the Company acquired a total of seven franchisee-owned restaurants. The asset purchase agreement governing this transaction also provides that an eighth restaurant, located in Baton Rouge, Louisiana, can be purchased by the Company for an agreed upon price (determined according to a formula set forth in the agreement) from the period commencing January 1, 2008 through December 31, 2012.

On September 11, 2007, the Company acquired a total of three franchisee-owned restaurants located in Bellevue and Seattle, Washington, and Portland, Oregon.

On February 19, 2008, the Company acquired all of the operating assets and intellectual property of Columbus, Ohio based Mitchell's Fish Market, which operates 19 restaurants operating under the names

[Table of Contents](#)

Mitchell's Fish Market and Columbus Fish Market, and Cameron's Steakhouse, which operates three restaurants operating under the names Cameron's Steakhouse and Mitchell's Steakhouse from Cameron Mitchell Restaurants, LLC (CMR).

The 19 Mitchell's Fish Market restaurants are located at Stamford, CT; Jacksonville, Sandestin and Tampa, FL; Glenview, IL; Carmel, IN; Louisville and Newport, KY; Birmingham, Lansing, Livonia and Rochester Hills, MI; Columbus (Crosswoods) and Columbus (Grandview), OH; Homestead and Pittsburgh, PA; and Brookfield, WI. The three Cameron's Steakhouse restaurants are located at Columbus (Downtown) and Columbus (Polaris), OH; and Birmingham, MI. Each of these restaurants is leased, other than Columbus (Grandview), which is owned by the Company.

The Company has also entered into lease commitments to develop seven additional company-owned Ruth's Chris restaurants in Fort Worth, Texas; New Orleans, Louisiana; Princeton, New Jersey; Dedham, Massachusetts; Barrington (Chicago), Illinois; Fresno, California; and Phoenix, Arizona.

Item 3. LEGAL PROCEEDINGS

In Re: Katherine Bush; In Re: Melia Stopa.

In November 2007, the Company was named as the respondent in two Equal Employment Opportunity Commission (EEOC) charges filed by two former employees wherein each charging party filed a claim of discrimination against the Company on the basis of their sex. Separately, the Company received written demand for both monetary and non-monetary relief from counsel for the two charging parties accompanied by threatened litigation seeking putative, class-wide relief for similarly situated individuals. The Company has responded to the charges, denied liability, considers the claims without merit and will vigorously defend them. The Company is not currently able to determine the outcome of the pending EEOC charges, whether class-wide certification will occur, any possible exposures or whether such exposures would be material. The Company is not currently able to determine the outcome of this pending action, whether class-wide certification will occur, any possible exposures or whether such exposures would be material.

Nikko Rose and Brandon Rose v. Ruth's Chris Steak House Boston, LLC.

In November 2007 one current and one former employee filed a complaint in the United States District Court for the District of Massachusetts alleging that one of the Company's affiliates violated the Fair Standards Labor Act ("FLSA") by inappropriately taking the "tip credit" set forth in section 203 (m) of the FLSA. Plaintiffs filed the action seeking putative, class-wide relief though no judicial certification has been made. Also, in November 2007, the same plaintiffs filed a complaint in the Massachusetts Superior Court for Suffolk County alleging that the Company violated Massachusetts General Laws, chapter 149, section 152A, by failing to remit to the wait staff the full amount of alleged service tips that the Company includes on its guest checks for private banquets. Plaintiffs also filed this action as a putative class action though no judicial certification has been made. The Company is not currently able to determine the outcome of this pending action, whether class-wide certification will occur, any possible exposures or whether such exposures would be material.

From time to time, the Company has been named as a defendant in other litigation arising in the normal course of business. Claims typically pertain to "slip and fall" accidents at its restaurants, employment claims and claims from guests alleging illness, injury or other food quality, health or operational concerns. Other claims and disputes have arisen in connection with supply contracts, the site development and construction of system restaurants, and with respect to franchise matters. Certain of these claims are not covered by existing insurance policies; however, many are referred to and are covered by insurance, except for deductible amounts, and have not had a material effect on us. As of the date of hereof, we believe that the ultimate resolution of any such claims in the ordinary course of business will not materially affect our financial condition or earnings.

Item 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matters were submitted to a vote of security holders during the fourth quarter of fiscal 2007.

PART II**Item 5. MARKET FOR THE REGISTRANT'S COMMON STOCK, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES**

The Company's common stock is listed on the Nasdaq Global Select Market under the trading symbol "RUTH." As of March 10, 2008, there were 82 holders of record of its common stock. The transfer agent and registrar for its common stock is American Stock Transfer & Trust Company, 59 Maiden Lane, New York, NY 10038, telephone (800) 937-5449.

There were no repurchases of the Company's equity securities by or on behalf of it during the fourth quarter of fiscal 2007 and the Company does not have a formal or publicly announced stock repurchase program.

The Company's common stock has been listed on the Nasdaq Global Select Market (formerly the Nasdaq National Market) since its initial public offering on August 8, 2005. The following table sets forth, for the period indicated, the highest and lowest closing sale price for its common stock for fiscal 2006 and fiscal 2007, as reported by the Nasdaq Global Select Market:

| | <u>High</u> | <u>Low</u> |
|--|-------------|------------|
| Fiscal Year ended December 31, 2006 | | |
| First Quarter | \$23.00 | \$17.71 |
| Second Quarter | \$24.18 | \$18.25 |
| Third Quarter | \$21.13 | \$17.25 |
| Fourth Quarter | \$20.50 | \$17.98 |
| Fiscal Year ended December 30, 2007 | | |
| First Quarter | \$22.67 | \$18.35 |
| Second Quarter | \$20.55 | \$16.95 |
| Third Quarter | \$18.14 | \$14.25 |
| Fourth Quarter | \$14.46 | \$ 8.76 |

The closing sale price for its common stock on March 10, 2008 was \$6.72.

Dividend Policy

The Company currently expects to retain all future earnings to finance the growth of its business. Since its acquisition by affiliates of Madison Dearborn in 1999, the Company has not paid, and has no current plans to pay in the future, cash dividends to holders of its common stock. The payment of dividends is within the discretion of the Company's board of directors and will depend on its earnings, capital requirements and operating and financial condition, among other factors. In addition, the Company's senior credit facilities limit its ability to pay dividends. The Company may not pay a dividend if there is a default (or if a default would result from such dividend payment) under its senior credit facilities, and may not pay dividends in excess of an aggregate of \$3.0 million in any fiscal year.

Unregistered Sales of Equity Securities

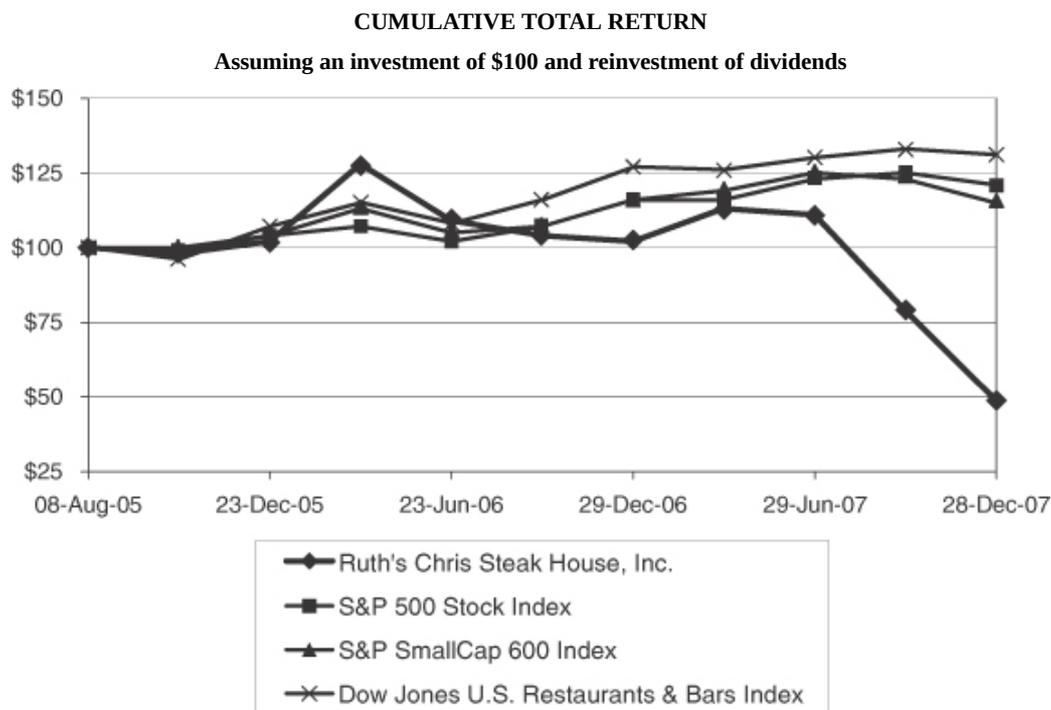
None.

Securities Authorized for Issuance Under Equity Compensation Plans

See Item 12, Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters, of this Annual Report on Form 10-K for information regarding securities authorized for issuance under the Company's equity compensation plans.

Performance Graph

The following table and graph shows the cumulative total stockholder return on the Company's Common Stock with the S&P 500 Stock Index, the S&P SmallCap 600 Index and the Dow Jones U.S. Restaurants & Bars Index, in each case assuming an initial investment of \$100 on August 8, 2005 and full dividend reinvestment.



| | 8/8/05 | 9/23/05 | 12/23/05 | 3/24/06 | 6/23/06 | 9/22/06 | 12/29/06 | 3/30/07 | 6/29/07 | 9/28/07 | 12/28/07 |
|---|--------|---------|----------|---------|---------|---------|----------|---------|---------|---------|----------|
| Ruth's Chris Steak House, Inc. | \$100 | \$ 98 | \$ 102 | \$ 128 | \$ 109 | \$ 104 | \$ 102 | \$ 113 | \$ 111 | \$ 79 | \$ 49 |
| S&P 500 Stock Index | 100 | 99 | 104 | 107 | 102 | 107 | 116 | 116 | 123 | 125 | 121 |
| S&P SmallCap 600 Index | 100 | 100 | 104 | 113 | 105 | 107 | 116 | 119 | 125 | 123 | 115 |
| Dow Jones U.S. Restaurants & Bars Index | 100 | 96 | 107 | 115 | 108 | 116 | 127 | 126 | 130 | 133 | 131 |

All amounts rounded to the nearest dollar.

[Table of Contents](#)

Item 6. SELECTED FINANCIAL DATA

The following table sets forth the Company's selected financial data for the year indicated and should be read in conjunction with the disclosures in Item 7, Management's Discussion and Analysis of Results of Operations and Financial Condition and Item 8, Financial Statements and Supplementary Data, of this report.

| | Fiscal Year | | | | |
|--|-------------------|-----------------|------------------|------------------|------------------|
| | 2003 | 2004 | 2005 | 2006 | 2007 |
| | (\$ in thousands) | | | | |
| Income Statement Data: | | | | | |
| Revenues: | | | | | |
| Restaurant sales | \$ 155,122 | \$ 179,083 | \$ 199,621 | \$ 254,718 | \$ 303,658 |
| Franchise income | 8,829 | 9,500 | 11,432 | 12,399 | 12,896 |
| Other operating income | 609 | 646 | 777 | 4,362 | 2,617 |
| Total revenues | <u>164,560</u> | <u>189,229</u> | <u>211,830</u> | <u>271,479</u> | <u>319,171</u> |
| Costs and expenses: | | | | | |
| Food and beverage costs | 54,386 | 60,303 | 61,804 | 82,017 | 97,432 |
| Restaurant operating expenses | 72,330 | 81,200 | 91,155 | 113,746 | 141,477 |
| Marketing and advertising | 6,379 | 6,634 | 6,696 | 8,328 | 8,447 |
| General and administrative costs | 8,792 | 10,938 | 15,208 | 22,974 | 25,111 |
| Depreciation and amortization expenses | 6,629 | 6,345 | 6,489 | 8,690 | 12,010 |
| Pre-opening costs | 497 | 364 | 1,623 | 2,046 | 5,020 |
| Hurricane and relocation costs, net of insurance proceeds | — | — | 2,660 | (3,948) | (3,478) |
| Loss on impairment | — | — | — | 970 | — |
| Loss on the disposal of property and equipment, net | — | — | — | 13 | 1,229 |
| Operating income | <u>15,547</u> | <u>23,445</u> | <u>26,195</u> | <u>36,643</u> | <u>31,923</u> |
| Other income (expense): | | | | | |
| Interest expense | (9,521) | (10,320) | (8,453) | (2,856) | (5,956) |
| Accrued dividends and accretion on mandatorily redeemable senior preferred stock | (2,243) | (5,071) | (1,891) | — | — |
| Other | 267 | (1,099) | (39) | 34 | 724 |
| Income from continuing operations before income tax expense | 4,050 | 6,955 | 15,812 | 33,822 | 26,691 |
| Income tax expense | 1,292 | 736 | 5,043 | 10,098 | 8,541 |
| Income from continuing operations | 2,758 | 6,219 | 10,769 | 23,724 | 18,150 |
| Discontinued operations, net of income tax benefit | 1,510 | 3,777 | (164) | (66) | 4 |
| Net income | <u>\$ 1,248</u> | <u>\$ 2,442</u> | <u>\$ 10,933</u> | <u>\$ 23,790</u> | <u>\$ 18,146</u> |

Table of Contents

| | Fiscal Year | | | | |
|---|--|-------------------|-----------------|------------------|------------------|
| | 2003 | 2004 | 2005 | 2006 | 2007 |
| | (\$ in thousands, except per share data) | | | | |
| Less dividends earned on mandatorily redeemable preferred stock and accretion of discount | \$ 2,135 | \$ — | \$ — | \$ — | \$ — |
| Less dividends earned on junior preferred stock and warrant expense | 4,975 | 5,373 | 3,753 | — | — |
| Net income (loss) available to common shareholders | <u>\$ (5,862)</u> | <u>\$ (2,931)</u> | <u>\$ 7,180</u> | <u>\$ 23,790</u> | <u>\$ 18,146</u> |
| Basic earnings (loss) per common share: | | | | | |
| Continuing operations | \$ (0.37) | \$ 0.07 | \$ 0.39 | \$ 1.02 | \$ 0.78 |
| Discontinued operations | (0.13) | (0.32) | 0.01 | 0.01 | — |
| Basic earnings (loss) per share | <u>\$ (0.50)</u> | <u>\$ (0.25)</u> | <u>\$ 0.40</u> | <u>\$ 1.03</u> | <u>\$ 0.78</u> |
| Diluted earnings (loss) per common share: | | | | | |
| Continuing operations | \$ (0.37) | \$ 0.07 | \$ 0.38 | \$ 1.01 | \$ 0.78 |
| Discontinued operations | (0.13) | (0.32) | 0.01 | 0.01 | — |
| Diluted earnings (loss) per share | <u>\$ (0.50)</u> | <u>\$ (0.25)</u> | <u>\$ 0.39</u> | <u>\$ 1.02</u> | <u>\$ 0.78</u> |
| Shares used in computing net income (loss) per common share: | | | | | |
| Basic | 11,746,868 | 11,917,093 | 17,961,198 | 23,175,323 | 23,206,864 |
| Diluted | 11,746,868 | 11,917,093 | 18,710,141 | 23,429,185 | 23,399,446 |
| Balance Sheet Data (at end of fiscal year): | | | | | |
| Cash and cash equivalents | \$ 5,130 | \$ 3,906 | \$ 8,985 | \$ 4,690 | \$ 12,311 |
| Total assets | 117,554 | 113,482 | 134,196 | 209,720 | 260,278 |
| Total long-term debt including current portion | 97,373 | 80,931 | 38,500 | 68,000 | 96,750 |
| Mandatorily redeemable senior preferred stock | 34,786 | 39,857 | — | — | — |
| Total shareholders' equity (deficit) | (53,958) | (51,513) | 40,265 | 67,978 | 88,067 |

* Certain prior year amounts have been reclassified to conform with the current year presentation of discontinued operations and other income. These reclassifications had no effect on previously reported net income.

Item 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF RESULTS OF OPERATIONS AND FINANCIAL CONDITION

Overview

The Company believes that it is the largest upscale steakhouse company in the United States, based on total company- and franchisee-owned restaurants as published in the Technomic, Inc. 2007 Top 100 U.S. Chain Reference Guide. The Ruth's Chris menu features a broad selection of high-quality USDA Prime and Choice grade steaks and other premium offerings served in Ruth's Chris' signature fashion—"sizzling" and topped with seasoned butter—complemented by other traditional menu items inspired by the Company's New Orleans heritage. The Ruth's Chris restaurants reflect the more than 40-year commitment to the core values instilled by its founder, Ruth Fertel, of caring for its guests by delivering the highest quality food, beverages and service in a warm and inviting atmosphere. The Company believes that Ruth's Chris is currently one of the strongest brands in fine dining.

[Table of Contents](#)

The Company's restaurants cater to families and special occasion diners, in addition to the business clientele traditionally served by upscale steakhouses, by providing a dining experience designed to appeal to a wide range of guests. The Company believes its focus on creating this broad appeal provides it with opportunities to expand into a wide range of markets, including many markets not traditionally served by upscale steakhouses.

The Company offers USDA Prime and Choice grade steaks that are aged and prepared to exact company standards and cooked in 1,800-degree broilers. The Company also offers veal, lamb, poultry and seafood dishes, and a broad selection of appetizers, including New Orleans-style barbequed shrimp, mushrooms stuffed with crabmeat, shrimp remoulade, Louisiana seafood gumbo, onion soup au gratin, crabtini and seven salad variations. The Company complements its distinctive food offerings with an award-winning core wine list, typically featuring bottles priced at between \$28 and \$2,000 and many selections offered by the glass.

As of December 30, 2007, there were 118 Ruth's Chris restaurants, of which 61 were company-owned and 57 were franchisee-owned, including twelve international franchisee-owned restaurants in Mexico, Hong Kong, Taiwan, Japan and Canada. In fiscal 2007, the Company had total revenues of \$319.2 million and operating income (excluding hurricane and relocation costs and loss on impairment) of \$35.4 million.

On February 19, 2008, the Company completed the acquisition previously announced on November 6, 2007, that it had entered into a definitive asset purchase agreement to acquire all of the operating assets and intellectual property of Mitchell's Fish Market, operating under the names Mitchell's Fish Market and Columbus Fish Market, and Cameron's Steakhouse, operating under the names Cameron's Steakhouse and Mitchell's Steakhouse from Cameron Mitchell Restaurants, LLC (CMR) for approximately \$92.0 million. There are currently 19 Mitchell's Fish Markets and three Cameron's Steakhouse's with locations in the Midwest, Northeast, and Florida.

Key Financial Terms and Metrics

The Company evaluates its business using a variety of key financial measures:

Restaurant Sales. Restaurant sales consist of food and beverage sales by company-owned restaurants. Restaurant sales are primarily influenced by total operating weeks in the relevant period and comparable restaurant sales growth. Total operating weeks is the total number of company-owned restaurants multiplied by the number of weeks each is in operation during the relevant period. Total operating weeks is impacted by restaurant openings and closings, as well as changes in the number of weeks included in the relevant period. Comparable restaurant sales growth reflects the change in year-over-year or quarter-over-quarter, as applicable, sales for the comparable restaurant base. The Company defines the comparable restaurant base to be those company-owned restaurants in operation for not less than fifteen months prior to the beginning of the fiscal quarter including the period being measured. Comparable restaurant sales growth is primarily influenced by the number of entrées sold and the average guest check. The number of entrées sold is influenced by the popularity of the Company's menu items, its guest mix, its ability to deliver a high quality dining experience and overall economic conditions. Average guest check, a measure of total restaurant sales divided by the number of entrées, is driven by menu mix and pricing.

Franchise Income. Franchise income includes (1) franchise and development option fees charged to franchisees and (2) royalty income. Franchise royalties consist of 5.0% of adjusted gross sales from each franchisee-owned restaurant. The Company evaluates the performance of its franchisees by measuring franchisee-owned restaurant operating weeks, which is impacted by franchisee-owned restaurant openings and closings, and comparable franchisee-owned restaurant sales growth, which together with operating weeks, drives its royalty income.

Other Operating Income. Other operating income includes banquet related guarantee and services revenue and other incidental guest fees as well as other licensing fees and income associated with the sale of gift cards. While we always honor gift cards, even beyond any stated expiration dates on the card and as required in several jurisdictions, our historical experience has shown that very few cards are redeemed after 18 months following the issue date. As such, the Company records in other operating income the full remaining value (original issue less

[Table of Contents](#)

any partial redemptions) of any gift cards unredeemed after 18 months from the date of last activity, subject to limitations in some jurisdictions in which the Company operates.

Food and Beverage Costs. Food and beverage costs include all restaurant-level food and beverage costs of company-owned restaurants. The Company measures food and beverage costs by tracking cost of sales as a percentage of restaurant sales and cost per entrée. Food and beverage costs are generally influenced by the cost of food and beverage items, distribution costs and menu mix.

Restaurant Operating Expenses. The Company measures restaurant-operating expenses for company-owned restaurants as a percentage of restaurant sales. Restaurant operating expenses include the following:

- Labor costs, consisting of restaurant management salaries, hourly staff payroll and other payroll-related items, including taxes and fringe benefits. The Company measures its labor cost efficiency by tracking hourly and total labor costs as a percentage of restaurant sales;
- Operating costs, consisting of maintenance, utilities, bank and credit card charges, and any other restaurant-level expenses; and
- Occupancy costs, consisting of both fixed and variable portions of rent, common area maintenance charges, insurance premiums and real property taxes.

Marketing and Advertising. Marketing and advertising includes all media, production and related costs for both local restaurant advertising and national marketing. The Company measures the efficiency of its marketing and advertising expenditures by tracking these costs as a percentage of total revenues. The Company has historically spent approximately 2.5% to 4.0% of total revenues on marketing and advertising and expects to maintain this level in the near term. All franchise agreements executed based on its new form of franchise agreement include up to a 1.0% advertising fee in addition to the 5.0% royalty fee. The Company spends this designated advertising fee on national advertising and records these fees as liabilities against which specified advertising and marketing costs will be charged.

General and Administrative. General and administrative costs include costs relating to all corporate and administrative functions that support development and restaurant operations and provide an infrastructure to support future company and franchisee growth. General and administrative costs are comprised of management, supervisory and staff salaries and employee benefits, travel, information systems, training, corporate rent, professional and consulting fees, technology and market research. The Company measures its general and administrative expense efficiency by tracking these costs as a percentage of total revenues. These expenses are expected to increase as a result of costs associated with being a public company as well as costs related to its anticipated growth, including substantial training costs and significant investments in infrastructure. As the Company is able to leverage these investments made in its people and systems, the Company expects these expenses to decrease as a percentage of total revenues over time.

Depreciation and Amortization. Depreciation and amortization includes depreciation of fixed assets. Consistent with SEC guidance, the Company depreciates capitalized leasehold improvements over the shorter of the total expected lease term or their estimated useful life. As the Company accelerates its restaurant openings, depreciation and amortization is expected to increase as a result of its increased capital expenditures.

Pre-Opening Costs. Pre-opening costs consist of costs incurred prior to opening a company-owned restaurant, which are comprised principally of manager salaries and relocation costs, employee payroll and related training costs for new employees, including practice and rehearsal of service activities as well as lease costs incurred prior to opening. The Company expects these costs to increase as it accelerates its company-owned restaurant openings, which may have a material impact on the Company's operating results in future periods.

Initial Public Offering

In August 2005, the Company and selling shareholders completed an initial public offering of 9,375,000 and 5,575,000 shares of common stock, respectively, at \$18.00 per share. The Company received net proceeds of

[Table of Contents](#)

approximately \$154.3 million from the sale of shares of its common stock in the offering after deducting underwriting discounts and commissions and offering expenses payable by it. The Company used the net proceeds of the offering as follows: (1) approximately \$11.7 million was used to redeem all of its outstanding mandatorily redeemable Series A senior cumulative preferred stock, (2) approximately \$76.2 million to redeem or repurchase all of its outstanding Series B junior cumulative preferred stock, (3) approximately \$65.5 million was used to repay a portion of the outstanding indebtedness under its senior credit facilities and (4) \$0.8 million was used for general working capital needs of the Company.

Results of Operations

The table below sets forth certain operating data expressed as a percentage of total revenues for the periods indicated. The Company's historical results are not necessarily indicative of the operating results that may be expected in the future. Certain prior year amounts have been reclassified to conform with the current year presentation of discontinued operations and other income. These reclassifications had no effect on previously reported net income.

| | Fiscal Year | | |
|--|-------------|--------|--------|
| | 2005 | 2006 | 2007 |
| Revenues: | | | |
| Restaurant sales | 94.2% | 93.8% | 95.1% |
| Franchise income | 5.4% | 4.6% | 4.1% |
| Other operating income | 0.4% | 1.6% | 0.8% |
| Total revenues | 100.0% | 100.0% | 100.0% |
| Costs and expenses: | | | |
| Food and beverage costs | 29.2% | 30.2% | 30.5% |
| Restaurant operating expenses | 43.0% | 41.9% | 44.3% |
| Marketing and advertising | 3.2% | 3.1% | 2.6% |
| General and administrative costs | 7.2% | 8.5% | 7.9% |
| Depreciation and amortization expenses | 3.1% | 3.2% | 3.8% |
| Pre-opening costs | 0.8% | 0.8% | 1.6% |
| Hurricane and relocation costs, net of insurance proceeds | 1.3% | (1.5)% | (1.1)% |
| Loss on impairment | — | 0.4% | — |
| Loss on the disposal of property and equipment, net | — | — | 0.4% |
| Operating income | 12.2% | 13.4% | 10.1% |
| Other income (expense): | | | |
| Interest expense | (4.0)% | (1.1)% | (1.9)% |
| Accrued dividends and accretion on mandatorily redeemable senior preferred stock | (0.9)% | — | — |
| Other | — | — | 0.2% |
| Income from continuing operations before income tax expense | 7.3% | 12.3% | 8.4% |
| Income tax expense | 2.4% | 3.7% | 2.7% |
| Income from continuing operations | 4.9% | 8.6% | 5.7% |
| Discontinued operations, net of income tax benefit | (0.1)% | — | — |
| Net income | 5.0% | 8.6% | 5.7% |

Fiscal Year 2007 Compared to Fiscal Year 2006

Restaurant sales. Restaurant sales increased \$48.9 million, or 19.2%, to \$303.7 million in fiscal 2007 from \$254.7 million in fiscal 2006. This increase was due primarily to an additional \$31.7 million contributed from 13 restaurants acquired during fiscal 2006 and 2007, and \$26.5 million from restaurants opened during fiscal 2006

[Table of Contents](#)

and 2007. This increase was partially offset by a reduction of \$6.7 million from the additional week of operations during fiscal 2006 as well as a \$2.6 million decrease in comparable restaurant sales. Comparable restaurants open throughout both fiscal years experienced a sales decrease of 1.0%, consisting of a 4.7% decrease in entrée growth (traffic) partially offset by a 3.7% increase in per entrée spending. The increase in per entrée spending was driven by a shift in sales mix as well as menu price increases of approximately 2.0% and 2.8% taken in January 2007 and October 2007. These factors increased the average per entrée spending to \$74.36 for fiscal 2007.

Franchise Income. Franchise income increased \$0.5 million, or 4.0%, to \$12.9 million in fiscal 2007 from \$12.4 million in fiscal 2006. The increase was due primarily to the opening of ten new franchise-owned restaurants in 2007 as well as the full-year impact of seven new franchisee-owned restaurants that opened during fiscal 2006. These increases were partially offset by the acquisition by the Company of seven franchise-owned restaurants during fiscal 2006 and three franchise-owned restaurants in the third quarter of fiscal 2007, as well as a comparable restaurant sales decrease of 0.2%.

Other Operating Income. Other operating income decreased \$1.8 million, or 40.9%, to \$2.6 million in fiscal 2007 from \$4.4 million in fiscal 2006. The decrease is due to the recognition of \$2.0 million in gift card related revenues in fiscal 2007 compared to \$3.7 million in fiscal 2006.

Food and Beverage Costs. Food and beverage costs increased \$15.4 million, or 18.8%, to \$97.4 million in fiscal 2007 from \$82.0 million in fiscal 2006. The increase was due to higher restaurant sales and partially offset by lower meat costs. As a percentage of restaurant sales, food and beverage costs decreased to 32.1% in fiscal 2007 from 32.2% in fiscal 2006. This decrease in food and beverage costs as a percentage of restaurant sales was due to favorable beef costs and modest price increases, partially offset by higher produce and dairy costs.

Restaurant Operating Expenses. Restaurant operating expenses increased \$27.8 million, or 24.5%, to \$141.5 million in fiscal 2007 from \$113.7 million in fiscal 2006. The increase was due to higher restaurant sales in fiscal 2007, increased hourly labor costs, staffing related to new restaurant openings and increased occupancy costs. Restaurant operating expenses, as a percentage of restaurant sales, increased to 46.6% in fiscal 2007 from 44.7% in fiscal 2006. This increase in restaurant operating expenses as a percentage of restaurant sales was due to increased labor, operating, and occupancy expenses of newly opened restaurants as well as reduced fixed expense leverage experienced from lower comparable restaurant sales and the additional operating week during fiscal 2006.

Marketing and Advertising. Marketing and advertising expenses increased \$0.1 million, or 1.2%, to \$8.4 million in fiscal 2007 from \$8.3 million in fiscal 2006. Marketing and advertising expenses, as a percentage of total revenues, decreased to 2.6% in fiscal 2007 from 3.1% in fiscal 2006. This decrease was primarily due to reduced utilization of television and national radio as well as reduced agency fees during fiscal 2007.

General and Administrative Costs. General and administrative costs increased \$2.1 million, or 9.1%, to \$25.1 million in fiscal 2007 from \$23.0 million in fiscal 2006. General and administrative costs, as a percentage of total revenues, decreased to 7.9% in fiscal 2007 from 8.5% in fiscal 2006. This increase is due to \$0.8 million in non-cash compensation expense under FAS123R, \$0.6 million of non-recurring severance and Mitchell's acquisitions costs, and the full year impact of the support personnel hired during 2006 and fiscal 2007. These increases were partially offset by reduced levels of incentive compensation.

Depreciation and Amortization Expenses. Depreciation and amortization expense increased \$3.3 million, or 37.9%, to \$12.0 million in fiscal 2007 from \$8.7 million in fiscal 2006. The increase was due primarily to the addition of new company-owned restaurants and acquired restaurants during 2006 and 2007 as well as investments at the Company's existing company-owned restaurants and corporate headquarters.

Pre-Opening Costs. Pre-opening costs increased \$3.0 million, or 150.0%, to \$5.0 million in fiscal 2007 from \$2.0 million in fiscal 2006. This increase was due to the opening of eight new company-owned restaurants in fiscal 2007 versus three locations during fiscal 2006.

[Table of Contents](#)

Hurricane and Relocation costs net of insurance proceeds. The Company recognized income, net of relocation costs, of \$3.5 million in fiscal 2007 from \$3.9 million in fiscal 2006. These net insurance proceeds related to the Company's business interruption losses and property losses in New Orleans and Metairie, Louisiana and Biloxi, Mississippi as a result of Hurricane Katrina. The Company finalized its claim in fiscal 2007 and does not expect any significant expenses or proceeds related to the Hurricane Katrina in the future.

Interest Expense. Interest expense, net of interest income, increased \$3.1 million, or 106.9%, to \$6.0 million in fiscal 2007 from \$2.9 million in fiscal 2006. This increase was primarily due to the additional borrowings related to the 2006 and 2007 acquired restaurants as well as higher interest rates on those borrowings. Interest expense during the year included a \$1.2 million "mark to market" non-cash charge related to an interest rate swap.

Income Tax Expense. Income tax expense decreased \$1.6 million, or 15.8%, to \$8.5 million in fiscal 2007 from \$10.1 million in fiscal 2006. The decrease was primarily due to a reduced income before income tax and partially offset by an increase in the annual effective tax rate from 29.9% in fiscal 2006 to 32.0% in fiscal 2007.

Income from Continuing Operations. Income from continuing operations decreased \$5.5 million, or 23.2%, to \$18.2 million in fiscal 2007 from \$23.7 million in fiscal 2006.

Discontinued Operations, net of Income Tax Benefit. Discontinued operations resulted in \$4,000 of expense in fiscal 2007 compared to \$66,000 of income in fiscal 2006. Discontinued operations income and expense relates to former operations in Cleveland, Ohio and Manhattan, NY. On June 25, 2006 the Company closed its Cleveland, Ohio restaurant whose lease term ended in September 2006. The Company determined that the closed restaurant should be accounted for as discontinued operations because the Company does not expect any further direct or indirect cash inflows from the discontinued restaurant as the restaurant has completely ceased operation. During August 2005, the Company entered into an agreement with the Manhattan-UN, New York landlord whereby: (1) the Company made a one-time payment of \$0.3 million to the landlord for rent, commission on replacement lease, and attorneys fees; (2) the existing lease was terminated; (3) the Company allowed the landlord to contract with a third party replacement tenant; and (4) the Company and the landlord adjusted the remaining contingent lease term from eleven years to six years. Under the agreement, after the third anniversary, if the replacement tenant defaults on the new lease anytime during the remaining six years, the Company will be required to enter into a new agreement with the landlord for the remaining term. During the third quarter of fiscal 2007, the Company was notified that the replacement tenant was placed in default by the landlord. As a result, the Company may be required to resume lease payments in respect of this property as soon as the third quarter of fiscal 2008, which payments will total \$0.2 million in the aggregate per fiscal quarter through September 1, 2014. In the event that the Company becomes required to make these lease payments, it expects to sublease the property for the duration of the lease term in order to recover some or all of the amounts paid in respect of the lease. The Company may, however, be unable to find a sub-lessee for part or all of the remaining lease term. At December 30, 2007, the Company maintained a contingent lease liability of \$0.2 million related to this property.

Fiscal Year 2006 Compared to Fiscal Year 2005

Restaurant Sales. Restaurant sales increased \$55.1 million, or 27.6%, to \$254.7 million in fiscal 2006 from \$199.6 million in fiscal 2005. The increase was due to an additional \$16.5 million in sales from comparable restaurants, \$26.7 million in incremental sales from six new company-owned restaurants opened from September 2005 through December 2006 and the reopened Metairie, Louisiana, restaurant, as well as \$15.5 million contributed by the previously franchised restaurants acquired during 2006. All three of these categories received benefit from an additional week of operations during fiscal 2006 versus fiscal 2005. The additional week, in total, contributed restaurant sales of \$6.7 million. These increases were partially offset by the closing of the New Orleans, Louisiana, restaurant, due to Hurricane Katrina, which represented a net decrease in restaurant sales of \$3.6 million. Comparable restaurants open throughout both fiscal years on a comparable 52-week basis achieved a sales increase of 6.2%, consisting of 0.7% in entrée growth (traffic) and 5.5% in per entrée spending. The increase in per entrée spending was driven by a shift in sales mix as well as menu price increases of

[Table of Contents](#)

approximately 1.5% and 0.7% taken in January 2006 and August 2006. These factors increased the average per entrée spending to \$71.55 in fiscal 2006.

Franchise Income. Franchise income increased \$1.0 million, or 8.8%, to \$12.4 million in fiscal 2006 from \$11.4 million in fiscal 2005. The increase was due primarily to an \$8.5 million increase in franchisee-owned restaurant sales from those franchisee-owned restaurants open throughout both periods, representing a comparable franchisee-owned restaurants sales growth of 5.2%, as well as the full-year impact of four new franchisee-owned restaurants that opened during fiscal 2005 and seven new franchisee-owned restaurants that opened during fiscal 2006. These increases were partially offset by the acquisition of seven franchisee-owned restaurants by the Company and the closing of one franchise location during fiscal 2006.

Other Operating Income. Other operating income increased \$3.6 million, or 450.0% to \$4.4 million in fiscal 2006 from \$0.8 million in fiscal 2005. The increase is due to the recognition of gift card revenues of \$3.7 million in fiscal 2006, as a result of the Company entering into an agreement with an unrelated third party that assumed the unredeemed liability for gift cards that had not yet reached the statutory term for unclaimed property. As a result of the agreement, certain third-party claims on unredeemed gift cards for certain jurisdictions have been removed, thus allowing the company to recognize additional other income in 2006.

Food and Beverage Costs. Food and beverage costs increased \$20.2 million, or 32.7%, to \$82.0 million in fiscal 2006 from \$61.8 million in fiscal 2005. The increase was due to higher restaurant sales and higher food costs. As a percentage of restaurant sales, food and beverage costs increased to 32.2% in fiscal 2006 from 31.0% in fiscal 2005. This increase in food and beverage costs as a percentage of restaurant sales was primarily due to higher meat costs, primarily tenderloins, and was partially offset by lower dairy costs.

Restaurant Operating Expenses. Restaurant operating expenses increased \$22.5 million, or 24.7%, to \$113.7 million in fiscal 2006 from \$91.2 million in fiscal 2005. The increase was due to higher restaurant sales in fiscal 2006, increased hourly labor costs, staffing related to new restaurant openings, and increased utility costs. Restaurant operating expenses, as a percentage of restaurant sales, decreased to 44.7% in fiscal 2006 from 45.7% in fiscal 2005 as a result of leveraging certain fixed occupancy and labor costs, as well as, the extra week of operations in fiscal 2006.

Marketing and Advertising. Marketing and advertising expenses increased \$1.6 million, or 23.9%, to \$8.3 million in fiscal 2006 from \$6.7 million in fiscal 2005. Marketing and advertising expenses, as a percentage of total revenues, decreased slightly to 3.1% in fiscal 2006 from 3.2% in fiscal 2005.

General and Administrative Costs. General and administrative costs increased \$7.8 million, or 51.3%, to \$23.0 million in fiscal 2006 from \$15.2 million in fiscal 2005. General and administrative costs, as a percentage of total revenues, increased to 8.5% in fiscal 2006 from 7.2% in fiscal 2005. This increase was primarily due to the recruitment and hiring of several key management personnel and staff personnel in all functional areas in the later part of fiscal 2005 and the first half of 2006, the addition of certain public-company expenses, additional costs associated with initiating and maintaining operations at the Company's Heathrow headquarters and expenses for stock options granted under FAS 123R.

Depreciation and Amortization Expenses. Depreciation and amortization expense increased \$2.2 million, or 33.8%, to \$8.7 million in fiscal 2006 from \$6.5 million in fiscal 2005. The increase was primarily due to the addition of six new company-owned restaurants and seven acquired restaurants from the second quarter of 2005 through the fourth quarter of 2006 as well as investments at the Company's existing company-owned restaurants and corporate headquarters.

Pre-Opening Costs. Pre-opening costs increased \$0.4 million, or 25.0%, to \$2.0 million in fiscal 2006 from \$1.6 million in fiscal 2005. This increase was due to the opening of four new company-owned restaurants in fiscal 2006 versus three locations during fiscal 2005, as well as certain expenses associated with the acquisition of the seven previously franchised restaurants.

[Table of Contents](#)

Hurricane and Relocation costs, net of insurance proceeds. During the third quarter of fiscal 2005, the Company's corporate office building in Metairie, Louisiana was damaged by Hurricane Katrina and the Company subsequently relocated its corporate offices to Heathrow, Florida. The Company's restaurants in New Orleans and Metairie, Louisiana, also received damage from Hurricane Katrina. The New Orleans restaurant has not reopened and the Metairie restaurant reopened in December 2005. The Company had completed the construction and pre-opening activities for a new restaurant in Biloxi, Mississippi, which was also damaged by Hurricane Katrina. The Company incurred expenses related to these events of \$0.6 million and \$2.7 million during fiscal 2006 and fiscal 2005, respectively. These expenses include severance and relocation payments to employees and insurance deductibles for the two New Orleans, Louisiana area restaurants, severance payments and insurance deductibles and pre-opening costs associated with the Biloxi, Mississippi location, and temporary living and relocation costs related to the Company's relocation from Metairie, Louisiana to Heathrow, Florida.

Interest Expense. Interest expense, net of interest income, decreased \$5.6 million, or 65.9%, to \$2.9 million in fiscal 2006 from \$8.5 million in fiscal 2005. This decrease was primarily due to the repayment of debt in connection with the Company's initial public offering in August 2005, offset by additional borrowings related to the franchise acquisitions.

Accrued Dividends and Accretion on Mandatorily Redeemable Senior Preferred Stock. Dividends and accretion of issuance discount on Senior Preferred Stock are reflected as accrued dividends and accretion on mandatorily redeemable senior preferred stock in the Company's consolidated financial statements subsequent to the June 30, 2003 implementation date of SFAS No. 150. The Company used a portion of the proceeds from its initial public offering on August 8, 2005 to redeem all of its outstanding Senior Preferred Stock.

Income Tax Expense. Income tax expense increased \$5.1 million, or 102.0%, to \$10.1 million in fiscal 2006 from \$5.0 million in fiscal 2005. This increase was due to a higher income from continuing operations before tax partially offset by a decrease in the annual effective tax rate due in part to tax credits received in fiscal 2006.

Income from Continuing Operations. Income from continuing operations increased \$12.9 million, or 119.4%, to \$23.7 million in fiscal 2006 from \$10.8 million fiscal 2005.

Discontinued Operations, net of Income Tax Benefit. Discontinued operations provided \$66,000 in fiscal 2006 compared to \$164,000 in fiscal 2005. On June 25, 2006 the company closed its Cleveland, Ohio restaurant whose lease term ended September 2006. The Company determined that the closed restaurant should be accounted for as discontinued operations because the Company does not expect any further direct or indirect cash inflows from the restaurant as it has completely ceased operation. The Company recognized a \$221,000 loss on impairment related to this location during fiscal year 2005.

On December 24, 2004, the Company closed its Manhattan-UN, New York restaurant operation, one of its two Ruth's Chris Steak House locations in Manhattan, New York. Prior to and including 2004, the Company experienced operating losses at its Manhattan-UN, New York restaurant location, which leased the property on which it operated. During August 2005, the Company entered into an agreement with the Manhattan (UN), New York landlord whereby: (1) the Company made a one-time payment of \$0.3 million to the landlord for rent, commission on a replacement lease, and attorneys fees; (2) the existing lease was terminated; (3) the Company allowed the landlord to contract with a third party replacement tenant; and (4) adjusted the remaining contingent lease term from eleven years to six years. Under the agreement, after the third anniversary, if the replacement tenant defaults on the new lease anytime during the remaining six years, the Company will be required to enter into a new agreement with landlord for the remaining term. This agreement resulted in a reduction of previously recorded rental liability reflecting the recovery.

Potential Fluctuations in Quarterly Results and Seasonality

The Company's quarterly operating results may fluctuate significantly as a result of a variety of factors. See "Risk Factors," which discloses certain material risks that could affect its quarterly operating results.

The Company's business is also subject to seasonal fluctuations. Historically, the percentages of its annual total revenues during the first and fourth fiscal quarters have been higher due, in part, to the year-end holiday season. Accordingly, results for any one quarter are not necessarily indicative of results to be expected for any other quarter or for any year, and comparable restaurant sales for any particular period may decrease. In the future, operating results may fall below the expectations of securities analysts and investors. If this occurs, the price of the Company's common stock would likely decrease. The following table presents summary quarterly results of operations for fiscal 2006 and fiscal 2007.

| | Quarter Ended | | | | Quarter Ended | | | |
|---|---|------------------|-----------------------|----------------------|------------------|-----------------|-----------------------|----------------------|
| | March 26, 2006 | June 25, 2006 | September 24, 2006 | December 31, 2006 | April 1, 2007 | July 1, 2007 | September 30, 2007 | December 30, 2007 |
| | (\$ in millions, except per share data) | | | | | | | |
| Total revenues | \$ 64.7 | \$ 60.6 | \$ 58.2 | \$ 88.0 | \$ 81.5 | \$ 78.5 | \$ 70.1 | \$ 89.0 |
| Cost and expenses | 55.7 | 53.8 | 56.1 | 78.4 | 70.6 | 69.4 | 66.3 | 80.8 |
| Operating income | \$ 9.0 | \$ 6.7 | \$ 2.1 | \$ 9.7 | \$ 10.9 | \$ 9.1 | \$ 3.8 | \$ 8.2 |
| Interest expense, net | (0.5) | (0.5) | (0.7) | (1.2) | (1.0) | (1.2) | (1.5) | (2.3) |
| Insurance proceeds, net | — | 0.8 | 2.0 | 6.4 | — | — | — | — |
| Other | — | — | — | 0.0 | — | — | — | — |
| Income from continuing operations before income tax | 8.5 | 7.1 | 3.3 | 14.8 | 9.9 | 7.9 | 2.3 | 5.9 |
| Income tax expense | 2.6 | 2.2 | 1.1 | 4.2 | 3.2 | 2.7 | 0.9 | 1.9 |
| Income from continuing operations | 5.9 | 4.9 | 2.3 | 10.6 | 6.7 | 5.2 | 1.4 | 4.1 |
| Discontinued operations, net of income tax benefit | — | — | — | (0.1) | — | — | — | (0.0) |
| Net income | \$ 5.9 | \$ 4.9 | \$ 2.3 | \$ 10.7 | \$ 6.7 | \$ 5.2 | \$ 1.4 | \$ 4.1 |
| Less dividends earned on junior preferred stock and warrant expense | — | — | — | — | — | — | — | — |
| Net Income (loss) available to common shareholders | \$ 5.9 | \$ 4.9 | \$ 2.3 | \$ 10.7 | \$ 6.7 | \$ 5.2 | \$ 1.4 | \$ 4.1 |
| Basic earnings (loss) per share: | | | | | | | | |
| Continuing operations | \$ 0.26 | \$ 0.21 | \$ 0.10 | \$ 0.45 | \$ 0.29 | \$ 0.23 | \$ 0.08 | \$ 0.18 |
| Discontinued operations | — | — | — | 0.01 | — | — | — | — |
| Basic earnings (loss) per share | \$ 0.26 | \$ 0.21 | \$ 0.10 | \$ 0.46 | \$ 0.29 | \$ 0.23 | \$ 0.08 | \$ 0.18 |
| Diluted earnings (loss) per share: | | | | | | | | |
| Continuing operations | \$ 0.25 | \$ 0.21 | \$ 0.10 | \$ 0.45 | \$ 0.29 | \$ 0.23 | \$ 0.08 | \$ 0.18 |
| Discontinued operations | — | — | — | 0.01 | — | — | — | — |
| Diluted earnings (loss) per share | \$ 0.25 | \$ 0.21 | \$ 0.10 | \$ 0.46 | \$ 0.29 | \$ 0.23 | \$ 0.08 | \$ 0.18 |
| Shares (in millions) used in computing net income per common share: | | | | | | | | |
| Basic | 23.1 | 23.2 | 23.2 | 23.2 | 23.2 | 23.2 | 23.2 | 23.2 |
| Diluted | 23.5 | 23.5 | 23.4 | 23.4 | 23.4 | 23.4 | 23.4 | 23.4 |
| Quarterly percentage of annual revenues | 23.8% | 22.3% | 21.4% | 32.4% | 25.5% | 24.6% | 22.8% | 27.9% |
| Operating margin (1) | 13.9% | 11.1% | 3.5% | 11.0% | 13.4% | 11.6% | 5.5% | 9.3% |

(1) The Company's measure of operating margin consists of operating income for a period divided by the total revenues for such period. Operating margin is used by the Company's management and investors to determine its ability to control expenses in relation to its total revenues, which allows its management and investors to more thoroughly evaluate its current performance as compared to past performance. The Company believes it is useful to its management and investors when presented on a quarterly basis because it allows the Company's management and investors to accurately view seasonal fluctuations in these operating results.

[Table of Contents](#)

During the fiscal quarters ended June 25, 2006, September 24, 2006, December 31, 2006 and April 1, 2007, the Company received \$0.4 million, \$1.0 million, \$3.2 million and \$3.7 million, respectively, in net insurance proceeds associated with property damage recoveries and business interruption claims from Hurricane Katrina.

During the fiscal quarter ended December 31, 2006, the Company recorded a loss on impairment of long-lived assets in the amount of \$1.0 million. These charges were related to the partial impairment of fixtures and equipment and leasehold improvements at one company-owned restaurant. Additionally, this quarter included an additional week of operations as well as total revenue benefited from gift card breakage above normal trends.

Liquidity and Capital Resources

The Company's principal sources of cash during fiscal 2007 were net cash provided by operating activities and borrowings under its senior credit facilities. The Company's principal uses of cash during fiscal 2007 include capital expenditures, franchise acquisitions and debt service. The Company expects that its principal uses of cash in the future will be to continue to finance capital expenditures and to service debt.

Cash Flows

The following table summarizes the Company's primary sources of cash in the periods presented:

| | Fiscal Year | | |
|--|-----------------|-------------------|-----------------|
| | 2005 | 2006 | 2007 |
| Net cash provided by (used in): | | | |
| Operating activities | \$ 29,617 | \$ 47,668 | \$ 34,772 |
| Investing activities | (17,519) | (84,218) | (56,082) |
| Financing activities | (7,019) | 32,255 | 28,931 |
| Net increase (decrease) in cash and cash equivalents | <u>\$ 5,079</u> | <u>\$ (4,295)</u> | <u>\$ 7,621</u> |

The Company's operations have not required significant working capital and, like many restaurant companies, it has been able to operate with negative working capital. Restaurant sales are primarily for cash or by credit card, and restaurant operations do not require significant inventories or receivables. In addition, the Company receives trade credit for the purchase of food, beverage and supplies, thereby reducing the need for incremental working capital to support growth.

Operating Activities. Net cash provided by operating activities was \$29.6 million and \$47.7 million in fiscal 2005 and fiscal 2006, respectively, compared to \$34.8 million in fiscal 2007. The decrease in net cash from fiscal 2006 was the result of decreased net income partially offset by an increase in accounts payable.

Investing Activities. Net cash used in investing activities was \$17.5 million and \$84.2 million in fiscal 2005 and fiscal 2006, respectively, compared to \$56.1 million in fiscal 2007. The decrease resulted primarily from the acquisition of seven previously franchisee-owned restaurants in fiscal 2006 versus three in fiscal 2007.

Financing Activities. Net cash used by financing activities totaled \$7.0 million in fiscal 2005 compared to net cash provided of \$32.3 million and \$28.9 million in fiscal 2006 and fiscal 2007 respectively. The decrease was driven by reduced net borrowings made during fiscal 2007 used primarily for acquisitions during the year.

Capital Expenditures

Capital expenditures and other acquisitions totaled \$56.2 million in fiscal 2007, \$87.6 million in fiscal 2006 and \$19.6 million in fiscal 2005. Capital expenditures in fiscal 2007 resulted from approximately \$31.8 million related to new restaurant construction, \$12.7 million for the purchase of three previously franchise-owned restaurants (excluding inventory), \$5.1 million for remodels, \$0.6 million for purchase of a millwork company and existing work in process inventory at year end, and maintenance capital and technology expenditures of existing operations of \$6.0 million.

[Table of Contents](#)

The Company anticipates capital expenditures in the future will increase to the extent it opens new company-owned restaurants and opportunistically acquires franchisee-owned restaurants and related rights. See Note (9) in the Notes to Consolidated Financial Statements regarding the completed franchise acquisition in fiscal 2006 and fiscal 2007. The Company currently expects to open six company-owned restaurants in fiscal 2008. The Company believes that its net investment in future openings will range between \$2.5 million and \$4.5 million depending upon underlying individual restaurant economics and the Company's ability to use its resources to obtain its fully-capitalized return-on-investment targets. These capital expenditures will primarily be funded by cash flows from operations and, if necessary, by the use of its revolving credit facility, depending upon the timing of expenditures.

On November 6, 2007, the Company announced that it has signed a definitive asset purchase agreement to acquire all of the operating assets and intellectual property of Columbus, Ohio based Mitchell's Fish Market, operating under the names Mitchell's Fish Market and Columbus Fish Market, and Cameron's Steakhouse, operating under the names Cameron's Steakhouse and Mitchell's Steakhouse from Cameron Mitchell Restaurants, LLC (CMR) for approximately \$92.0 million. The acquisition was funded using the Company's credit facility and was completed on February 19, 2008.

Senior Credit Facility

On September 27, 2005, the Company entered into a senior credit facility with Wells Fargo Bank, National Association, as administrative agent, Bank of America, N.A., as documentation agent, and JPMorgan Chase Bank, National Association, Wells Fargo Bank, National Association as co-lead arrangers and Wachovia Bank, N.A. The Company used the \$38.5 million funded at closing under the Credit Agreement to prepay and retire borrowings under its previous credit facility and to pay related fees and expenses.

On May 17, 2006, the Company completed an amendment to its existing senior revolving credit facility to increase its availability under the facility to \$100.0 million. This amendment also provides that the revolving credit facility may be further increased by \$25.0 million upon the Company's request (for a total commitment of \$125.0 million). The financial covenants, restrictive covenants and terms of the increased revolving credit facility were not amended.

On August 7, 2007, the Company completed a second amendment to its senior credit facility to increase its availability under the facility to \$150.0 million. The Company's ability to request additional funding through the revolving credit facility also increased with this amendment to \$50.0 million, for a total potential borrowing of \$200.0 million. The amendment also provided that \$50.0 million in proceeds may be utilized to repurchase the Company's common stock, extended the maturity date of the outstanding principal from March 11, 2010 to August 7, 2012, and changed the maximum Consolidated Leverage Ratio in the financial covenants to 3.25:1.00. All other financial covenants, restrictive covenants and terms of the increased revolving credit facility remained unchanged.

On September 13, 2007, the Company entered into a three year interest rate swap to limit the variability of its interest payments. The notional amounts total \$75.0 million through September 17, 2008, \$50.0 million through September 17, 2009 and \$25.0 million through its expiration on September 17, 2010 of the then outstanding debt under its senior credit facility. Previously, the Company had two interest rate swaps in place that were terminated as a result of this new transaction. The Company does not use hedge accounting to account for this swap. The changes in the fair value of the interest rate swap contracts were recorded to interest expense.

As of December 30, 2007, the Company had an aggregate of \$96.8 million of outstanding indebtedness under its senior credit facility at a weighted average interest rate of 6.074%. The Company had approximately \$50.2 million of borrowings available under its revolving credit facility, net of outstanding letters of credit of approximately \$3.0 million. The Company may, at its option, increase the amount available under its revolving credit facility by an additional \$50.0 million. The Company is required to maintain certain financial covenants and is also subject to restrictive covenants under its borrowings. The Company was in compliance with all such

[Table of Contents](#)

covenants at December 30, 2007. The Company's obligations under the senior credit facility are guaranteed by each of its existing and future subsidiaries and are secured by substantially all of its assets and a pledge of the capital stock of its subsidiaries.

On February 19, 2008, the Company amended and restated its existing credit facility to increase the revolving loan commitment to \$250.0 million. The amended and restated credit facility continues to provide for an increase in the revolving loan commitment by an additional \$50.0 million at the Company's request (for a total commitment \$300.0 million), extends the maturity date of the outstanding principal from March 11, 2010 to February 19, 2013, and changes the maximum Consolidated Leverage Ratio in the financial covenants to 3.50:1.00. The Company used the increased borrowing capacity to fund the acquisition, and plans to use the remaining borrowing capacity to fund working capital needs, expansion and potential future acquisitions.

Contractual Obligations

The following table summarizes the Company's contractual obligations as of December 30, 2007:

| | Payments due by period | | | | |
|-----------------------------|------------------------|---------------------|-------------------------------|----------------|----------------------|
| | Total | Less than 1 year | 1-2 years (in millions) | 3-5 years | More than 5 years |
| Long-term debt obligations | \$ 96.8 | \$ — | \$ — | \$ 96.8 | \$ — |
| Operating lease obligations | 117.8 | 12.6 | 12.4 | 35.8 | 57.0 |
| Total | <u>\$214.6</u> | <u>\$ 12.6</u> | <u>\$12.4</u> | <u>\$132.6</u> | <u>\$ 57.0</u> |

Off-Balance Sheet Arrangements

As of December 30, 2007, the Company does not have any off-balance sheet arrangements as defined by the SEC in Section 13(j) of the Securities Exchange Act of 1934.

Critical Accounting Policies and Estimates

The Company's discussion and analysis of results of operations and financial condition are based upon its audited consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these financial statements is based, in part, on its critical accounting policies that require the Company to make estimates and judgments that affect the amounts reported in those financial statements. The Company's significant accounting policies, which may be affected by its estimates and assumptions, are more fully described in Note 2 to its consolidated financial statements that appear elsewhere in Item 8. Critical accounting policies are those that the Company believes are most important to portraying its financial condition and results of operations and also require the greatest amount of subjective or complex judgments by management. Judgments or uncertainties regarding the application of these policies may result in materially different amounts being reported under different conditions or using different assumptions. The Company considers the following policies to be the most critical in understanding the judgments that are involved in preparing the combined financial statements.

Equipment and Leasehold Improvements

Equipment and leasehold improvements are stated at cost less accumulated depreciation and amortization. Equipment consists primarily of restaurant equipment, furniture, fixtures and smallwares. Depreciation is generally calculated using the straight-line method over the estimated useful lives of the related assets. Leasehold improvements are amortized using the straight-line method over the shorter of the lease term, including renewal periods, or the estimated useful life of the asset. Repairs and maintenance are expensed as incurred; renewals and betterments are capitalized. Estimated useful lives are generally as follows: equipment—3 to 5 years; furniture and fixtures—5 to 7 years. Judgments and estimates made by us related to the expected useful lives of these

[Table of Contents](#)

assets are affected by factors such as changes in economic conditions and changes in operating performance. If these assumptions change in the future, the Company may be required to record impairment charges for these assets.

Impairment of Long-Lived Assets

The Company reviews property and equipment (which includes leasehold improvements) for impairment when events or circumstances indicate these assets might be impaired. The Company tests impairment using historical cash flow and other relevant facts and circumstances as the primary basis for the Company's estimates of future cash flows. The analysis is performed at the restaurant level for indicators of permanent impairment. In determining future cash flows, significant estimates are made by the Company with respect to future operating results of each restaurant over its remaining lease term. If assets are determined to be impaired, the impairment charge is measured by calculating the amount by which the asset-carrying amount exceeds its fair value. The determination of asset fair value is also subject to significant judgment. This process requires the use of estimates and assumptions, which are subject to a high degree of judgment. If these assumptions change in the future, the Company may be required to record impairment charges for these assets.

During fiscal 2005 and fiscal 2006 the Company recorded losses on impairment of long-lived assets in the amounts of \$0.2 million and \$1.0 million, respectively. These charges related to the partial impairment of fixtures, equipment and leasehold improvements at two company-owned restaurants, one that closed in 2006 and is included in discontinued operations, and one that is still in operation. There were no impairment charges during fiscal 2007.

Goodwill and Other Intangible Assets

Goodwill and other indefinite lived assets resulted primarily from the Company's acquisition of franchisee-owned restaurants. The most significant acquisitions were completed in 1996, 1999, 2006 and 2007. Goodwill and franchise rights with indefinite lives are not subject to amortization. However, such assets must be tested for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable and at least annually. The Company completed the most recent impairment test in December 2007, and determined that there were no impairment losses related to goodwill and other indefinite lived assets. In assessing the recoverability of goodwill and other indefinite lived assets, market values and projections regarding estimated future cash flows and other factors are used to determine the fair value of the respective assets. The estimated future cash flows were projected using significant assumptions, including future revenues and expenses. If these estimates or related projections change in the future, the Company may be required to record impairment charges for these assets.

Insurance Liability

The Company maintains various insurance policies for workers' compensation, employee health, general liability, and property damage. Pursuant to those policies, the Company is responsible for losses up to certain limits and is required to estimate a liability that represents the Company's ultimate exposure for aggregate losses below those limits. This liability is based on management's estimates of the ultimate costs to be incurred to settle known claims and claims not reported as of the balance sheet date. The Company's estimated liability is not discounted and is based on a number of assumptions and factors, including historical trends, actuarial assumptions, and economic conditions. If actual trends differ from the Company's estimates, the Company's financial results could be impacted.

Income Taxes

The Company accounts for income taxes in accordance with Statement of Financial Accounting Standards ("SFAS") No. 109, Accounting for Income Taxes. This Statement establishes financial accounting and reporting standards for the effects of income taxes that result from an enterprise's activities during the current and

preceding years. It requires an asset and liability approach for financial accounting and reporting of income taxes. The Company recognizes deferred tax liabilities and assets for the future consequences of events that have been recognized in its consolidated financial statements or tax returns. In the event the future consequences of differences between financial reporting bases and tax bases of the Company's assets and liabilities resulted in a net deferred tax asset, an evaluation is made of the probability of the Company's ability to realize the future benefits indicated by such asset. A valuation allowance related to a deferred tax asset is recorded when it is more likely than not that some portion or all of the deferred tax asset will not be realized. The realization of such net deferred tax will generally depend on whether the Company will have sufficient taxable income of an appropriate character within the carry-forward period permitted by the tax law. Without sufficient taxable income to offset the deductible amounts and carry forwards, the related tax benefits will expire unused. The Company has evaluated both positive and negative evidence in making a determination as to whether it is more likely than not that all or some portion of the deferred tax asset will not be realized. Measurement of deferred items is based on enacted tax laws.

Share-Based Compensation

FAS 123R requires the recognition of compensation expense in the Consolidated Statements of Income related to the fair value of employee share-based options. Determining the fair value of share-based awards at the grant date requires judgment, including estimating the expected term that stock options will be outstanding prior to exercise and the expected dividends. Judgment is also required in estimating the amount of share-based awards expected to be forfeited prior to vesting. If actual forfeitures differ significantly from these estimates, share-based compensation expense could be materially impacted. Prior to adopting FAS 123, the Company applied APB Opinion No. 25, and related Interpretations, in accounting for its stock-based compensation plans. All employee stock options were granted at or above the grant date market price. Accordingly, no compensation cost was recognized for fixed stock option grants in 2005.

Prior to the adoption of FAS 123R, the Company presented the tax savings resulting from tax deductions resulting from the exercise of stock options as an operating cash flow, in accordance with Emerging Issues Task Force ("EITF") Issue No. 00-15, "Classification in the Statement of Cash Flows of the Income Tax Benefit Received by a Company upon Exercise of a Nonqualified Employee Stock Option." FAS 123R requires the Company to reflect the tax savings resulting from tax deductions in excess of expense reflected in its financial statements as a financing cash flow related to certain stock option transactions.

Recent Accounting Pronouncements For Future Application

In September 2006, the FASB issued SFAS 157, *Fair Value Measurement*. ("SFAS 157") clarifies the definition of fair value, describes methods used to appropriately measure fair value, and expands fair value disclosure requirements. This statement applies under other accounting pronouncements that currently require or permit fair value measurements and is effective for fiscal years beginning after November 15, 2007. The Company is currently evaluating the impact that SFAS 157 will have on the consolidated financial statements and expects the adoption of this standard will not have a material impact on its consolidated balance sheet, statements of income or cash flows.

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities* ("SFAS 159"). SFAS 159 permits entities to choose to measure many financial assets and financial liabilities at fair value. Unrealized gains and losses on items for which the fair value option has been elected are reported in earnings. The provisions of SFAS 159 are effective for fiscal years beginning after November 15, 2007. The Company is currently evaluating the impact that SFAS 159 will have on the consolidated financial statements and expects the adoption of this standard will not have a material impact on its consolidated balance sheet, statements of income or cash flows.

[Table of Contents](#)

Other accounting standards that have been issued by the FASB or other standards-setting bodies that do not require adoption until a future date are not expected to have a material impact on the consolidated financial statements upon adoption.

Item 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Interest Rate Risk

The Company is exposed to market risk from fluctuations in interest rates. For fixed rate debt, interest rate changes affect the fair market value of such debt but do not impact earnings or cash flows. Conversely for variable rate debt, including borrowings under the Company's senior credit facility, interest rate changes generally do not affect the fair market value of such debt, but do impact future earnings and cash flows, assuming other factors are held constant. At December 30, 2007, the Company had \$96.8 million of variable rate debt of which \$75.0 million has been converted to fixed rates through the use of interest rate swaps. Holding other variables constant (such as foreign exchange rates and debt levels), a hypothetical immediate one percentage point change in interest rates would be expected to have an impact on pre-tax earnings and cash flows for fiscal 2007 of approximately \$0.2 million.

The Company has an interest rate swap to manage its exposure on its debt facility. By using the interest rate swap to hedge exposures to changes in interest rates, the Company exposes itself to credit risk and market risk. Credit risk is the failure of the counterparty to perform under the terms of the derivative contract. When the fair value of a derivative contract is positive, the counterparty owes the Company, which creates credit risk for the Company. When the fair value of a derivative contract is negative, the Company owes the counterparty and, therefore, it does not possess credit risk.

Market risk is the adverse effect on the value of a financial instrument that results from a change in interest rates. The market risk associated with interest-rate contracts is managed by establishing and monitoring parameters that limit the types and degree of market risk that may be undertaken.

During fiscal 2007, interest expense included a \$1.2 million "mark to market" non-cash charge related to an interest rate swap.

Foreign Currency Risk

In accordance with the Company's franchise agreements relating to the Company's international locations, the Company receives royalties from those franchisees in U.S. dollars, and therefore the Company believes that fluctuations in foreign exchange rates do not present a material risk to its operations.

Commodity Price Risk

The Company is exposed to market price fluctuations in beef and other food product prices. Given the historical volatility of beef and other food product prices, this exposure can impact the Company's food and beverage costs. Because the Company typically sets its menu prices in advance of its beef and other food product purchases, the Company cannot quickly take into account changing costs of beef and other food items. To the extent that the Company is unable to pass the increased costs on to its guests through price increases, the Company's results of operations would be adversely affected. The Company currently does not use financial instruments to hedge its risk to market price fluctuations in beef or other food product prices.

Effects of Inflation

Components of the Company's operations subject to inflation include food, beverage, lease and labor costs. The Company's leases require it to pay taxes, maintenance, repairs, insurance and utilities, all of which are subject to inflationary increases. The Company believes inflation has not had a material impact on its results of operations in recent years.

Item 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The Company's consolidated financial statements, together with the related notes and report of independent registered accounting firm, are set forth in the pages indicated in Item 15 of this Annual Report on Form 10-K.

Item 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

Item 9A. CONTROLS AND PROCEDURES

Evaluation of disclosure controls and procedures

Under the supervision and with the participation of the Company's management, including the Chief Executive Officer and the Chief Financial Officer, the Company conducted an evaluation of the effectiveness of the design and operation of its disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934), as of December 30, 2007. Based on that evaluation, the Chief Executive Officer and the Chief Financial Officer concluded that the Company's disclosure controls and procedures were effective as of December 30, 2007 to ensure that information required to be disclosed in reports filed or submitted by the Company under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that information required to be disclosed by the Company is accumulated and communicated to the Company's management to allow timely decisions regarding the required disclosure.

Change in internal controls over financial reporting

During the fiscal year ending December 30, 2007, there was no change in the Company's internal control over financial reporting (as defined in Rule 13a-15(f) under the Securities Exchange Act of 1934) that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

Management's Report on Internal Control Over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rule 13a-15(f) under the Securities Exchange Act of 1934).

Management, including the Chief Executive Officer and Chief Financial Officer, assessed the effectiveness of the Company's internal control over financial reporting as of December 30, 2007. In making this assessment, management applied the criteria based on the "Internal Control – Integrated Framework" set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's assessment included documenting, evaluating, and testing the design and operating effectiveness of the Company's internal control over financial reporting. Based upon this evaluation, management concluded that the Company's internal control over financial reporting was effective as of December 30, 2007.

KPMG LLP, the Company's independent registered public accounting firm, has issued an audit report on the Company's internal control over financial reporting as of December 30, 2007, which follows.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders
Ruth's Chris Steak House, Inc.:

We have audited Ruth's Chris Steak House, Inc.'s internal control over financial reporting as of December 30, 2007, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Ruth's Chris Steak House, Inc.'s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying *Management's Report on Internal Control Over Financial Reporting*. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, Ruth's Chris Steak House, Inc. maintained, in all material respects, effective internal control over financial reporting as of December 30, 2007, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Ruth's Chris Steak House, Inc. and subsidiaries as of December 31, 2006 and December 30, 2007, and the related consolidated statements of income, shareholders' equity (deficit), and cash flows for the fifty-two weeks ended December 25, 2005, fifty-three weeks ended December 31, 2006, and fifty-two weeks ended December 30, 2007, and our report dated March 11, 2008 expressed an unqualified opinion on those consolidated financial statements.

/s/ KPMG LLP

Orlando, Florida
March 11, 2008
Certified Public Accountants

Item 9B. Other Information

None.

PART III

Item 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Information required by this Item for executive officers is set forth under “Executive Officers of the Registrant” in Part I, Item 1 of this report. The other information required by this Item is incorporated by reference to the sections entitled “Election of Directors,” “Executive Officers,” “Audit Committee Disclosure,” “Board of Directors and Corporate Governance” and “Section 16A Beneficial Ownership Reporting Compliance” in the Company’s Proxy Statement for the 2008 Annual Meeting of Stockholders.

There have been no material changes to the procedures through which stockholders may recommend nominees to our Board of Directors since April 16, 2007, which is the date of our last proxy statement. We have adopted a Code of Ethics that applies to our principal executive officer, principal financial officer and principal accounting officer. The text of our Code of Ethics is posted on our website: www.ruthschris.com—click on “Investors”, then click on “Corporate Governance” and then click on “Code of Ethics.” Our Company intends to disclose future amendments to, or waivers from, certain provisions of the Code of Ethics on the Company’s website within four business days following the date of such amendment or waiver. Stockholders may request a free copy of the Code of Ethics from: Ruth’s Chris Steak House, Inc., Attention: Corporate Secretary, 500 International Parkway, Suite 100, Heathrow, Florida 32746.

Item 11. EXECUTIVE COMPENSATION

The information required by this Item is incorporated by reference to the sections entitled “Executive Compensation,” “Director Compensation” and “Compensation Committee Interlocks and Insider Participation” in the Company’s Proxy Statement for the 2008 Annual Meeting of Stockholders. See also the information under the caption “Compensation Committee Report” in the Proxy Statement for the 2008 Annual Meeting of Stockholders, which is incorporated herein by reference; however, such information is only “furnished” hereunder and not deemed “soliciting material” or “filed” with the SEC or subject to Regulation 14A or 14C or to the liabilities of Section 18 of the Securities Exchange Act of 1934.

Item 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information required by this Item is incorporated by reference to the sections entitled “Principal Stockholders” and “Equity Compensation Plan Information” in the Company’s Proxy Statement for the 2008 Annual Meeting of Stockholders.

[Table of Contents](#)

Options to purchase shares of our common stock have been granted to certain of our directors, executives and key employees under our 2005 Long-Term Equity Incentive Plan and our 2000 Stock Option Plan. The following table summarizes the number of stock options issued and shares of restricted stock granted, net of forfeitures and sales, the weighted-average exercise price of such stock options and the number of securities remaining to be issued under all outstanding equity compensation plans as of December 30, 2007:

| <u>Plan Category</u> | <u>Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights</u> (a) | <u>Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights</u> (b) | <u>Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plan (Excluding Securities Reflected in Column (a))</u> (c) |
|--|---|---|--|
| Equity compensation plans approved by stockholders: | | | |
| 2000 Stock Option Plan | 284,619 | \$ 0.48 | 613,940 |
| 2004 Restricted Stock Plan(1) | 1,167,487 | — | — |
| 2005 Long-Term Equity Incentive Plan | 1,281,310 | \$ 18.24 | 1,073,695 |
| Equity compensation plans not approved by stockholders | — | — | — |
| Total | <u>2,448,797</u> | <u>\$ 15.09</u> | <u>1,687,635</u> |

(1) 1,167,487 shares of restricted stock were issued under our 2004 Restricted Stock Plan and vest pro rata on a daily basis over a five year period which began on November 8, 2004

Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information required by this Item is incorporated by reference to the sections entitled “Certain Relationships and Related Transactions” and “Director Independence” in the Company’s Proxy Statement for the 2008 Annual Meeting of Stockholders.

Item 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required by this Item is incorporated by reference to the sections entitled “Principal Accountant Fees and Services” in its Proxy Statement for the 2008 Annual Meeting of Stockholders.

PART IV

Item 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) Financial Statements and Financial Statement Schedules.

See Index to Consolidated Financial Statements appearing on page F-1. All schedules have been omitted because they are not required or applicable or the information is included in the consolidated financial statements or notes thereto.

(b) Exhibits.

See Exhibit Index appearing on page E-1 for a list of exhibits filed with or incorporated by reference as part of this Annual Report on Form 10-K.

[Table of Contents](#)

RUTH'S CHRIS STEAK HOUSE, INC. AND SUBSIDIARIES
INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

| | <u>Page</u> |
|---|-------------|
| Report of Independent Registered Public Accounting Firm | F-2 |
| Consolidated Balance Sheets | F-3 |
| Consolidated Statements of Income | F-4 |
| Consolidated Statements of Shareholders' Equity (Deficit) | F-5 |
| Consolidated Statements of Cash Flows | F-6 |
| Notes to Consolidated Financial Statements | F-7 |

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders
Ruth's Chris Steak House, Inc.:

We have audited the accompanying consolidated balance sheets of Ruth's Chris Steak House, Inc. and subsidiaries as of December 31, 2006 and December 30, 2007, and the related consolidated statements of income, shareholders' equity (deficit) and cash flows for the fifty-two weeks ended December 25, 2005, fifty-three weeks ended December 31, 2006, and fifty-two weeks ended December 30, 2007. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Ruth's Chris Steak House, Inc. and subsidiaries as of December 31, 2006 and December 30, 2007, and the results of their operations and their cash flows for the fifty-two weeks ended December 25, 2005, fifty-three weeks ended December 31, 2006, and fifty-two weeks ended December 30, 2007, in conformity with U.S. generally accepted accounting principles.

As discussed in the Notes to the consolidated financial statements, the Company adopted the provisions of Statement of Financial Accounting Standard No. 123(R), *Share-Based Payment*, in fiscal year 2006. The Company adopted the provisions of Financial Accounting Standards Board Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*, in fiscal year 2007.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Ruth's Chris Steak House, Inc.'s internal control over financial reporting as of December 30, 2007, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated March 11, 2008 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

/s/ KPMG LLP

Orlando, Florida
March 11, 2008
Certified Public Accountants

RUTH'S CHRIS STEAK HOUSE, INC. AND SUBSIDIARIES
Consolidated Balance Sheets
(dollar amounts in thousands, except share and per share data)

| | December 31, 2006 | December 30, 2007 |
|--|----------------------|----------------------|
| Assets | | |
| Current assets: | | |
| Cash and cash equivalents | \$ 4,690 | \$ 12,311 |
| Accounts receivable, net | 11,120 | 11,825 |
| Inventory | 6,453 | 8,626 |
| Prepaid expenses and other | 3,184 | 2,803 |
| Deferred income taxes | 906 | 874 |
| Total current assets | 26,353 | 36,439 |
| Property and equipment, net | 105,092 | 135,615 |
| Goodwill and franchise rights | 65,156 | 75,877 |
| Other intangible assets, net of accumulated amortization of 2006: \$131, 2007: \$271 | 2,032 | 2,568 |
| Deferred income taxes | 8,987 | 6,110 |
| Other assets | 2,100 | 3,669 |
| Total assets | <u>\$ 209,720</u> | <u>\$ 260,278</u> |
| Liabilities and Shareholders' Equity | | |
| Current liabilities: | | |
| Accounts payable and accrued expenses | \$ 33,188 | \$ 28,868 |
| Deferred revenue | 24,676 | 27,686 |
| Other current liabilities | 1,440 | 1,445 |
| Total current liabilities | 59,304 | 57,999 |
| Long-term debt | 68,000 | 96,750 |
| Deferred rent | 14,007 | 16,245 |
| Other liabilities | 431 | 1,217 |
| Total liabilities | <u>141,742</u> | <u>172,211</u> |
| Commitments and contingencies (Note 12) | | |
| Shareholders' equity (deficit): | | |
| Common stock, par value \$.01 per share; 100,000,000 shares authorized, 23,215,356 shares issued and outstanding at December 30, 2007, 23,237,630 shares issued and outstanding at December 31, 2006 | 232 | 233 |
| Class B common stock, par value \$.01 per share; 1,000,000 shares authorized, no shares issued and outstanding | — | — |
| Additional paid-in capital | 166,489 | 168,431 |
| Accumulated deficit | (98,743) | (80,597) |
| Treasury stock, at cost; no shares at December 31, 2006, 71,950 shares at December 30, 2007 | — | — |
| Total shareholders' equity | 67,978 | 88,067 |
| Total liabilities and shareholders' equity | <u>\$ 209,720</u> | <u>\$ 260,278</u> |

See accompanying notes to consolidated financial statements.

RUTH'S CHRIS STEAK HOUSE, INC. AND SUBSIDIARIES
Consolidated Statements of Income
(dollar amounts in thousands, except share and per share data)

| | Fiscal Year Ended | | |
|---|----------------------|----------------------|----------------------|
| | December 25, 2005 | December 31, 2006 | December 30, 2007 |
| Revenues: | | | |
| Restaurant sales | \$ 199,621 | \$ 254,718 | \$ 303,658 |
| Franchise income | 11,432 | 12,399 | 12,896 |
| Other operating income | 777 | 4,362 | 2,617 |
| Total revenues | <u>211,830</u> | <u>271,479</u> | <u>319,171</u> |
| Costs and expenses: | | | |
| Food and beverage costs | 61,804 | 82,016 | 97,432 |
| Restaurant operating expenses | 91,155 | 113,746 | 141,477 |
| Marketing and advertising | 6,696 | 8,328 | 8,447 |
| General and administrative costs | 15,208 | 22,974 | 25,111 |
| Depreciation and amortization expenses | 6,489 | 8,690 | 12,010 |
| Pre-opening costs | 1,623 | 2,046 | 5,020 |
| Hurricane and relocation costs, net of insurance proceeds | 2,660 | (3,949) | (3,478) |
| Loss on impairment | — | 970 | — |
| Loss on the disposal of property and equipment, net | — | 13 | 1,229 |
| Operating income | <u>26,195</u> | <u>36,645</u> | <u>31,923</u> |
| Other income (expense): | | | |
| Interest expense | (8,453) | (2,856) | (5,956) |
| Accrued dividends and accretion on mandatorily redeemable senior preferred stock | (1,891) | — | — |
| Other | (39) | 33 | 724 |
| Income from continuing operations before income tax expense | <u>15,812</u> | <u>33,822</u> | <u>26,691</u> |
| Income tax expense | 5,043 | 10,098 | 8,541 |
| Income from continuing operations | <u>10,769</u> | <u>23,724</u> | <u>18,150</u> |
| Discontinued operations: | | | |
| Loss (gain) from operations of discontinued restaurants, net of income tax benefit: 2005—\$1,059; 2006—\$150; 2007—\$21 | (164) | (66) | 4 |
| Net income | <u>\$ 10,933</u> | <u>\$ 23,790</u> | <u>\$ 18,146</u> |
| Less dividends earned on junior preferred stock and warrant expense | 3,753 | — | — |
| Net income available to common shareholders | <u>\$ 7,180</u> | <u>\$ 23,790</u> | <u>\$ 18,146</u> |
| Basic earnings per share: | | | |
| Continuing operations | \$ 0.39 | \$ 1.02 | \$ 0.78 |
| Discontinued operations | 0.01 | 0.01 | — |
| Basic earnings per share | <u>\$ 0.40</u> | <u>\$ 1.03</u> | <u>\$ 0.78</u> |
| Diluted earnings per share: | | | |
| Continuing operations | \$ 0.38 | \$ 1.01 | \$ 0.78 |
| Discontinued operations | 0.01 | 0.01 | — |
| Diluted earnings per share | <u>\$ 0.39</u> | <u>\$ 1.02</u> | <u>\$ 0.78</u> |

See accompanying notes to consolidated financial statements.

RUTH'S CHRIS STEAK HOUSE, INC. AND SUBSIDIARIES

Consolidated Statements of Shareholders' Equity (Deficit)
(dollar and share amounts in thousands)

| | Junior Preferred Stock | | Common Stock | | Additional paid-in capital | Accumulated Deficit | Treasury Stock | | Shareholders' Equity (Deficit) |
|--|------------------------|------------------|---------------|---------------|----------------------------|---------------------|----------------|-------------|--------------------------------|
| | Shares | Value | Shares | Value | | | Shares | Value | |
| Balance at December 26, 2004 | <u>72</u> | <u>\$ 72,537</u> | <u>11,544</u> | <u>\$ 115</u> | <u>\$ 5,548</u> | <u>\$ (129,713)</u> | <u>—</u> | <u>\$ —</u> | <u>\$ (51,513)</u> |
| Net income | — | — | — | — | — | 10,933 | — | — | 10,933 |
| Dividends | — | — | — | — | — | (3,707) | — | — | (3,707) |
| Issuance of junior preferred shares | 4 | 3,707 | — | — | — | — | — | — | 3,707 |
| Warrant expense | — | — | — | — | 46 | (46) | — | — | — |
| Exercise of warrants | — | — | 1,494 | 15 | (6) | — | — | — | 9 |
| Redemption of junior preferred shares | (76) | (76,244) | — | — | — | — | — | — | (76,244) |
| Shares issued under stock option plan including tax effects | — | — | 661 | 7 | 2,626 | — | — | — | 2,633 |
| Compensation expense and other | — | — | — | — | 110 | — | — | — | 110 |
| Issuance of common stock in initial public offering, net of offering costs | — | — | 9,375 | 94 | 154,243 | — | — | — | 154,337 |
| Balance at December 25, 2005 | <u>—</u> | <u>\$ —</u> | <u>23,074</u> | <u>\$ 231</u> | <u>\$ 162,567</u> | <u>\$ (122,533)</u> | <u>—</u> | <u>\$ —</u> | <u>\$ 40,265</u> |
| Net income | — | — | — | — | — | 23,790 | — | — | 23,790 |
| Shares issued under stock option plan including tax effects | — | — | 163 | 1 | 2,873 | — | — | — | 2,874 |
| Compensation expense and other | — | — | — | — | 1,049 | — | — | — | 1,049 |
| Balance at December 31, 2006 | <u>—</u> | <u>\$ —</u> | <u>23,237</u> | <u>\$ 232</u> | <u>\$ 166,489</u> | <u>\$ (98,743)</u> | <u>—</u> | <u>\$ —</u> | <u>\$ 67,978</u> |
| Net income | — | — | — | — | — | 18,146 | — | — | 18,146 |
| Shares issued under stock option plan including tax effects | — | — | 49 | 1 | 367 | — | — | — | 368 |
| Compensation Expense and other | — | — | — | — | 1,575 | — | — | — | 1,575 |
| Repurchase of Restricted Stock | — | — | — | — | — | — | 72 | — | — |
| Balance at December 30, 2007 | <u>—</u> | <u>\$ —</u> | <u>23,286</u> | <u>\$ 233</u> | <u>\$ 168,431</u> | <u>\$ (80,597)</u> | <u>72</u> | <u>\$ —</u> | <u>\$ 88,067</u> |

See accompanying notes to consolidated financial statements.

RUTH'S CHRIS STEAK HOUSE, INC. AND SUBSIDIARIES
Consolidated Statements of Cash Flows

(dollar amounts in thousands)

| | Fiscal Year Ended | | |
|---|----------------------|----------------------|----------------------|
| | December 25, 2005 | December 31, 2006 | December 30, 2007 |
| Cash flows from operating activities: | | | |
| Net income | \$ 10,933 | \$ 23,790 | \$ 18,146 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | | |
| Depreciation and amortization | 6,617 | 8,690 | 12,010 |
| Deferred income taxes | 595 | (438) | 2,909 |
| Non-cash interest expense | 2,980 | 88 | 99 |
| Loss on sale or disposition of assets | 89 | 81 | 1,229 |
| Loss on impairment | 221 | 970 | — |
| Non-cash compensation expense | 110 | 733 | 1,575 |
| Accrued dividends and accretion on mandatorily redeemable preferred stock | 1,891 | — | — |
| Income tax benefits credited to equity upon exercise of stock options | 2,314 | — | — |
| Changes in operating assets and liabilities: | | | |
| Accounts receivables | (6,210) | (1,720) | (705) |
| Inventories | (927) | (1,862) | (1,941) |
| Prepaid expenses and other | 23 | (1,028) | 381 |
| Other assets | (243) | (254) | (1,480) |
| Accounts payable and accrued expenses | 5,175 | 9,672 | (3,491) |
| Deferred revenue | 3,947 | 6,036 | 3,010 |
| Deferred rent | 1,963 | 2,277 | 2,244 |
| Other liabilities | 139 | 633 | 786 |
| Net cash provided by operating activities | <u>29,617</u> | <u>47,668</u> | <u>34,772</u> |
| Cash flows from investing activities: | | | |
| Acquisition of property and equipment | (19,627) | (48,771) | (42,429) |
| Acquisition of franchises and lease right | — | (38,868) | (13,473) |
| Acquisition of RCSH Millwork | — | — | (260) |
| Proceeds on sale or disposition of fixed assets | 2,108 | — | 80 |
| Insurance proceeds related to hurricane damage | — | 3,421 | — |
| Net cash used in investing activities | <u>(17,519)</u> | <u>(84,218)</u> | <u>(56,082)</u> |
| Cash flows from financing activities: | | | |
| Principal repayments on long-term debt | (198,000) | (22,500) | (5,000) |
| Proceeds from long-term financing | 155,500 | 52,000 | 33,750 |
| Redemption of senior preferred stock | (41,748) | — | — |
| Redemption of junior preferred stock | (76,243) | — | — |
| Income tax benefits credited to equity upon exercise of stock options | — | 2,738 | 279 |
| Proceeds from exercise of stock options and warrants | 328 | 144 | 90 |
| Proceeds from issuance of common stock | 154,337 | — | — |
| Deferred financing costs | (1,193) | (127) | (188) |
| Net cash (used in) provided by financing activities | <u>(7,019)</u> | <u>32,255</u> | <u>28,931</u> |
| Net increase (decrease) in cash and cash equivalents | 5,079 | (4,295) | 7,621 |
| Cash and cash equivalents at beginning of period | 3,906 | 8,985 | 4,690 |
| Cash and cash equivalents at end of period | <u>\$ 8,985</u> | <u>\$ 4,690</u> | <u>\$ 12,311</u> |
| Supplemental disclosures of cash flow information: | | | |
| Cash paid during the year for: | | | |
| Interest | \$ 6,099 | \$ 2,851 | \$ 5,170 |
| Income taxes | 3,144 | 6,301 | 8,279 |
| Supplemental disclosures of non-cash equity information: | | | |
| Issuance of junior preferred stock in payment of dividends | 3,707 | — | — |

See accompanying notes to consolidated financial statements.

RUTH'S CHRIS STEAK HOUSE, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(dollar amounts in thousands)

(1) Organization and Description of Business

Ruth's Chris Steak House, Inc. and its subsidiaries (the "Company") operate 118 restaurants and a wholesale restaurant equipment company, and sell franchise rights to franchisees giving them the exclusive right to operate similar restaurants in a particular location designated in the franchise agreement. At December 31, 2006 and December 30, 2007, there were 100 and 118 restaurants operating, respectively. Of the 118 restaurants operating at December 30, 2007, 61 were wholly-owned Company restaurants and 57 were franchise restaurants. Of the 100 restaurants operating at December 31, 2006, 50 were wholly-owned Company restaurants and 50 were franchise restaurants. During 2007, eight company-owned restaurants were opened, three previously franchised restaurants were acquired, and ten franchise-owned restaurants were opened. During 2006, one company-owned restaurant was closed, three company-owned restaurants were opened, seven previously franchised restaurants were acquired, seven franchise-owned restaurants were opened and one franchise-owned restaurant closed.

In August 2005, the Company and selling shareholders completed an initial public offering of 9,375,000 and 5,575,000 shares of common stock, respectively, at \$18.00 per share. The Company received net proceeds of approximately \$154.3 million from the sale of shares of its common stock in the offering after deducting underwriting discounts and commissions and offering expenses payable by it. The Company used the net proceeds of the offering as follows: (1) approximately \$11.7 million was used to redeem all of its outstanding mandatorily redeemable Series A senior cumulative preferred stock (the "Senior Preferred Stock"), (2) approximately \$76.2 million to redeem or repurchase all of its outstanding Series B junior cumulative preferred stock (the "Junior Preferred Stock"), (3) approximately \$65.5 million was used to repay a portion of the outstanding indebtedness under its senior credit facilities and (4) \$0.8 million was used for general working capital needs of the Company.

The Company manages its operations by restaurant. The Company has aggregated its operations into one reportable segment.

(2) Summary of Significant Accounting Policies

(a) Reporting Period

The Company utilizes a 52- or 53-week reporting period ending on the last Sunday of December. The periods ended December 30, 2007 (fiscal 2007) and December 25, 2005 (fiscal 2005) each had a 52-week reporting period. The period ended December 31, 2006 (fiscal 2006) had a 53-week reporting period.

(b) Principles of Consolidation

The consolidated financial statements include the financial statements of Ruth's Chris Steak House, Inc. and its wholly owned subsidiaries. All significant inter-company balances and transactions have been eliminated in consolidation.

(c) Cash Equivalents

For purposes of the consolidated statements of cash flows, the Company considers all highly-liquid debt instruments purchased with an original maturity of three months or less to be cash equivalents.

(d) Accounts Receivable

Accounts receivable consists primarily of bank credit card receivable, franchise royalty payments receivable, banquet billings receivable, and other miscellaneous receivables.

RUTH'S CHRIS STEAK HOUSE, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements—(Continued)

(e) Allowance for Doubtful Accounts

The Company performs a specific review of account balances and applies historical collection experience to the various aging categories of receivable balances in establishing an allowance.

(f) Inventories

Inventories consisting of food, beverages, and supplies are stated at the lower of cost or market; cost is determined using the first-in, first-out method.

(g) Property and Equipment

Property and equipment are stated at cost. Expenditures for improvements and major renewals are capitalized, and minor replacement, maintenance, and repairs are charged to expense. Depreciation is computed on a straight-line basis over the estimated useful lives of the assets. Leasehold improvements are amortized on the straight-line basis over the shorter of the lease term or the estimated useful lives of the assets. The estimated useful lives for assets are as follows: Building and Building Improvements, 20 to 40 years; Equipment, 5 years; Furniture and Fixtures, 5 to 7 years; Computer Equipment, 3 to 5 years; Leasehold Improvements, 5 to 20 years.

(h) Goodwill and Other Intangibles

Goodwill and franchise rights acquired in a purchase business combination and determined to have an indefinite useful life are not amortized, but instead tested for impairment at least annually in accordance with the provisions of SFAS No. 142, *Goodwill and Other Intangible Assets*. Goodwill and franchise rights are tested annually on a reporting unit (which is defined as an individual restaurant) basis for impairment, and is tested more frequently if events and circumstances indicate that the asset might be impaired. An impairment loss is recognized to the extent that the carrying amount exceeds the asset's fair value. Based upon the Company's review, no goodwill or franchise right impairment charge was required in 2005, 2006, or 2007.

(i) Deferred Financing Costs

Deferred financing costs represent fees paid in connection with obtaining bank and other long-term financing. These fees are amortized using a method that approximates the interest method over the term of the related financing. Amortization expense of deferred financing cost was \$2,911, \$88, and \$99 in fiscal 2005, 2006, and 2007, respectively.

(j) Impairment of Long-Lived Assets

In accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, long lived assets, such as property, plant and equipment, and purchased intangibles subject to amortization are reviewed for impairment on a restaurant-by-restaurant basis whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, an impairment charge is recognized in the amount by which the carrying amount of the asset exceeds the fair value of the asset. Assets to be disposed of would be separately presented in the balance sheet and reported at the lower of the carrying amount or the fair value less costs to sell, and are no longer depreciated. The assets and liabilities of a disposed group classified as held for sale would be presented separately in the appropriate asset and liability sections of the balance sheet.

RUTH'S CHRIS STEAK HOUSE, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements—(Continued)

(k) Rent

Certain of the Company's operating leases contain predetermined fixed escalations of the minimum rent during the term of the lease. For these leases, the Company recognizes the related rent expense on a straight-line basis over the life of the lease and records the difference between amounts charged to operations and amounts paid as deferred rent.

Additionally, certain of the Company's operating leases contain clauses that provide additional contingent rent based on a percentage of sales greater than certain specified target amounts. The Company recognizes contingent rent expense prior to the achievement of the specified target that triggers the contingent rent, provided achievement of that target is considered probable.

(l) Marketing and Advertising

Marketing and advertising expenses in the accompanying consolidated statements of operations included advertising expenses of approximately \$5.2 million, \$5.6 million and \$5.6 million for fiscal 2005, fiscal 2006 and fiscal 2007, respectively. Advertising costs are expensed as incurred.

(m) Insurance Liability

The Company maintains various policies for workers' compensation, employee health, general liability and property damage. Pursuant to those policies, the Company is responsible for losses up to certain limits. The Company records a liability for the estimated exposure for aggregate losses below those limits. This liability is based on estimates of the ultimate costs to be incurred to settle known claims and claims not reported as of the balance sheet date. The estimated liability is not discounted and is based on a number of assumptions and factors, including historical trends, actuarial assumptions and economic conditions.

(n) Pre-Opening Costs

Pre-opening costs incurred with the opening of new restaurants are expensed as incurred. These costs include straight-line rent during the rent holiday period, wages, benefits, travel and lodging for the training and opening management teams, and food, beverage and other restaurant operating expenses incurred prior to a restaurant opening for business.

(o) Income Taxes

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

(p) Derivative Instruments

The Company utilized derivative instruments in 2006 and 2007 to manage interest rate risk. The Company does not apply hedge accounting as defined by SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities", and any changes in fair value of the derivative instruments are marked-to-market through earnings in the period of change. Cash flows related to derivatives are included in operating activities.

(q) Revenue Recognition

Revenue from restaurant sales is recognized when food and beverage products are sold. Revenues are presented net of sales taxes. Deferred revenue primarily represents the Company's liability for gift cards that have been sold, but not yet redeemed, and is recorded at the expected redemption value. When the gift cards are redeemed, the Company recognizes restaurant sales and reduces the deferred revenue. Company gift cards

RUTH'S CHRIS STEAK HOUSE, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements—(Continued)

redeemed at franchisee-owned locations reduce the deferred revenue but do not result in restaurant sales. The expected redemption value of the gift cards represents the full value of all gift cards issued less the amount the company has recognized as other operating income for gift cards that are not expected to be redeemed. The Company recognizes as other operating income the remaining value of gift cards that have not been redeemed 18 months following the last date of card activity, subject to limitations in some jurisdictions in which we operate.

The Company franchises Ruth's Chris Steak House restaurants. The Company executes franchise agreements for each franchise restaurant, which sets out the terms of its arrangement with the franchisee. The franchise agreements typically require the franchisee to pay an initial, non-refundable fee and continuing fees based upon a percentage of sales. The Company collects ongoing royalties of 5% of sales from franchise restaurants plus a 1% advertising fee applied to national advertising expenditures. The Company is not required to perform any services for the ongoing royalties and thus these royalties are recognized when the royalties are due from the franchisee on a monthly basis. These ongoing royalties are reflected in the accompanying consolidated statements of income as franchise income. The 1% advertising fee is recorded as a liability against which specified advertising and marketing costs are charged.

The Company executes an area development agreement with franchisees that gives the franchisee rights to develop a specific number of restaurants within a specified area. The Company charges an initial development fee at the time the area agreements are executed. This fee is related to feasibility studies of the area and certification of the franchisee and for the development opportunities lost or deferred as a result of the rights granted. These services are performed prior to the execution of the agreement. The Company recognizes the initial area development fee upon the signing of the area development agreement by the franchisee.

The Company executes separate, site specific, franchise agreements for each restaurant developed by a franchisee under an area development agreement. The Company charges an initial fee at the time the franchise agreement is executed. This fee is related to assistance in site selection and lease negotiation, construction consulting assistance and consulting regarding purchasing and supplies. These services are performed prior to the restaurant opening. The Company recognizes the initial franchise fee when the related restaurant opens.

(r) Foreign Revenues

The Company currently has eleven international franchise locations in Canada, Mexico, China (Hong Kong), Japan and Taiwan. In accordance with its franchise agreements relating to these international locations, the Company receives royalty revenue from these franchisees in U.S. dollars. Franchise fee royalties from international locations made up less than 1% of total revenues in all periods presented.

(s) Stock-Based Compensation

On December 26, 2005, the Company adopted the fair value recognition provisions of Financial Accounting Standards Board ("FASB") Statement No. 123(R), *Share-Based Payment*, ("FAS 123R"). Prior to December 26, 2005, the Company accounted for share-based payments under the recognition and measurement provisions of APB Opinion No. 25, *Accounting for Stock Issued to Employees* ("APB 25"), and related Interpretations, as permitted by FASB Statement No. 123, *Accounting for Stock-Based Compensation* ("FAS 123"). In accordance with APB 25, no compensation was required to be recognized for options granted that had an exercise price equal to or greater than the market value of the underlying common stock on the date of the grant.

The Company adopted FAS 123R using the modified prospective transition method. Under that transition method, compensation cost recognized during fiscal 2006 includes: a) compensation cost for all share-based

RUTH'S CHRIS STEAK HOUSE, INC. AND SUBSIDIARIES**Notes to Consolidated Financial Statements—(Continued)**

payments granted prior to, but not yet vested as of December 26, 2005, based on the grant date fair value estimated in accordance with the original provisions of FAS 123, and b) compensation cost for all share-based payments granted subsequent to December 26, 2005, based on the grant date fair value estimated in accordance with the provisions of FAS 123R. Compensation cost is recognized on a straight-line basis, net of estimated forfeitures, over the requisite service period of each award. The results for the prior periods have not been restated.

As a result of the adoption of FAS 123R on December 26, 2005, the fiscal 2006 and fiscal 2007 consolidated statement of income was impacted as follows:

| | <u>2006</u> | <u>2007</u> |
|--|-------------|-------------|
| Reduction in operating income from continuing operations | \$ 667 | \$ 1,515 |
| Reduction in income before taxes | 667 | 1,515 |
| Reduction in operating net income | 468 | 1,030 |
| Reduction in earnings per share: | | |
| Basic | \$0.02 | \$ 0.04 |
| Diluted | \$0.02 | \$ 0.04 |

The following table illustrates the effect on net income adjusted for pro forma provision for income taxes if the fair-value-based method had been applied to all outstanding and unvested awards in each period. For purposes of pro forma disclosures, the value of options is estimated using a Black-Scholes option pricing formula and amortized to expense over the options' vesting periods; using the graded vesting method. The following pro forma information sets forth net income assuming that the Company had used the FAS 123 fair value method in accounting for employee stock options during fiscal 2005.

| | <u>2005</u> |
|---|----------------|
| Net income, as reported | \$7,180 |
| Stock-based employee compensation expense | (80) |
| Pro-forma net income | <u>\$7,100</u> |
| Net income per share: | |
| Basic—as reported | \$ 0.40 |
| Basic—pro forma | \$ 0.40 |
| Diluted—as reported | \$ 0.39 |
| Diluted—proforma | \$ 0.38 |

(t) Use of Estimates

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

RUTH'S CHRIS STEAK HOUSE, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements—(Continued)

(u) Fair Value of Financial Instruments

The following methods and assumptions were used to estimate the fair value of each class of financial instruments for which it is practicable to estimate the value:

- The carrying amount of cash and cash equivalents, receivables, prepaid expenses, accounts payable and accrued expenses and other current and long-term liabilities are a reasonable estimate of their fair values.
- Borrowings under the senior credit facility as of December 30, 2007 and the term loan and revolving credit facility as of December 30, 2007 have variable interest rates that reflect currently available terms and conditions for similar debt. The carrying amount of this debt is a reasonable estimate of its fair value.

(v) Contingencies

The Company recognizes liabilities for contingencies when there is an exposure that indicates it is both probable that an asset has been impaired or that a liability has been incurred and that the amount of impairment or loss can be reasonably estimated.

(w) Recent Accounting Pronouncements

In September 2006, the FASB issued SFAS 157, *Fair Value Measurement*. ("SFAS 157") clarifies the definition of fair value, describes methods used to appropriately measure fair value, and expands fair value disclosure requirements. This statement applies under other accounting pronouncements that currently require or permit fair value measurements and is effective for fiscal years beginning after November 15, 2007. The Company is currently evaluating the impact that SFAS 157 will have on the consolidated financial statements and expects the adoption of this standard will not have a material impact on its consolidated balance sheet, statements of income or cash flows.

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities* ("SFAS 159"). SFAS 159 permits entities to choose to measure many financial assets and financial liabilities at fair value. Unrealized gains and losses on items for which the fair value option has been elected are reported in earnings. The provisions of SFAS 159 are effective for fiscal years beginning after November 15, 2007. The Company is currently evaluating the impact that SFAS 159 will have on the consolidated financial statements and expects the adoption of this standard will not have a material impact on its consolidated balance sheet, statements of income or cash flows.

Other accounting standards that have been issued by the FASB or other standards-setting bodies that do not require adoption until a future date are not expected to have a material impact on the consolidated financial statements upon adoption.

(x) Reclassifications

Certain prior year amounts have been reclassified to conform with the current year presentation. These reclassifications had no effect on previously reported net income.

RUTH'S CHRIS STEAK HOUSE, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements—(Continued)

(3) Property and Equipment

Property and equipment consists of the following:

| | December 31, 2006 | December 30, 2007 |
|------------------------------------|----------------------|----------------------|
| Land | \$ 7,778 | \$ 7,582 |
| Building and building improvements | 30,830 | 44,899 |
| Equipment | 20,590 | 25,885 |
| Computer equipment | 4,341 | 5,930 |
| Furniture and fixtures | 8,934 | 11,790 |
| Leasehold improvements | 64,387 | 88,432 |
| Construction-in-progress | 16,543 | 9,559 |
| | <u>153,403</u> | <u>194,077</u> |
| Less accumulated depreciation | (48,311) | (58,462) |
| | <u>\$ 105,092</u> | <u>\$ 135,615</u> |

The Company capitalizes interest as a component of the cost of construction in progress. In connection with assets under construction in 2005, 2006 and 2007, the Company has capitalized \$123, \$203 and \$375 of interest costs, respectively, in accordance with SFAS No. 34, *Capitalization of Interest Cost*.

(4) Long-term Debt

Long-term debt consists of the following:

| | December 31, 2006 | December 30, 2007 |
|---------------------------|----------------------|----------------------|
| Senior Credit Facility: | | |
| Revolving credit facility | \$ 68,000 | \$ 96,750 |
| Less current maturities | — | — |
| | <u>\$ 68,000</u> | <u>\$ 96,750</u> |

On September 27, 2005, the Company entered into a senior credit facility with Wells Fargo Bank, National Association, as administrative agent, Bank of America, N.A., as documentation agent, and JPMorgan Chase Bank, National Association, Wells Fargo Bank, National Association as co-lead arrangers and Wachovia Bank, N.A. The Company used the \$38.5 million funded at closing under the Credit Agreement to prepay and retire borrowings under its previous credit facility and to pay related fees and expenses.

On May 17, 2006, the Company completed an amendment to its existing senior revolving credit facility to increase its availability under the facility to \$100.0 million. This amendment also provides that the revolving credit facility may be further increased by \$25.0 million upon the Company's request (for a total commitment of \$125.0 million). The financial covenants, restrictive covenants and terms of the increased revolving credit facility were not amended.

On August 7, 2007, the Company completed a second amendment to its senior credit facility to increase its availability under the facility to \$150.0 million. The Company's ability to request additional funding through the revolving credit facility also increased with this amendment to \$50.0 million, for a total potential borrowing of \$200.0 million. The amendment also provided that \$50.0 million in proceeds may be utilized to repurchase the

RUTH'S CHRIS STEAK HOUSE, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements—(Continued)

Company's common stock, extended the maturity date of the outstanding principal from March 11, 2010 to August 7, 2012, and changed the maximum Consolidated Leverage Ratio in the financial covenants to 3.25:1.00. All other financial covenants, restrictive covenants and terms of the increased revolving credit facility remained unchanged.

On September 13, 2007, the Company entered into a three year interest rate swap to limit the variability of its interest payments. The notional amounts total \$75.0 million through September 17, 2008, \$50.0 million through September 17, 2009 and \$25.0 million through its expiration on September 17, 2010 of the then outstanding debt under its senior credit facility. Previously, the Company had two interest rate swaps in place that were terminated as a result of this new transaction. The Company does not use hedge accounting to account for this swap.

As of December 30, 2007, the Company had an aggregate of \$96.8 million of outstanding indebtedness under its senior credit facility at a weighted average interest rate of 6.074%. The Company had approximately \$50.2 million of borrowings available under its revolving credit facility, net of outstanding letters of credit of approximately \$3.0 million. An additional \$50.0 million is also available upon the Company's request. The Company is required to maintain certain financial covenants and is also subject to restrictive covenants under its borrowings. The Company was in compliance with all such covenants at December 30, 2007. The Company's obligations under the senior credit facility are guaranteed by each of its existing and future subsidiaries and are secured by substantially all of its assets and a pledge of the capital stock of its subsidiaries.

On February 19, 2008, the Company amended and restated its existing credit facility to increase the revolving loan commitment to \$250.0 million. The amended and restated credit facility continues to provide for an increase in the revolving loan commitment by an additional \$50.0 million at the Company's request (for a total commitment \$300.0 million), extends the maturity date of the outstanding principal from March 11, 2010 to February 19, 2013, and changes the maximum Consolidated Leverage Ratio in the financial covenants to 3.50:1.00. Management intends to use facility to fund the acquisition, working capital needs, expansion and potential future acquisitions.

(5) Shareholders' Equity

The holders of the Class A common stock are entitled to one vote per share on all matters to be voted on by the Company's shareholders. Holders of Class A common stock are entitled to convert, at any time and from time to time, any or all of the shares of Class A common stock held by such holder into the same number of shares of Class B common stock.

The holders of the Class B common stock do not have voting rights. Holders of Class B common stock are entitled to convert, at any time and from time to time, any or all of the shares of Class B common stock held by such holder into the same number of shares of Class A common stock.

(6) Employee Benefit Plan

In 2000, the Company established a 401(k) plan. Eligible employees may contribute up to 15% of their annual compensation. At the discretion of the Company's management and Board of Directors, the Company can match the employees' contributions at year end. Employees vest in the Company's contributions based upon their years of service. The Company's expenses relating to matching contributions were approximately \$112, \$173, and \$226 for fiscal 2005, 2006 and 2007, respectively. During 2005, the Company added a profit sharing component to the 401(k) plan that provided for a payment to all employees if the Company achieved certain predetermined financial targets. The Company's expense related to the profit sharing was approximately \$398, \$348 and \$0 for fiscal 2005, 2006 and 2007, respectively.

RUTH'S CHRIS STEAK HOUSE, INC. AND SUBSIDIARIES**Notes to Consolidated Financial Statements—(Continued)****(7) Incentive and Stock Option Plans**

As of December 30, 2007, the Company had the following share-based compensation plans:

2000 Stock Option Plan

The Company established a stock option plan (the 2000 Stock Option Plan) which allows the Company's Board of Directors to grant stock options to directors, officers, key employees, and other key individuals performing services for the Company. The 2000 Stock Option Plan authorizes grants of options to purchase up to 1,765,981 shares of authorized but unissued Class A common stock. The Plan provides for granting of options to purchase shares of common stock at an exercise price not less than the fair value of the stock on the date of grant. Options are exercisable at various periods ranging from one to ten years from date of grant. Under the Company's 2000 Stock Option Plan there are 284,619 shares of common stock issuable upon exercise of currently outstanding options at December 30, 2007 and 613,258 shares available for future grants. No future grants are expected to be made under the 2000 Stock Option Plan.

2004 Restricted Stock Plan

The Company established a restricted stock plan (the 2004 Restricted Stock Plan), which allows the Company's Board of Directors to grant restricted stock to directors, officers and other key employees. The 2004 Restricted Stock Plan authorizes restricted stock grants of up to 1,167,487 shares of authorized but unissued Class A common stock. Under the Company's 2004 Restricted Stock Plan, there are 1,167,487 shares of Class A common stock reserved for issue at December 30, 2007 and no shares available for future grants.

2005 Long-Term Equity Incentive Plan

In connection with the initial public offering, the Company adopted the Ruth's Chris Steak House, Inc. 2005 Long-Term Equity Incentive Plan (the 2005 Equity Incentive Plan), which allows the Company's Board of Directors to grant stock options, restricted stock, restricted stock units, deferred stock units and other equity-based awards to directors, officers, key employees, and other key individuals performing services for the Company. The 2005 Equity Incentive Plan provides for granting of options to purchase shares of common stock at an exercise price not less than the fair value of the stock on the date of grant. Options are exercisable at various periods ranging from one to five years from date of grant. Under the Company's 2005 Long-Term Equity Incentive Plan, there are 1,281,310 shares of common stock reserved for issue at December 30, 2007 and 1,073,695 shares available for future grants.

The following table summarizes stock option activity for fiscal 2007 under all plans:

| | December 30, 2007 | | | |
|----------------------------------|-------------------|---------------------------------|---|-------------------------------------|
| | Shares | Weighted-Average Exercise Price | Weighted-Average Remaining Contractual Term | Aggregate Intrinsic Value (\$000's) |
| Outstanding at beginning of year | 1,123,369 | \$ 13.07 | | |
| Granted | 544,841 | 18.13 | | |
| Exercised | (49,676) | 1.81 | | |
| Forfeited | (52,605) | 18.42 | | |
| Outstanding at end of year | <u>1,565,929</u> | <u>\$ 15.01</u> | <u>7.91</u> | <u>\$ 2,356</u> |
| Options exercisable at year end | <u>477,751</u> | <u>\$ 9.22</u> | <u>5.90</u> | <u>\$ 2,020</u> |

RUTH'S CHRIS STEAK HOUSE, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements—(Continued)

As of December 30, 2007, there was \$6.2 million of total unrecognized compensation costs related to unvested stock options. This cost is expected to be recognized over a weighted-average period of approximately 3.71 years. The total intrinsic value of options exercised in fiscal 2005, 2006 and 2007 was \$11.6, \$3.2 and \$0.8 million, respectively. The Company recorded \$0.7 million and \$1.5 million in total compensation cost during fiscal 2006 and 2007, respectively, that was expensed in general and administrative costs.

During fiscal 2005, 2006, and 2007, the Company received \$319, \$144 and \$90, respectively, in cash related to the exercise of options and tax benefits of \$3.4, \$2.7 and \$0.3 million, respectively. The exercise of shares were fulfilled from shares reserved for issue under the stock option plans and resulted in an increase in issued shares outstanding.

A summary of the status of non-vested shares as of December 30, 2007 and changes during fiscal 2007 is presented below.

| | December 30, 2007 | |
|--|-------------------|--|
| | Shares | Weighted-Average Grant-Date Fair Value |
| Non-vested shares at beginning of year | 781,341 | \$ 6.11 |
| Granted | 544,841 | 7.44 |
| Vested | (193,101) | 5.12 |
| Canceled | (44,903) | 6.88 |
| Non-vested shares at end of period | <u>1,088,178</u> | <u>\$ 6.92</u> |

The weighted-average grant-date per share fair value of options granted in fiscal 2007 was \$7.44. The weighted-average grant-date per share fair value of options granted in fiscal 2005 and 2006 was \$4.91 and \$7.82, respectively. The fair value of each option award is estimated on the date of grant using the Black-Scholes option valuation model with the weighted-average assumptions noted in the following table. The Black-Scholes option valuation model requires the input of highly subjective assumptions, including the expected life of the stock-based award. The assumptions listed below represent management's best estimates, but these estimates involve inherent uncertainties and the application of management's judgment. In addition, the Company is required to estimate the expected forfeiture rate and only recognizes expense for those shares expected to vest. If the actual forfeiture rate is materially different from the Company's estimate, the share-based compensation expense could be materially different.

The expected term of options granted is derived from historical data on employee exercise and post-vesting employment termination behavior. The risk-free rate for periods within the contractual life of the option is based on the U.S. Treasury constant maturities rate in effect at the time of grant. The Company utilized a blended rate for expected volatility during 2007 based on the historical volatility of our stock and a representative peer group with a similar expected term of options granted. The following weighted-average assumptions were used for stock option grants in each year:

| | 2005 | 2006 | 2007 |
|-------------------------|---------|---------|---------|
| Expected life | 5.0 yrs | 6.3 yrs | 6.3 yrs |
| Risk-free interest rate | 4.28% | 4.84% | 4.60% |
| Volatility | 20.0% | 32.1% | 31.13% |
| Expected dividend yield | 0.0% | 0.0% | 0.0% |

RUTH'S CHRIS STEAK HOUSE, INC. AND SUBSIDIARIES**Notes to Consolidated Financial Statements—(Continued)****(8) Earnings per share**

Basic earnings per common share were computed by dividing net income available to common shareholders by the weighted-average number of shares of common stock outstanding during the fiscal year. Basic and diluted earnings per common share for fiscal 2005 were determined on the assumption that all outstanding warrants were exercised as of the beginning of the fiscal year. There were no warrants outstanding in fiscal 2006 or 2007. Diluted earnings per share for fiscal year 2006 and 2007 excludes 44,500 stock options at a weighted-average price of \$20.25 and 1,238,810 stock options at a weighted-average price of \$17.15, respectively, which were outstanding during the period but were anti-dilutive. There were no stock options outstanding that were anti-dilutive for fiscal 2005.

The following table sets forth the computation of basic and diluted earnings per share:

| | December 25, 2005 | December 31, 2006 | December 30, 2007 |
|--|----------------------|----------------------|----------------------|
| Net Income available to common shareholders | \$ 7,180 | \$ 23,790 | \$ 18,146 |
| Shares: | | | |
| Weighted average number of common shares outstanding | 17,961,198 | 23,175,323 | 23,206,864 |
| Dilutive stock options | 748,943 | 253,862 | 192,582 |
| Weighted-average number of common shares outstanding | <u>18,710,141</u> | <u>23,429,185</u> | <u>23,399,446</u> |
| Basic earnings per common share: | | | |
| Continuing operations | \$ 0.39 | \$ 1.02 | \$ 0.78 |
| Discontinued operations | 0.01 | 0.01 | — |
| Basic earnings per common share | <u>\$ 0.40</u> | <u>\$ 1.03</u> | <u>\$ 0.78</u> |
| Diluted earnings per common share: | | | |
| Continuing operations | \$ 0.38 | \$ 1.01 | \$ 0.78 |
| Discontinued operations | 0.01 | 0.01 | — |
| Diluted earnings per common share | <u>\$ 0.39</u> | <u>\$ 1.02</u> | <u>\$ 0.78</u> |

On August 1, 2005, the Company completed a 20.75281-for-1 stock split of its common stock. Accordingly, basic and diluted shares for all periods presented have been adjusted for the stock split.

(9) Acquisitions

During fiscal 2006, the Company completed the acquisition of seven previously franchised restaurants pursuant to the asset purchase agreement dated April 24, 2006. The restaurants acquired are located in Northbrook and Chicago, Illinois; Memphis and Nashville, Tennessee; Jacksonville and Ponte Vedra, Florida; and Troy, Michigan. This acquisition was done to facilitate additional development in the respective geographic markets, as well as enhance future long term growth potential of both Company-operated restaurants and the Ruth's Chris brand. The acquisition was financed with borrowings under the Company's revolving credit facility.

The results of the operations of the seven purchased franchises have been included in the Company's consolidated statement of income from the date of acquisition. The Company allocated the purchase price to the assets acquired in the acquisition at their estimated fair values with the remainder allocated to goodwill and franchise rights. For income tax purposes, there is \$34,624 that is deductible. The weighted-average life of the

RUTH'S CHRIS STEAK HOUSE, INC. AND SUBSIDIARIES**Notes to Consolidated Financial Statements—(Continued)**

amortizable intangible assets is approximately 2 years. The below table summarizes the allocation of proceeds paid to the seller as well as acquisition costs. Approximately \$335 associated with legal and closing costs are included in goodwill and franchise rights. The allocation of the purchase price is summarized below.

| | |
|-------------------------------|------------------|
| Inventory | \$ 463 |
| Property, Plant and Equipment | 2,213 |
| Goodwill and franchise rights | 34,624 |
| Non-compete agreement | 35 |
| Total assets acquired | <u>\$ 37,335</u> |

On September 10, 2007, the Company completed the acquisition of three previously franchised restaurants pursuant to the asset purchase agreements dated as of April 16, 2007. The acquired restaurants are located in Bellevue and Seattle, Washington; and Portland, Oregon. This acquisition is expected to open up the contiguous West Coast to company-owned development. In connection with the acquisition, the Company acquired all of the Seller's interests in the three aforementioned Ruth's Chris Steak House restaurants for approximately \$13.3 million in cash.

The results of the operations of the three purchased franchises have been included in the Company's consolidated statement of income from the date of acquisition. The Company allocated the purchase price to the assets acquired in the acquisition at their estimated fair values with the remainder allocated to goodwill and franchise rights. For income tax purposes, there is \$10,600 that is deductible. The below table summarizes the allocation of proceeds paid to the seller as well as acquisition costs. The weighted-average life of the amortizable intangible assets is approximately 8 years. Approximately \$223 associated with legal and closing costs are included in goodwill and franchise rights. The preliminary allocation of the purchase price is summarized below.

| | |
|-------------------------------|------------------|
| Inventory | \$ 232 |
| Property, Plant and Equipment | 1,965 |
| Goodwill and franchise rights | 10,600 |
| Non-compete agreement | 70 |
| Lease | 606 |
| Total assets acquired | <u>\$ 13,473</u> |

On August 6, 2007, the Company completed the acquisition of Design Custom Millwork, Inc., a millwork company, pursuant to the asset purchase agreement dated as of July 24, 2007. All assets were purchased for approximately \$260 in cash. The Company allocated the purchase price to the assets acquired in the acquisition at their estimated fair values with the remainder allocated to goodwill as follows: \$139 to property, plant and equipment and \$121 to goodwill and other intangibles. All of the goodwill is deductible for income tax purposes.

On November 6, 2007, the Company entered into a definitive asset purchase agreement to acquire all of the operating assets and intellectual property of Mitchell's Fish Market, operating under the names Mitchell's Fish Market and Columbus Fish Market, and Cameron's Steakhouse, operating under the names Cameron's Steakhouse and Mitchell's Steakhouse from Cameron Mitchell Restaurants, LLC. See Footnote [16].

RUTH'S CHRIS STEAK HOUSE, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements—(Continued)

(10) Income Taxes

Income tax expense (benefit) from continuing operations consists of the following:

| | <u>Current</u> | <u>Deferred</u> | <u>Total</u> |
|-------------------------------|-----------------|-----------------|-----------------|
| Year ended December 25, 2005: | | | |
| U.S. Federal | \$ 4,563 | \$ (476) | \$ 4,087 |
| State | 576 | 180 | 756 |
| Foreign | 200 | — | 200 |
| | <u>\$ 5,339</u> | <u>\$ (296)</u> | <u>\$ 5,043</u> |
| Year ended December 31, 2006: | | | |
| U.S. Federal | \$ 8,907 | \$ (296) | \$ 8,611 |
| State | 1,259 | (128) | 1,131 |
| Foreign | 356 | — | 356 |
| | <u>\$10,522</u> | <u>\$ (424)</u> | <u>\$10,098</u> |
| Year ended December 30, 2007: | | | |
| U.S. Federal | \$ 3,986 | \$ 2,748 | \$ 6,734 |
| State | 1,378 | 173 | 1,551 |
| Foreign | 256 | — | 256 |
| | <u>\$ 5,620</u> | <u>\$ 2,921</u> | <u>\$ 8,541</u> |

Income tax expense differs from amounts computed by applying the federal statutory income tax rate to income from continuing operations before income taxes as follows:

| | <u>2005</u> | <u>2006</u> | <u>2007</u> |
|---|-----------------|-----------------|-----------------|
| Income tax expense at statutory rates | \$ 5,376 | \$11,838 | \$ 9,342 |
| Increase (decrease) in income taxes resulting from: | | | |
| State income taxes, net of federal benefit | 499 | 735 | 896 |
| FAS 123(R) expense | — | 199 | 444 |
| FICA tax credit | (1,671) | (2,057) | (2,519) |
| Nondeductible accrued dividends and accretion of mandatorily redeemable preferred stock | 643 | — | — |
| Other | 196 | (617) | 378 |
| | <u>\$ 5,043</u> | <u>\$10,098</u> | <u>\$ 8,541</u> |

RUTH'S CHRIS STEAK HOUSE, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements—(Continued)

The tax effects of temporary differences that give rise to significant portions of the deferred tax assets are presented below:

| | December 25, 2005 | December 31, 2006 | December 30, 2007 |
|--|----------------------|----------------------|----------------------|
| Deferred tax assets: | | | |
| Accounts payable and accrued expenses | \$ 240 | \$ 895 | \$ 927 |
| Deferred rent | 1,387 | 2,985 | 2,710 |
| Net state operating loss carryforwards | 4,937 | 5,902 | 6,064 |
| Tax credit carryforwards | 3,457 | 3,992 | — |
| Property and equipment | 2,307 | 4,226 | 6,335 |
| Other | 55 | 215 | 492 |
| Total gross deferred tax assets | 12,383 | 18,215 | 16,528 |
| Less valuation allowance | (61) | (999) | (1,438) |
| Net deferred tax assets | 12,322 | 17,216 | 15,090 |
| Deferred tax liabilities: | | | |
| Intangible assets | (2,831) | (7,241) | (7,984) |
| Other | (37) | (82) | (122) |
| Total gross deferred tax liabilities | (2,868) | (7,323) | (8,106) |
| Net deferred tax assets | \$ 9,454 | \$ 9,893 | \$ 6,984 |

There was a valuation allowance for deferred tax assets at December 31, 2006 and December 30, 2007 of \$999 and \$1,438, respectively. In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Management considers the scheduled reversal of deferred tax liabilities and projected future taxable income in making this assessment. Based upon the level of historical taxable income and projections for future taxable income over the periods in which the deferred tax assets are deductible, management believes it is more likely than not that the Company will realize the benefits of these deductible differences.

As of December 30, 2007, the Company has state net operating loss carry-forwards of \$73.0 million which are available to offset state taxable income through 2026.

The Company adopted the provisions of FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes* ("FIN 48"), on January 1, 2007. The implementation of FIN 48 did not result in any changes to the Company's unrecognized tax benefits for uncertain tax positions.

A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows:

| | |
|--|--------|
| Unrecognized tax benefits balance at January 1, 2007 | \$ 650 |
| Gross increases for tax positions of prior years | 354 |
| Gross decreases for tax positions of prior years | (492) |
| Settlements | — |
| Lapse of statute of limitations | — |
| Unrecognized tax benefits balance at December 30, 2007 | \$ 512 |

RUTH'S CHRIS STEAK HOUSE, INC. AND SUBSIDIARIES**Notes to Consolidated Financial Statements—(Continued)**

As of December 30, 2007, the Company's gross unrecognized tax benefits totaled approximately \$512, all of which, if recognized, would impact the effective tax rate. The Company does not anticipate there will be any material changes in the unrecognized tax benefits within the next 12 months. Our continuing practice is to recognize interest and penalties related to uncertain tax positions in income tax expense. As of January 1, 2007 and December 30, 2007, the Company had accrued approximately \$139 and \$88 respectively for the payment of interest, which is included as a component of the unrecognized tax benefit noted above.

The Company files consolidated and separate income tax returns in the United States Federal jurisdiction, many state jurisdictions and Puerto Rico. With few exceptions, the Company is no longer subject to U.S. Federal income tax examinations for years before 2004 and is no longer subject to state and local or Puerto Rico income tax examinations by tax authorities for years before 2003.

(11) Leases

All of the Company's owned restaurants operate in leased premises, with the exception of the locations in Metairie, Houston, Columbus, Palm Desert, Palm Beach, Ft. Lauderdale and Sarasota, which are owned properties. Remaining lease terms range from approximately 4 to 30 years, including anticipated renewal options. The leases generally provide for minimum annual rental payments and are subject to escalations based, in some cases, upon increases in the Consumer Price Index, real estate taxes, and other costs. In addition, certain leases contain contingent rental provisions based upon the sales of the underlying restaurants. Certain leases also provide for rent deferral during the initial term of such lease and/or scheduled minimum rent increases during the terms of the leases. For financial reporting purposes, rent expense is recorded on a straight-line basis over the life of the lease. Accordingly, included in long-term liabilities in the accompanying consolidated balance sheets at December 25, 2005, December 31, 2006 and December 30, 2007 are accruals related to such rent deferrals and the pro rata portion of scheduled rent increases of approximately \$11.7 million, \$14.0 million, and \$16.3 million respectively, net of the current portion included in other current liabilities of \$1.0 million, \$1.4 million, and \$1.5 million, respectively.

Future minimum annual rental commitments under leases as of December 30, 2007 are as follows:

| Lessee: | |
|----------------|-------------------|
| 2008 | \$ 12,567 |
| 2009 | 12,401 |
| 2010 | 12,403 |
| 2011 | 12,074 |
| 2012 | 11,345 |
| Thereafter | 56,986 |
| | <u>\$ 117,776</u> |

Rental expense consists of the following:

| | Fiscal Year | | |
|--------------------|--------------------|-----------------|-----------------|
| | 2005 | 2006 | 2007 |
| Minimum rentals | \$7,379 | \$ 8,894 | \$11,562 |
| Contingent rentals | 2,614 | 3,566 | 3,802 |
| | <u>\$9,993</u> | <u>\$12,460</u> | <u>\$15,364</u> |

RUTH'S CHRIS STEAK HOUSE, INC. AND SUBSIDIARIES**Notes to Consolidated Financial Statements—(Continued)**

In December 2006, the Company purchased the building in Heathrow, Florida that houses its corporate headquarters. As a result, the Company assumed two tenant leases associated with the building. Rent revenue of \$42 was included in other income in fiscal 2006 and \$1.0 million in fiscal 2007. The minimum rents expected to be received under these leases are as follows:

| Lessor: | |
|----------------|-----------------|
| 2008 | \$ 1,102 |
| 2009 | 1,122 |
| 2010 | 1,143 |
| 2011 | 476 |
| Thereafter | — |
| | <u>\$ 3,843</u> |

(12) Commitments and Contingencies

The Company currently buys most of its beef from one supplier. Although there are a limited number of beef suppliers, management believes that other suppliers could provide similar product on comparable terms. A change in suppliers, however, could cause supply shortages and a possible loss of sales, which would affect operating results adversely.

The Company is subject to other various claims, possible legal actions, and other matters arising in the normal course of business. Management does not expect disposition of these other matters to have a material adverse effect on the financial position, results of operations or liquidity of the Company.

(13) Discontinued Operations

On June 25, 2006 the company closed its Cleveland, Ohio restaurant whose lease term ended September 2006. The Company determined that the closed restaurant should be accounted for as discontinued operations because the Company does not expect any further direct or indirect cash inflows from the restaurant because it has completely ceased operation. The Company recognized a \$221 loss on impairment related to this location during fiscal year 2005.

During August 2005, the Company entered into an agreement with the Manhattan (UN), New York landlord whereby: (1) the Company made a one-time payment of \$0.3 million to the landlord for rent, commission on replacement lease, and attorneys fees; (2) the existing lease was terminated; (3) the Company allowed the landlord to contract with a third party replacement tenant; and (4) adjusted the remaining contingent lease term from eleven years to six years. Under the agreement, after the third anniversary, if the replacement tenant defaults on the new lease anytime during the remaining six years, the Company will be required to enter into a new agreement with landlord for the remaining term. This agreement resulted in a reduction of previously recorded rental liability. At December 30, 2007, the Company maintained a contingent lease liability of \$0.2 million related to this property. The Company accounted for its exit costs in accordance with the provisions of SFAS No. 146, *Accounting for Costs Associated with Exit or Disposal Activities*, which required that such costs be expensed in the periods such costs are incurred. All of the losses incurred are included in discontinued operations in the accompanying consolidated income statements.

As discussed in Note 2 to the consolidated financial statements, the Company accounts for its closed restaurants in accordance with the provisions of SFAS No. 144. Therefore, when a restaurant is closed, and the restaurant is either held for sale or abandoned, the restaurant's operations are eliminated from the ongoing

RUTH'S CHRIS STEAK HOUSE, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements—(Continued)

operations. Accordingly, the operations of such restaurants, net of applicable income taxes, are presented as discontinued operations and prior period operations of such restaurants, net of applicable income taxes, are reclassified. Discontinued operations consist of the following:

| | Fiscal Year | | |
|--|-------------|----------|---------|
| | 2005 | 2006 | 2007 |
| Revenues | \$ 2,707 | \$ 1,569 | — |
| Income (loss) before income tax | \$ (895) | \$ (84) | \$ (25) |
| Income (loss) from operations of discontinued restaurants, net of income tax benefit | \$ 164 | \$ 66 | \$ (4) |

(14) Supplemental Consolidated Financial Statement Information

(a) Accounts Receivable, net

Accounts receivable, net consist of the following:

| | December 31, 2006 | December 30, 2007 |
|---------------------------------|----------------------|----------------------|
| Bank credit card receivables | \$ 5,384 | \$ 4,445 |
| Landlord contributions | 4,003 | 2,198 |
| Franchise fees | 1,366 | 1,553 |
| Trade | 238 | 513 |
| Net income tax refundable | 183 | 3,056 |
| Other | 62 | 289 |
| Allowance for doubtful accounts | (116) | (229) |
| | <u>\$ 11,120</u> | <u>\$ 11,825</u> |

(b) Other Assets

Other assets consist of the following:

| | December 31, 2006 | December 30, 2007 |
|--------------------------|----------------------|----------------------|
| Deposits | \$ 1,022 | \$ 1,030 |
| Liquor licenses | 477 | 1,395 |
| Deferred financing costs | 373 | 460 |
| Other | 228 | 784 |
| | <u>\$ 2,100</u> | <u>\$ 3,669</u> |

(c) Accounts Payable and Accrued Expenses

Accounts payable and accrued expenses consist of the following:

| | December 31, 2006 | December 30, 2007 |
|---|----------------------|----------------------|
| Accounts payable & other accrued expenses | \$ 21,330 | \$ 18,115 |
| Accrued payroll & related benefits | 8,808 | 7,654 |
| Sales & use tax payable | 2,642 | 2,551 |
| Accrued interest payable | 408 | 548 |
| | <u>\$ 33,188</u> | <u>\$ 28,868</u> |

RUTH'S CHRIS STEAK HOUSE, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements—(Continued)

(15) Quarterly Financial Data (Unaudited)

Summarized unaudited quarterly financial data (amounts in thousands, except per share information):

| | Quarter Ended | | | | Total |
|---|-------------------|------------------|-----------------------|----------------------|-------------|
| | March 26, 2006 | June 25, 2006 | September 24, 2006 | December 31, 2006 | |
| Revenues | \$ 64,660 | \$ 60,548 | \$ 58,255 | \$ 88,016 | \$271,479 |
| Operating income | 9,008 | 7,146 | 3,151 | 12,760 | 32,065 |
| Net income | 5,915 | 4,868 | 2,331 | 10,676 | 23,790 |
| Net Income available to common shareholders | \$ 5,915 | \$ 4,868 | \$ 2,331 | \$ 10,676 | \$ 23,790 |
| Basic earnings per share: | | | | | |
| Continuing operations | \$ 0.26 | \$ 0.21 | \$ 0.10 | \$ 0.45 | \$ 1.02 |
| Discontinued operations | — | — | — | 0.01 | 0.01 |
| Basic earnings per share | <u>\$ 0.26</u> | <u>\$ 0.21</u> | <u>\$ 0.10</u> | <u>\$ 0.46</u> | <u>1.03</u> |
| Diluted earnings per share: | | | | | |
| Continuing operations | \$ 0.25 | \$ 0.21 | \$ 0.10 | \$ 0.45 | \$ 1.01 |
| Discontinued operations | — | — | — | 0.01 | 0.01 |
| Diluted earnings per share | <u>\$ 0.25</u> | <u>\$ 0.21</u> | <u>\$ 0.10</u> | <u>\$ 0.46</u> | <u>1.02</u> |

| | Quarter Ended | | | | Total |
|---|------------------|-----------------|--------------------------|----------------------|----------------|
| | April 1, 2007 | July 1, 2007 | September 30, 2007 | December 30, 2007 | |
| Revenues | \$ 81,499 | \$ 78,434 | \$ 70,224 | \$ 89,014 | \$319,171 |
| Operating income | 10,881 | 9,026 | 3,926 | 8,090 | 31,923 |
| Net income | 6,782 | 5,444 | 1,780 | 4,140 | 18,146 |
| Net Income available to common shareholders | \$ 6,782 | \$ 5,444 | \$ 1,780 | \$ 4,140 | \$ 18,146 |
| Basic earnings per share: | | | | | |
| Continuing operations | \$ 0.29 | \$ 0.23 | \$ 0.08 | \$ 0.18 | \$ 0.78 |
| Discontinued operations | — | — | — | — | — |
| Basic earnings per share | <u>\$ 0.29</u> | <u>\$ 0.23</u> | <u>\$ 0.08</u> | <u>\$ 0.18</u> | <u>\$ 0.78</u> |
| Diluted earnings per share: | | | | | |
| Continuing operations | \$ 0.29 | \$ 0.23 | \$ 0.08 | \$ 0.18 | \$ 0.78 |
| Discontinued operations | — | — | — | — | — |
| Diluted earnings per share | <u>\$ 0.29</u> | <u>\$ 0.23</u> | <u>\$ 0.08</u> | <u>\$ 0.18</u> | <u>\$ 0.78</u> |

During the fiscal quarters ended June 25, 2006, September 24, 2006, December 31, 2006 and April 1, 2007, the Company received \$0.4 millions, \$1.0 million, \$3.2 million and \$3.7 million respectively in net insurance proceeds associated with property damage recoveries and business interruption claims from Hurricane Katrina.

During the fiscal quarter ended December 31, 2006 the Company recorded a loss on impairment of long-lived assets in the amount of \$1.0 million. These charges were related to the partial impairment of fixtures and equipment and leasehold improvements at one company-owned restaurant. Additionally, this quarter included an additional week of operations as well as total revenue benefited from gift card breakage above normal trends.

(16) Subsequent Event

On February 19, 2008, the Company completed the acquisition of the Mitchell's Fish Market, operating under the names Mitchell's Fish Market and Columbus Fish Market, and Cameron's Steakhouse, operating under the names Cameron's Steakhouse and Mitchell's Steakhouse from Cameron Mitchell Restaurants, LLC (CMR)

RUTH'S CHRIS STEAK HOUSE, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements—(Continued)

for approximately \$92.0 million. The acquisition has been funded through the Company's credit facility. These restaurants will be the first the Company owns that focus primarily of serving seafood and that do not have the "Ruth's Chris" brand.

On February 19, 2008, the Company amended and restated its existing credit facility to increase the revolving loan commitment to \$250.0 million. The amended and restated credit facility continues to provide for an increase in the revolving loan commitment by an additional \$50.0 million at the Company's request (for a total commitment \$300.0 million), extends the maturity date of the outstanding principal from March 11, 2010 to February 19, 2013, and changes the maximum Consolidated Leverage Ratio in the financial covenants to 3.50:1.00. Management intends to use facility to fund the acquisition, working capital needs, expansion and potential future acquisitions.

EXHIBIT INDEX

| <u>Exhibit</u> | <u>Description</u> |
|----------------|--|
| 1.1 | Underwriting Agreement dated as of August 8, 2005 between Ruth's Chris Steak House, Inc. and Banc of America Securities LLC, Wachovia Capital Markets, LLC, Goldman, Sachs & Co., RBC Capital Markets Corporation, CIBC World Markets Corp., SG Cowen & Co., LLC and Piper Jaffray & Co., as representatives of the underwriters set forth in Schedule A thereto (incorporated by reference to Exhibit 1.1 of Ruth's Chris Steak House, Inc.'s Registration Statement on Form S-1 (Reg. No. 333-124285), as amended, which became effective on August 8, 2005 (the "Registration Statement")). |
| 3.1 | Amended and Restated Certificate of Incorporation of Ruth's Chris Steak House, Inc. (incorporated by reference to Exhibit 3.1 of the Registration Statement, as filed on August 3, 2005). |
| 3.2 | Restated By-Laws of Ruth's Chris Steak House, Inc. (incorporated by reference to Exhibit 3.2 of the Registration Statement, as filed on July 12, 2005). |
| 4.1 | Form of Certificate of Common Stock of Ruth's Chris Steak House, Inc. (incorporated by reference to Exhibit 4.1 of the Registration Statement, as filed on August 3, 2005). |
| 10.1 | Transaction and Merger Agreement, dated as of July 16, 1999, among the Registrant, RUF Merger Corp., Madison Dearborn Capital Partners III, L.P., Madison Dearborn Special Equity III, L.P. and Special Advisors Fund I, LLC (incorporated by reference to Exhibit 10.1 of the Registration Statement, as filed on April 25, 2005). |
| 10.2 | License Agreement, dated as of July 16, 1999, between Ruth U. Fertel and the Registrant (incorporated by reference to Exhibit 10.4 of the Registration Statement, as filed on April 25, 2005). |
| 10.3 | 2005 Long-Term Equity Incentive Plan (incorporated by reference to Exhibit 10.13 of the Registration Statement, as filed on August 8, 2005). * |
| 10.4 | 2004 Restricted Stock Plan (incorporated by reference to Exhibit 10.14 of the Registration Statement, as filed on April 25, 2005). * |
| 10.5 | Amendment No. 1 to the 2004 Restricted Stock Plan (incorporated by reference to Exhibit 10.15 of the Registration Statement, as filed on June 7, 2005). * |
| 10.6 | Form of Restricted Stock Agreement (incorporated by reference to Exhibit 10.16 of the Registration Statement, as filed on April 25, 2005). * |
| 10.7 | 2000 Stock Option Plan (incorporated by reference to Exhibit 10.17 of the Registration Statement, as filed on April 25, 2005). * |
| 10.8 | Form of Stock Option Agreement under 2000 Stock Option Plan (incorporated by reference to Exhibit 10.18 of the Registration Statement, as filed on April 25, 2005). * |
| 10.9 | Employment agreement of Craig S. Miller (incorporated by reference to Exhibit 10.19 of the Registration Statement, as filed on April 25, 2005). * |
| 10.10 | Employment agreement of Geoffrey D.K. Stiles (incorporated by reference to Exhibit 10.20 of the Registration Statement, as filed on April 25, 2005). * |
| 10.11 | Form of Stock Option Agreement under 2005 Long Term Equity Incentive Plan (incorporated by reference to Exhibit 10.22 of the Registration Statement, as filed on August 8, 2005). * |
| 10.12 | Amended and Restated Management Bonus Plan (incorporated by reference to Exhibit 10.1 of the Current Report on Form 8-K filed by the Company on August 7, 2006). * |
| 10.13 | Deferred Compensation Plan of the Company (incorporated by reference to Exhibits 10.1 and 10.2 of the Current Report on Form 8-K filed by the Company on November 2, 2005). * |

Table of Contents

| <u>Exhibit</u> | <u>Description</u> |
|----------------|--|
| 10.14 | Deferred Compensation Plan of RCSH Management, Inc. (incorporated by reference to Exhibits 10.1 and 10.3 of the Current Report on Form 8-K filed by the Company on November 2, 2005). * |
| 10.15 | Form of Employment Agreement entered into between the Registrant and each of David L. Cattell, Thomas S. Pennison, Jr. and Thomas E. O’Keefe, Jr. (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K filed by the Company on September 30, 2005).* |
| 10.16 | Form of Amended and Restated Letter of Understanding and Salary Continuation Agreement entered into between the Registrant and each of Geoffrey D.K. Stiles, David L. Cattell, Sarah C. Jackson, Thomas E. O’Keefe, Jr. and Thomas J. Pennison, Jr. (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K filed by the Company on June 1, 2007). * |
| 10.17 | Shareholders Agreement between the Registrant, Madison Dearborn Capital Partners III, L.P., Madison Dearborn Special Equity III, L.P., Special Advisors Fund I, LLC, First Union Investors, Inc., GS Mezzanine Partners, L.P., GS Mezzanine Partners Offshore and each of the stockholders of the Registrant identified as Investors therein (incorporated by reference to Exhibit 10.2 of the Registration Statement, as filed on April 25, 2005). |
| 10.18 | Registration Agreement between the Registrant, Madison Dearborn Capital Partners III, L.P., Madison Dearborn Special Equity III, L.P. and Special Advisors Fund I, LLC, First Union Investors, Inc., GS Mezzanine Partners, L.P., GS Mezzanine Partners Offshore, and each of the stockholders of the registrant identified as Investors therein (incorporated by reference to Exhibit 10.3 of the Registration Statement, as filed on April 25, 2005). |
| 10.19 | Asset Purchase Agreement, dated as of April 24, 2006, by and among Ruth’s Chris Steak House, Inc., Thomas J. Moran, Jr., individually, and Prime Steak—Chicago, Inc., Prime Steak—Troy, LLC, Prime Steak—Jacksonville, LLC, Prime Steak—Northbrook, LLC, Prime Steak—Ponte Vedra, LLC, Prime Steak—Detroit, Inc., T. J. Moran and Associates, Inc., Prime Steak—Memphis, Inc. and Bekmet, Inc. and Capital City Restaurants, Inc., as Intervenor (incorporated by reference to Exhibit 10.1 of the Quarterly Report on Form 10-Q filed by the Company on March 3, 2006). |
| 10.20 | Purchase and Sale agreement between Ruth’s Chris Steak House, Inc. and Colonial Realty Limited Partnership dated December 19, 2006 (incorporated by reference to Exhibit 99.1 of the Current Report on Form 8-K filed by the Company on December 22, 2006). |
| 10.21 | Asset Purchase Agreement, dated as of April 16, 2007, by and among Ruth’s Chris Steak House, Inc., Steven Queyrouze, RCSH Bellevue, L.L.C., a Washington limited liability company, and Anne Queyrouze (incorporated by reference to Exhibit 10.1 of the Quarterly Report on Form 10-Q filed by the Company on May 9, 2007). |
| 10.22 | Asset Purchase Agreement, dated as of April 16, 2007, by and among Ruth’s Chris Steak House, Inc., Steven Queyrouze, Bayou Investors Limited Liability Company, a Washington limited liability company and Anne Queyrouze (incorporated by reference to Exhibit 10.2 of the Quarterly Report on Form 10-Q filed by the Company on May 9, 2007). |
| 10.23 | Asset Purchase Agreement, dated as of April 16, 2007, by and among Ruth’s Chris Steak House, Inc., Steven Queyrouze, New N.O. Crescent City Investors, L.L.C., a Washington limited liability company, and Anne Queyrouze (incorporated by reference to Exhibit 10.3 of the Quarterly Report on Form 10-Q filed by the Company on May 9, 2007). |
| 10.24 | Terms of Employment and Memorandum of Understanding between the Registrant and Damon M. Liever dated as of July 16, 2007 (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K filed by the Company on July 17, 2007).* |
| 10.25 | First Amendment to the Thomas J. Pennison, Jr. Amended and Restated Terms of Employment/ Letter of Understanding and Salary Continuation Agreement, dated as of January 10, 2008, between the Registrant and Thomas J. Pennison, Jr. (incorporated by reference to Exhibit 10.1 of the Current Report on Form 8-K filed by the Company on January 11, 2008).* |

Table of Contents

| <u>Exhibit</u> | <u>Description</u> |
|----------------|--|
| 10.26 | Asset Purchase Agreement, dated as of November 6, 2008, between Ruth's Chris Steak House Inc. and Cameron Mitchell Restaurants, LLC, with M. Cameron Mitchell and 1245 Properties, LLC as interveners.** |
| 10.27 | Amended and Restated Credit Agreement, dated as of February 19, 2008 by and among the Registrant, as Borrower, the Lenders listed therein, as Lenders, Wells Fargo Bank, N.A., as Administrative Agent, Bank of America, N.A., as Syndication Agent and Wachovia Bank, National Association and JPMorgan Chase Bank, N.A., as Co-Documentation Agents.** |
| 21.1 | Subsidiaries.** |
| 23.1 | Consent of KPMG LLP ** |
| 31.1 | Rule 13a—14(a) Certification of Ruth's Chris Steak House, Inc.'s Chief Executive Officer ** |
| 31.2 | Rule 13a—14(a) Certification of Ruth's Chris Steak House, Inc.'s Chief Financial Officer ** |
| 32.1 | Section 1350 Certification of Ruth's Chris Steak House, Inc.'s Chief Executive Officer ** |
| 32.2 | Section 1350 Certification of Ruth's Chris Steak House, Inc.'s Chief Financial Officer ** |

* Management contract or compensatory plan or arrangement required to be filed and an exhibit pursuant to Item 15 of Form 10-K.

** Filed or furnished herewith.

ASSET PURCHASE AGREEMENT

by and among

RUTH'S CHRIS STEAK HOUSE, INC.,

CAMERON MITCHELL RESTAURANTS, LLC,

**M. CAMERON MITCHELL,
Intervener**

and

**1245 PROPERTIES, LLC,
Intervener**

Dated as of November 6, 2007

Table of Contents

| | <u>Page</u> |
|--|-------------|
| Article I – DEFINITIONS | 1 |
| 1.1 Definitions | 1 |
| 1.2 Interpretation | 9 |
| Article II – PURCHASE AND SALE OF ACQUIRED ASSETS | 9 |
| 2.1 Purchase and Sale of Acquired Assets | 9 |
| 2.2 Purchase Price | 9 |
| 2.3 Purchase Price Adjustment | 10 |
| 2.4 Adjustment to Purchase Price | 10 |
| 2.5 Retained Liabilities | 10 |
| 2.6 Shared Liabilities | 11 |
| 2.7 Payment of Liabilities | 11 |
| 2.8 The Closing | 12 |
| 2.9 Deliveries at the Closing | 12 |
| 2.10 Title | 12 |
| 2.11 Power of Attorney | 12 |
| 2.12 Closing Costs | 13 |
| 2.13 Allocation | 13 |
| Article III – REPRESENTATIONS AND WARRANTIES OF SELLER | 13 |
| 3.1 Organization of Seller | 13 |
| 3.2 Consents | 14 |
| 3.3 Authorization of Transaction | 14 |
| 3.4 Noncontravention | 14 |
| 3.5 Brokers' and Consulting Fees | 14 |

| | | |
|--|---------------------------------|----|
| 3.6 | Real Property | 15 |
| 3.7 | Acquired Assets | 15 |
| 3.8 | Real Property Leases | 15 |
| 3.9 | Sufficiency of Assets | 17 |
| 3.10 | Trade Payables | 17 |
| 3.11 | Inventory | 17 |
| 3.12 | Financial Statements | 17 |
| 3.13 | Absence of Certain Changes | 18 |
| 3.14 | Legal Compliance | 19 |
| 3.15 | Tax Matters | 20 |
| 3.16 | Intentionally Omitted | 20 |
| 3.17 | Intellectual Property | 20 |
| 3.18 | Tangible Assets | 22 |
| 3.19 | Contracts | 22 |
| 3.20 | Litigation | 23 |
| 3.21 | Seller's Employees | 23 |
| 3.22 | Employee Benefit Plans | 24 |
| 3.23 | Environment, Health, and Safety | 25 |
| 3.24 | Assumed Liabilities | 26 |
| 3.25 | Insurance | 26 |
| 3.26 | Gift Cards | 26 |
| 3.27 | Disclosure | 26 |
| Article IV – REPRESENTATIONS AND WARRANTIES OF PURCHASER | | 27 |
| 4.1 | Organization | 27 |
| 4.2 | Authorization of Transaction | 27 |

| | | |
|--|--|----|
| 4.3 | Noncontravention | 27 |
| 4.4 | Brokers' Fees | 27 |
| 4.5 | Legal Compliance | 28 |
| 4.6 | No Financing Contingency; Sufficiency of Cash on Hand | 28 |
| 4.7 | Due Diligence Investigation | 28 |
| 4.8 | Disclosure | 28 |
| Article V – CERTAIN OBLIGATIONS PRIOR TO CLOSING | | 28 |
| 5.1 | Covenants | 28 |
| 5.2 | Risk of Loss | 33 |
| 5.3 | Further Assurances/Cooperation | 33 |
| 5.4 | Termination of Equipment Leases and Loans | 33 |
| 5.5 | Purchaser's Access to Premises, Employees and Information; Confidentiality | 33 |
| 5.6 | Real Estate Matters | 34 |
| 5.7 | Environmental Matters | 35 |
| 5.8 | Inventory Assessment | 35 |
| 5.9 | Purchaser's Financing | 35 |
| Article VI – COVENANTS TO SURVIVE THE CLOSING | | 35 |
| 6.1 | Employees | 36 |
| 6.2 | Non-assignable Contracts and Permits and Liquor Licenses | 37 |
| 6.3 | Confidentiality | 38 |
| 6.4 | Tax Matters | 38 |
| 6.5 | Continuing Existence of Seller | 40 |
| 6.6 | Post-Closing Audited Financial Statements | 40 |
| 6.7 | Gift Cards | 40 |
| 6.8 | Redemption of Gift Cards | 41 |

| | | |
|-----------------------------------|--|----|
| 6.9 | Non-Solicitation of Seller’s Employees | 41 |
| 6.10 | Non-Solicitation of Purchaser’s Employees | 41 |
| 6.11 | Non-Competition | 41 |
| 6.12 | Use of “Mitchell” | 41 |
| 6.13 | Cameron’s Steakhouse | 42 |
| 6.14 | Working Cash | 43 |
| 6.15 | Real Property Leases | 43 |
| 6.16 | Real Property Lease Notices | 43 |
| 6.17 | Bulk Sales Laws | 43 |
| 6.18 | Additional Assurances | 43 |
| 6.19 | Survivability | 43 |
| Article VII – INDEMNIFICATION | | 43 |
| 7.1 | Survival of Representations | 43 |
| 7.2 | Indemnification by Seller | 44 |
| 7.3 | Indemnification by Purchaser | 45 |
| 7.4 | Prosecution of Indemnification Claims | 46 |
| 7.5 | Liability Escrow Arrangement | 46 |
| 7.6 | Limitations | 47 |
| 7.7 | Amount of Damages | 47 |
| 7.8 | Gift Card Escrow Account | 47 |
| 7.9 | Indemnification of Mitchell | 47 |
| Article VIII – CLOSING CONDITIONS | | 48 |
| 8.1 | Conditions to the Obligations of Purchaser | 48 |
| 8.2 | Conditions to the Obligations of Seller | 50 |
| Article IX – TERMINATION | | 51 |

| | | |
|---------------------------|---|----|
| 9.1 | Mutual Consent | 51 |
| 9.2 | By Either Purchaser or Seller | 51 |
| 9.3 | By Purchaser | 52 |
| 9.4 | By Seller | 52 |
| 9.5 | Effect of Termination | 52 |
| Article X – MISCELLANEOUS | | 52 |
| 10.1 | Press Releases and Public Announcements | 52 |
| 10.2 | No Third Party Beneficiaries | 52 |
| 10.3 | Entire Agreement | 52 |
| 10.4 | Succession and Assignment | 53 |
| 10.5 | Counterparts | 53 |
| 10.6 | Headings | 53 |
| 10.7 | Notices | 53 |
| 10.8 | Governing Law | 54 |
| 10.9 | Amendments and Waivers | 54 |
| 10.10 | Severability | 55 |
| 10.11 | Construction | 55 |
| 10.12 | Incorporation of Exhibits and Schedules | 55 |
| 10.13 | Litigation Expense | 55 |
| 10.14 | Specific Performance | 55 |

| | |
|---------|---|
| 1.1(a) | Acquired Assets |
| 1.1(b) | Excluded Assets |
| 1.1(c) | Restaurants |
| 3.2 | Governmental Consents |
| 3.4 | Consents |
| 3.6 | Seller's Real Property |
| 3.7 | Acquired Assets Subject to Liens |
| 3.8 | Real Property Leases |
| 3.8(n) | Parking |
| 3.8(p) | Landlord Advances |
| 3.12(c) | Liabilities Not Disclosed on Financial Statements |
| 3.13 | Absence of Certain Changes |
| 3.14 | Permits |
| 3.15 | Tax matters |
| 3.17 | Intellectual Property |
| 3.19 | Contracts |
| 3.20 | Litigation |
| 3.21 | Seller's Employees |
| 3.22 | Employee Benefits Plan |
| 3.23 | Environment, Health, and Safety |
| 3.24 | Assumed Liabilities |
| 5.1(d) | Operation of Business |
| 5.4 | Termination of Leases and Debt |
| 6.2 | Liquor License Consent |

Exhibits

| | |
|-----------|--|
| Exhibit A | Bill of Sale |
| Exhibit B | Intellectual Property Documents |
| Exhibit C | Shared Services Agreement |
| Exhibit D | Non-Compete and Non-Solicitation Agreement |
| Exhibit E | Assignment and Assumption Agreement |
| Exhibit F | 1245 Properties Deed |
| Exhibit G | Purchase Price Allocation |
| Exhibit H | Liability Escrow Agreement |
| Exhibit I | Gift Card Escrow Agreement |
| Exhibit J | M. Cameron Mitchell Consulting and Non-Compete Agreement |
| Exhibit K | Opinion of Porter Wright Morris & Arthur LLP |
| Exhibit L | Inventory |
| Exhibit M | Estoppel Certificate and Consent to Assignment |
| Exhibit N | Assignment of all Intellectual Property and Bill of Sale |
| Exhibit O | Assignment of Lease |
| Exhibit P | Cross Receipt |
| Exhibit Q | Consent of Members |
| Exhibit R | Management Agreement |

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the "Agreement") is made and entered into this 6th day of November, 2007, by and among Ruth's Chris Steak House, Inc., a Delaware corporation and its permitted assignees pursuant to Section 10.4 hereof (collectively, the "Purchaser") and Cameron Mitchell Restaurants, LLC, an Ohio limited liability company ("Seller"). Also appearing herein, (each as an "Intervener" and collectively as the "Interveners") are Mr. M. Cameron Mitchell, individually ("Mitchell") and 1245 Properties, LLC, an Ohio limited liability company ("1245 Properties").

This Agreement contemplates a transaction in which Purchaser will purchase all of Seller's, and its Affiliates', undivided right, title and interest, of any kind and nature, relating, directly or indirectly, to the development, ownership and operation of the restaurants and trade names described in Section 1.1(c) of the Seller Disclosure Schedule.

Now, therefore, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties, and covenants herein contained, the parties agree as follows.

ARTICLE I – DEFINITIONS

1.1 Definitions. The following capitalized words and phrases have the stated meanings:

"Accounts Receivable" means all obligations to Seller on the basis of goods sold or services performed by Seller for which payment has not been fully made, together with all interest, late charges, penalties, collection fees and other sums that may be due and payable in connection with such obligations.

"Acquired Assets" means the assets, properties, and rights of every kind, nature, type and description, real, personal and mixed, tangible and intangible (including Intellectual Property), used or useful in, or related to, the Business. The term "Acquired Assets" shall include the real, personal and mixed, tangible and intangible (including the Intellectual Property), assets, property, and rights of Seller and 1245 Properties described in the Seller Disclosure Schedule other than the Excluded Assets set forth in Section 1.1(b) of the Seller Disclosure Schedule.

"Affected Restaurant" has the meaning set forth in Section 6.2 below.

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by or is under common control with, such first Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities, by Contract or otherwise.

"Ancillary Agreements" means the agreements substantially in the form attached hereto as Exhibits A, B, C, D, E, F, H, I, J, N, O, and P.

“Assignment and Assumption” has the meaning set forth in Section 2.9 below.

“Assumed Liabilities” means the Liabilities arising from (i) the honoring of any Bonus Cards issued prior to the Closing Date and presented to Purchaser for redemption after the Closing Date, (ii) honoring any Gift Cards issued prior to the Closing Date and presented to Purchaser for redemption after the Closing Date, subject to the terms and conditions of the Gift Card Escrow Agreement, (iii) accruing after the Closing Date under the contracts, certain copier leases and other agreements marked with an asterisk in Section 3.19 of the Seller Disclosure Schedule and (iv) that portion of the POS Lease Amount not paid by Seller prior to Closing and assumed by Purchaser at Closing.

“Bonus Cards” means \$25 denomination cards issued by Seller prior to the Closing Date that can be used at any of the Restaurants between Sunday and Thursday until February 29, 2008.

“Bulk Sales Laws” means Article 6 of the Uniform Commercial Code as in force in any state in which the Acquired Assets are located and all other similar laws applicable to bulk sales and transfers.

“Business” means the Restaurants operated, or to be operated at the locations listed on Section 1.1(a) of the Seller Disclosure Schedule, including any right of Seller to develop or expand a restaurant at such locations.

“Business Employees” has the meaning set forth in Section 3.21(a) below.

“Capital Stock” means (a) in the case of a corporation, corporate stock, or options, warrants or rights to receive corporate stock; (b) in the case of an association or business entity, any or all shares, interests, participations, rights or other equivalents (however designated) which evidence one or more of (i) a right to share in the entity’s earnings or assets, or both; (ii) a right to vote on significant matters affecting the entity, including without limitation whether to authorize additional participation rights, whether to merge or combine with another entity or whether to dissolve the entity; or (iii) a right to obtain information from the entity about its business and prospects on a regular basis; (c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and (d) any other interest or participation that confers upon a Person the right to vote or to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“Cash” means cash and cash equivalents (including marketable securities and short term investments) calculated in accordance with GAAP applied on a basis consistent with the preparation of the Financial Statements.

“Cash Cards” means pre-paid balance cards issued by Seller that can be used at any of the Restaurants.

“Claim” has the meaning set forth in Section 7.4 below.

“Closing” has the meaning set forth in Section 2.8 below.

“Closing Date” has the meaning set forth in Section 2.8 below.

“Club Cards” means cards issued for various group discounts available for a certain number of visits to any of the Restaurants that are valid for use only from January 1 through December 31 of a calendar year.

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

“Commitments” has the meaning set forth in Section 5.6 below.

“Confidential Information” has the meaning set forth in Section 6.3 below.

“Damages” has the meaning set forth in Section 7.2 below.

“Employee Benefit Plan” means that term as defined by Section 3(3) of the ERISA, or any other bonus, profit sharing, pension, retirement compensation, deferred compensation, stock option, stock purchase, fringe benefit, severance, post-retirement, scholarship, disability, sick leave, vacation, individual employment, commission, bonus, payroll practice, retention, severance, or other plan, agreement, policy, trust fund or arrangement for the benefit of current or former directors or employees of any Seller and any of Seller’s current or former ERISA Affiliates or any other persons currently or formerly performing services for any Seller and any of Seller’s current or former ERISA Affiliates, and/or beneficiaries of any such persons.

“Employment Offer” has the meaning set forth in Section 6.1 below.

“Environmental, Health, and Safety Laws” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act of 1976, the Toxic Substances Control Act, the Hazardous Material Transportation and Uniform Safety Act, the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, and the Occupational Safety and Health Act of 1970, each as amended, together with their state and local counterparts or equivalents and all other laws, statutes, ordinances, regulations, criteria, or guidelines (including rules, regulations or codes and any injunctions, judgments, orders, decrees or rulings, with respect to the Acquired Assets or the Business) of federal, state and local governments (and all agencies thereof) concerning pollution or protection of the environment, public health and safety, or employee health and safety, including laws relating to emissions, discharges, releases, or threatened releases of pollutants, contaminants, or chemical, industrial, hazardous, or toxic materials or wastes into ambient air, surface water, ground water, or lands or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation, or handling of pollutants, contaminants, or chemical, industrial, hazardous, or toxic materials or wastes in effect as of the Closing Date.

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

“ERISA Affiliate” means any person that, together with any Seller, would be or was at any time treated as a single employer under Section 414 of the Code or Section 4001 of ERISA and any general partnership of which Seller is or has been a general partner.

“Estoppel and Consent” has the meaning set forth in Section 2.9 below.

“Excluded Assets” means:

(i) Cash;

(ii) Accounts Receivable;

(iii) membership interests of 1245 Properties;

(iv) The corporate minute books and equity ledgers of Seller;

(v) All documentation and correspondence of the Seller not related to the Business; and

(vi) Any personal memorabilia items currently used or displayed in the Restaurants to the extent set forth in Section 1.1 .(b) of the Seller Disclosure Schedule, if any, unless such memorabilia is part and parcel of the Restaurants’ trade dress or marketing scheme, in which case it shall be included within the Acquired Assets.

“Expenditures” has the meaning set forth in Section 2.3 below.

“Fee Owned Property” has the meaning set forth in Section 3.6 below.

“Financial Statements” means collectively, (i) the audited annual financial statements of the Seller doing business as “Mitchell’s Fish Market” and “Columbus Fish Market” for the periods ending December 31, 2005 and December 31, 2006, respectively, in each case prepared in accordance with GAAP and as audited by Hausser + Taylor LLC, together with related notes, schedules and supplemental information and a report on such financial information by Hausser + Taylor LLC, (ii) the unaudited annual financial statements of the Seller doing business as “Mitchell’s Steakhouse” and “Cameron’s Steakhouse” (but excluding the Cameron’s Steakhouse located in Glendale (Milwaukee, WI)) , for the periods ending December 31, 2005 and December 31, 2006, respectively, in each case prepared in accordance with GAAP, and (iii) the Most Recent Financial Statements and (iv) the financial statements required to be delivered by Seller to Purchaser prior to the Closing Date pursuant to Section 5.1(m).

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

“Gift Cards” means collectively the Cash Cards, Club Cards and Promotional Cards.

“Gift Card Escrow Agreement” has the meaning set forth in Section 7.8 below.

“Gift Card Liability Period” has the meaning set forth in Section 6.7 below.

“Governmental Authority” means any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States, any foreign country or any domestic or foreign state, county, parish, city or other political subdivision.

“**Hazardous Substances**” shall mean (i) any hazardous or toxic waste, chemical, substance, waste, pollutant, contaminant, or material defined as or deemed as hazardous or toxic or otherwise regulated under any Environmental, Health and Safety Law, (ii) asbestos or asbestos-containing material, (iii) medical, radiological and biological waste, (iv) urea formaldehyde and polychlorinated biphenyls, (v) oil and petroleum products, including gasoline, fuel oil, crude oil and other various constituents of such products, including gasoline, fuel oil, crude oil, and other various constituents of such products, (vi) fungal growth and mold, (vii) lead in paint or drinking water, and (viii) pesticides and other agricultural chemicals, and (ix) any other chemicals, materials or substances, exposure to which is prohibited, limited or regulated by any Environmental, Health and Safety Laws.

“**Indemnitee**” has the meaning set forth in Section 7.4 below.

“**Intellectual Property**” means (a) all inventions relating to the Business (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof; (b) the federally registered service mark “Mitchell’s Fish Market” (Reg. No. 2,713,985), the common law service mark “Cameron’s Steakhouse” as used in connection with steakhouse and seafood restaurant services, the common law service marks “Columbus Fish Market” and “Mitchell’s Steakhouse” and all other trade names, common law trade and service marks, state registered trade and service marks, and trade dress owned or used by Seller in connection with the Business, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, affidavits, and renewals in connection therewith; (c) the name “Mitchell” (including any stylistic presentation or possessive/plural-possessive form) for use and for future exploitation “by Purchaser, in connection with the provision of restaurant, lounge, catering or food services of any kind and scope worldwide, whether used in connection with the Business or not, to include, without limitation, (i) marketing, promotion or advertisement in any form of such services, (ii) trademark, service mark or trade name use and federal, state or foreign registration in any class related to or associated with such services or the promotion or advertisement of same, and (iii) as part of or the subject of a copyright claim, use or registration; (d) the common law service mark “Mitchell’s Ocean Club” as used in connection with and on restaurant services and the federal application to register the same (Ser. No. 77/038135); (e) all copyrightable works, all copyrights therein, and all applications, registrations, and renewals used in connection with the Business; (f) all mask works and all applications, registrations, and renewals used in connection with the Business; (g) all trade secrets and confidential business information which relates to or is used in the operation of the Business and which does not remain the property of Seller pursuant to applicable provisions of this Agreement (including recipes, cookbooks, manuals, policies and procedures, and training tapes/videos); (h) all assignable computer software (including data and related documentation) relating solely to the Business; and (i) all domain names currently registered or used in association with the Business as well as the domain name “www.mitchellsoceanclub.com.” Notwithstanding the foregoing, Intellectual Property does not mean the common law service marks and all other trade names, common law trade and service marks, state registered trade and service marks “Cameron” as used in connection with non-steakhouse and/or non-seafood restaurant services, “Cameron’s American Bistro,” “Cameron Mitchell Restaurants, LLC,” “Cameron Mitchell Catering” and the domain names “www.cameronmitchellcatering.com” and “www.cameronmitchell.com.”

“Inventory” means all of Seller’s inventory at the Restaurants, including without limitation, all perishable and non-perishable meats, fish, poultry, vegetables, and other foodstuffs, beverages, including without limitation, all liquor, beer and wine (to the extent the transfer of liquor, beer and wine is not prohibited by applicable law), paper goods, condiments, and other items held for sale or consumption in connection with the Business.

“Key Business Employee” has the meaning set forth in Section 3.21(a).

“Knowledge” means actual knowledge after reasonable investigation.

“Liability” means with respect to any Person, any liability or obligation of such Person of any kind, character or description whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due and whether or not the same is required to be accrued on the financial statements of such Person.

“Liability Escrow Fund” has the meaning set forth in Section 7.5 below.

“Lien” means any lien, mortgage, deed of trust, security interest, pledge, negative pledge, conditional sale or title retention, any community or other marital property interest or equitable interest, any restrictive covenant, restriction on use or similar restriction, any claim, levy or charge or encumbrance of any kind or nature, any easement, encroachment or survey defect, or any option, right of first refusal or offer, preferential or third party right.

“Liquor License” means the licenses required to sell alcoholic beverages at each of the Restaurants and identified in Section 3.14 of the Seller Disclosure Schedule.

“Limitation Period” has the meaning set forth in Section 7.1 below.

“Material Adverse Effect” means any event, change, violation, inaccuracy, circumstance or other matter that individually or in the aggregate has had or could reasonably be expected to have a material adverse impact to or on (i) the ability of Seller to perform its obligations under this Agreement or (ii) the Liabilities, results of operations, operations, financial condition, condition, performance, or prospects of the Acquired Assets or the Business; provided, however, the term “Material Adverse Effect” for purposes of this clause (ii) shall not include any such material adverse impact to the extent that it directly or indirectly relates to or results from the announcement or consummation of the transactions contemplated by this Agreement.

“Material Contract or Permit” means, collectively, (i) the Real Property Leases, (ii) the Liquor Licenses and (iii) any Permits set forth on Exhibit 3.14.

“M&A Qualified Beneficiaries” has the meaning set forth in Section 6.1 below.

“Most Recent Financial Statement” means the unaudited interim financial statements of the Seller (i) doing business as “Mitchell’s Fish Market” and “Columbus Fish Market” and (ii) doing business as “Mitchell’s Steakhouse” and “Cameron’s Steakhouse” (but excluding the Cameron’s Steakhouse located in Glendale (Milwaukee, WI)), in each case prepared in accordance with GAAP for the six month period ending June 30, 2007.

“Non-Material Contract or Permit” means any contract, agreement or Permit that is not a Material Contract or Permit.

“Operating Agreement” means the Operating Agreement of Seller dated February 20, 1998, as amended January 17, 2001 and July 1, 2007.

“Ordinary Course of Business” means the ordinary course of business consistent with past practice and custom.

“PBGC” means the Pension Benefit Guaranty Corporation.

“PCAOB” means the Public Company Advisory Oversight Board.

“Permits” has the meaning set forth in Section 3.14 below.

“Permitted Lien” means (i) Liens arising from Taxes that are not yet due and payable; (ii) zoning restrictions, easements, minor restrictions on the use of real property (including any lease thereof), minor irregularities in title thereto and other minor Liens (x) that do not secure the payment of money or the performance of an obligation or (y) that do not in the aggregate materially detract from the value of any of the Restaurants, any of the Real Property Leases or the Fee Owned Property, or the Acquired Assets, taken as a whole, or materially impair the use thereof in the Business; (iii) Liens imposed by law in favor of landlords and suppliers of inventory arising in the Ordinary Course of Business for sums not yet due; and (iv) Lien filings for informational purposes only with respect to equipment leases entered into in the Ordinary Course of Business.

“Person” means an individual, a partnership, a corporation, an association, a limited liability company, a joint stock company, a trust, a joint venture, an unincorporated organization, a governmental entity (or any department, agency, or political subdivision thereof), or any other entity of any kind which is legally recognized as a separate entity under the laws of its jurisdiction of creation or formation.

“Promotional Cards” means a single use set amount card (not to exceed \$100) issued by Seller prior to the Closing Date primarily for promotional, charitable, media trade or guest service matters that can be used at any of the Restaurants.

“POS Lease Amount” means the aggregate amount of the capital leases listed in Section 3.7 of the Seller Disclosure Schedule with respect to the lease of POS Systems/Business Electronics, Wasserman Tables and a DMX Music System from CFC Investment Company, as lessor and lender, for various Restaurant locations.

“Purchase Price” has the meaning set forth in Section 2.2 below.

“Purchase Price Adjustment” has the meaning set forth in Section 2.3(b) below.

“Purchase Price Adjustment Notice” has the meaning set forth in Section 2.3(b) below.

“Purchaser Indemnitees” has the meaning set forth in Section 7.2 below.

“Real Property Leases” has the meaning set forth in Section 3.8 below.

“Required Approvals” has the meaning set forth in Section 6.2 below.

“Restaurant Concept Agreement” has the meaning set forth in Section 5.1(j) below.

“Restaurants” means the restaurant and bar businesses of Seller operated or to be operated at the locations listed on Section 1.1(c) of the Seller Disclosure Schedule.

“Retained Liabilities” has the meaning set forth in Section 2.5 below.

“Seller Indemnities” has the meaning set forth in Section 7.3 below.

“Seller Disclosure Schedule” has the meaning set forth in Section 3.2 below.

“Shared Liabilities” has the meaning set forth in Section 2.6 below.

“Shared Services Agreement” has the meaning set forth in Section 2.9 below.

“Subsidiary” means, with respect to any Person:

(a) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person (or a combination thereof); and

(b) any partnership (i) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person, or (ii) the only general partners of which are such Person or one or more Subsidiaries of such Person (or any combination thereof).

“Surveys” has the meaning set forth in Section 5.6 below.

“Tax” means any federal, state, foreign or local income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code Section 59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, commercial or business activity and general business, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, and any unclaimed property, including any interest, penalty, or addition thereto, whether disputed or not.

“Tax Return” means any return, declaration, report, claim for refund or credit, or information return or statement relating to any Taxes, whether filed on a separate, combined, consolidated or unitary basis, including any schedule or attachment thereto and any amendment thereof.

“1245 Properties” means 1245 Properties, LLC, an Ohio limited liability company, the membership interests of which are wholly owned by Seller.

“Termination Date” has the meaning set forth in Section 9.2 below.

“Title Company” has the meaning set forth in Section 5.6 below.

“Title Objections” has the meaning set forth in Section 5.6 below.

“Uniform Commercial Code” means the Uniform Commercial Code as in effect in the applicable state where the Acquired Assets are located.

“WARN Act” means the Worker Adjustment and Retraining Notification (WARN) Act, 29 U.S.C. §2101 *et. seq.*

“Working Cash” means the sum of \$1,500 representing the estimated average daily opening cash balance at each Restaurant.

1.2 Interpretation. Any reference in this Agreement to a statute shall be to such statute, as amended from time to time prior to the date hereof, and to the rules and regulations promulgated thereunder prior to the date hereof. Any reference to any agreement, document or instrument means such agreement, document or instrument as amended or otherwise modified from time to time in accordance with its terms. Unless the context otherwise requires, (1) all references made in this Agreement to a Section, Schedule or an Exhibit are to a Section, Schedule or an Exhibit of or to this Agreement, (2) “or” is disjunctive but not necessarily exclusive, (3) “will” shall be deemed to have the same meaning as the word “shall” and (4) words in the singular include the plural and vice versa. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation,” whether or not so followed. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof.

ARTICLE II – PURCHASE AND SALE OF ACQUIRED ASSETS

2.1 Purchase and Sale of Acquired Assets. On and subject to the terms and conditions of this Agreement, at the Closing, Purchaser shall purchase from Seller, and Seller shall sell, transfer, convey, assign and deliver to Purchaser, free and clear of all Liens and restrictions on transfer, all of the Acquired Assets for the consideration specified below in this Article II. This Agreement is limited to the assets described, and Purchaser is not purchasing, and shall have no interest in, the Excluded Assets,

2.2 Purchase Price. Purchaser agrees to pay to Seller at the Closing the sum of Ninety Four Million Dollars (\$94,000,000.00) (the “Purchase Price”), payable by transfer of immediately available funds. The Purchase Price shall be subject to adjustment as provided in Section 2.3 below.

2.3 Purchase Price Adjustment.

(a) The Purchase Price shall be subject to adjustment by the credit to Seller of (A) the actual, reasonable and documented development and construction expenditures incurred and paid by Seller prior to Closing at the two (2) Scottsdale, Arizona, and one Overland Park, Kansas restaurant locations listed on Section 1.1(c) of the Seller Disclosure Schedule, and such other restaurant locations as may be approved by Purchaser in writing after the date hereof and that are subject to a lease agreement within thirty (30) days following the Closing Date (collectively, the "Expenditures"). Seller shall deliver to Purchaser a copy of the invoices or such other appropriate evidence for all Expenditures, together with documentation supporting Seller's payment of same prior to the Closing Date (the "Purchase Price Adjustment Notice"). The Purchase Price shall be increased by an amount equal to the amount of the Expenditures (the "Purchase Price Adjustment"). Within three (3) days after Purchaser's receipt of the Purchase Price Adjustment Notice, Purchaser shall remit payment to Seller the amount of the Purchase Price Adjustment via wire transfer of immediately available funds.

(b) The Purchase Price shall also be adjusted within five (5) business days following the Closing Date based on the minimum inventory levels set forth on Exhibit "L". The Purchase Price shall be increased if the inventory levels are more than ten (10) percent above the minimum levels set forth on Exhibit "L" and the Purchase Price shall be decreased if the inventory levels are more than ten (10) percent below the minimum levels set forth on Exhibit "L".

(c) The Purchase Price shall be further adjusted by reducing the Purchase Price by the principal amount of the POS Lease Amount assumed by Purchaser on the Closing Date.

2.4 Adjustment to Purchase Price. Amounts paid or payable pursuant to Section 2.3 shall be treated by the parties for Tax purposes as adjustments to the Purchase Price.

2.5 Retained Liabilities. Except for the Assumed Liabilities and Purchaser's pro rata portion of any Shared Liabilities (as hereinafter defined), it is expressly understood and agreed that Purchaser shall not assume or have any responsibility with respect to any Liability of the Seller, regardless of the nature thereof, including any Liabilities arising from or in connection with, or attributable or related to, the Seller's operation of the Business or the Seller's ownership, lease or use of the Acquired Assets, including (i) any such Liability arising from events, facts or circumstances occurring on or prior to the Closing Date, (ii) any such Liability arising out of the employment, terms or conditions of employment, or termination of employment of any Person, or the failure to employ any Person, including, severance, the Worker Adjustment and Retraining Act, income tax withholding, payroll and/or unemployment tax, workers' compensation, salary or consulting fees, pension, profit-sharing, accrued, earned or unused vacation or sick leave, health insurance or any other employee or employee benefit Liabilities, withdrawal Liability, Liability to the PBGC, Liability under Section 412 of the Code or Section 102 (a)(2) of ERISA or other similar Liability or expense, (iii) any such Liability for any period of time for Taxes, penalties or interest (including without limitation any property or sales Tax Liability, penalty or interest), (iv) any such Liability for expenses, debts or obligations incurred within or outside the Ordinary Course of Business and (v) any such Liability pursuant to Environmental, Health, and Safety Laws. Purchaser shall not become a party to any Employee Benefit Plan as a result of any of the transactions contemplated by this Agreement. All such Liabilities of Seller described above in this Section 2.5 shall be referred to herein collectively as the "Retained Liabilities".

2.6 Shared Liabilities. The following Liabilities and obligations relating to the Business and the Acquired Assets (the “Shared Liabilities”) shall be shared between Purchaser and Seller as follows:

(a) Utility charges and sanitary sewer charges that relate to billing periods beginning before the Closing Date for the Acquired Assets and ending after the Closing Date, shall be allocated on the basis of measured utility usage before and after such Closing Date (if meter or other measured service readings are made at such time) or otherwise on the basis of the proportional number of calendar days in the relevant billing period before and after such Closing Date;

(b) Rentals and other fees, charges and costs, including without limitation common area maintenance fees and administrative fees payable under real property leases and equipment leases that relate to lease periods beginning before and ending after the Closing Date shall be allocated between the parties on the basis of the proportional number of calendar days in the relevant lease period before and after the Closing Date; and

(c) All city, state and county *ad valorem* property, real estate and similar Taxes with respect to the Fee Owned Property and the Real Property Leases (“Property Taxes”) shall be allocated on the basis of the proportional number of calendar days in the relevant Tax year before and after the Closing Date. Such Property Taxes shall be based on the most recent assessment for the purpose of calculating the Purchase Price under Section 2.2, provided, that the Seller shall indemnify Purchaser to the extent that Seller’s actual pro rated assessed Property Taxes are greater than the estimate. In the event that, after the Closing Date, any additional Property Taxes are levied, imposed upon or assessed against the Fee Owned Property or the Real Property Leases for periods prior to the Closing Date, Purchaser shall give Seller written notice of such Property Taxes promptly after the Purchaser receives notices thereof, and Seller shall be responsible for payment of such additional Taxes in full within the time fixed for payment thereof and before the same become delinquent; provided, however, Seller shall have no liability to Purchaser under this Section 2.6(c) with respect to the payment of penalties or interest resulting from late payment of such Property Taxes caused by Purchaser’s failure to promptly notify Seller as herein provided. The foregoing obligation of Seller shall include, without limitation, the payment of any “rollback” or similar Taxes imposed because of a change in use of, or the conveyance of, the Fee Owned Property and the Real Property Leases Without limiting the obligations of Seller pursuant to the preceding sentences, Seller shall, and does hereby, indemnify, defend and hold Purchaser harmless from and against any such additional Taxes (including all interest and penalties assessed or imposed in connection therewith) relating to periods prior to the Closing Date.

2.7 Payment of Liabilities. If any party pays all or any portion of any Liabilities for which another party is entirely or partially responsible hereunder (including without limitation any Shared Liabilities), the responsible party will promptly (but in no event later than 30 days after demand by the paying party) reimburse the paying party for its portion of that payment, provided that any demand for reimbursement shall be accompanied by appropriate evidence of payment thereof.

2.8 The Closing. Subject to and in accordance with the provisions of this Agreement, the closing of the transactions contemplated by this Agreement shall occur at a date and time that is as of the later of January 1, 2008 or the last business day of the month end immediately following the satisfaction or waiver of all closing conditions set forth in Article VIII below at the offices of Porter, Wright, Morris & Arthur LLP, Columbus, Ohio, (the "Closing Date"). As used in this Agreement, "Closing" shall refer to the time when and the place at which the respective obligations of the parties described in this Agreement become due, except for those obligations for which another time of performance is specified hereunder. Unless otherwise agreed by the parties, the Closing shall not take place later than February 29, 2008.

2.9 Deliveries at the Closing. At the Closing, (i) Seller will deliver to Purchaser the various agreements, certificates, instruments, and documents referred to in Section 8.1 below; (ii) Purchaser will deliver to Seller the various certificates, instruments, and documents referred to in Section 8.2 below; (iii) Seller, and Intervener, where applicable, will execute, acknowledge (if appropriate), and/or deliver to Purchaser (A) a bill of sale substantially in the form attached hereto as Exhibit "A", (B) a real estate limited warranty deed executed by 1245 Properties in substantially the form attached hereto as Exhibit "F" (C) an assignment of Intellectual Property rights in substantially the forms attached hereto as Exhibit "B", (D) a counterpart of the shared services agreement in substantially the form attached hereto as Exhibit "C" (the "Shared Services Agreement"), (E) a Seller non-compete and non-solicitation agreement in substantially the form attached hereto as Exhibit "D", (F) a counterpart to an assignment and assumption agreement in substantially the form attached hereto as Exhibit "E" (the "Assignment and Assumption"), (G) an assignment of each Real Property Lease in substantially the form of Exhibit "O" attached hereto, (H) to the extent required under Section 6.2(b), a counterpart to the management agreement in substantially the form attached hereto as Exhibit "R" and (I) such other instruments of sale, transfer, conveyance, and assignment as Purchaser and its counsel reasonably may request, including assignments of all domain names involved; (iv) Purchaser will execute, acknowledge (if appropriate), and deliver to Seller (A) a counterpart of the Assignment and Assumption, (B) a counterpart of the Shared Services Agreement, (C) to the extent required under Section 6.2(b), a counterpart to the management agreement in substantially the form attached hereto as Exhibit "R" and (D) such other instruments of assumption as Seller and its counsel reasonably may request; and (v) Purchaser will deliver to Seller the Purchase Price,

2.10 Title. Title to all of the Acquired Assets and any and all rights to operate and control the Acquired Assets will pass from Seller or 1245 Properties, as the case may be, to Purchaser on the Closing Date, subject to the terms and conditions of this Agreement.

2.11 Power of Attorney. Effective on the Closing Date, Seller hereby constitutes and appoints Purchaser the true and lawful attorney of Seller, with power of substitution, in the name of Seller or Purchaser, but on behalf of and for the benefit of Purchaser: (a) to demand and receive from time to time any and all of the Acquired Assets and to make endorsements and give receipts and releases for and in respect of the same and any part thereof; (b) to institute, prosecute, compromise and settle any and all actions or proceedings against third parties that Purchaser may deem proper in order to collect, assert or enforce any claim, right or title of any kind in or to the Acquired Assets; (c) to defend or compromise any and all actions or proceedings against third parties in respect of any of the Business or Acquired Assets; and (d) to do all such acts and things necessary to fulfill the

transactions contemplated under this Agreement. Seller acknowledges that the appointment hereby made and the powers hereby granted are coupled with an interest and are not and shall not be revocable by it in any manner or for any reason. Purchaser shall indemnify and hold harmless Seller from any and all losses caused by or arising out of any breach of law by Purchaser in its exercise of such power of attorney. Purchaser further acknowledges that it will exercise the power of attorney only in connection with the Business and the Acquired Assets,

2.12 Closing Costs. Except as set forth in Section 10.13 hereof, all of the expenses incurred by Purchaser in connection with the authorization, negotiation, preparation, execution and performance of this Agreement, the Ancillary Agreements and other agreements referred to herein and therein and the consummation of the transactions contemplated hereby and thereby, including, without limitation all fees and expenses of agents, representatives, brokers, counsel and accountants for Purchaser shall be paid by Purchaser. Except as set forth in Section 10.13 hereof, all expenses incurred by any Seller in connection with the authorization, negotiation, preparation, execution and performance of this Agreement, the Ancillary Agreements and the other agreements referred to herein and therein and the consummation of the transactions contemplated hereby and thereby, including without limitation all fees and expenses of agents, representatives, brokers, counsel and accountants for such Seller, shall be paid by such Seller.

2.13 Allocation. The Purchase Price (and all other capitalizable costs) shall be allocated among the Acquired Assets as of the Closing Date for all purposes in accordance with the allocation schedule attached hereto as Exhibit "G" (to be agreed upon as of the Closing Date and reconciled after the Closing Date with any Purchase Price Adjustment pursuant to Section 2.3). For all Tax purposes, including timely preparing and filing Form 8594, Purchaser and Seller agree to report the transactions contemplated by this Agreement in all respects and for all purposes consistent with the terms of this Agreement, including the allocation under Exhibit "G", and that neither of them will take any position inconsistent therewith in any Tax Return, in any refund claim, in any litigation or otherwise.

ARTICLE III – REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Purchaser that the statements contained in this Article III are correct and complete as of the date of this Agreement and, subject to any adjustments which may arise in the Ordinary Course of Business, will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this Article III).

3.1 Organization of Seller. Seller is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Ohio and has the limited liability company power and authority to own or lease the Acquired Assets and to carry on the Business substantially as it is being conducted on the date hereof. Seller is duly qualified and licensed to do business and is in good standing in each jurisdiction where the ownership or operation of the Acquired Assets or the conduct of the Business requires such qualification except where the failure to be so licensed would have a Material Adverse Effect on the Acquired Assets or the Business.

3.2 Consents. Except as described in Section 3.2 of the Seller's disclosure schedule (the "Seller Disclosure Schedule"), Seller is not required to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any Governmental Authority in order for the parties to consummate the transactions contemplated by this Agreement (including the assignments and assumptions referred to in Section 2 above).

3.3 Authorization of Transaction. Seller has full limited liability company power and authority, and has taken all limited liability company action necessary in order to execute, deliver and perform its obligations under this Agreement and the Ancillary Agreements to which it is a party and to consummate the transactions contemplated by this Agreement and each such Ancillary Agreement. This Agreement and each of the Ancillary Agreements to which it is a party have been duly executed and delivered by Seller and constitute the valid and legally binding obligations of Seller enforceable in accordance with their respective terms and conditions, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally or by general equitable principles.

3.4 Noncontravention. Except for any Governmental Authority consents listed on Section 3.2 of the Seller Disclosure Schedule, neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (i) violate, breach or conflict with any provision of, or require any consent, authorization or approval under, any constitution, statute, law, regulation, rule, injunction, judgment, order, decree, ruling, charge, permit or other restriction of any government, Governmental Authority, or court to which Seller is subject or any provision of the Seller's Articles of Organization or Operating Agreement; or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any consent, authorization or approval or notice under, any agreement, contract, lease, license, instrument, or other arrangement to which Seller is a party or by which it is bound or to which any of the Acquired Assets is subject (or result in the imposition of any Lien of any kind upon any Acquired Assets). Without limiting the generality of the representations and warranties set forth in Sections 3.3 and 3.4, except as set forth on Section 3.4 of the Seller Disclosure Schedule, Seller and its manager have taken all actions necessary, and neither Seller nor its manager is required to obtain any consents or make any notifications or disclosures (including disclosures of conflicts of interest), pursuant to (i) any organizational documents of Seller or its Affiliates, including the operating agreements of Seller and its Affiliates, (ii) any agreements or understandings pursuant to which Seller is committed to share any portions of, or make any bonus or other payments based upon, the proceeds of the sale of the Acquired Assets with Columbus Restaurant Development Company, Ltd. ("CRDC"), Seller's employees or others or (iii) any management, development or other agreement to which Seller is bound, including the Restaurant Concept Development Agreement, dated as of February 1998, as amended, between Seller and CRDC and any management or advisory agreement between Seller and its manager.

3.5 Brokers' and Consulting Fees. Except for broker's fees to be paid to Piper Jaffray & Co. and consulting fees to be paid to AEGIS Advisors LLC, Seller has no Liability or obligation to pay any fees or commissions to any broker, finder, consultant or agent with respect to the transactions contemplated by this Agreement for which Purchaser could become liable or obligated or to which the Acquired Assets could become subject.

3.6 Real Property. Section 3.6 of the Seller Disclosure Schedule sets forth a true, correct and complete schedule and legal description of all real property used in connection with the operation of the Business which is owned by 1245 Properties (the "Fee Owned Property"). Except as set forth in Section 3.6 of the Seller Disclosure Schedule, with respect to each such parcel of Fee Owned Property:

(a) 1245 Properties has good and marketable title to the Fee Owned Property, free and clear of any Liens, except for Permitted Liens; provided, however, the foregoing representation and warranty is limited to matters that arise out of claims or demands of Persons claiming by, through or under 1245 Properties;

(b) there are no leases, subleases, licenses, concessions, or other agreements entered into by 1245 Properties granting to any Person or Persons the right of use or occupancy to any portion of the parcel of the Fee Owned Property;

(c) all of the real property owned by Seller or an Affiliate in the conduct of the Business is included in the Fee Owned Property;

(d) Seller has not received notice and, to the Knowledge of Seller, there are no pending, threatened or contemplated condemnation proceeding or proceedings affecting any of the Fee Owned Property or any part thereof or of any sale or other disposition of the Fee Owned Property or any part thereof in lieu of condemnation; and

(e) no portion of the Fee Owned Property has suffered any material damage by fire or other casualty which is uninsured or has not heretofore been completely repaired and restored in full.

(f) The Fee Owned Property has legal and valid rights of ingress and egress to the nearest public roadway and rights to parking and other easements in order to permit the operation of the Business by Purchaser in the same manner as the Business is conducted on the date hereof and all such rights are assignable without the consent of any Person.

3.7 Acquired Assets. Except for the Fee Owned Property, Seller has good and marketable title to, or a valid and enforceable leasehold interest in, all Acquired Assets. Except as set forth in Section 3.7 of the Seller Disclosure Schedule, Seller's ownership of or leasehold interest in any Acquired Assets is not subject to any Liens, except for Permitted Liens. Upon Closing, except for certain copier leases set forth in Section 3.7 of the Seller Disclosure Schedule, Purchaser will be vested with good and marketable title to the Acquired Assets, free and clear of Liens other than Permitted Liens and free of any transferee and/or successor Liabilities. Seller and 1245 Properties have not sold, assigned, transferred or otherwise disposed of, or modified, altered or replaced any of the Acquired Assets between the date of the Most Recent Financial Statement and the date of this Agreement, except for Inventory sold in the Ordinary Course of Business.

3.8 Real Property Leases. Seller has delivered to the Purchaser a true, correct and complete copy of the real property leases listed in Section 3.8 of Seller's Disclosure Schedule (which comprises all the leases and/or subleases of immovable property to which such Seller is a party or by which it is bound), together with all amendments, addenda and supplements thereto (the "Real Property Leases"). With respect to each Real Property Lease and the Real Property Leases:

(a) The Real Property Lease is legal, valid, binding and enforceable against Seller, and to Seller's Knowledge, enforceable against the lessor and any sublessors thereunder in accordance with its terms;

- (b) All rentals or other monies due or required to be paid thereunder have been paid and will have been paid through the Closing Date, except for routine adjustments to percentage rentals which will be paid by Seller within fifteen (15) business days following the Closing Date;
- (c) Except as set forth on Section 3.8 of the Seller Disclosure Schedule, the Real Property Lease is assignable to Purchaser;
- (d) Seller has not received any notice that the lessor or any sublessor under the Real Property Lease intends to cancel or terminate the Real Property Lease or to exercise or not exercise any option thereunder;
- (e) Neither Seller nor, to Seller's Knowledge, any other party to the Real Property Lease, is in breach or default, and no event has occurred that, with notice or lapse of time or both, would constitute a breach or default or permit termination, modification or acceleration thereunder;
- (f) Neither Seller nor, to Seller's Knowledge, any other party to the Real Property Lease has repudiated any provision thereof;
- (g) There have been and there are no disputes, oral agreement(s), temporary waivers, or forbearances in effect as to the Real Property Lease;
- (h) Seller has not assigned, pledged, transferred or conveyed any interest in the leasehold and is not aware of any such assignment, transfer or conveyance;
- (i) To Seller's Knowledge, all facilities leased or subleased under the Real Property Lease have received all approvals of Governmental Authorities (including licenses and Permits) required in connection with the operation of the Business and have been operated and maintained in accordance with applicable laws, rules and regulations;
- (j) The Real Property Lease has not been amended or modified other than as described on Section 3.8 of Seller's Disclosure Schedule;
- (k) There are no leases, subleases, licenses, concessions, or other agreements entered into by Seller in which Seller has granted to any Person or Persons the right of use or occupancy to any portion of the Real Property Lease;
- (l) All of the real property leased by Seller in the conduct of the Business is included in the Real Property Leases;

(m) Seller has not received notice and, to the Knowledge of Seller, there are no pending, threatened or contemplated condemnation proceeding or proceedings affecting the Real Property Lease or any part thereof or of any sale or other disposition of the Real Property Lease or any part thereof in lieu of condemnation;

(n) Except as set forth in Section 3.8(n) of the Seller Disclosure Schedule, the Real Property Lease contains an accurate and complete description of the relevant parking plans, rights and accommodations;

(o) The Real Property Lease has legal and valid rights of ingress and egress to the nearest public roadway and rights to parking and other easements in order to permit the operation of the Business by Purchaser in the same manner as the Business is conducted on the date hereof and, except as set forth in such Real Property Lease, all such rights are assignable without the consent of another Person;

(p) Except as set forth in Section 3.8(p) of the Seller Disclosure Schedule, the landlord under the Real Property Lease has made no loans or advances to Seller including any indebtedness evidenced by a promissory note or other instrument; and

(q) No portion of the Real Property Lease has suffered any material damage by fire or other casualty which is uninsured or has not heretofore been completely repaired and restored in full.

3.9 Sufficiency of Assets. Seller and 1245 Properties, and upon completion of the transactions contemplated by this Agreement, Purchaser, shall have, directly or indirectly, ownership of or rights in all of the assets necessary to conduct the Business in all material respects as currently conducted.

3.10 Trade Payables. All of the trade payables or accrued expenses of Seller have been paid in all material respects in accordance with terms that are customary for the trade including without limitation any such amounts as may be due to an alcoholic beverage wholesaler.

3.11 Inventory. Seller's Inventory consists, and as of the close of business on the business day preceding the Closing Date will consist, only of items that are of a quantity usable in the ordinary course of business consistent with past practice and will be in amounts not significantly less than those set forth on Exhibit "L" and in any event sufficient to operate the Business in the Ordinary Course of Business. All Inventory (other than de minimis amounts) is, (i) of merchantable quality, (ii) suitable for sale under existing quality control standards, and (iii) is in compliance with all applicable regulations and standards of any Governmental Authority. As of Closing Date, there will be on hand Inventory levels as defined and set forth on Exhibit "L".

3.12 Financial Statements.

(a) On or prior to the date hereof, Seller has delivered to Purchaser true and complete copies of the audited annual financial statements of Seller doing business as "Mitchell's Fish Market" and "Columbus Fish Market" for the periods ending December 31, 2005 and December 31, 2006 and true and complete copies of the unaudited balance sheet and income statements of the

Seller doing business as “Mitchell’s Steakhouse” and “Cameron’s Steakhouse” (but excluding the Cameron’s Steakhouse located in Glendale (Milwaukee, WI)), for the periods ending December 31, 2005 and December 31, 2006. As of the Closing Date, the Financial Statements (including any notes thereto) delivered by Seller to Purchaser pursuant to Section 5.1(m) on or prior to the Closing Date have been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby, are complete and correct in all material respects, and fairly present the income, expenses, assets, Liabilities, financial condition, results of operation and changes in financial condition of the Business for the periods covered thereby.

(b) The books of account and other financial records of Seller, all of which have been made available to Purchaser, are complete and correct and represent actual, bona fide transactions and have been maintained in accordance with sound business practices. The minute books of Seller, all of which have been made available to Purchaser, contain accurate and complete records of all meetings held of, and limited liability company action taken by, the members or managers of Seller, and no meeting of any such members or managers has been held for which minutes have not been prepared or are not contained in such minute books.

(c) Except as set forth in Section 3.12(c) of the Seller Disclosure Schedule, Seller has no Liabilities in connection with or related to the Business or Acquired Assets except for those Liabilities reflected or reserved against in the Financial Statements and current liabilities incurred in the Ordinary Course of Business since the date of the Most Recent Financial Statement.

3.13 Absence of Certain Changes. Except as set forth in Section 3.13 of the Seller Disclosure Schedule, since the date of the Most Recent Financial Statement, Seller has conducted the Business in the Ordinary Course of Business and there has not occurred any event, and there does not exist any condition or set of circumstances, that has or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Without limiting the generality of the foregoing, since that date:

(i) Seller has not sold, leased, transferred, or assigned any of its assets, tangible or intangible, used in the Business other than for a fair consideration in the Ordinary Course of Business;

(ii) Seller has not entered into any agreement, contract, lease, or license (or series of related agreements, contracts, leases, and licenses) in connection with the Business either involving annual payments of more than \$475,000 or outside the Ordinary Course of Business;

(iii) no party (including Seller) has accelerated, terminated, modified, or canceled any material agreement, contract, lease, or license (or series of related agreements, contracts, leases, and licenses) in connection with the Business to which Seller is a party or by which it or any of the Acquired Assets is bound;

(iv) Seller has not made any capital expenditure (or series of related capital expenditures) in connection with the Business either involving more than \$1,500,000 or outside the Ordinary Course of Business;

(v) Seller has not delayed or postponed the payment of accounts payable or other Liabilities in connection with the Business beyond Seller's Ordinary Course of Business;

(vi) Seller has not issued any note, bond or other debt security or created, incurred, assumed or guaranteed any indebtedness for borrowed money or capitalized lease obligation in connection with the Business either involving more than \$50,000 individually or \$100,000 in the aggregate;

(vii) Seller has not granted any license or sublicense of any rights under or with respect to any Intellectual Property;

(viii) Seller has not experienced any material damage, destruction, or loss (whether or not covered by insurance) to the Acquired Assets;

(ix) Seller has not granted any increase in the base compensation of any of the Business Employees of the Key Business Employees outside the Ordinary Course of Business;

(x) Seller has not made any other change in employment terms for any of the Business Employees or Key Business Employees outside the Ordinary Course of Business;

(xi) Seller has not entered into any employment agreement or collective bargaining agreement, written or oral, or modified the terms of any existing such contract or agreement with respect to any of the Business Employees or Key Business Employees;

(xii) Seller has not sold or otherwise transferred any Intellectual Property;

(xiii) To the Knowledge of Seller, there has not been any other material occurrence, event, incident, action, failure to act, or transaction in connection with the Business outside the Ordinary Course of Business;

(xiv) Except as set forth in Section 3.13 of the Seller Disclosure Schedule, neither Seller nor its Affiliates has made any offer of employment to the Key Business Employees; and

(xv) Seller has not committed to any of the foregoing.

3.14 Legal Compliance. Seller has complied in all material respects with all laws, ordinances, rules, regulations, orders, filings, judgments, and decrees of any Governmental Authority applicable to the operation of its Business or to the Acquired Assets and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice is currently pending or, to the Knowledge of Seller, threatened against Seller alleging any failure so to comply. To Seller's Knowledge, Seller has not received any notification, warning or inquiry from, or given any notification to or had any communication with, any Governmental Authority, with respect to any violation or alleged or possible violation of any law (including any Environment, Health and Safety Laws) that may be applicable to the Business, nor are any facts known to Seller that may reasonably be expected to give rise to any such notification, warning or inquiry. Section 3.14 of the Seller Disclosure Schedule sets forth all licenses, permits, certificates and other governmental authorizations (collectively, "Permits") necessary to the conduct of the Business and whether such

Permit is freely transferable or assignable, and the party or parties whose consent is required for such transfer or assignment. Seller has all Permits required to conduct the Business, all of which are in good standing, valid, and effective. Other than Seller, no Person or Affiliate of the Seller holds any Permit relating to the Business or the Acquired Assets. Seller shall use its commercially reasonable efforts to assist Purchaser in obtaining all Permits necessary for the ownership and operation of the Acquired Assets and the Business.

3.15 Tax Matters. All Tax Returns required to be filed by Seller in connection with the operation of the Business or the ownership, use or operation of the Acquired Assets have been timely filed and in the manner prescribed by law. Such Tax Returns filed for the five preceding calendar years reflect accurately all material Liabilities for Taxes required to be paid in connection with the operation of the Business for the periods covered by such Tax Returns. Except as set forth on Section 3.15 in the Seller's Disclosure Schedule, all Taxes owed in connection with the operation of the Business or the ownership, use or operation of the Acquired Assets have been paid in full or, to Seller's Knowledge, appropriate provision for payment has been made including all estimated Tax payments due and payable through the date hereof. All Taxes being disputed in good faith are listed on Section 3.15 in the Seller's Disclosure Schedule. To Seller's Knowledge, Seller currently has no Liability for any Tax under the law of any jurisdiction that would subject Purchaser or the Acquired Assets to successor Liability under such jurisdiction's law for such Tax. Except as set forth on Section 3.15 of the Seller Disclosure Schedule, there is no pending audit, examination or proceeding by any Governmental Authority with respect to the Business or the Acquired Assets relating to the assessment or collection of any Taxes.

3.16 Intentionally Omitted.

3.17 Intellectual Property.

(a) Seller owns or has the right to use pursuant its ownership of the Intellectual Property or pursuant to license, sublicense or other agreement all Intellectual Property used and/or necessary for the current operation of the Business. Each item of Intellectual Property owned or used by Seller immediately prior to the Closing hereunder will be owned or available for use by Purchaser on identical terms and conditions immediately subsequent to the Closing hereunder. Seller has taken commercially reasonable action to maintain and protect each item of Intellectual Property that it owns or uses.

(b) Except to the extent that the ownership of the mark "MITCHELL'S OCEAN CLUB" (Ser. No. 77/038135) is not otherwise limited by the U.S. Patent & Trademark's Office initial refusal to register it under Section 2(d) of the Lanham Act 15 U.S.C. §1052(d), to the Knowledge of Seller, Seller has not interfered with, infringed upon, misappropriated, or otherwise come into conflict with any Intellectual Property rights of third parties, and Seller has not received any charge, complaint, claim, demand, opposition, cancellation, or notice alleging any such interference, infringement, misappropriation, or violation (including any claim that Seller must license or refrain from using any Intellectual Property rights of any third party). To the Knowledge of Seller, no third party has interfered with, infringed upon, misappropriated, or otherwise come into conflict with any Intellectual Property rights of Seller.

(c) Section 3.17 of the Seller Disclosure Schedule identifies all Intellectual Property used by Seller and necessary in connection with the operation of the Business, including every trade name, service name, registered trademark, registered service mark, unregistered trademark, unregistered service mark, all copyrightable works, including without limitation, all photographs, photographic negatives, photographic images (digital or otherwise), advertisements, ad copy, web layout and design, web copy and content, menus, menu language and design, gift card design, artwork, architectural drawings and plans, lyrics and composition of music, sound recordings, videos and video images, all copyrights, all trade secrets, all domain names, all patents, all inventions, all trade dress, and assignable computer software. With respect to the Intellectual Property, including those items identified in Section 3.17 of the Seller Disclosure Schedule:

(i) Seller possesses all right, title and interest thereto, free and clear of any Lien, license, or other restriction of any kind or nature, except for those copyrighted works created or developed for or on behalf of Seller to use or that are useful in connection with the Business and for which Seller will use commercially reasonable efforts to obtain written assignments for as set forth in Section 5. 1(o);

(ii) none are subject to any outstanding injunction, judgment, order, decree, ruling or charge;

(iii) no action, suit, proceeding, hearing, investigation, charge, opposition, cancellation, complaint, claim or demand is pending or, to the Knowledge of Seller, is threatened which challenges the legality, validity, enforceability, use or ownership thereof;

(iv) Seller has never agreed to indemnify any Person for or against any interference, infringement, misappropriation, or other conflict with respect thereof; and

(v) with respect to registered and common law service marks and trademarks, none can be considered to be abandoned as that term is defined in 15 U.S.C § 1127, and Seller has not discontinued use of such marks with intent not to resume such use, and

(vi) with respect to the copyrightable works, none were created before March 1, 1989.

(d) Section 3.17 of the Seller Disclosure Schedule identifies Intellectual Property that any third party owns and that Seller uses in connection with the Business pursuant to license, sublicense, agreement or permission. Seller has delivered to Purchaser or shall deliver to Purchaser by Closing, correct and complete copies of all such licenses, sublicenses, agreements and permissions (as amended to date). With respect to each item of Intellectual Property that is owned by any third party, including items that are identified in Section 3.17 of the Seller Disclosure Schedule:

(i) Any license, sublicense, agreement or permission thereof is legal, valid, binding, enforceable and in full force and effect and Seller shall obtain such consents as are necessary to assign all such licenses, sub-licenses, agreements or permissions to Purchaser at Closing;

(ii) to the Knowledge of Seller, no party to the license, sublicense, agreement or permission is in breach or default, and no event has occurred which with notice or lapse of time would constitute a breach or default or permit termination, modification or acceleration thereunder;

(iii) no party to the license, sublicense, agreement or permission has repudiated any provision thereof;

(iv) to the Knowledge of Seller, the underlying item of Intellectual Property is not subject to any outstanding injunction, judgment, order, decree, ruling or charge;

(v) to the Knowledge of Seller, no action, suit, proceeding, hearing, investigation, charge, complaint, claim or demand is pending or threatened which challenges the legality, validity or enforceability of the underlying item of Intellectual Property; and

(vi) Seller has never granted any sublicense or similar right with respect to the license, sublicense, agreement or permission.

3.18 Tangible Assets. In all material respects, each tangible asset included within the Acquired Assets is free from defects (patent and latent), has been maintained in accordance with normal industry practice, is in good operating condition and repair (subject to normal wear and tear), and is suitable for the purposes for which it presently is used.

3.19 Contracts. Section 3.19 of the Seller Disclosure Schedule lists the following contracts and other agreements to which Seller is a party or is bound in connection with the Business on the date hereof and identifies each such contract (if any) in which (i) an officer, director, member, manager or employee of Seller or (ii) an Affiliate of Seller has or holds (directly or indirectly) a material interest (and Seller will update the Schedule as necessary at least five (5) days prior to Closing):

(i) any agreement (or group of related agreements), for the lease of personal property to or from any Person;

(ii) any agreement (or group of related agreements) requiring capital expenditures or for the purchase or sale of raw materials, commodities, supplies, products or other personal property, or for the furnishing or receipt of services (including advertising and marketing services), the performance of which will extend over a period of more than 30 days, result in a loss to Seller, or involve consideration in excess of \$100,000;

(iii) any agreement concerning a partnership or joint venture;

(iv) any agreement (or group of related agreements) under which Seller has created, incurred, assumed or guaranteed any indebtedness for borrowed money, or any capitalized lease obligation, in excess of \$500,000 or under which it has granted a Lien with respect to any of the Acquired Assets;

(v) any agreement concerning confidentiality or noncompetition;

(vi) any collective bargaining agreement;

(vii) any agreement for the employment of any Key Business Employee providing annual salary (excluding bonus) in excess of \$50,000 or providing severance benefits;

(viii) any agreement under which Seller has advanced or loaned any amount to any of the Business Employees or Key Business Employees outside the Ordinary Course of Business;

(ix) any agreement under which the consequences of a default or termination could have a materially adverse effect on the financial condition, operations, results of operations or future prospects of the Business;

(x) letters of intent with respect to the construction and/or establishment of contemplated Restaurants; and

(xi) any other agreement (or group of related agreements) the performance of which involves annual consideration in excess of \$250,000.

Seller has delivered to Purchaser a correct and complete copy of each written agreement listed in Section 3.19 of the Seller Disclosure Schedule and a written summary setting forth the terms and conditions of each oral agreement referred to in Section 3.19 of the Seller Disclosure Schedule. With respect to each such agreement that is listed in Section 3.19 of the Seller Disclosure Schedule, except as described in Section 3.19 of the Seller Disclosure Schedule: (A) the agreement is legal, valid, binding, enforceable and in full force and effect and was entered into on an arms length basis; (B) to the Knowledge of Seller, no party is in breach or default, and no event has occurred which with notice or lapse of time would constitute a breach or default, or permit termination, modification or acceleration, under the agreement; and (C) to the Knowledge of Seller, no party has repudiated any provision of the agreement.

3.20 Litigation. Section 3.20 of the Seller Disclosure Schedule sets forth each instance in which Seller, in connection with the operation of the Business, (i) is subject to any outstanding injunction, judgment, order, decree, ruling, or charge, or (ii) is a party or, to the Knowledge of Seller, is threatened to be made a party to any action, suit, proceeding, hearing, or investigation of, in, or before any court or quasi-judicial or Governmental Authority of any foreign, federal, state or local jurisdiction or before any arbitrator. Except as set forth in Section 3.20 of the Seller Disclosure Schedule, there is no litigation, arbitration, known investigation, proceeding or controversy (including, without limitation, unsettled claims) relating to the Business or the Acquired Assets, or to Seller's ability or right to sell the Acquired Assets, pending or, to the Knowledge of Seller, threatened by or against Seller by any Person or before any Governmental Authority.

3.21 Seller's Employees.

(a) Section 3.21 of the Seller Disclosure Schedule sets forth a list of all of the employees of Seller employed as of the date hereof in connection with the Business (by type or classification) and their respective rates of compensation (including the portions thereof attributable

to bonuses or other extraordinary compensation), benefits and length of employment, also as of the date hereof. Seller's employees identified on such list as hourly employees or non-management employees are referred to herein as the "Business Employees" and Seller's employees identified on such list as management employees are referred to herein as the "Key Business Employees."

(b) To the Knowledge of Seller, no Key Business Employee has any plans or has notified Seller that such employee intends to terminate employment with Seller.

(c) Seller is not a party to any collective bargaining agreement or other contract or understanding with a labor union relating to the Business Employees, and to the Knowledge of Seller there are no labor union organizational efforts underway or threatened involving any of the Business Employees. There are no labor disputes, or employment related claims, lawsuits or grievances pending, or to the Knowledge of Seller threatened, against or otherwise affecting the Business. There are no employment contracts or employment agreements with any Business Employees or Key Business Employees.

(d) Seller will deliver any and all necessary notices to the Business Employees and the Key Business Employees relating to the transactions contemplated by this Agreement, including without limitation any notices required by the WARN Act.

(e) Seller has at all times complied in all material respects with all federal, state and local laws, rules, regulations, orders, judgments, decrees, ordinances and other statements of authority pertaining to employment of the Business Employees and the Key Business Employees, including without limitation all (i) employment eligibility verification forms, (ii) all immigration and alien employee regulations and laws, (iii) group health plans of Seller to which Part 6 of Subtitle B of Title I of ERISA and Section 4980B of the Code (such statutory provisions and predecessors thereof are referred to herein collectively as "COBRA") applies and that cover employees of the Business, (iv) the Americans with Disabilities Act and (v) payment of withholding taxes for or on behalf of employees.

(f) Seller has provided to Purchaser complete copies of all employee files including Business Employee files on disk and Key Business Employee files on disk or however maintained by Seller.

3.22 Employee Benefit Plans.

(a) Seller shall retain, and Purchaser will not assume, any obligation or Liability due to or because of any past service Liability of any of the Business Employees or Key Business Employees or otherwise, vested benefits, retirement plan or other obligations under local, state or federal law (including ERISA) resulting from the acquisition of the Acquired Assets or from the employment of the Business Employees and the Key Business Employees by Purchaser.

(b) Except as set forth in Section 3.22 of the Seller Disclosure Schedule, Seller does not maintain or contribute to any Employee Benefit Plan that cover the Business Employees or the Key Business Employees. Such schedule shall include each retirement plan and welfare plan, including each hospitalization, medical, dental, and Code Section 125 medical reimbursement plans ("Health Plans") that applies and that covers the Business Employees and Key Business Employees.

(c) Intentionally Omitted.

(d) Neither Seller nor any ERISA Affiliate maintains, has ever maintained or become obligated to contribute to any Employee Benefit Plan that is a subject to Title IV of ERISA. Seller has not within the last five years engaged in, nor is a successor corporation to any entity that has engaged in, a transaction described in Section 4069 of ERISA. The Acquired Assets are not subject to a lien by the PBGC.

(e) Each Employee Plan which is intended to be qualified under Section 401(a) of the Code has been the subject of an Internal Revenue Service determination letter, and, to the knowledge of Sellers, no event has occurred since the issuance of any such determination letter that would create a material risk of revocation of any such determination letter.

3.23 Environment, Health, and Safety.

(a) Except as described in Section 3.23 of the Seller Disclosure Schedule, to the Knowledge of Seller, Seller and 1245 Properties has complied with all Environmental, Health, and Safety Laws with respect to the Acquired Assets, and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand has been filed or commenced against Seller or 1245 Properties, and no notice has been received by Seller or 1245 Properties, alleging any failure so to comply. Without limiting the generality of the preceding sentence, to the Knowledge of Seller, Seller has obtained and been in compliance in all material respects with all of the terms and conditions of all permits, licenses, and other authorizations in connection with the Business which are required under, and has complied with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules, and timetables which are contained in, all Environmental, Health, and Safety Laws.

(b) To the Knowledge of Seller, Seller and 1245 Properties have no Liability (and Seller has not handled or disposed of any Hazardous Substance, arranged for the disposal of any Hazardous Substance, exposed any employee employed in connection with the Business or other individual to any Hazardous Substance or condition, or owned or operated any property or facility in connection with the Business in any manner that could form the basis for any present action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand against Seller giving rise to any material Liability) for (i) damage to any site, location, or body of water (surface or subsurface) used in connection with the Business under any Environmental, Health and Safety Law, or (ii) for any illness of or personal injury to any employee employed in connection with the Business or other individual, or for any other reason under any Environmental, Health, and Safety Law.

(c) To the Knowledge of Seller, all properties and equipment used in the Business have been free of, and are currently free of reportable releases or spills of Hazardous Substances.

(d) To the Knowledge of Seller, following the Closing, no material capital expenditures shall be required by Purchaser to insure compliance with any Environmental, Health

and Safety Law with respect to the Acquired Assets. There is no pending audit known to Seller by any federal, state, or local Governmental Authority with respect to groundwater, soil, or air monitoring; the storage, burial, release, transportation, or disposal of Hazardous Substances; or the use of underground storage tanks by Seller or relating to the facilities of Seller used in the Business. Except as described in Section 3.23 of the Seller Disclosure Schedule, Seller does not have any agreement with any federal, state, or local Governmental Authority or any other third party relating to any environmental matter or environmental cleanup with respect to the Acquired Assets.

(e) Seller has delivered to Purchaser true and complete copies and results of any reports, studies, analyses, tests or monitoring possessed or initiated by Seller or 1245 Properties pertaining to Hazardous Substances or hazardous activities in, on or under any facility owned, leased or operated by Seller or 1245 Properties or concerning compliance by Seller or 1245 Properties or any other Person for whose conduct Seller or 1245 Properties is or may be held responsible in connection with the Business or Acquired Assets, with Environmental, Health, and Safety Laws.

3.24 Assumed Liabilities. Except as set forth in Section 3.24 of the Seller Disclosure Schedule, all Assumed Liabilities have arisen in the Ordinary Course of Business, are bona fide and are properly recorded on the books of Seller in accordance with GAAP.

3.25 Insurance. Seller has in force adequate fire and other risk insurance covering the full replacement value of the Acquired Assets including the full replacement value of the real property improvements owned by Seller or 1245 Properties and shall maintain such insurance in full force until the Closing Date. Seller also has in force, and will maintain until the Closing Date, adequate general liability insurance in amounts consistent with industry standards for similar businesses.

3.26 Gift Cards. Other than the Gift Cards and the Bonus Cards, Seller has no Liability in respect of any gift cards, coupons, discounts or similar Liabilities with respect to the Business or the Acquired Assets.

3.27 Disclosure. Seller has delivered or made available to Purchaser all of the items requested to date in connection with Purchaser's inspection of the Business and the Acquired Assets. No representation or warranty by Seller in this Agreement or any Ancillary Agreement to which it is a party and no exhibit, document, statement, certificate or schedule furnished or to be furnished to Purchaser by Seller pursuant hereto (including the Seller Disclosure Schedule) or thereto, or in connection with the transactions contemplated hereby or thereby, or any other items or materials delivered or made available in connection with the Purchaser's inspection, contains or will contain on the Closing Date any untrue statement of a material fact, or omits or will omit on the Closing Date to state a material fact necessary to make the statements contained herein or therein not misleading, or necessary to provide adequate and complete information as to the Acquired Assets and Business.

ARTICLE IV – REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Seller that the statements contained in this Article IV are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this Article IV).

4.1 Organization. Purchaser is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has the corporate power and authority to carry on its business substantially as it is being conducted on the date hereof. Purchaser is duly qualified and licensed to do business in each jurisdiction where the conduct of its business requires such qualification.

4.2 Authorization of Transaction. Purchaser has full corporate power and authority to execute, deliver and perform its obligations under this Agreement and the Ancillary Agreements to which it is a party and to consummate the transactions contemplated by this Agreement and the Ancillary Agreements. This Agreement and each Ancillary Agreement to which it is a party have been duly executed and delivered by Purchaser and constitute the valid and legally binding obligations of Purchaser, enforceable in accordance with their respective terms and conditions, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally or by general equitable principles.

4.3 Noncontravention. Neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (i) violate, breach or conflict with any provision of, or require any consent, authorization or approval under, any constitution, statute, law, regulation, rule, injunction, judgment, order, decree, ruling, charge, Permit or other restriction of any government, Governmental Authority, or court to which Purchaser or any of its assets is subject or any provision of the Articles of Incorporation or Bylaws of Purchaser, or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any consent, authorization or approval or notice under any agreement, contract, lease, license, instrument, or other arrangement to which Purchaser is a party or by which it is bound or to which any of its assets is subject. The execution and delivery by Purchaser of this Agreement, the performance by Purchaser of its obligations hereunder, and the consummation by Purchaser of the transactions contemplated hereby do not require Purchaser to obtain any consent, approval or action of, or make any filing with or give any notice to any governmental agency or authority except for the expiration or early termination of the applicable waiting period under the H-S-R Act and any administrative actions described in Section 5.1(d) below.

4.4 Brokers' Fees. Except for broker's fees to be paid to William C. Sinton, Purchaser has no Liability or obligation to pay any fees or commissions to any broker, finder, consultant or agent with respect to the transactions contemplated by this Agreement for which Seller could become liable or obligated or to which the Acquired Assets could become subject.

4.5 Legal Compliance. Purchaser has complied in all material respects with all applicable laws (including rules, regulations, codes, plans, injunctions, judgments, orders, decrees, rulings, and charges thereunder) of federal, state, local and foreign governments (and all agencies thereof), and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice is currently pending or, to the Knowledge of Purchaser, threatened against Purchaser alleging any failure so to comply.

4.6 No Financing Contingency; Sufficiency of Cash on Hand. Purchaser's obligation to purchase the Acquired Assets hereunder is not contingent upon Purchaser obtaining financing. Purchaser has or on the Closing Date will have sufficient cash, available lines of credit or other sources of immediately available funds to enable Purchaser to pay the Purchase Price at the Closing.

4.7 Due Diligence Investigation. Purchaser and its representatives have conducted a due diligence review of the Business and acknowledges that Seller has afforded Purchaser and its representatives full and complete access to the books and records, financial statements, facilities, employees and such other information of the Business as Purchaser has requested to evaluate the operations, properties, assets, Liabilities and prospects of the Business. Other than confirmatory due diligence and due diligence related to Intellectual Property, Purchaser represents and warrants that no significant additional due diligence is required by Purchaser prior to the Closing Date in the absence of notice by Seller of developments that materially adversely impact its representations or warranties or events that may reasonably lead to a Material Adverse Effect.

4.8 Disclosure. No representation or warranty by Purchaser in this Agreement or any Ancillary Agreement to which it is a party and no exhibit, document, statement, certificate or schedule furnished or to be furnished to Seller by Purchaser pursuant hereto or thereto, or in connection with the transactions contemplated hereby or thereby, contains or will contain on the Closing Date any untrue statement of a material fact, or omits or will omit on the Closing Date to state a material fact necessary to make the statements contained herein or therein not misleading.

ARTICLE V – CERTAIN OBLIGATIONS PRIOR TO CLOSING

5.1 Covenants. The parties agree as follows with respect to the period between the execution of this Agreement and the Closing:

(a) General. Each of the parties will use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, and assist the other party in doing, all things necessary, proper, or advisable in order to consummate and make effective, the transactions contemplated by this Agreement (including satisfaction, but not waiver, of the closing conditions set forth in Article VIII below).

(b) Regulatory Filings. Seller and Purchaser shall make all necessary regulatory filings as soon as practicable, but in no event later than ten (10) business days from the date of this Agreement, including without limitation, those required under the H-S-R Act in order to facilitate prompt consummation of the transactions contemplated by this Agreement. In addition, Seller and Purchaser shall use commercial reasonable efforts, and shall cooperate fully with each other, to comply as soon as practicable with all governmental requirements applicable to, or necessary for the

consummation of, the transactions contemplated hereby. Seller and Purchaser shall provide such information and communications to Governmental Authorities as such Governmental Authorities may request, including Seller cooperating with Purchaser in reporting or making application to any applicable state, county or municipal liquor license board or authority in connection with the consummation of the transactions contemplated hereby prior to Closing and reasonably cooperating in the resolution of the administrative actions (if any) brought before such Governmental Authorities prior to Closing. Each of the parties shall provide the other party copies of all applications filed or submitted with Governmental Authorities in connection with this Agreement and shall keep the other party apprised of the status of matters relating to completion of the transactions contemplated hereby.

(c) Notices and Consents. Promptly after execution of this Agreement, Seller will apply for or otherwise seek, give any notices to third parties, and use its commercially reasonable efforts to obtain any third party consents and approvals, that are required for consummation of the transactions contemplated hereby. Seller will give any notices to, make any filings with, and use its commercially reasonable efforts to obtain any authorizations, consents and approvals of third parties necessary for the assignment to Purchaser of the agreements, contracts, leases, licenses and other arrangements identified in Section 3.14 and Section 3.19 of the Seller Disclosure Schedule. In the event any such third party consent, approval or authorization is not obtained prior to the Closing, the agreement, contract, lease or arrangement relating thereto shall not be included among the Acquired Assets and the executory obligations of Seller under such agreement, contract, lease or arrangement shall not be included among the Assumed Liabilities. Nothing in this section 5.1(c) shall be construed as waiver of the conditions to Purchaser's obligation to Closing set forth in Section 8.1 hereof including Section 8.1(q) and Section 8.1(u).

(d) Operation of Business. Except as expressly provided in Section 5.1(d) of the Seller Disclosure Schedule, Seller will not engage in any practice, take any action, or enter into any transaction in connection with the Business or Acquired Assets outside the Ordinary Course of Business and in a manner consistent with past practices of the Seller. Without limiting the generality of the foregoing, except as expressly provided in Section 5.1(d) of the Seller Disclosure Schedule, Seller will not otherwise engage in any practice, take any action or enter into any transaction of the sort described in Section 5.1(e) below.

(e) Prohibited Transactions. Seller shall not (a) sell or dispose of, or authorize or propose the sale or disposition of, any of the Acquired Assets (other than (i) the sale of Inventory in the Ordinary Course of Business, which shall be replenished to maintain the levels set forth in Exhibit "L" and (ii) the sale and/or replacement of obsolete or damaged equipment in the Ordinary Course of Business); (b) make any significant change in its methods of management, marketing, or operating (or practices relating to trade accounts or to other payments) or make any change in its accounting methods; (c) other than in the Ordinary Course of Business, authorize any capital expenditures; (d) allow any Lien to be placed on any of the Acquired Assets other than purchase money liens and capital leases incurred in the Ordinary Course of Business, provided, that, such Liens are promptly disclosed to Purchaser and are released on or before the Closing Date; (e) enter into (i) any contract that provides for payments to another Person by Seller other than in the Ordinary Course of Business provided, that, any such contracts that are entered into by Seller are promptly disclosed to Purchaser or (ii) other transactions in connection with the operation of its Business, of any nature whatsoever, which may have a Material Adverse Effect; (f) amend, cancel, terminate or

default under any material contract or commitment of its Business, including, without limitation, any of leases or assigned contracts or (g) other than in the Ordinary Course of Business, commit to take or take any action with respect to increasing, or make or commit to make any other adjustment to, the existing salary or compensation package of any Business Employee or Key Business Employee, or (h) without the prior written consent of Purchaser, enter into any lease of real property that will be assigned to Purchaser at Closing.

(f) Preservation of Business. Seller shall preserve its Business intact, including maintaining (a) all Permits, consents or approvals required by applicable law and (b) the current relationships of the Business with customers, suppliers, employees, and others having business relationship with the Seller, including without limitation maintenance of Inventory as defined and set forth on Exhibit "L".

(g) Notice of Developments.

(i) Seller shall give prompt notice to Purchaser of the following:

(A) the occurrence or nonoccurrence of any event that would be likely to cause either (1) any representation or warranty of such Seller contained in this Agreement, or in connection with the transactions contemplated hereunder, to be untrue or inaccurate at any time from the date hereof to the Closing Date, or (2) directly or indirectly, any Material Adverse Effect; or

(B) any material failure of Seller, or any officer, director, employee or agent thereof, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder; or

(C) any proposal together with the terms thereof, however communicated and in whatever form transmitted, regarding (1) any merger of Seller into or with another Person, (2) any purchase or sale of any material portion of its Assets or the equity interest in Seller, (3) any other similar business combination or transaction involving Seller or any Affiliate of Seller, or (4) any other indication of interest on the part of any Person with respect to any of the foregoing.

(ii) Purchaser shall give prompt notice to the Seller of the following:

(A) the occurrence or nonoccurrence of any event that would be likely to cause any representation or warranty of Purchaser contained in this Agreement to be untrue or inaccurate at any time from the date hereof to the Closing Date; or

(B) any material failure of Purchaser, or any officer, director, employee or agent thereof, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder.

(iii) Notwithstanding the foregoing, the delivery of any notice pursuant to this Section shall not limit or otherwise affect the remedies available hereunder to the party receiving such notice.

(h) Exclusivity. Seller will not (i) solicit, initiate, or encourage the submission of any proposal or offer from any Person relating to the acquisition of any capital stock or other voting securities, or any of the Acquired Assets, of Seller (including any acquisition structured as a merger or consolidation) or (ii) participate in any discussions or negotiations regarding, furnish any information with respect to, assist or participate in, or facilitate in any other manner any effort or attempt by any Person to do or seek any of the foregoing. Seller will notify Purchaser promptly if any Person makes any written proposal or offer with respect to any of the foregoing that the Seller believes in good faith to be bona fide.

(i) Release of Mitchell Personal Guaranty Obligations. Purchaser shall use its best efforts to obtain the release of Mitchell from any personal guaranty obligation under any of the Real Property Leases or in respect of all or any portion of the POS Lease Amount on or prior to the Closing.

(j) Documentation of Transfer of Restaurant Concepts. In accordance with that certain Restaurant Concept Development Agreement dated as of February, 1998, as amended from time to time, by and between Seller and Columbus Restaurant Development Company, Ltd. (the "Restaurant Concept Agreement"), Seller shall, on or before the Closing Date, cause the execution and delivery of one or more assignments and bills of sale in the form set forth as Exhibit "N" attached hereto documenting the transfer and assignment of the specific Restaurant Concepts (as defined in the Restaurant Concept Agreement and including Mitchell's Fish Market and Cameron's Steakhouse) relating to the Business, including any Intellectual Property (as that term is defined in Exhibit N) related to the Restaurant concepts that may be owned by Columbus Restaurant Development Company, Ltd., an Ohio limited liability company, to Seller.

(k) Amendment of Operating Agreement. Prior to the Closing Date, Seller shall cause Manager to amend the Operating Agreement pursuant to Section 11.1 thereof solely for the purpose of continuing the business of Seller following a dissolution event which is defined therein to include a sale of all or substantially all of Seller's assets.

(l) Amendment of certain Real Property Leases. Prior to the Closing Date, Seller shall obtain amendments to the Real Property Leases for the Cameron's Steakhouse Restaurant in Scottsdale, Arizona and Birmingham, Michigan to eliminate or waive any radius restriction that may conflict with any restaurant Purchaser or its franchisees currently operates or Purchaser has notified Seller in writing that it or any of its franchisees has current intentions to develop.

(m) Additional Financial Statements. Seller shall deliver to Purchaser not less than three business days prior to Closing Date (i) the audited annual financial statement of Seller doing business as "Mitchell's Steakhouse" and "Cameron's Steakhouse" (but excluding the Cameron's Steakhouse located in Glendale (Milwaukee, WI) for the periods ending December 31, 2005 and December 31, 2006 and (ii) unaudited financial statements of Seller (x) doing business as "Mitchell's Fish Market" and "Columbus Fish Market" and (y) doing business as "Mitchell's Steakhouse" and "Cameron's Steakhouse" (but excluding the Cameron's Steakhouse located in Glendale (Milwaukee, WI) for the fiscal quarter ending within 45 days prior to the Closing Date.

(n) Service Mark Registration Applications. Within ten (10) calendar days following the date of this Agreement, Seller shall cause application(s) to register the marks “Columbus Fish Market,” “Mitchell’s Steakhouse,” and “Cameron’s Steakhouse” to be filed at the U.S. Patent & Trademark Office in Class 43 for “restaurant and bar services; provided, however, that on the application to register the service mark “Cameron’s Steakhouse”, Seller shall specify the services in Class 43 as “Steakhouse and seafood restaurant services.” Seller shall file concurrently with each application a “Petition to Make Special” seeking expedited examination treatment of the application(s) pursuant to 37 C.F.R. § 2,146(a), and thereafter shall take all actions necessary to prosecute the applications and obtain registrations thereof. Prior to Seller filing the applications) and petition(s), Purchaser shall review and approve each. Seller shall advise Purchaser of any refusals or objections to the applications made by the PTO or third parties, and coordinate responses to same with Purchaser’s approval. These applications, should they not mature into registrations prior to Closing, will be assigned by Seller to Purchaser at the Closing. In the event the applications do mature into registrations, the registrations will be assigned by Seller to Purchaser at Closing. In the event the applications do not mature into registrations prior to Closing, Seller will assign the applications to Purchaser at Closing and Purchaser will thereafter have the sole responsibility to maintain the applications and prosecute same before the PTO, including the payment of fees and costs, including attorneys’ fees, associated therewith.

(o) Copyright Assignments. Seller shall specifically identify each and every original work of authorship (“Works”) that is or may be copyrightable, registered or unregistered, and is used or useful in the Business, and amend Seller Disclosure Schedule 3.17 hereto to accurately reflect same,

(i) Assignments: Seller will use commercially reasonable efforts, which will not include the payment of any monetary consideration whatsoever, to obtain written assignments to Seller of the exclusive and full ownership of the Works from all third party providers who have created those Works, but only those Works for which the copyrights have not already been assigned to or are currently owned by Seller.

(ii) In the event any such third party refuses to assign the Work(s) to Seller absent monetary payment, Seller shall immediately advise Purchaser of the nature of the Work(s) involved and amount of such payment, and Purchaser shall then have the option, in its sole discretion, to make such payment (or other negotiated amount) on Seller’s behalf at or before the Closing to obtain such assignment. Other than as part of this procedure, Seller shall not, in obtaining the assignments, offer or suggest that Purchaser will compensate third party providers for such assignments.

(iii) In the event a third party refuses to assign the Work(s) to Seller regardless of payment, Seller shall immediately notify Purchaser of the nature of the Work(s) and the third party’s reason(s) for refusing to assign, and thereafter provided that the Work(s) is material to the operation of the Business, Seller will facilitate further negotiations between Seller, Purchaser and the third party to obtain such assignment, provided however, if such negotiations result in an agreement to assign the Work(s) in exchange for monetary consideration, Seller shall be responsible for such consideration either by making payment directly to the third party or reimbursing Purchaser for same.

(p) General Manager Description. Seller shall deliver to Purchaser on or before the Closing Date a detailed description prepared by the general managers of each Restaurant of the relevant valet parking contracts and arrangements, off-site parking leases, parking plans, rights and accommodations that are not expressly contained in the Real Property Leases.

5.2 Risk of Loss. The risk of any loss or destruction to any of the Acquired Assets by fire or other casualty or cause shall be borne by Seller at all times prior to the Closing. Upon the occurrence of any loss, damage or destruction to any of the Acquired Assets as a result of fire, or act of God or other casualty cause or any judicial or Governmental Authority proceeding prior to the Closing, Seller shall immediately notify Purchaser of same in writing stating with particularity the extent of loss or damage incurred, the cause thereof, if known, and the extent to which restoration, replacement and repair of the Acquired Assets lost or destroyed will be reimbursed under any insurance policy with respect thereto. In the event the Acquired Assets or the operation of the Business can not be fully restored to its pre-casualty condition prior to the Closing, then Purchaser may proceed to the Closing with an assignment of any and all proceeds (or the right to receive any such proceeds) that may be paid to reflect such loss or damage subject to Purchaser's right to terminate this Agreement pursuant to Section 9.3 hereof upon the occurrence of a Material Adverse Effect without further liability to Purchaser or Seller and subject to the condition to Purchaser's obligation to close set forth in Section 8.1(g).

5.3 Further Assurances/Cooperation. At any time between the execution of this Agreement and the Closing Date, at Purchaser's request and without further consideration, Seller shall provide such materials and information and take such actions as Purchaser may reasonably deem necessary or desirable in order to more effectively consummate the transactions contemplated hereby, including, without limitation any request by Purchaser for assistance to obtain any authorizations, consents, filings, approvals, and Permits necessary for Purchaser to consummate the transaction hereunder and otherwise to cause Seller to fulfill its obligations under this Agreement. Seller shall cooperate and consult with Purchaser and its representatives, including making available Key Business Employees, as determined in the reasonable discretion of Seller. Such continuing cooperation and any such consultation shall be conducted in a manner not to unreasonably interfere with the operation of the business of Seller.

5.4 Termination of Equipment Leases and Loans. Seller shall pay in full and terminate, as of or prior to the Closing Date, all of the equipment leases and equipment loans or advances identified in Section 5.4 of the Seller Disclosure Schedule and the equipment and other property covered by such leases and loans shall be included in the Acquired Assets; provided, that, Seller and Purchaser acknowledge and agree that Seller may not pay in full the POS Lease Amount prior to the Closing Date in which case on the Closing Date (i) the unpaid portion of the POS Lease Amount shall be assumed by Purchaser, (ii) the Purchase Price shall be reduced in accordance with Section 2.3(c) of this Agreement and (iii) all of Seller's right, title and interest in and to the equipment and other property covered by the leases giving rise to the POS Lease Amount shall be included in the Acquired Assets.

5.5 Purchaser's Access to Premises, Employees and Information: Confidentiality. Promptly following the execution of this Agreement by all parties hereto (other than any intervenor), Seller shall, from time to time, upon reasonable notice to and coordination with the Seller's

representative, which for this purpose shall be Diane Rimkus or any other individual subsequently designated by Seller in writing, grant Purchaser and its counsel, accountants and other duly authorized representatives reasonable access during normal business hours to the Acquired Assets, premises, and all books and records relating to the operation of the Business and its employees.

(a) Purchaser shall cause its employees, agents, representatives, counsel, accountants and financial advisors (and their counsel and accountants) to hold in confidence any and all information obtained from Seller and to refrain from disclosing such information (unless it is or becomes ascertainable from public sources or public disclosure is, in the good faith judgment of Purchaser, required by law); *provided, however*, that nothing contained herein shall limit the right of any such persons to disclose any such information to Purchaser or its employees, agents, representatives, counsel, accountants and financial advisors (and their counsel and accountants) for the purpose of facilitating the consummation of the transactions contemplated hereby.

(b) Purchaser's access hereunder and any inspections pursuant thereto shall not waive or release Seller from, or otherwise affect, any of their representations or warranties under this Agreement.

(c) Purchaser shall have access to Sellers' employees for purposes of determining and making employment offers to such employees as set forth in Section 6.1.

(d) Purchaser shall have access to Seller's operation of the Business to conduct additional due diligence as reasonably requested by Purchaser.

5.6 Real Estate Matters.

(a) Purchaser, at its sole cost and expense, may order title policy Commitments (the "Commitments") to be issued by a title company reasonably acceptable to Purchaser (the "Title Company"), accompanied by copies of all recorded documents relating to restrictions, easements, rights-of-way, and other matters affecting the Fee Owned Property or the leased Restaurant locations that are not located in lifestyle centers, office developments, condominium developments or major retail developments (the "Leased Locations"). The Commitments will commit the Title Company to issue at the Closing, ALTA form of Title Insurance Policies to Purchaser, such policies to be in an amount as determined jointly by Purchaser and the Title Company and with such endorsements as are requested by Purchaser. Purchaser, at its sole cost and expense, may also obtain one or more surveys of the Fee Owned Property and the Leased Locations at Purchaser's expense (the "Surveys"). Purchaser shall promptly, but not later than forty five (45) days following the date of this Agreement, notify the Seller in writing of objections to the condition of title set forth in the Commitments or on the Surveys which materially affect the merchantability of 1245 Properties' title or the use of the Fee Owned Property or Seller's use of the Leased Locations as presently utilized and do not constitute Permitted Liens (the "Title Objections").

(b) Seller may voluntarily undertake to eliminate any and all of the Title Objections to the satisfaction of Purchaser, but the Seller is under no obligation to do so. If, however, the Seller elects not to, or cannot, eliminate the Title Objections to the reasonable satisfaction of Purchaser prior to the Closing Date and the Title Objections constitute a Material

Adverse Effect, Purchaser may terminate this Agreement, within five (5) business days following Seller's notice that it will not or cannot eliminate such Title Objections, pursuant to Section 9.3 hereof without further liability to Purchaser or Seller. If the Title Objections do not constitute a Material Adverse Effect, Purchaser's obligation to close shall nevertheless remain subject to the conditions set forth in Section 8.1 including Section 8.1(g).

(c) All title matters shown on the Commitments and the Surveys which are not the subject of Title Objections shall be deemed to be Permitted Liens. Further, if Purchaser makes any Title Objections which Seller elects not to, or cannot, cure, and Purchaser elects to proceed to Closing on the Closing Date, such Title Objections shall likewise be deemed Permitted Liens.

5.7 Environmental Matters. Purchaser, at its sole cost and expense, may obtain an environmental site assessment report with respect to the Fee Owned Property and Leased Locations, which report shall be acceptable in form and substance to Purchaser in its sole discretion. Any such environmental site assessment may include non-intrusive, non-damaging physical inspections of the Fee Owned Property and Leased Locations described above, a review of all relevant records in the possession or custody or under the control of the Seller, a review of relevant Governmental Authority records and contact with Governmental Authority personnel, sampling activities and any other investigatory activities of a scope satisfactory to Purchaser in its sole discretion. Purchaser shall promptly, but not later than forty five (45) days following the date of this Agreement, notify the Seller in writing of any objections to the condition of the Fee Owned Property or Leased Locations described above identified as a result of any environmental site assessment report. Any such objection by Purchaser shall be deemed a Title Objection (defined in Section 5.6(a) above) and shall be governed by the rights and obligations of the parties set forth in Section 5.6(b) and (c) above.

5.8 Inventory Assessment. Seller will grant Purchaser access to its property to the extent necessary to do a physical Inventory count at each Restaurant location within one (1) day prior to the Closing Date for purposes of determining the value of the Inventory.

5.9 Purchaser's Financing. Seller shall use commercially reasonable efforts to cooperate with Purchaser in its efforts to consummate the financing, if any, of the transactions contemplated by this Agreement. Such commercially reasonable efforts shall include, to the extent reasonably requested by Purchaser, (i) providing direct contact between prospective lenders and the officers and directors of Seller, (ii) providing information with respect to the Business and Acquired Assets readily available to Seller in connection with Purchaser's preparation of confidential information memoranda, preliminary offering memoranda, financial information and other materials to be used in connection with obtaining such financing, (iii) cooperation with the marketing efforts of Purchaser and its financing sources for such financing, including participation in management presentation sessions, and (iv) providing reasonable assistance in obtaining any consents of third parties necessary in connection with such financing.

ARTICLE VI – COVENANTS TO SURVIVE THE CLOSING

Seller hereby covenants and promises to Purchaser and, where expressly stated, Purchaser hereby covenants and promises to Seller, the following:

6.1 Employees.

(a) The employment of all employees of Seller employed in connection with the Acquired Assets will be terminated by Seller as of the Closing Date. It is Purchaser's intention and Purchaser may, but shall be under no obligation to, offer employment to any or all eligible employees of Seller employed in connection with the Acquired Assets. If Purchaser offers employment to such employees, the salary offered (including any bonus) will be no less favorable than the current salary paid to such employees on the date immediately preceding the Closing Date and with benefits no less favorable in any material respects than the benefits provided by Purchaser to its own similarly situated employees (the "Employment Offer"). Purchaser shall not assume any of Seller's employment Liabilities that have accrued on or before the Closing Date, including without limitation unpaid FICA, FUTA, unemployment Tax, pension or profit-sharing plan contributions, employee fringe benefits, Liabilities under the WARN Act, severance benefits, bonuses, vacation time or pay or incentive programs of any type, nor shall Purchaser acquire any interest in or obligation under any pension, profit sharing, retirement or other plan of Seller. Seller shall retain all severance obligations, if any, to its employees. Seller shall retain all Liabilities relating to any Employee Benefit Plan.

(b) Seller or Seller's ERISA Affiliate shall maintain a Health Plan after the Closing Date and provide continuation of health coverage pursuant to COBRA for all M&A Qualified Beneficiaries. "M&A Qualified Beneficiaries" means each individual who is a "qualified beneficiary" whose "qualifying event" occurred prior to or in connection with the sale of the Acquired Assets and who is, or whose qualifying event occurred in connection with, a covered employee whose last employment prior to the qualifying event was associated with the Acquired Assets being sold. (The terms within quotes are as defined in COBRA and its related regulations). On the Closing Date, all Business Employees and Key Business Employees hired by Purchaser shall become employees of Purchaser and not of Seller.

(c) Purchaser shall honor seniority of all Business Employees and Key Business Employees, for vacation purposes, who become employees of Purchaser (i.e. if Seller's terminated employee would have been entitled to two weeks vacation in their position with Seller but would only be entitled to one week of vacation in the comparable position with Purchaser, such employee will receive two weeks vacation, subject to all applicable vacation eligibility rules of Purchaser).

(d) Purchaser shall cooperate with Seller in making any notices required by the WARN Act or other applicable federal or state laws.

(e) Purchaser shall notify Seller regarding which Business Employees and Key Business Employees have been employed by Purchaser within ten (10) days following the Closing Date. Purchaser shall properly prepare and furnish to each Business Employee and Key Business Employee who is employed by Purchaser and for whom U.S. Tax reporting is required a Form W-2 that shall reflect all wages and compensation paid to such Business Employee and such Key Business Employee for the entire calendar year in which the Closing Date occurs. Purchaser shall send to the appropriate Social Security Administration office a duly completed Form W-3 and accompanying copies of the duly completed Forms W-2. Purchaser shall properly prepare and file a final Form 941 and Schedule D (Form 941) with respect to the calendar year in which the Closing Date occurs.

Seller shall furnish to Purchaser the Forms W-4 and W-5 of each Business Employee and Key Business Employee that Seller is timely notified is employed by Purchaser for the portion of the calendar year up to and including the Closing Date. It is the intent of the parties hereto that the obligations of Seller and Purchaser under this Section 6.1 shall be carried out in accordance with Sections 5 and 6 of Revenue Procedure 2004-53. Seller shall remain responsible for Form W-2 reporting obligations for those Business Employees and Key Business Employees, if any, who do not become employees of Purchaser.

(f) Purchaser and Seller acknowledge that as of the Closing Date they will enter into the Shared Services Agreement, pursuant to which Seller shall provide Purchaser with the services of certain of its employees to assist Purchaser in the transition period following the Closing Date.

6.2 Non-assignable Contracts and Permits and Liquor Licenses

(a) Nothing in this Agreement shall be construed as an attempt to assign to Purchaser any Contract or Permit which by applicable law or its terms is non-assignable or the assignment of which would constitute a violation of law, contract, commitment, or other agreement. To the Knowledge of Seller, no Contract or Permit is non-assignable or would, in the event it were assigned, constitute a violation of any law, contract, commitment or other agreement.

(b) If, as of the Closing Date, an attempted assignment of any Non-Material Contract or Permit (other than a Liquor License) would be ineffective or would affect Purchaser's rights thereunder so that Purchaser would not in fact receive all such rights (the "Non-assigned Contracts and Permits"), then such failure shall not affect the Closing except as hereinafter set forth. If a Liquor License has not been received for one or more Restaurants (the "Affected Restaurant"), Seller shall cooperate with Purchaser in a mutually acceptable arrangement and to the extent not prohibited by law to provide Purchaser the benefit (including the economic benefit) of Seller's ability to sell and/or consume alcoholic beverages on the premises at the Affected Restaurant, including but not limited to entering into on the Closing Date a management agreement substantially similar to that set out in Exhibit R. Further, Seller must obtain the written consent of such third parties listed on Section 6.2 of the Seller Disclosure Schedule in connection with the transfer of certain Liquor Licenses into Purchaser's name as licensee or co-licensee. If, and so long after the Closing Date as, such assignment shall not have been made or such Liquor License not received, Seller shall: (i) to the extent that such action shall not result in violation of the Non-assigned Contracts and Permits or applicable law, transfer to Purchaser all Acquired Assets and rights, including all monies, received in respect of the Affected Restaurants and the Non-assigned Contracts and Permits and hold the Affected Restaurants and Non-assigned Contracts and Permits in trust for Purchaser, and (ii) to the extent that the provisions of clause (i) above are not sufficient to transfer all of the benefits (including the economic benefit) of the Affected Restaurants and the Non-assigned Contracts and Permits, or any of the Non-assigned Contracts and Permits has been canceled as a result of the attempted assignment, take such actions (which, without limitation, may include entering into subcontracting arrangements with Purchaser) as are necessary to provide all of the benefits (or the equivalent thereof, including the economic benefit) of the Affected Restaurants and the Non-assigned Contracts and Permits to Purchaser.

(c) Nothing in this Section 6.2 shall derogate from the parties' obligations under Section 5.1(a). Further, Seller agrees and acknowledges that in addition to the conditions to Closing set forth in Section 8.1, Purchaser has no obligation to proceed to a Closing prior to the Termination Date as long as Purchaser has not received the requisite Liquor Licenses for each of the Restaurants. If, on the Termination Date, Purchaser has not received a Liquor License for each of the Restaurants and all of the other conditions to Closing set forth in Article VIII have been satisfied or waived, then Seller and Purchaser agree to consummate the transactions contemplated by this Agreement on the Termination Date (which will become the Closing Date) subject to clause (b) above of this Section 6.2.

6.3 Confidentiality. Purchaser and Seller, until the fifth (5th) anniversary of the date of this Agreement and notwithstanding the earlier termination of this Agreement, shall keep, and shall cause their Affiliates, attorneys, accountants, counsel, financial advisors and other representatives to keep, any and all Confidential Information (as defined below) confidential and not to disclose any Confidential Information to any Person other than such parties' Affiliates, directors, managers, members, officers, employees or agents, and then only on a confidential basis; *provided, however*, that such parties may disclose Confidential Information (a) as required by law, rule, regulation or judicial process, including as required to be disclosed in connection with the consummation of the transactions contemplated by this Agreement, (b) to such parties' attorneys, accountants and financial advisors who have agreed to keep the Confidential Information confidential in accordance with the terms hereof or (c) as requested or required by any Governmental Authority; and provided further that Purchaser may disclose such information to its financing sources. Purchaser may also disclose this Agreement and related Confidential Information to the creditors, customers or potential customers of the Seller to the extent Purchaser reasonably determines that such disclosure is appropriate to facilitate the fulfillment of the conditions precedent set forth in Article V hereof and to the extent the Confidential Information constitutes an Acquired Asset acquired by Purchaser, as necessary to run the Business after the Closing Date. For purposes of this Agreement, the term "Confidential Information" shall include all information about Purchaser and its Affiliates, on the one hand, and the Seller and its Affiliates on the other hand, which has been furnished to the other parties or their Affiliates pursuant to or in connection with this Agreement and any of the terms, conditions or other facts with respect to the negotiations of this Agreement; *provided, however*, that the term "Confidential Information" shall not be deemed to include information which (x) is or becomes generally available to the public other than as a result of a disclosure by Purchaser and its Affiliates, on the one hand, or the Seller and its Affiliates, on the other hand, not permitted by this Agreement, (y) was available to the disclosing party on a non-confidential basis prior to its disclosure by the other parties to this Agreement or (z) becomes available to the disclosing party on a non-confidential basis from a person other than the other parties to this Agreement who, to the knowledge of the disclosing party, is not otherwise bound by a confidentiality agreement with the other parties to this Agreement or is not otherwise prohibited from transmitting the relevant information to such parties.

6.4 Tax Matters.

(a) All material Tax Returns of Seller with respect to any Taxes that constitute Retained Liabilities and that are required to be filed after the Closing Date by Seller with respect to

Taxes for periods prior to the Closing Date which, if unpaid, might result in a lien on any of the Acquired Assets shall be filed by Seller and all Taxes payable pursuant thereto shall be paid by Seller.

(b) Purchaser and Seller and their respective Affiliates shall cooperate in the preparation and defense of all Tax Returns and Taxes with respect to the Business relating in whole or in part to taxable periods ending on or before or including the Closing Date that are required to be filed after such date. Such cooperation shall include furnishing prior years' Tax Returns or Tax Return preparation packages with respect to the Business illustrating previous reporting practices or containing historical information relevant to the preparation of such Tax Returns, and furnishing such other information within such party's possession requested by the party filing such returns as is relevant to their preparation. In the case of any Tax Return, such cooperation shall also relate to any other taxable periods in which one party could reasonably require the assistance of the other party in obtaining any necessary information. After the Closing Date, each of Seller and Purchaser shall furnish the other with copies of all correspondence received from any Governmental Authority with respect to the Business in connection with any Tax audit or examination information request with respect to any period beginning prior to the Closing Date.

(c) Seller and its duly authorized representatives, at Seller's expense, shall have the sole right to supervise or otherwise coordinate any Tax audit or examination process with respect to the Business and to negotiate, resolve, settle or contest any asserted adjustment to any Tax, or assert or prosecute any claim for refund or credit of any overpayment of any Tax for taxable periods ending on or before the Closing Date, provided that Seller shall not settle, resolve or compromise such examination without the written consent of Purchaser if such settlement, resolution, or compromise could affect in any way the Business or the Acquired Assets or the liability of Purchaser for any Taxes for any period. Except as otherwise provided herein or in any Ancillary Agreement, Seller shall be entitled to participate at its expense in the defense of any such claim relating to any taxable period that includes the Closing Date and, with the written consent of Purchaser at Seller's sole expense, may assume the entire defense of such claim. Without the prior written consent of Purchaser, Seller shall not take any action with respect to any Tax Return or any Tax that would have any material effect on any Liability of Purchaser for any Tax or the obligation of Purchase to file any Tax Return.

(d) Notwithstanding anything herein to the contrary, the parties (including any Affiliates and Persons acting on behalf of any party) agree that each party (and each employee, representative, or other agent of such party) may disclose to any and all Persons, without limitation of any kind, the Tax treatment and Tax structure (as such terms are used in regulations promulgated under Code §6011) of the transactions contemplated by this Agreement and all materials of any kind (including opinions or Tax analyses) provided to such party or such Person relating to such Tax treatment and Tax structure, except to the extent necessary to comply with any applicable federal or state securities laws; provided, however, that such disclosure may not be made until the earlier of the date of (i) public announcement of discussions relating to the transactions contemplated by this Agreement, or (ii) execution of this Agreement. This authorization is not intended to permit disclosure of any other information including (without limitation) (A) any portion of any materials to the extent not related to the transactions' Tax treatment or Tax structure, (B) the identities of the parties hereto, (C) the existence or status of any negotiations relating to this Agreement, (D) any

pricing or other financial information (except to the extent such pricing or financial information is related to the transactions' Tax treatment or Tax structure), or (E) any other term or detail not relevant to the transactions' Tax treatment or Tax structure.

(e) Seller shall pay any and all Taxes, filing fees, recording fees or similar charges applicable to the purchase and sale of the Acquired Assets. Seller and Purchaser shall cooperate to deliver, prepare and file with the proper Governmental Authorities and public officials, as and to the extent available and necessary, all appropriate exemption certificates or similar instruments as may be necessary to avoid the imposition of any sales, transfer and similar Taxes on the transfer of the Acquired Assets pursuant hereto.

6.5 Continuing Existence of Seller. Seller shall maintain its limited liability company existence and shall not liquidate or wind down its affairs for a period of not less than sixty (60) months after the Closing Date.

6.6 Post-Closing Audited Financial Statements. Seller shall cooperate in good faith (including making available appropriate employees and outside accountants and providing relevant information and access to relevant information), during normal business hours and upon reasonable advance notice, with Purchaser's preparation within sixty (60) days after the Closing, at Purchaser's expense, of audited financial statements (prepared in accordance with GAAP and Securities Exchange Act Reg. S-X) for the operations of Mitchell's Fish Market, Columbus Fish Market, Cameron's Steakhouse (Michigan) and Mitchell's Steakhouse for the fiscal periods ended December 31, 2006 and December 30, 2007, together with a report on such financial information by the PCAOB registered accounting firm thereon.

6.7 Gift Cards. After the Closing Date it is contemplated that Gift Cards issued by Seller prior to the Closing Date and which are not redeemed prior to the Closing Date will be presented to Purchaser for redemption. Following the Closing Date, Purchaser shall recognize and honor such Gift Cards upon presentation. Subject to this Section 6.7 and the Gift Card Escrow Agreement, for a period of eighteen (18) months (the "Gift Card Liability Period"), Seller shall reimburse and indemnify Purchaser for any such amount in accordance with Section 7.2 and Section 7.8 hereof. Seller and Purchaser shall enter into the Gift Card Escrow Agreement to provide for a cash escrow in the amount provided therein and such agreement will have a term of twelve (12) months following the Closing Date. Following the twelfth month after the Closing Date, the Gift Card Escrow Agent shall deliver to Seller the remaining balance of the Gift Card Escrow Account in accordance with the Gift Card Escrow Agreement. Disbursements to Purchaser in connection with the redemption of Gift Cards during the period of the Gift Card Escrow Account shall be in accordance with the terms, and subject to the conditions, set forth in the Gift Card Escrow Agreement. Disbursements by Purchaser in connection with the redemption of Gift Cards after the twelfth month following the Closing Date but before the Gift Card Liability Period has expired will be promptly reimbursed to Purchaser on a monthly basis upon Seller's receipt of documentation evidencing Purchaser's redemptions; provided, however, that as of the thirteenth month following the Closing Date, Purchaser shall be liable for the first One Hundred Thousand Dollars (\$100,000) of Gift Cards presented to Purchaser for redemption; provided, Seller shall reimburse and indemnify Purchaser for any amount in excess of such One Hundred Thousand Dollars (\$100,000) during the six (6) months following the twelfth month following the Closing Date.

6.8 Redemption of Gift Cards. (a) Following the expiration of the Gift Card Liability Period, Purchaser shall continue to honor any Gift Cards issued by Seller prior to the Closing Date and presented to Purchaser for redemption, subject to Section 6.7 above.

(b) Following the Closing Date, Purchaser shall continue to honor any Bonus Cards issued by Seller prior to the Closing Date and presented to Purchaser for redemption. Purchaser shall not seek reimbursement from Seller for any Bonus Card redemption.

(c) From the date hereof, Seller shall only issue Promotional Cards in the Ordinary Course of Business. As of December 31, 2007, with respect to the Acquired Assets, Seller shall discontinue use of and will not longer issue Club Cards for use at any of the Restaurant locations.

6.9 Non-Solicitation of Seller's Employees. For a period of eighteen (18) months following the Closing Date, Purchaser shall not knowingly solicit or employ, or seek to solicit or employ, any employee of Seller who is a store level manager, director level employee or a member of the Seller's executive team as of the date hereof, to perform services or functions for Purchaser except as contemplated under the shared services agreement. Nothing in this Agreement shall prohibit Purchaser from hiring any such employee or officer of Seller whose employment is subsequently terminated by Seller for any reason.

6.10 Non-Solicitation of Purchaser's Employees. From the date of this Agreement through and including the Closing Date, neither Seller or Mitchell shall knowingly solicit or employ, or seek to solicit or employ any existing key or management personnel of Purchaser or the Key Business Employees to perform any services or functions for Seller or Mitchell, except for such personnel employed by Purchaser and subsequently terminated by Purchaser.

6.11 Non-Competition. Both Mitchell and Seller will execute an agreement not to compete in the form attached hereto as Exhibit "D" and Exhibit "J", respectively.

6.12 Use of "Mitchell." As part of this Agreement, Seller is assigning to Purchaser the service mark "Mitchell's Ocean Club", the name/mark "Mitchell", and the domain name "www.mitchellsoceanclub.com," together with all of their good will. For the name/mark "Mitchell," Purchaser agrees to grant to Seller at Closing an exclusive, non-assignable and royalty-free license to use only as set forth below. For mark "Mitchell's Ocean Club," Purchaser agrees to grant to Seller at Closing an exclusive, non-assignable and royalty-free license to use the mark "Mitchell's Ocean Club" and the domain name "www.mitchellsoceanclub.com," on the following terms.

(a) Mitchell's Ocean Club: Seller may continue to use the service mark "Mitchell's Ocean Club" at the current store location at 4002 Easton Station, Columbus, Ohio, 43219 for as long as Seller operates the business at this location. Seller is prohibited from assigning this license to any purchaser of the business at this location or moving the name to a new location.

(b) Cameron Mitchell Catering Company: Seller may use the name/mark "Mitchell" as part of the name "Cameron Mitchell Catering Company" in connection with Seller's

catering business located in Columbus, Ohio. Seller is prohibited from expanding the catering business outside of the Columbus, Ohio metropolitan area under the name "Cameron Mitchell Catering Company." This right is not assignable to third parties who may purchase the catering business.

(c) Cameron Mitchell Restaurants, LLC. Seller may continue to use the name "Mitchell" in connection with "Cameron Mitchell Restaurants, LLC" as the name of the legal entity located in Columbus, Ohio for as long as Seller operates its business under such name.

(d) Domain Names. Seller may continue to use the name "Mitchell" and the domain names "www.cameronmitchellcatering.com" and "www.cameronmitchell.com."

(e) M. Cameron Mitchell" and Cameron Mitchell. Seller and Purchaser acknowledge and agree that nothing in this Agreement or in any Ancillary Agreement prohibits or precludes Mitchell from using his legal name "M. Cameron Mitchell" or "Cameron Mitchell" in association with the future exploitation of, or the provision of, restaurant, lounge, catering or food services of any kind and scope worldwide, so long as Seller agrees not to use "M. Cameron Mitchell" or "Cameron Mitchell" as or in the name of any seafood and/or steakhouse dining business identical to or commercially similar to the Business and the restaurants owned and operated by Purchaser as of the Closing Date.

6.13 Cameron's Steakhouse.

(a) As part of this Agreement, Purchaser is acquiring all right, title and interest to the name and mark "Cameron's Steakhouse" in connection with "steakhouse and seafood restaurant services." Seller recognizes that to the extent Seller retains ownership of the mark "Cameron's" for all other restaurant services and seeks to register mark(s) using that name in the U.S. Patent & Trademark Office and Purchaser's application for "Cameron's Steakhouse" matures into a registration, there may be a finding by the Patent & Trademark Office that the marks as used by the different parties may cause a likelihood of confusion on each other and thus are not registrable under Section 2(d) of the Lanham Act (15 U.S.C. § 1052(d)). The parties agree to execute at the Closing a Consent Agreement in the form attached hereto as part of Exhibit B (F), in which each party recognizes the right of the other to own, use and register its respective mark(s) and agrees that the use of the same will not cause a likelihood of confusion. Mitchell also agrees to provide his consent to the use of his personal name "Cameron" as part of any application that is filed at the Patent & Trademark Office now or in the future by separate document in the form attached hereto as part of Exhibit B.

(b) Seller agrees to cease operating the Cameron's Steakhouse location at 5750 North Port Washington Road, Glendale, Wisconsin 53217 and it is not part of the Acquired Assets. As Purchaser is acquiring all rights, title and interest in and to the mark "Cameron's Steakhouse," in connection with "steakhouse and seafood restaurant services", it will grant to Seller a non-exclusive, non-assignable, royalty-free and temporary license (as set forth in the form attached hereto as part of Exhibit B) to use the mark only at this location for ninety (90) calendar days after the Closing Date in the event Seller has not ceased operating this location by the Closing Date.

(c) Nothing in this section 6.13 shall prohibit or preclude Seller from offering steak or seafood menu items in Seller's provision of restaurant, lounge, food or catering services; provided that no such steak or seafood items shall be a primary or focal menu item(s) in the provision of such services.

6.14 Working Cash. Working Cash shall be reimbursed to Seller within five (5) calendar days after the Closing Date in the amount evidenced by the cross-receipt executed by both Purchaser and Seller on the Closing Date.

6.15 Real Property Leases. With respect to those Real Property Leases that as of the Closing Date have a remaining term of less than 10 years (including any renewal options exercisable by the lessee thereunder), after the Closing Date Seller shall use commercially reasonable efforts to assist Purchaser in obtaining an extension to, or an option to extend, such lease term on terms and conditions reasonably satisfactory to Purchaser; provided, Seller's obligation hereunder shall expire six (6) months following the Closing Date.

6.16 Real Property Lease Notices. Seller will provide the Purchaser with copies of all notices from any landlord under each Real Property Lease within three (3) business days of receipt of such notice.

6.17 Bulk Sales Laws. Seller agrees to pay and discharge, when due, all claims of creditors that could be asserted against Purchaser by reason of noncompliance with any Bulk Sales Law applicable to the transactions anticipated by this Agreement.

6.18 Additional Assurances. At any time following the Closing Date, at Purchaser's request and without further consideration, Seller shall provide such materials and information and take such actions as Purchaser may reasonably deem necessary or desirable in order to provide Purchaser with the rights and benefits intended to be conveyed under this Agreement and the Ancillary Agreements, including, without limitation any reasonable request by Purchaser for assistance (i) in connection with the Intellectual Property including any related filings or registrations or (ii) in connection with the Liquor Licenses or other Permits including the transfer thereof and such other assistance to apply for, obtain or make any authorizations, consents, filings, approvals, and Permits (including Liquor Licenses) necessary for Purchaser to conduct the Business and operate the Acquired Assets in the same manner conducted and operated by Seller on the date hereof.

6.19 Survivability. The provisions of this Article VI shall survive the Closing Date.

ARTICLE VII – INDEMNIFICATION

7.1 Survival of Representations. All of the representations and warranties of the parties contained in Articles III and IV this Agreement, along with the covenants set forth in Articles V, shall survive the Closing hereunder for a period of twelve (12) months (the "Limitation Period"); provided, however, that claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from either party to the breaching party prior to the expiration of the Limitation Period shall not thereafter be barred by the expiration of the relevant representation or warranty to the extent that it relates to such claims; and provided, further, that the

representations set forth in Section 3.3, Authorization of Transaction; Section 3.4, Noncontravention; Section 3.5, Brokers' and Consulting Fees, Section 3.6(a), Real Property, Section 3.7, Acquired Assets, Section 3.15, Tax Matters; Section 3.22, Employee Benefit Plans; and Section 3.23, Environmental, Health and Safety, and claims brought against Seller with respect to the intentional misrepresentations or fraud shall survive until the expiration of the applicable statute of limitations. The right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations shall not be affected by any investigation (including any environmental investigation or assessment) conducted with respect to, or any Knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with any such representation, warranty, covenant or obligation.

7.2 Indemnification by Seller. Seller shall indemnify and hold harmless Purchaser and their respective members, managers, officers, employees, and other agents (collectively, the "Purchaser Indemnitees") in respect of any and all damages (including diminution in value), losses, Liabilities, payments, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses (including, reasonable fees, disbursements and expenses of attorneys, accountants and other professional advisors and of expert witnesses and costs of investigation and preparation not related to or arising from the Assumed Liabilities) of any kind or nature whatsoever (collectively, "Damages") asserted against or incurred by any Purchaser Indemnitee as a result of, in connection with or arising out of:

(a) Any breach or nonperformance (partial or total) of or inaccuracy in any representation, warranty, covenant or agreement of Seller or 1245 Properties contained herein, in the Seller Disclosure Schedule or in any Ancillary Agreement;

(b) 100% of the amount of any Gift Cards issued by Seller prior to the Closing Date and presented to Purchaser for redemption during the Gift Card Liability Period;

(c) The Retained Liabilities;

(d) Any Liability or obligation (other than the Assumed Liabilities) resulting from, arising out of or in connection with the Business as conducted or the ownership or the operation of the Acquired Assets on or prior to the Closing Date;

(e) Any losses or costs of defending against any claims which may be made against any Purchaser Indemnitee by any Person claiming violations by Seller of any local, state or federal laws relating to the employment by Seller of any employee of Seller including, but not limited to, wages, hours, concerted activity, nondiscrimination, occupational health and safety and the payment and withholding of Taxes of any kind or nature (except to the extent that Purchaser has assumed a Tax obligation pursuant to Section 6.1(e)), where such claims arise out of events, facts or circumstances occurring prior to the Closing Date;

(f) Any Liabilities that may arise from or relate to any obligations of Seller to be responsible under the Real Property Leases on or prior to the Closing Date;

(g) Any actual or threatened violation of or non-compliance with, or remedial obligation arising under, any Environmental, Health and Safety Law arising from any event, circumstance, activity, practice, incident, or action occurring prior to the Closing Date and relating in any way to the Acquired Assets or the Business;

(h) The failure to comply with any Bulk Sales Law in connection the transactions contemplated by this Agreement;

(i) Any legal action or proceeding threatened or commenced by a Person owning or holding (directly or indirectly) a membership or other ownership interest in Seller relating to the transactions contemplated by this Agreement; or

(j) Any Liabilities that may arise from or relate to Seller's or Seller's ERISA Affiliate's failure to maintain a Health Plan after the Closing Date and provide continuation health coverage pursuant to COBRA for all M&A Qualified Beneficiaries.

7.3 Indemnification by Purchaser. Purchaser shall indemnify and hold harmless Seller and its managing member, members, officers, employees and other agents (collectively, the "Seller Indemnitees") in respect of any Damages asserted against or incurred by any Seller Indemnitee as a result of, in connection with, or arising out of:

(a) Any material breach or nonperformance (partial or total) of or material inaccuracy in any representation, warranty, covenant or agreement of Purchaser contained herein or in any Ancillary Agreement;

(b) Any Liability or obligation arising out of Purchaser's use of the Acquired Assets or the operation of the Business after the Closing Date and not resulting from a breach of any representation, warranty or covenant made herein by Seller;

(c) The Assumed Liabilities;

(d) Any losses or costs of defending against any claims which may be made against any Seller Indemnitee by any Person claiming violations by Purchaser of any local, state or federal laws relating to the employment by Purchaser of any former employee of Seller including, but not limited to, wages, hours, concerted activity, nondiscrimination, occupational health and safety and the payment and withholding of Taxes of any kind or nature, where such claims arise out of events, facts or circumstances occurring after the Closing Date and not resulting from a breach of any representation, warranty or covenant made herein by Seller;

(e) Any Liabilities that may arise from or relate to any obligations of Purchaser to be responsible under the Real Property Leases after the Closing Date;

(f) Any Liability arising out of or relating to any inspections or other activities or the acts or omissions of Purchaser, its agents or employees in connection with the inspections permitted under Section 5.7;

(g) Any Liability associated with the presentation to Purchaser of Gift Cards for redemption during the six months following the twelfth month following the Closing Date up to the amount of One Hundred Thousand Dollars (\$100,000); or

(h) Any actual or threatened violation of or non-compliance with, or remedial obligation arising under, any Environmental, Health and Safety Law arising from any event, circumstance, activity, practice, incident, or action occurring after the Closing Date and relating in any way to the Acquired Assets or the business of Purchaser and not resulting from a breach of any representation, warranty or covenant made herein by Seller.

7.4 Prosecution of Indemnification Claims. The respective obligations of Seller to indemnify the Purchaser Indemnitees under Section 7.2 and the respective obligations of Purchaser to indemnify the Seller Indemnitees under Section 7.3 hereof, in each case resulting from the assertion of Liability by a third party (each, as the case may be, a "Claim"), shall be further subject to the following terms and conditions:

(a) Any party against whom any Claim is asserted shall give the party (or parties) required to provide indemnity hereunder written notice of such Claim promptly after learning of such Claim, and the indemnifying party may at its option undertake the defense thereof with counsel chosen by it but reasonably satisfactory to the indemnified party. Failure to give prompt notice of a Claim hereunder shall not affect the indemnifying party's obligations under this Section 7.4, except to the extent the indemnifying party is materially prejudiced by such failure to give prompt notice. If the indemnifying party, within 30 days after notice of any such Claim, or such shorter period as is reasonably required, fails to assume the defense of such Claim, the Purchaser Indemnitee or Seller Indemnitee, as the case may be (each, an "Indemnitee"), against whom such Claim has been made shall have the right, but shall not be obligated, to undertake the defense, compromise or settlement of such Claim on behalf of and for the account and risk, and at the expense, of the indemnifying party.

(b) Anything in this Section 7.4 to the contrary notwithstanding, the indemnifying party shall not enter into any settlement or compromise of any action, suit or proceeding or consent to the entry of any judgment (a) which does not include as an unconditional term thereof the delivery by the claimant or plaintiff to the Indemnitee of a written release from all Liability in respect of such action, suit or proceeding or (b) for other than monetary damages without the prior written consent of the Indemnitee, which consent shall not be unreasonably withheld.

7.5 Liability Escrow Arrangement. On the Closing Date, Seller shall deposit a cash amount equal to ten percent (10%) of the Purchase Price (the "Liability Escrow Fund") with a banking or other financial institution selected by Purchaser with the reasonable consent of Seller as escrow agent, such deposit to be governed by the terms set forth herein and in the Escrow Agreement attached hereto as Exhibit "H." The Escrow Fund shall be available solely to compensate the Purchaser Indemnities pursuant to the indemnification obligations of Seller (exclusive of the Gift Card indemnification in clause (b)) set forth in Section 7.2 above.

7.6 Limitations.

(a) Notwithstanding anything to the contrary in this Article VII, in no event shall the liability of Seller for Damages, whether pursuant to indemnification of the Purchaser Indemnities pursuant to Section 7.2 hereof or otherwise, exceed in the aggregate more than fifteen percent (15%) of the Purchase Price; provided, the Purchaser Indemnities shall not be entitled to make a claim for indemnification under Section 7.2 hereof unless and until the aggregate Damages suffered or incurred by the Purchaser Indemnitees exceed Five Hundred Thousand Dollars (\$500,000) (it being understood and agreed that the Five Hundred Thousand Dollars (\$500,000) is intended as a deductible), and the Seller shall not be liable for the first Five Hundred Thousand Dollars (\$500,000) of Damages for which the Purchaser Indemnities are entitled to indemnification. However, this Section 7.6 will not apply to claims under Section 7.2(a) for breach of any obligation of Seller in Article V or Article VI, or to claims under Section 7.2(b) or Section 7.2(c), or to matters arising in respect of Sections 3.5, 3.6, 3.7, or 3.15, or any intentional breach by Seller of any covenant or obligation.

(b) Notwithstanding anything to the contrary in this Article VII, in no event shall the liability of Purchaser for Damages, whether pursuant to indemnification of the Seller Indemnities pursuant to Section 7.3 hereof or otherwise, exceed in the aggregate more than fifteen percent (15%) of the Purchase Price; provided, the Seller Indemnities shall not be entitled to make a claim for indemnification under Section 7.3 hereof unless and until the aggregate Damages suffered or incurred by the Seller Indemnitees exceed Five Hundred Thousand Dollars (\$500,000) (it being understood and agreed that the Five Hundred Thousand Dollars (\$500,000) is intended as a deductible), and Purchaser shall not be liable for the first Five Hundred Thousand Dollars (\$500,000) of Damages for which the Seller Indemnities are entitled to indemnification. However, this Section 7.6(b) will not apply to claims under Section 7.3(a) for breach of any obligation of Purchaser in Article V or Article VI, or to claims under Section 7.3(c) or Section 7.3(g) or to matters arising in respect of Section 4.4 or 4.6, or any intentional breach by Purchaser of any covenant or obligation.

7.7 Amount of Damages. The amount of any Damages for which indemnification is available under this Article VII shall be determined after giving effect to any Tax benefits or insurance recoveries that are available to any Indemnitee with respect to all or a portion of such Damages (provided that no offset or deduction shall be made if the Indemnitee fails to realize such benefits or recoveries after having taken commercially reasonable efforts to do so), and an Indemnitee shall take such actions as are commercially reasonable to mitigate any such Damages.

7.8 Gift Card Escrow Account. At the Closing, Purchaser, Seller and a banking or other financial institution selected by Purchaser with the reasonable consent of Seller, as the Gift Card escrow agent, shall enter into an escrow agreement in form and substance as set forth in Exhibit "I" hereof (the "Gift Card Escrow Agreement").

7.9 Indemnification of Mitchell. Purchaser shall indemnify and hold harmless Mitchell from any personal guaranty of any obligation of Purchaser accruing after the Closing Date for which a release is not obtained pursuant to Section 5.1(i), pursuant to an agreement in form and having terms and conditions mutually satisfactory to Mitchell and Purchaser.

ARTICLE VIII – CLOSING CONDITIONS

8.1 Conditions to the Obligations of Purchaser. Each and every obligation of Purchaser hereunder shall be subject to the satisfaction, as of Closing, of each of the following conditions, each of which can be waived by Purchaser, but only in writing:

(a) All of the representations and warranties of Seller set forth in Article III above shall be true and correct as of the date hereof and shall be deemed to have been made again at Closing and shall then be true and correct except for representations and warranties as of a specified date, which shall be true and correct as of such date;

(b) Each of the covenants and other obligations of Seller to be performed by it on or before Closing pursuant to the terms hereof shall have been duly performed and complied with in all material respects;

(c) No action, suit, or proceeding shall be pending before any court or governmental agency or before any arbitrator wherein an unfavorable injunction, judgment, order, decree, ruling, or charge would (i) prevent consummation of any of the transactions contemplated by this Agreement, (ii) cause any of the transactions contemplated by this Agreement to be rescinded following consummation, or (iii) affect adversely the right of Purchaser to own the Acquired Assets and to operate the Business;

(d) Seller shall have obtained a release or releases or other appropriate documents as may be necessary to enable Purchaser to cancel or release any and all Liens encumbering or otherwise affecting any of the Acquired Assets other than the Permitted Liens and Seller shall have delivered to Purchaser a certified Uniform Commercial Code or equivalent search in the name of the Seller, performed in each jurisdiction where the Acquired Assets of Seller are located and where Seller's Chief Executive Office (as that term is used under the Uniform Commercial Code in the state wherein such search is being performed) is located, dated not more than 30 days prior to the Closing Date showing no Liens of record encumbering the Acquired Assets other than Permitted Liens and Liens to be released hereunder;

(e) The expiration or early termination of the applicable waiting period under the H-S-R Act;

(f) Seller shall have delivered to Purchaser a certificate, in form reasonably satisfactory to Purchaser, to the effect that each of the conditions specified above in Section 8.1(a)-(c) and (e) has been satisfied in all material respects;

(g) There shall have been no material adverse change in the condition or character of the Fee Owned Property, any Real Property Lease or any Restaurant and there shall have been no event or circumstance that has had or could reasonably be expected to have a material adverse change on the operations, financial condition or prospects of any Restaurant, in each case, between the date of the Most Recent Financial Statement and the Closing Date;

(h) Since the date of the Most Recent Financial Statement, there shall not have been a Material Adverse Effect;

(i) Seller shall have delivered to Purchaser the Financial Statements described in Section 5.1(m);

(j) The Inventory level at each Restaurant location as of the Closing Date shall be sufficient to operate each Restaurant location in the Ordinary Course of Business.

(k) Seller shall have delivered all of the executed agreements and other instruments required to be delivered by Seller pursuant to Section 2.9 hereof;

(l) Seller shall have delivered any executed assignments of copyrightable works delivered to Seller pursuant to Section 5.1(o);

(m) Mitchell shall have executed and delivered the Non-Compete and Non-Solicitation Agreement in the form attached hereto as Exhibit "J";

(n) Seller shall have delivered to Purchaser from its members holding at least fifty one percent (51%) of its voting power as of the Closing Date a consent, release and discharge of Purchaser, its executive officers, managers, employees, directors, subsidiaries, Affiliates, attorneys and agents in substantially the form of Exhibit "Q" from all Damages that may arise in connection with the authorization, execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby;

(o) Seller shall have delivered to Purchaser a legal opinion of Seller's counsel, in form and substance attached hereto as Exhibit "K";

(p) All actions to be taken by Seller in connection with consummation of the transactions contemplated hereby and all certificates, instruments, and other documents required to effect the transactions contemplated hereby are reasonably satisfactory in form and substance to Purchaser;

(q) Receipt by Purchaser of the Material Consents and Permits (other than the Liquor Licenses) and subject to Section 6.2, receipt by Purchaser of such other authorizations, consents, filings and approvals necessary to permit Seller to perform the transactions contemplated hereby, and all authorizations, consents, filings, licenses, permits and approvals necessary to permit Purchaser to continue the Business of Seller and to own and operate the Acquired Assets in the manner now conducted, owned and operated by Seller as obtained, made or given, in form and substance reasonably satisfactory to Purchaser, not subject to the satisfaction of any condition that has not been satisfied or waived and in full force and effect; and all terminations or expirations of waiting periods imposed by any Governmental Authority necessary for the transactions contemplated under this Agreement, if any, shall have occurred;

(r) A certificate of the Secretary of the Seller, dated the Closing Date, (i) setting forth the resolutions of the manager authorizing the execution and delivery of this Agreement and the Ancillary Agreements to which it is a party, and the consummation of the transactions contemplated hereby, (ii) certifying that such resolutions were duly adopted and have not been rescinded or amended as of the Closing Date, (iii) certifying as to the incumbency of the officers of the Seller executing this Agreement and any Ancillary Agreement to which it is a party, (iv) certifying as to the

validity and completeness of the Articles of Organization and Operating Agreement of the Seller delivered to Purchaser prior to the Closing Date including the Operating Agreement amendment provided for under Section 5.1(k) and (v) certifying as to the identity and voting percentage of the equity members of Seller as of the Closing Date.

(s) A certificate of full force and effect of Seller dated a date reasonably approximate to the Closing Date, issued by the Secretary of State of the entity's state of organization and each state where the Seller operates its Business, and to the extent reasonably available in each state wherein a Restaurant is located, a letter from that state's Department of Revenue certifying as to the timely filing of all sales, use and similar Tax reports and the timely payment of all sales, use and similar Taxes by Seller;

(t) Seller shall have delivered to Purchaser (i) an estoppel and consent agreement executed by the landlord under each Real Property Lease in substantially the form of Exhibit "M" (each an "Estoppel and Consent"), (ii) fully executed amendments to certain Real Property Leases as provided under Section 5.1(l) and (iii) evidence satisfactory to Purchaser of the payment in full of all loans, advances, notes and other instruments due any landlord under the Real Property Leases;

(u) An assignment of any all insurance proceeds (or an assignment of the right to receive all such proceeds) to which Purchaser may be entitled under Section 5.2 hereof; and

(v) Each Restaurant location shall have Working Cash on hand, the amount of which shall be evidenced by a cross receipt in substantially the form attached hereto as Exhibit "P" signed by Purchaser and Seller as of the Closing Date;

(w) Seller shall have delivered to Purchaser for each of the Restaurants the general manager description set forth in Section 5.1(p).

(x) Seller shall have delivered to Purchaser satisfactory evidence of the payoff of all equipment leases and equipment loans or advances set forth in Section 5.4 of the Seller Disclosure Schedule.

8.2 Conditions to the Obligations of Seller. Each and every obligation of Seller hereunder shall be subject to the satisfaction, as of Closing, of each of the following conditions, each of which can be waived by Seller, but only in writing:

(a) Purchaser shall have delivered to Seller at Closing the Purchase Price, less any funds delivered into escrow, in cash in United States dollars, by wire transfer of immediately available funds in accordance with written instructions provided to Purchaser by Seller;

(b) All of the representations and warranties of Purchaser set forth in Article IV above shall be true and correct as of the date hereof and shall be deemed to have been made again at Closing and shall then be true and correct in all material respects;

(c) Each of the covenants and other obligations of Purchaser to be performed by it on or before Closing pursuant to the terms hereof shall have been duly performed and complied with in all material respects;

(d) The expiration or early termination of the applicable waiting period under the H-S-R Act;

(e) No action, suit, or proceeding shall be pending before any court or governmental agency or before any arbitrator wherein an unfavorable injunction, judgment, order, decree, ruling, or charge would (i) prevent consummation of any of the transactions contemplated by this Agreement or (ii) cause any of the transactions contemplated by this Agreement to be rescinded following consummation (and no such injunction, judgment, order, decree, ruling, or charge shall be in effect);

(f) Purchaser shall have delivered to Seller certificates, in form reasonably satisfactory to Seller, to the effect that each of the conditions specified above in Section 8.2(b)-(c) has been satisfied in all material respects;

(g) Purchaser shall have delivered to Seller all of the executed agreements and other instruments required to be delivered by Purchaser pursuant to Section 2.9 hereof; and

(h) All actions to be taken by Purchaser in connection with consummation of the transactions contemplated hereby and all certificates, instruments, and other documents required to effect the transactions contemplated hereby are reasonably satisfactory in form and substance to Seller.

ARTICLE IX – TERMINATION

9.1 Mutual Consent. This Agreement may be terminated by the mutual written consent of Purchaser and Seller.

9.2 By Either Purchaser or Seller. This Agreement may be terminated by either Purchaser or Seller at any time prior to Closing if:

(a) any law or regulation that materially restricts the consummation of the transactions contemplated by this Agreement or makes the consummation of the transactions illegal or if a judgment, injunction, order or decree of a court or other competent Governmental Authority enjoining Purchaser or Seller from consummating the transactions contemplated by this Agreement shall have been entered, and such judgment, injunction, order or decree shall have become final and nonappealable; provided, a party may not terminate this Agreement pursuant to this Section 9.2(a) if it or its Affiliates' failure to perform its obligations under this Agreement resulted in or substantially contributed to the issuance of such judgment, injunction, order or decree; or

(b) if the Closing Date shall not be on or before February 29, 2008 (the "Termination Date").

Notwithstanding Sections 9.3 and 9.4 hereof, a party who is in breach of any of its obligations or representations and warranties hereunder shall not have the right to terminate this Agreement pursuant to Section 9.2(a) or (b).

9.3 By Purchaser. This Agreement may be terminated by Purchaser if a Material Adverse Effect occurs or if a material default shall be made by Seller in the observance of or in the due and timely performance of any of the agreements or covenants of Seller herein contained, or if there shall have been a breach by Seller of any of the warranties and representations of Seller herein contained, or if any of the conditions to the obligations of Purchaser shall not have occurred and the noncompliance, nonperformance, breach or failure to occur, as applicable, shall not have been waived by Purchaser; provided, that if such breach is of a nature that it may be cured and as determined in the sole discretion of Purchaser, such breach or subsequent cure causes no adverse effect to Purchaser, Purchaser shall not be entitled to terminate this Agreement pursuant to this Section 9.3 unless such breach causes no adverse effect to Purchaser, as determined in the sole discretion of Purchaser and remains uncured for 30 days after written notice thereof shall have been received by Seller.

9.4 By Seller. This Agreement may be terminated by Seller if a material default shall be made by Purchaser in the observance of or in the due and timely performance by Purchaser of any of the agreements or covenants of Purchaser herein contained, or if there shall have been a breach by Purchaser of any of the warranties and representations of Purchaser herein contained, or if any of the conditions to the obligations of Seller shall not have occurred and the noncompliance, nonperformance, breach or failure to occur, as applicable, shall not have been waived by Seller; provided, that if such breach is of a nature that it may be cured, Seller shall not be entitled to terminate this Agreement pursuant to this Section 9.4 unless such breach remains uncured for 30 days after written notice thereof shall have been received by Purchaser.

9.5 Effect of Termination. If this Agreement is terminated pursuant to Section 9.1, 9.2, 9.3 or 9.4 above, all rights and obligations of the parties hereunder shall terminate without any liability to any other party hereto; provided, however, that if the basis of termination is a material breach or default by Purchaser, on the one hand, or Seller, on the other hand, of one or more of the provisions of this Agreement, the party or parties then in breach or default shall be liable to the nonbreaching party or parties for all Damages resulting from such breach or default.

ARTICLE X – MISCELLANEOUS

10.1 Press Releases and Public Announcements. Prior to Closing, no party shall make any press release or other public disclosure of this transaction without the prior written consent of the other parties hereto; provided, however, that Purchaser may make any public disclosure it believes in good faith is required by applicable law, rule or regulation or any listing or trading agreement or the rules or requirements of any stock exchange concerning its publicly traded securities (in which case, Purchaser shall use commercially reasonable efforts to advise Seller prior to making such disclosure).

10.2 No Third Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any Person other than the parties hereto and their respective successors and permitted assigns, except Mitchell with respect to Section 5.1(i) and Section 7.9 hereof.

10.3 Entire Agreement. This Agreement (including the documents referred to herein) constitutes the entire agreement between the parties and supersedes any prior understandings,

agreements, or representations by or between the parties, written or oral, to the extent they related in any way to the subject matter hereof including, without limitation, that certain Offer Letter, dated as of October 15, 2007, by and among Seller, 1245 Properties, Mitchell, and Purchaser.

10.4 Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties named herein and their respective successors and permitted assigns. No party may assign either this Agreement or any Ancillary Agreement or any of its rights, interests, or obligations hereunder or thereunder without the prior written approval of the other parties hereto or thereto, except that Purchaser may assign some or all of its rights, interests and obligations pursuant to this Agreement and the Ancillary Agreements to one or more one of its subsidiaries without the consent of Seller; provided that Purchaser shall remain liable for its obligations hereunder.

10.5 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

10.6 Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

10.7 Notices. All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given (i) if served personally, on the day of such service, or (ii) if mailed by certified or registered mail (return receipt requested), on the second business day after mailing, and (iii) if transmitted by recognized overnight carrier, on the next business day after tender to the carrier. Such communications shall be sent to the following addresses:

If to Seller: Cameron Mitchell Restaurants, LLC
515 Park Street
Columbus, Ohio 43215
Attn: CMR Management, Inc., President
Fax: 614-621-1020

Copy to: Richard J. Helmreich, Esq.
Porter, Wright, Morris & Arthur, LLP
41 South High St.
Columbus, OH 43215
Fax: 614-227-2100

If to Purchaser: Ruth's Chris Steakhouse, Inc.
500 International Pkwy, Suite 100
Heathrow, Florida 32746
Attn: Craig S. Miller, President/CEO
Fax: 407-833-9625

Copy to: Ruth's Chris Steakhouse, Inc.
500 International Pkwy, Suite 100
Heathrow, Florida 32746
Attn: Thomas E. O'Keefe, General Counsel
Attn: 407-833-9625

If to 1245 Properties: 1245 Properties LLC
c/o Cameron Mitchell Restaurants, LLC
515 Park Street
Columbus, Ohio 43215
Attn: CMR Management, Inc., President
Fax: 614-621-1020

Copy to: Richard J. Helmreich, Esq.
Porter, Wright, Morris & Arthur, LLP
41 South High St.
Columbus, OH 43215
Fax: 614-227-2100

If to Mitchell: M. Cameron Mitchell
c/o Cameron Mitchell Restaurants, LLC
515 Park Street
Columbus, Ohio 43215
Attn: CMR Management, Inc., President
Fax: 614-621-1020

Copy to: Richard J. Helmreich, Esq.
Porter, Wright, Morris & Arthur, LLP
41 South High St.
Columbus, OH 43215
Fax: 614-227-2100

Any party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other parties notice in the manner herein set forth.

10.8 Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than the State of Ohio.

10.9 Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing, signed by each of the parties hereto and identified in such writing as an amendment to this Agreement. No waiver by any party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

10.10 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

10.11 Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "including" shall mean including without limitation.

10.12 Incorporation of Exhibits and Schedules. The Exhibits and Schedules identified in this Agreement are incorporated herein by reference and made a part hereof.

10.13 Litigation Expense. In any action brought by a party hereto to enforce the obligations of the other parties hereto, the prevailing party shall be entitled to collect from the other parties to such action such prevailing parties' reasonable attorneys' and accountants' fees, court costs and other expenses incidental to such litigation.

10.14 Specific Performance. Each of the parties acknowledges and agrees that the other parties will be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each of the parties agrees that the other parties shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof, in addition to any other remedy to which it may be entitled, at law or in equity.

[Signatures appear on the following page]

FIRST AMENDED AND RESTATED

CREDIT AGREEMENT

DATED AS OF FEBRUARY 19, 2008

AMONG

RUTH'S CHRIS STEAK HOUSE, INC.,
as Borrower,

THE LENDERS LISTED HEREIN,
as Lenders,

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent and Sole Bookrunner,

BANK OF AMERICA, N.A.,
as Syndication Agent

and

WACHOVIA BANK, NATIONAL ASSOCIATION
and
JPMORGAN CHASE BANK, N.A.,
as Co-Documentation Agents

BANC OF AMERICA SECURITIES LLC
and
WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Co-Lead Arrangers

| | |
|---|----|
| SECTION 1. DEFINITIONS | 2 |
| 1.1 <u>Certain Defined Terms</u> | 2 |
| 1.2 <u>Accounting Terms; Utilization of GAAP for Purposes of Calculations Under Agreement</u> | 25 |
| 1.3 <u>Other Definitional Provisions and Rules of Construction</u> | 26 |
| 1.4 <u>Amendment and Restatement</u> | 26 |
| SECTION 2. AMOUNTS AND TERMS OF COMMITMENTS AND LOANS | 26 |
| 2.1 <u>Commitments; Making of Loans; the Register; Optional Notes</u> | 26 |
| 2.2 <u>Interest on the Loans</u> | 32 |
| 2.3 <u>Fees</u> | 36 |
| 2.4 <u>Repayments, Prepayments and Reductions of Revolving Loan Commitment Amount; General Provisions Regarding Payments; Application of Proceeds of Collateral and Payments Under Subsidiary Guaranty.</u> | 37 |
| 2.5 <u>Use of Proceeds</u> | 42 |
| 2.6 <u>Special Provisions Governing Eurodollar Rate Loans</u> | 43 |
| 2.7 <u>Increased Costs; Taxes; Capital Adequacy</u> | 45 |
| 2.8 <u>Statement of Lenders; Obligation of Lenders and Issuing Lender to Mitigate</u> | 49 |
| 2.9 <u>Replacement of a Lender</u> | 50 |
| 2.10 <u>Increase in Commitments</u> | 51 |
| SECTION 3. LETTERS OF CREDIT | 53 |
| 3.1 <u>Issuance of Letters of Credit and Lenders' Purchase of Participations Therein</u> | 53 |
| 3.2 <u>Letter of Credit Fees</u> | 55 |
| 3.3 <u>Drawings and Reimbursement of Amounts Paid Under Letters of Credit</u> | 55 |
| 3.4 <u>Obligations Absolute</u> | 58 |
| 3.5 <u>Nature of Issuing Lender's Duties</u> | 59 |
| SECTION 4. CONDITIONS TO LOANS AND LETTERS OF CREDIT | 60 |
| 4.1 <u>Conditions to Initial Revolving Loans and Swing Line Loans</u> | 60 |
| 4.2 <u>Conditions to All Loans</u> | 65 |
| 4.3 <u>Conditions to Letters of Credit</u> | 65 |

| | |
|--|-----------|
| SECTION 5. COMPANY'S REPRESENTATIONS AND WARRANTIES | 66 |
| 5.1 <u>Organization, Powers, Qualification, Good Standing, Business and Subsidiaries</u> | 66 |
| 5.2 <u>Authorization of Borrowing, etc.</u> | 67 |
| 5.3 <u>Financial Condition</u> | 67 |
| 5.4 <u>No Material Adverse Change; No Restricted Junior Payments</u> | 68 |
| 5.5 <u>Title to Properties; Liens; Real Property; Intellectual Property</u> | 68 |
| 5.6 <u>Litigation; Adverse Facts</u> | 69 |
| 5.7 <u>Payment of Taxes</u> | 69 |
| 5.8 <u>Governmental Regulation</u> | 69 |
| 5.9 <u>Securities Activities</u> | 69 |
| 5.10 <u>Employee Benefit Plans</u> | 70 |
| 5.11 <u>Certain Fees</u> | 70 |
| 5.12 <u>Environmental Protection</u> | 70 |
| 5.13 <u>Employee Matters</u> | 71 |
| 5.14 <u>Solvency</u> | 71 |
| 5.15 <u>Matters Relating to Collateral</u> | 71 |
| 5.16 <u>Disclosure</u> | 72 |
| 5.17 <u>UFOC</u> | 72 |
| 5.18 <u>Acquisition Agreement</u> | 72 |
| 5.19 <u>Compliance with OFAC Rules and Regulations.</u> | 73 |
| 5.20 <u>Foreign Assets Control Regulations, Etc.</u> | 73 |
| SECTION 6. COMPANY'S AFFIRMATIVE COVENANTS | 73 |
| 6.1 <u>Financial Statements and Other Reports</u> | 73 |
| 6.2 <u>Existence, etc.</u> | 78 |
| 6.3 <u>Payment of Taxes and Claims; Tax</u> | 78 |
| 6.4 <u>Maintenance of Properties; Insurance; Application of Net Insurance/ Condemnation Proceeds</u> | 78 |
| 6.5 <u>Inspection Rights; Lender Meeting</u> | 80 |
| 6.6 <u>Compliance with Laws, etc.</u> | 80 |
| 6.7 <u>Environmental Matters</u> | 80 |
| 6.8 <u>Execution of Subsidiary Guaranty and Collateral Documents After the Restatement Date</u> | 81 |

| | | |
|-------------------|--|-----------|
| SECTION 7. | COMPANY'S NEGATIVE COVENANTS | 82 |
| 7.1 | <u>Indebtedness</u> | 83 |
| 7.2 | <u>Liens and Related Matters</u> | 83 |
| 7.3 | <u>Investments; Acquisitions</u> | 84 |
| 7.4 | <u>Contingent Obligations</u> | 86 |
| 7.5 | <u>Restricted Junior Payments</u> | 86 |
| 7.6 | <u>Financial Covenants</u> | 87 |
| 7.7 | <u>Restriction on Fundamental Changes; Asset Sales</u> | 87 |
| 7.8 | <u>Transactions with Shareholders and Affiliates</u> | 88 |
| 7.9 | <u>Sales and Lease-Backs</u> | 88 |
| 7.10 | <u>Conduct of Business</u> | 89 |
| 7.11 | <u>Amendments of Organizational Documents</u> | 89 |
| 7.12 | <u>Fiscal Year</u> | 89 |
| 7.13 | <u>UFOC</u> | 89 |
| SECTION 8. | EVENTS OF DEFAULT | 89 |
| 8.1 | <u>Failure to Make Payments When Due</u> | 90 |
| 8.2 | <u>Default in Other Agreements</u> | 90 |
| 8.3 | <u>Breach of Certain Covenants</u> | 90 |
| 8.4 | <u>Breach of Warranty</u> | 90 |
| 8.5 | <u>Other Defaults Under Loan Documents</u> | 90 |
| 8.6 | <u>Involuntary Bankruptcy; Appointment of Receiver, etc.</u> | 91 |
| 8.7 | <u>Voluntary Bankruptcy; Appointment of Receiver, etc.</u> | 91 |
| 8.8 | <u>Judgments and Attachments</u> | 91 |
| 8.9 | <u>Nonmonetary Judgments</u> | 92 |
| 8.10 | <u>Dissolution</u> | 92 |
| 8.11 | <u>Employee Benefit Plans</u> | 92 |
| 8.12 | <u>Change in Control</u> | 92 |
| 8.13 | <u>Invalidity of Loan Documents; Failure of Security; Repudiation of Obligations</u> | 92 |
| 8.14 | <u>Failure to Consummate Acquisition</u> | 92 |
| SECTION 9. | ADMINISTRATIVE AGENT | 93 |
| 9.1 | <u>Appointment</u> | 93 |

| | | |
|-------------|--|-----|
| 9.2 | <u>Powers and Duties; General Immunity</u> | 95 |
| 9.3 | <u>Independent Investigation by Lenders; No Responsibility For Appraisal of Creditworthiness</u> | 96 |
| 9.4 | <u>Right to Indemnity</u> | 96 |
| 9.5 | <u>Resignation of Agents; Successor Administrative Agent and Swing Line Lender</u> | 97 |
| 9.6 | <u>Collateral Documents and Subsidiary Guaranty</u> | 98 |
| 9.7 | <u>Duties of Other Agents</u> | 99 |
| 9.8 | <u>Administrative Agent May File Proofs of Claim</u> | 99 |
| SECTION 10. | MISCELLANEOUS | 100 |
| 10.1 | <u>Successors and Assigns; Assignments and Participations in Loans and Letters of Credit</u> | 100 |
| 10.2 | <u>Expenses</u> | 103 |
| 10.3 | <u>Indemnity</u> | 104 |
| 10.4 | <u>Set-Off</u> | 105 |
| 10.5 | <u>Ratable Sharing</u> | 105 |
| 10.6 | <u>Amendments and Waivers</u> | 106 |
| 10.7 | <u>Independence of Covenants</u> | 107 |
| 10.8 | <u>Notices; Effectiveness of Signatures</u> | 108 |
| 10.9 | <u>Survival of Representations, Warranties and Agreements</u> | 109 |
| 10.10 | <u>Failure or Indulgence Not Waiver; Remedies Cumulative</u> | 109 |
| 10.11 | <u>Marshalling; Payments Set Aside</u> | 109 |
| 10.12 | <u>Severability</u> | 109 |
| 10.13 | <u>Obligations Several; Independent Nature of Lenders' Rights; Damage Waiver</u> | 110 |
| 10.14 | <u>Release of Security Interest or Subsidiary Guaranty</u> | 110 |
| 10.15 | <u>Applicable Law</u> | 111 |
| 10.16 | <u>Construction of Agreement; Nature of Relationship</u> | 111 |
| 10.17 | <u>Consent to Jurisdiction and Service of Process</u> | 111 |
| 10.18 | <u>Waiver of Jury Trial</u> | 112 |
| 10.19 | <u>Confidentiality</u> | 112 |
| 10.20 | <u>Counterparts; Effectiveness</u> | 113 |
| 10.21 | <u>Successor Issuing Lender</u> | 113 |

10.22 Patriot Act Notice.

114

10.23 Advertising, Promotion and Marketing.

114

EXHIBITS

- I FORM OF NOTICE OF BORROWING
- II FORM OF NOTICE OF CONVERSION/CONTINUATION
- III FORM OF REQUEST FOR ISSUANCE
- IV FORM OF NOTICE OF PREPAYMENT
- V FORM OF REVOLVING NOTE
- VI FORM OF SWING LINE NOTE
- VII FORM OF COMPLIANCE CERTIFICATE
- VIII FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT
- IX FORM OF FIRST AMENDED AND RESTATED SUBSIDIARY GUARANTY
- X FORM OF FIRST AMENDED AND RESTATED PLEDGE AND SECURITY AGREEMENT
- XI FORM OF SOLVENCY CERTIFICATE

SCHEDULES

- 1.1 EXISTING LETTERS OF CREDIT
- 2.1 LENDERS' COMMITMENTS AND PRO RATA SHARES
- 5.1 COMPANY AND ITS SUBSIDIARIES
- 5.5 INTELLECTUAL PROPERTY
- 5.6 LITIGATION
- 5.12 ENVIRONMENTAL MATTERS
- 7.1 CERTAIN EXISTING INDEBTEDNESS
- 7.2 CERTAIN EXISTING LIENS
- 7.3 CERTAIN EXISTING INVESTMENTS
- 7.4 CERTAIN EXISTING CONTINGENT OBLIGATIONS

RUTH'S CHRIS STEAK HOUSE, INC.

FIRST AMENDED AND RESTATED
CREDIT AGREEMENT

This **FIRST AMENDED AND RESTATED CREDIT AGREEMENT** is dated as of February 19, 2008 and entered into by and among **RUTH'S CHRIS STEAK HOUSE, INC.**, a Delaware corporation ("**Company**"), **THE FINANCIAL INSTITUTIONS FROM TIME TO TIME PARTY HERETO** (each individually referred to herein as a "**Lender**" and collectively as "**Lenders**"), **WELLS FARGO BANK, NATIONAL ASSOCIATION** ("**Wells Fargo**"), as administrative agent for Lenders (in such capacity, "**Administrative Agent**") and a co-lead arranger, Banc of America Securities LLC, as a co-lead arranger (together with Wells Fargo, in such capacity, "**Co-Lead Arrangers**"), Bank of America, N.A., as syndication agent (in such capacity "**Syndication Agent**"), and Wachovia Bank, National Association and JPMorgan Chase Bank, N.A., as co-documentation agents (in such capacity, "**Co-Documentation Agents**").

R E C I T A L S

WHEREAS, Company, certain lenders and Wells Fargo, as administrative agent, are parties to that certain Credit Agreement dated as of September 27, 2005, as amended pursuant to the First Amendment to Credit Agreement dated as of May 17, 2006 and the Second Amendment to Credit Agreement dated as of August 7, 2007 (the "**Original Credit Agreement**");

WHEREAS, on the Restatement Date (this and other capitalized terms used in these recitals without definition being used as defined in subsection 1.1), Company will purchase the Acquired Business pursuant to the Acquisition Agreement;

WHEREAS, Lenders, at the request of Company, have agreed to increase the Commitments, the proceeds of which will be used (i) to fund the Acquisition Financing Requirements and (ii) together with the existing Commitments, to provide financing for working capital and other general corporate purposes of Company and its Subsidiaries (including the acquisition of one or more Ruth's Chris restaurant franchises to the extent permitted hereunder);

WHEREAS, Company desires to continue to secure all of the Obligations hereunder and under the other Loan Documents by a First Priority Lien, granted to Administrative Agent, on behalf of Lenders, on all of the Capital Stock of its Domestic Subsidiaries and 66% of the Capital Stock of certain of its Foreign Subsidiaries; and

WHEREAS, all of the Domestic Subsidiaries of Company desire to continue to guarantee the Obligations hereunder and under the other Loan Documents and to continue to secure their guaranties by a First Priority Lien, granted to Administrative Agent, on behalf of Lenders, on all of the Capital Stock of their Domestic Subsidiaries and 66% of the Capital Stock of certain of their Foreign Subsidiaries;

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, Company, Lenders, Co-Lead Arrangers, Syndication Agent, Co-Documentation Agents and Administrative Agent agree that the Original Credit Agreement is hereby amended and restated to read in its entirety as follows:

Section 1. DEFINITIONS**1.1 Certain Defined Terms**

The following terms used in this Agreement shall have the following meanings:

“Acquired Business” means, collectively, Mitchell’s Fish Market (**“Mitchell’s Fish Market”**), operating under the names Mitchell’s Fish Market and Columbus Fish Market, and Cameron’s Steakhouse (**“Cameron’s Steakhouse”**), operating under the names Cameron’s Steakhouse and Mitchell’s Steakhouse.

“Acquisition” means the transactions contemplated by the Acquisition Agreement.

“Acquisition Agreement” means that certain Asset Purchase Agreement, dated as of November 6, 2007, by and among Company, Seller, and M. Cameron Mitchell and 1245 Properties, LLC, an Ohio limited liability company, as the interveners, in the form delivered to Administrative Agent and Lenders prior to their execution of this Agreement and as such agreement may be amended from time to time thereafter.

“Acquisition EBITDA” means, for any period ending prior to March 29, 2009, the sum, without duplication, of the amounts for such period of (i) Consolidated Net Income, (ii) Consolidated Interest Expense, (iii) provisions for taxes based on income, (iv) total depreciation expense, (v) total amortization expense, (vi) pre-opening costs, (vii) administrative overhead costs not to exceed \$4,500,000, (viii) management fees paid to M. Cameron Mitchell and CMR Management, Inc. in the aggregate not to exceed 4% of gross revenues of the Acquired Business for fiscal year 2007, and (ix) non-cash write-offs of restaurant assets, in the case of clauses (ii)-(ix), to the extent deducted in the calculation of Consolidated Net Income, less non-cash items added in the calculation of Consolidated Net Income, all of the foregoing as determined on a combined basis for the Acquired Business in conformity with GAAP. For purposes of determining Acquisition EBITDA, references in the definitions of “Consolidated Net Income” and “Consolidated Interest Expense” to Company and its Subsidiaries shall be deemed to refer to the Acquired Business.

“Acquisition Financing Requirements” means the aggregate of all amounts necessary (i) to finance the purchase price payable in connection with the Acquisition and (ii) to pay Transaction Costs.

“Administrative Agent” has the meaning assigned to that term in the introduction to this Agreement and also means and includes any successor Administrative Agent appointed pursuant to subsection 9.5A.

“Affected Lender” has the meaning assigned to that term in subsection 2.6C.

“Affected Loans” has the meaning assigned to that term in subsection 2.6C.

“Affiliate”, as applied to any Person, means any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise.

“Affiliated Funds” means Funds that are administered or managed by (i) a single entity or (ii) an Affiliate of such entity.

“Agents” means Administrative Agent, Syndication Agent, Co-Documentation Agents, Co-Lead Arrangers, Supplemental Collateral Agents and Related Parties.

“Aggregate Amounts Due” has the meaning assigned to that term in subsection 10.5.

“Agreement” means this First Amended and Restated Credit Agreement dated as of February 19, 2008.

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

“Asset Sale” means the sale by Company or any of its Subsidiaries to any Person other than Company or any of its wholly-owned Subsidiaries of (i) any of the stock of any of Company’s Subsidiaries, (ii) substantially all of the assets of any division or line of business of Company or any of its Subsidiaries, or (iii) any other assets (whether tangible or intangible) of Company or any of its Subsidiaries (other than (a) inventory sold in the ordinary course of business, (b) sales, assignments, transfers or dispositions of accounts in the ordinary course of business for purposes of collection and (c) any such other assets to the extent that the aggregate value of such assets sold in any Fiscal Year is equal to \$750,000 or less).

“Assignment Agreement” means an Assignment and Assumption in substantially the form of Exhibit VIII annexed hereto.

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

“Base Rate” means, at any time, the higher of (i) the Prime Rate or (ii) the rate which is $\frac{1}{2}$ of 1% in excess of the Federal Funds Effective Rate. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective on the effective date of such change.

“Base Rate Loans” means Loans bearing interest at rates determined by reference to the Base Rate as provided in subsection 2.2A.

“Base Rate Margin” means the margin over the Base Rate used in determining the rate of interest of Revolving Loans that are Base Rate Loans pursuant to subsection 2.2A.

“Business Day” means (i) for all purposes other than as covered by clause (ii) below, any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of California, Florida, Louisiana or New York or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close, and (ii) with respect to all notices, determinations, fundings and payments in connection with the Eurodollar Rate or any Eurodollar Rate Loans, any day that is a Business Day described in clause (i) above and that is also a day for trading by and between banks in Dollar deposits in the London interbank market.

“Cameron’s Steakhouse” has the meaning assigned to that term in the definition of “Acquired Business.”

“Capital Lease”, as applied to any Person, means any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of that Person.

“Capital Stock” means the capital stock of or other equity interests in a Person.

“Cash” means money, currency or a credit balance in a demand, time, savings, passbook or similar account maintained with a Person engaged in the business of banking, including a savings bank, savings and loan association, credit union or trust company.

“Cash Equivalents” means, as at any date of determination, (i) marketable securities (a) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government or (b) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one year after such date; (ii) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after such date and having, at the time of the acquisition thereof, the highest rating obtainable from either Standard & Poor’s (“**S&P**”) or Moody’s Investors Service, Inc. (“**Moody’s**”); (iii) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody’s; (iv) certificates of deposit or bankers’ acceptances maturing within one year after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia that (a) is at least “adequately capitalized” (as defined in the regulations of its primary Federal banking regulator) and (b) has Tier 1 capital (as defined in such regulations) of not less than \$100,000,000; and (v) shares of any money market mutual fund that (a) has at least 95% of its assets invested continuously in the types of investments referred to in clauses (i) and (ii) above, (b) has net assets of not less than \$500,000,000, and (c) has the highest rating obtainable from either S&P or Moody’s.

“Change in Control” means any of the following: (i) any “person” or “group” (within the meaning of Sections 13(d) and 14(d) of the Exchange Act), other than Madison

Dearborn and its Affiliates, existing stockholders as of the Closing Date and employees of Company and its Subsidiaries, becomes the beneficial owner, directly or indirectly of 20% or more of the issued and outstanding shares of capital stock of Company entitled (without regard to the occurrence of any contingency) to vote for the election of members of the Governing Body of Company, (ii) the occurrence of a change in the composition of the Governing Body of Company such that a majority of the members of any such Governing Body are not Continuing Members; and (iii) the occurrence of any "Change in Control" as defined in Company's Articles of Incorporation. As used herein, the term "beneficially own" or "beneficial ownership" shall have the meaning set forth in the Exchange Act and the rules and regulations promulgated thereunder.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (i) the adoption or taking effect of any law, rule, regulation, treaty or order, (ii) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Government Authority, (iii) any determination of a court or other Government Authority or (iv) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Government Authority.

"Closing Date" means September 27, 2005, being the date on which the initial Loans were made under the Original Credit Agreement.

"Co-Documentation Agents" has the meaning assigned to that term in the introduction to this Agreement.

"Co-Lead Arrangers" has the meaning assigned to that term in the introduction to this Agreement.

"Collateral" means, collectively, all of the property in which Liens are purported to be granted pursuant to the Collateral Documents as security for the Obligations.

"Collateral Account" has the meaning assigned to that term in the Pledge Agreement.

"Collateral Documents" means the Pledge Agreement and all other instruments or documents delivered by any Loan Party pursuant to this Agreement, the Original Credit Agreement or any of the other Loan Documents in order to grant to Administrative Agent, on behalf of Lenders, a Lien on any property of that Loan Party as security for the Obligations.

"Commercial Letter of Credit" means any letter of credit or similar instrument issued for the purpose of providing the primary payment mechanism in connection with the purchase of any materials, goods or services by Company or any of its Subsidiaries in the ordinary course of business of Company or such Subsidiary.

"Commitments" means the commitments of Lenders to make Loans as set forth in subsections 2.1A and 3.3.

"Communications" has the meaning assigned to that term in subsection 10.8.

“**Company**” has the meaning assigned to that term in the introduction to this Agreement.

“**Compliance Certificate**” means a certificate substantially in the form of Exhibit VII annexed hereto.

“**Confidential Information Memorandum**” means the Confidential Information Memorandum dated December 2007 prepared by Wells Fargo relating to the credit facilities evidenced by this Agreement.

“**Consolidated Capital Expenditures**” means, for any period and without duplication, the sum of the aggregate of all expenditures, including, to the extent not already included as an expenditure, the purchase price of any acquired Ruth’s Chris restaurant franchise, (whether paid in cash or other consideration or accrued as a liability and including that portion of Capital Leases which is capitalized on the consolidated balance sheet of Company and its Subsidiaries) by Company and its Subsidiaries during that period that, in conformity with GAAP, are included in “additions to property, plant or equipment” or comparable items reflected in the consolidated statement of cash flows of Company and its Subsidiaries. For purposes of this definition, the purchase price of any asset that is purchased with insurance proceeds shall be included in Consolidated Capital Expenditures only to the extent of the gross amount of such purchase price less the amount of such proceeds.

“**Consolidated EBITDA**” means, for any period, the sum, without duplication, of the amounts for such period of (i) Consolidated Net Income, (ii) Consolidated Interest Expense, (iii) provisions for taxes based on income, (iv) total depreciation expense, (v) total amortization expense, (vi) non-cash write-offs or impairment of restaurant assets (including write-offs due to impairment of goodwill) and cash write-offs of the Manhattan UN Facility, (vii) non-recurring costs and expenses in connection with severance payments, hurricane and relocation costs, and business acquisition costs, (viii) ongoing non-cash GAAP costs in connection with, but not limited to, stock options, restricted stock, bank fees and pre-opening straight-line rent, in the case of clauses (ii)-(viii), to the extent deducted in the calculation of Consolidated Net Income, less non-cash items added in the calculation of Consolidated Net Income, all of the foregoing as determined on a consolidated basis for Company and its Subsidiaries in conformity with GAAP; provided that in the event Company or any of its Subsidiaries acquires a Ruth’s Chris restaurant franchise during such period, Consolidated EBITDA for such period shall be calculated on a Pro Forma Basis; provided further that Consolidated EBITDA for the Fiscal Quarters ending prior to March 29, 2009 shall include Acquisition EBITDA for such period as reflected in the financial statements of the Acquired Business for such period delivered to Company and Administrative Agent (as if the Acquired Business were acquired on the first day of such period).

“**Consolidated EBITDAR**” means, for any period, the sum, without duplication, of the amounts for such period of (i) Consolidated EBITDA and (ii) Consolidated Rental Expense.

“**Consolidated Fixed Charges**” means, for any period, the sum (without duplication) of the amounts for such period of (i) Consolidated Interest Expense, (ii) scheduled principal payments in respect of Consolidated Total Debt, and (iii) Consolidated Rental Expense, all of the foregoing as determined on a consolidated basis for Company and its Subsidiaries in conformity with GAAP.

“Consolidated Interest Expense” means, for any period, total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest) of Company and its Subsidiaries on a consolidated basis with respect to all outstanding Indebtedness of Company and its Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing, net costs under Interest Rate Agreements and amounts referred to in subsection 2.3 payable to Administrative Agent and Lenders that are considered interest expense in accordance with GAAP, but excluding, however, any such amounts referred to in subsection 2.3 payable on or before the Restatement Date.

“Consolidated Leverage Ratio” means, as at any date, the ratio of (i) Consolidated Total Debt as at such date to (ii) Consolidated EBITDA for the four consecutive Fiscal Quarter period most recently ended as at such date.

“Consolidated Maintenance Capital Expenditures” means, for any period, Consolidated Capital Expenditures minus all such Consolidated Capital Expenditures relating to (i) developing, constructing and opening new restaurants, (ii) acquiring restaurant franchises, (iii) the Acquisition of the Acquired Business and (iv) major restaurant remodeling in excess of \$500,000 for any restaurant location.

“Consolidated Net Income” means, for any period, the net income (or loss) of Company and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP; provided that there shall be excluded (i) the income (or loss) of any Person (other than a Subsidiary of Company) in which any other Person (other than Company or any of its Subsidiaries) has a joint interest, except to the extent of the amount of dividends or other distributions actually paid to Company or any of its Subsidiaries by such Person during such period, (ii) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of Company or is merged into or consolidated with Company or any of its Subsidiaries or that Person’s assets are acquired by Company or any of its Subsidiaries, (iii) the income of any Subsidiary of Company to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, (iv) any after-tax gains or losses attributable to asset sales or returned surplus assets of any Pension Plan, and (v) (to the extent not included in clauses (i) through (iv) above) any net extraordinary gains or net non-cash extraordinary losses.

“Consolidated Rental Expense” means, for any period, the aggregate amount of all rents paid or payable during that period under all Real Property Operating Leases to which Company or any of its Subsidiaries is a party as lessee as determined on a consolidated basis for Company and its Subsidiaries in conformity with GAAP.

“Consolidated Total Debt” means, as at any date of determination, the aggregate stated balance sheet amount of all Indebtedness of Company and its Subsidiaries, determined on a consolidated basis in accordance with GAAP.

“Contingent Obligation”, as applied to any Person, means any direct or indirect liability, contingent or otherwise, of that Person (i) with respect to any Indebtedness, lease, dividend or other obligation of another if the primary purpose or intent thereof by the Person incurring the Contingent Obligation is to provide assurance to the obligee of such obligation of another that such obligation of another will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such obligation will be protected (in whole or in part) against loss in respect thereof, (ii) with respect to any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings, or (iii) under Hedge Agreements. Contingent Obligations shall include (a) the direct or indirect guaranty, endorsement (otherwise than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another, (b) the obligation to make take-or-pay or similar payments if required regardless of non-performance by any other party or parties to an agreement, and (c) any liability of such Person for the obligation of another through any agreement (contingent or otherwise) (1) to purchase, repurchase or otherwise acquire such obligation or any security therefor, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (2) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under subclauses (1) or (2) of this sentence, the primary purpose or intent thereof is as described in the preceding sentence. The amount of any Contingent Obligation shall be equal to the amount of the obligation so guaranteed or otherwise supported or, if less, the amount to which such Contingent Obligation is specifically limited.

“Continuing Member” means, as of any date of determination any member of the Governing Body of Company who (i) was a member of such Governing Body on the Closing Date or (ii) was nominated for election or elected to such Governing Body with the affirmative vote of a majority of the members who were either members of such Governing Body on the Closing Date or whose nomination or election was previously so approved.

“Contractual Obligation”, as applied to any Person, means any provision of any Security issued by that Person or of any material indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

“Currency Agreement” means any foreign exchange contract, currency swap agreement, futures contract, option contract, synthetic cap or other similar agreement or arrangement to which Company or any of its Subsidiaries is a party.

“Dollars” and the sign **“\$”** mean the lawful money of the United States of America.

“Domestic Subsidiary” means any Subsidiary of Company that is incorporated or organized under the laws of the United States of America, any state thereof or in the District of Columbia.

“Eligible Assignee” means (i) any Lender, any Affiliate of any Lender and any Approved Fund of any Lender; and (ii) (a) a commercial bank organized under the laws of the United States or any state thereof; (b) a savings and loan association or savings bank organized under the laws of the United States or any state thereof; (c) a commercial bank organized under the laws of any other country or a political subdivision thereof; provided that (1) such bank is acting through a branch or agency located in the United States or (2) such bank is organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development or a political subdivision of such country; and (d) any other entity that is an “accredited investor” (as defined in Regulation D under the Securities Act) that extends credit or buys loans as one of its businesses including insurance companies, mutual funds and lease financing companies; provided that none of Company, any Affiliate of Company, or any Person acting at the direction of, or in concert with, any such Person, shall be an Eligible Assignee.

“Employee Benefit Plan” means any “employee benefit plan” as defined in Section 3(3) of ERISA which is or was maintained or contributed to by Company, any of its Subsidiaries or any of their respective ERISA Affiliates.

“Environmental Claim” means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Government Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law, or (ii) in connection with any Hazardous Materials or any actual or alleged Hazardous Materials Activity.

“Environmental Laws” means any and all current or future statutes, ordinances, orders, rules, regulations, guidance documents, judgments, Governmental Authorizations, or any other requirements of any Government Authority relating to (i) environmental matters, including those relating to any Hazardous Materials Activity, (ii) the generation, use, storage, transportation or disposal of Hazardous Materials, or (iii) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health or welfare, in any manner applicable to Company or any of its Subsidiaries or any Facility.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor thereto.

“ERISA Affiliate”, as applied to any Person, means (i) any corporation that is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (ii) any trade or business (whether or not incorporated) that is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (iii) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (i) above or any trade or business described in clause (ii) above is a member. Any former ERISA Affiliate of a Person or any of its Subsidiaries shall continue to be considered an ERISA

Affiliate of such Person or such Subsidiary within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of such Person or such Subsidiary and with respect to liabilities arising after such period for which such Person or such Subsidiary could be liable under the Internal Revenue Code or ERISA.

“ERISA Event” means (i) a “reportable event” within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for 30-day notice to the PBGC has been waived by regulation); (ii) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(d) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 412(m) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (iii) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (iv) the withdrawal by Company, any of its Subsidiaries or any of their respective ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability pursuant to Section 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition which might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (vi) the imposition of liability on Company, any of its Subsidiaries or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the withdrawal of Company, any of its Subsidiaries or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by Company, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (viii) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan other than a Multiemployer Plan or the assets thereof, or against Company, any of its Subsidiaries or any of their respective ERISA Affiliates in connection with any Employee Benefit Plan; (ix) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; or (x) the imposition of a Lien pursuant to Section 401(a)(29) or 412(n) of the Internal Revenue Code or pursuant to ERISA with respect to any Pension Plan.

“Eurodollar Rate” means, for any Interest Rate Determination Date with respect to an Interest Period for a Eurodollar Rate Loan, the rate per annum obtained by dividing (i) (a) the rate per annum (rounded upward to the nearest $\frac{1}{16}$ of one percent) that appears on the Moneyline Telerate page 3750 (or such other comparable page as may, in the opinion of Administrative Agent, replace such page for the purpose of displaying such rate) as the London interbank offered rate for Dollar deposits with maturities comparable to such Interest Period as of approximately 11:00 a.m. (London time) on such Interest Rate Determination Date or (b) if such

rate is not available at such time for any reason, the arithmetic average (rounded upward to the nearest $\frac{1}{16}$ of one percent) of the offered quotations, if any, to first class banks in the London interbank Eurodollar market by Wells Fargo for Dollar deposits of amounts in same day funds comparable to the principal amount of the Eurodollar Rate Loan of Wells Fargo for which the Eurodollar Rate is then being determined with maturities comparable to such Interest Period as of approximately 11:00 A.M. (New York time) on such Interest Rate Determination Date by (ii) a percentage equal to 100% minus the stated maximum rate of all reserve requirements (including any marginal, emergency, supplemental, special or other reserves) applicable on such Interest Rate Determination Date to any member bank of the Federal Reserve System in respect of "Eurocurrency liabilities" as defined in Regulation D (or any successor category of liabilities under Regulation D).

"Eurodollar Rate Loans" means Loans bearing interest at rates determined by reference to the Eurodollar Rate as provided in subsection 2.2A.

"Eurodollar Rate Margin" means the margin over the Eurodollar Rate used in determining the rate of interest of Revolving Loans that are Eurodollar Rate Loans pursuant to subsection 2.2A.

"Event of Default" means each of the events set forth in Section 8.

"Excess Net Asset Sale Proceeds" has the meaning assigned to that term in subsection 2.4A(iii)(a).

"Excess Net Insurance/Condemnation Proceeds" has the meaning assigned to that term in subsection 6.4C(ii).

"Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

"Excluded Taxes" means, with respect to Administrative Agent, any Lender, or any other recipient of any payment to be made by or on account of any obligation of Company hereunder (i) taxes that are imposed on the overall net income (however denominated) and franchise taxes imposed in lieu thereof (a) by the United States, (b) by any other Government Authority under the laws of which such Lender is organized or has its principal office or maintains its applicable lending office, or (c) by any Government Authority solely as a result of a present or former connection between such recipient and the jurisdiction of such Government Authority (other than any such connection arising solely from such recipient having executed, delivered or performed its obligations or received a payment under, or enforced, any of the Loan Documents), (ii) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which Company is located, and (iii) in the case of a Foreign Lender (other than an assignee pursuant to a request of Company under subsection 2.9), any withholding tax that (x) is imposed on amounts payable to such Foreign Lender at the time it becomes a party hereto (or designates a new lending office), (y) is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with its obligations under subsection 2.7B(iv), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment),

to receive additional amounts from Company with respect to such withholding tax pursuant to subsection 2.7B, or (z) is required to be deducted under applicable law from any payment hereunder on the basis of the information provided by such Foreign Lender pursuant to clause (d) of subsection 2.7B(iv).

“Existing Letters of Credit” means the letters of credit listed on Schedule 1.1 annexed hereto.

“Facilities” means any and all real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by Company or any of its Subsidiaries or any of their respective predecessors or Affiliates.

“Federal Funds Effective Rate” means, for any period, a fluctuating interest rate equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by Administrative Agent from three Federal funds brokers of recognized standing selected by Administrative Agent.

“First Priority” means, with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, that (i) such Lien is perfected and has priority over any other Lien on such Collateral (other than Liens permitted pursuant to clauses (ii)-(iv) of subsection 7.2A) and (ii) such Lien is the only Lien (other than Liens permitted pursuant to subsection 7.2A) to which such Collateral is subject.

“Fiscal Quarter” means a quarterly fiscal period of Company and its Subsidiaries ending on the last Sunday in March, June, September and December of each calendar year.

“Fiscal Year” means the fiscal year of Company and its Subsidiaries ending on the last Sunday in December of each calendar year.

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

“Foreign Subsidiary” means any Subsidiary of Company that is not a Domestic Subsidiary.

“Franchise EBITDA” means, for any period, with respect to each Ruth’s Chris restaurant franchise acquired by Company or any of its Subsidiaries during such period, the sum, without duplication, of the amounts for such period of (i) Consolidated Net Income, (ii) Consolidated Interest Expense, (iii) provisions for taxes based on income, (iv) total depreciation expense, and (v) total amortization expense, in the case of clauses (ii)-(v), to the extent deducted in the calculation of Consolidated Net Income, determined for such franchise in

conformity with GAAP. For purposes of determining Franchise EBITDA, references in the definitions of “Consolidated Net Income” and “Consolidated Interest Expense” to Company and its Subsidiaries shall be deemed to refer to such franchise.

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

“**Funding and Payment Office**” means (i) the office of Administrative Agent and Swing Line Lender located at 5938 Priestly Drive, Suite 200, Carlsbad, California 92008 or (ii) such other office of Administrative Agent and Swing Line Lender as may from time to time hereafter be designated as such in a written notice delivered by Administrative Agent and Swing Line Lender to Company and each Lender.

“**Funding Date**” means the date of funding of a Loan.

“**GAAP**” means, subject to the limitations on the application thereof set forth in subsection 1.2, generally accepted accounting principles set forth in opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession, in each case as the same are applicable to the circumstances as of the date of determination.

“**Governing Body**” means the board of directors or other body having the power to direct or cause the direction of the management and policies of a Person that is a corporation, partnership, trust or limited liability company.

“**Government Authority**” means the government of the United States or any other nation, or any state, regional or local political subdivision or department thereof, and any other governmental or regulatory agency, authority, body, commission, central bank, board, bureau, organ, court, instrumentality or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, in each case whether federal, state, local or foreign (including supra-national bodies such as the European Union or the European Central Bank).

“**Governmental Authorization**” means any permit, license, registration, authorization, plan, directive, accreditation, consent, order or consent decree of or from, or notice to, any Government Authority.

“**Hazardous Materials**” means (i) any chemical, material or substance at any time defined as or included in the definition of “hazardous substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous waste”, “acutely hazardous waste”, “radioactive waste”, “biohazardous waste”, “pollutant”, “toxic pollutant”, “contaminant”, “restricted hazardous waste”, “infectious waste”, “toxic substances”, or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, “TCLP toxicity” or “EP toxicity” or

words of similar import under any applicable Environmental Laws); (ii) any oil, petroleum, petroleum fraction or petroleum derived substance; (iii) any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; (iv) any flammable substances or explosives; (v) any radioactive materials; (vi) any asbestos-containing materials; (vii) urea formaldehyde foam insulation; (viii) electrical equipment which contains any oil or dielectric fluid containing polychlorinated biphenyls; (ix) pesticides; and (x) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Government Authority or which may or could pose a hazard to the health and safety of the owners, occupants or any Persons in the vicinity of any Facility or to the indoor or outdoor environment.

“Hazardous Materials Activity” means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

“Hedge Agreement” means an Interest Rate Agreement or a Currency Agreement designed to hedge against fluctuations in interest rates or currency values, respectively.

“Increase Effective Date” has the meaning assigned to that term in subsection 2.10.

“Indebtedness”, as applied to any Person, means (i) all indebtedness for borrowed money, (ii) that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP, (iii) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money, (iv) any obligation owed for all or any part of the deferred purchase price of property or services (excluding any such obligations incurred under ERISA), which purchase price is (a) due more than six months from the date of incurrence of the obligation in respect thereof or (b) evidenced by a note or similar written instrument, (v) Synthetic Lease Obligations, and (vi) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person. Obligations under Interest Rate Agreements and Currency Agreements constitute (1) in the case of Hedge Agreements, Contingent Obligations, and (2) in all other cases, Investments, and in neither case constitute Indebtedness.

“Indemnified Liabilities” has the meaning assigned to that term in subsection 10.3.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Indemnitee” has the meaning assigned to that term in subsection 10.3.

“Intellectual Property” means all patents, trademarks, tradenames, copyrights, technology, software, know-how and processes used in or necessary for the conduct of the business of Company and its Subsidiaries.

“Interest Payment Date” means (i) with respect to any Base Rate Loan, each March 31, June 30, September 30 and December 31 of each calendar year, commencing on the first such date to occur after the Restatement Date, and (ii) with respect to any Eurodollar Rate Loan, the last day of each Interest Period applicable to such Loan; provided that in the case of each Interest Period of six months “Interest Payment Date” shall also include the date that is three months after the commencement of such Interest Period.

“Interest Period” has the meaning assigned to that term in subsection 2.2B.

“Interest Rate Agreement” means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or other similar agreement or arrangement to which Company or any of its Subsidiaries is a party.

“Interest Rate Determination Date”, with respect to any Interest Period, means the second Business Day prior to the first day of such Interest Period.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended to the date hereof and from time to time hereafter, and any successor statute.

“Investment” means (i) any direct or indirect purchase or other acquisition by Company or any of its Subsidiaries of, or of a beneficial interest in, any Securities of any other Person (including any Subsidiary of Company), (ii) any direct or indirect redemption, retirement, purchase or other acquisition for value, by any Subsidiary of Company from any Person other than Company or any of its Subsidiaries, of any equity Securities of such Subsidiary, (iii) any direct or indirect loan, advance (other than advances to employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contribution by Company or any of its Subsidiaries to any other Person, including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business, or (iv) Interest Rate Agreements or Currency Agreements not constituting Hedge Agreements. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment (other than adjustments for the repayment of, or the refund of capital with respect to, the original principal amount of any such Investment).

“Issuing Lender” means Wells Fargo, in its capacity as Issuing Lender.

“Joint Venture” means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form.

“Lender” and **“Lenders”** means the Persons identified as “Lenders” and listed on the signature pages of this Agreement, together with their successors and permitted assigns pursuant to subsection 10.1, and the term “Lenders” shall include Swing Line Lender unless the context otherwise requires.

“Letter of Credit” or **“Letters of Credit”** means Commercial Letters of Credit and Standby Letters of Credit issued or to be issued by Issuing Lender for the account of Company pursuant to subsection 3.1 and shall include the Existing Letters of Credit.

“Letter of Credit Usage” means, as at any date of determination, the sum of (i) the maximum aggregate amount which is or at any time thereafter may become available for drawing under all Letters of Credit then outstanding plus (ii) the aggregate amount of all drawings under Letters of Credit honored by Issuing Lender and not theretofore reimbursed out of the proceeds of Revolving Loans pursuant to subsection 3.3B or otherwise reimbursed by Company.

“Lien” means any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any conditional sale or other title retention agreement, any lease in the nature thereof, and any agreement to give any security interest) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing.

“Liquor License” has the meaning assigned to that term in the Acquisition Agreement.

“Loan” or **“Loans”** means one or more of the Loans made by Lenders to Company pursuant to subsection 2.1A.

“Loan Documents” means this Agreement, the Notes, the Letters of Credit (and any applications for, or reimbursement agreements or other documents or certificates executed by Company in favor of Issuing Lender relating to, the Letters of Credit), the Subsidiary Guaranty and the Collateral Documents.

“Loan Party” means each of Company and any of Company’s Subsidiaries from time to time executing a Loan Document, and **“Loan Parties”** means all such Persons, collectively.

“Madison Dearborn” means Madison Dearborn Capital Partners III, L.P.

“Manhattan UN Facility” means the property located at 885 Second Avenue, New York, New York.

“Margin Stock” has the meaning assigned to that term in Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

“Material Adverse Effect” means a material adverse effect upon (i) the business, operations, properties, assets, liabilities, condition (financial or otherwise) or prospects of Company and its Subsidiaries taken as a whole or (ii) the ability of any Loan Party to perform, or of Administrative Agent or Lenders to enforce, the Obligations.

“Metairie Offices” means Company’s offices located at 3321 Hessmer Avenue, Metairie, Louisiana.

“Mitchell’s Fish Market” has the meaning assigned to that term in the definition of “Acquired Business.”

“Multiemployer Plan” means any Employee Benefit Plan that is a “multiemployer plan” as defined in Section 3(37) of ERISA.

“Net Asset Sale Proceeds”, with respect to any Asset Sale, means Cash payments (including any Cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) received from such Asset Sale, net of any bona fide direct costs incurred in connection with such Asset Sale, including (i) income taxes reasonably estimated to be actually payable within two years of the date of such Asset Sale as a result of any gain recognized in connection with such Asset Sale and (ii) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Loans) that is (a) secured by a Lien on the stock or assets in question and that is required to be repaid under the terms thereof as a result of such Asset Sale and (b) actually paid at the time of receipt of such cash payment to a Person that is not an Affiliate of any Loan Party or of any Affiliate of a Loan Party.

“Net Insurance/Condemnation Proceeds” means any Cash payments or proceeds received by Company or any of its Subsidiaries (i) under any business interruption or casualty insurance policy in respect of a covered loss thereunder or (ii) as a result of the taking of any assets of Company or any of its Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, in each case net of any actual and reasonable documented costs incurred by Company or any of its Subsidiaries in connection with the adjustment or settlement of any claims of Company or such Subsidiary in respect thereof.

“Net Securities Proceeds” means the cash proceeds (net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, including reasonable legal fees and expenses) from the incurrence of Indebtedness by Company or any of its Subsidiaries.

“Non-Consenting Lender” has the meaning assigned to that term in subsection 2.9.

“Notes” means one or more of the Revolving Notes or Swing Line Note or any combination thereof.

“Notice of Borrowing” means a notice substantially in the form of Exhibit I annexed hereto.

“Notice of Conversion/Continuation” means a notice substantially in the form of Exhibit II annexed hereto.

“**Notice of Prepayment**” means a notice substantially in the form of Exhibit IV annexed hereto.

“**Obligations**” means all obligations of every nature of each Loan Party from time to time owed to Administrative Agent, Lenders or any of them under the Loan Documents, whether for principal, interest, reimbursement of amounts drawn under Letters of Credit, fees, expenses, indemnification or otherwise.

“**OFAC**” shall mean the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“**Officer**” means the president, chief executive officer, a vice president, chief financial officer, treasurer, general partner (if an individual), managing member (if an individual) or other individual appointed by the Governing Body or the Organizational Documents of a corporation, partnership, trust or limited liability company to serve in a similar capacity as the foregoing.

“**Officer’s Certificate**”, as applied to any Person that is a corporation, partnership, trust or limited liability company, means a certificate executed on behalf of such Person by one or more Officers of such Person or one or more Officers of a general partner or a managing member if such general partner or managing member is a corporation, partnership, trust or limited liability company.

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

“**Organizational Documents**” means the documents (including bylaws, if applicable) pursuant to which a Person that is a corporation, partnership, trust or limited liability company is organized.

“**Original Credit Agreement**” has the meaning assigned to that term in the recitals to this Agreement.

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

“**Participant**” means a purchaser of a participation in the rights and obligations under this Agreement pursuant to subsection 10.1C.

“**Patriot Act**” means the Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (USA Patriot Act) Act of 2001, Title III of Pub. L. 107-56, signed into law on October 26, 2001.

“**PBGC**” means the Pension Benefit Guaranty Corporation or any successor thereto.

“Pension Plan” means any Employee Benefit Plan, other than a Multiemployer Plan, that is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA.

“Permit” has the meaning assigned to that term in the Acquisition Agreement.

“Permitted Encumbrances” means the following types of Liens (excluding any such Lien imposed pursuant to Section 401(a)(29) or 412(n) of the Internal Revenue Code or by ERISA, any such Lien relating to or imposed in connection with any Environmental Claim, and any such Lien expressly prohibited by any applicable terms of any of the Collateral Documents):

- (i) Liens for taxes, assessments or governmental charges or claims the payment of which is not, at the time, required by subsection 6.3;
- (ii) statutory Liens of landlords, Liens of collecting banks under the UCC on items in the course of collection, statutory Liens and rights of set-off of banks as to deposit accounts, provided that, in each case, (a) such deposit account is not a dedicated cash collateral account and is not subject to restrictions against access by Company or any of its Subsidiaries owning the affected deposit account in excess of those set forth by regulations promulgated by the Federal Reserve Board or any foreign regulatory agency performing an equivalent function, and (b) such deposit account is not intended by Company or any of its Subsidiaries to provide collateral (other than such as is ancillary to the establishment of such deposit account) to the bank, statutory Liens of carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law, in each case incurred in the ordinary course of business (1) for amounts not yet overdue or (2) for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of 5 days) are being contested in good faith by appropriate proceedings, so long as (x) such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts, and (y) in the case of a Lien with respect to any portion of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral on account of such Lien;
- (iii) deposits made in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security, or to secure the performance of statutory obligations, bids, leases, government contracts, trade contracts, and other similar obligations (exclusive of obligations for the payment of borrowed money);
- (iv) any attachment or judgment Lien not constituting an Event of Default under subsection 8.8 or 8.9;
- (v) licenses (with respect to Intellectual Property and other property), leases or subleases granted to third parties and not interfering in any material respect with the ordinary conduct of the business of Company or any of its Subsidiaries;
- (vi) easements, rights-of-way, restrictions, encroachments, and other minor defects or irregularities in title, in each case which do not and will not interfere in any material respect with the ordinary conduct of the business of Company or any of its Subsidiaries;

- (vii) any (a) interest or title of a lessor or sublessor under any lease not prohibited by this Agreement, (b) Lien or restriction that the interest or title of such lessor or sublessor may be subject to, or (c) subordination of the interest of the lessee or sublessee under such lease to any Lien or restriction referred to in the preceding clause (b), so long as the holder of such Lien or restriction agrees to recognize the rights of such lessee or sublessee under such lease;
- (viii) Liens arising from filing UCC financing statements relating solely to leases not prohibited by this Agreement;
- (ix) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;
- (x) any zoning or similar law or right reserved to or vested in any Government Authority to control or regulate the use of any real property;
- (xi) Liens granted pursuant to the Collateral Documents; and
- (xii) Liens securing obligations (other than obligations representing Indebtedness for borrowed money) under operating leases, reciprocal easements or similar agreements entered into in the ordinary course of business of Company and its Subsidiaries.

“Person” means and includes 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 Government Authorities.

“Platform” means an electronic delivery system (which may be provided by Administrative Agent, an Affiliate of Administrative Agent or any Person that is not an Affiliate of Administrative Agent), such as IntraLinks or a substantially similar electronic system.

“Pledge Agreement” means the First Amended and Restated Pledge and Security Agreement executed and delivered on the Restatement Date, substantially in the form of Exhibit X annexed hereto.

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

“Potential Event of Default” means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

“Prime Rate” means the rate that Wells Fargo publicly announces from time to time as its prime lending rate, as in effect from time to time. The Prime Rate is a reference rate

and does not necessarily represent the lowest or best rate actually charged to any customer. Wells Fargo or any other Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

“Proceedings” means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration.

“Pro Forma Basis” means, with respect to any determination of Consolidated EBITDA for any period, adjusting the calculation of Consolidated EBITDA to include, for each Ruth’s Chris restaurant franchise acquired by Company or any of its Subsidiaries during such period and not subsequently sold, transferred or otherwise disposed of prior to the end of such period, Franchise EBITDA for such period as reflected in the financial statements of such franchise for such period delivered to Company and Administrative Agent (as if such franchise were acquired on the first day of such period).

“Pro Rata Share” means the percentage obtained by dividing (i) the Revolving Loan Exposure of that Lender by (ii) the aggregate Revolving Loan Exposure of all Lenders, as the applicable percentage may be adjusted by assignments permitted pursuant to subsection 10.1. The initial Pro Rata Share of each Lender for purposes of the preceding sentence is set forth opposite the name of that Lender in Schedule 2.1 annexed hereto.

“Real Property Operating Lease”, as applied to any Person, means any lease (including leases that may be terminated by the lessee at any time) of any real property that is not a Capital Lease other than any such lease under which that Person is the lessor.

“Refunded Swing Line Loans” has the meaning assigned to that term in subsection 2.1A(ii).

“Register” has the meaning assigned to that term in subsection 2.1D.

“Regulation D” means Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

“Reimbursement Date” has the meaning assigned to that term in subsection 3.3B.

“Related Parties” has the meaning assigned to that term in subsection 9.1A.

“Release” means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Materials into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Materials), including the movement of any Hazardous Materials through the air, soil, surface water or groundwater.

“Request for Issuance” means a request substantially in the form of Exhibit III annexed hereto.

“Requisite Lenders” means at least two Lenders collectively having or holding more than 50% of the aggregate Revolving Loan Exposure of all Lenders.

“Restatement Date” means the date on which all conditions set forth in subsections 4.1 and 4.2 are satisfied.

“Restricted Junior Payment” means (i) any dividend or other distribution, direct or indirect, on account of any shares of any class of stock of Company now or hereafter outstanding, except a dividend payable solely in shares of that class of stock to the holders of that class, (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of stock of Company now or hereafter outstanding, (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of stock of Company now or hereafter outstanding, and (iv) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, any Subordinated Indebtedness.

“Revolving Lender” means a Lender that has a Revolving Loan Commitment and/or that has an outstanding Revolving Loan.

“Revolving Loan Commitment” means the commitment of a Revolving Lender to make Revolving Loans to Company pursuant to subsection 2.1A(i), and **“Revolving Loan Commitments”** means such commitments of all Revolving Lenders in the aggregate.

“Revolving Loan Commitment Amount” means, at any date, the aggregate amount of the Revolving Loan Commitments of all Revolving Lenders.

“Revolving Loan Commitment Termination Date” means February 19, 2013.

“Revolving Loan Exposure”, with respect to any Revolving Lender, means, as of any date of determination (i) prior to the termination of the Revolving Loan Commitments, the amount of that Lender’s Revolving Loan Commitment, and (ii) after the termination of the Revolving Loan Commitments, the sum of (a) the aggregate outstanding principal amount of the Revolving Loans of that Lender plus (b) in the event that Lender is an Issuing Lender, the aggregate Letter of Credit Usage in respect of all Letters of Credit issued by that Lender (in each case net of any participations purchased by other Lenders in such Letters of Credit or in any unreimbursed drawings thereunder) plus (c) the aggregate amount of all participations purchased by that Lender in any outstanding Letters of Credit or any unreimbursed drawings under any Letters of Credit plus (d) in the case of Swing Line Lender, the aggregate outstanding principal amount of all Swing Line Loans (net of any assignments thereof deemed purchased by other Revolving Lenders) plus (e) the aggregate amount of all assignments deemed purchased by that Lender in any outstanding Swing Line Loans.

“Revolving Loans” means the Loans made by Revolving Lenders to Company pursuant to subsection 2.1A(i).

“Revolving Notes” means any promissory notes of Company issued pursuant to subsection 2.1E to evidence the Revolving Loans of any Revolving Lenders, substantially in the form of Exhibit V annexed hereto.

“Sanctioned Country” shall mean a country subject to a sanctions program identified on the list maintained by OFAC and available at <http://www.treas.gov/offices/enforcement/ofac/programs/index.shtml>, or as otherwise published from time to time.

“Sanctioned Person” shall mean (i) a Person named on the list of “Specially Designated Nationals and Blocked Persons” maintained by OFAC available at <http://www.treas.gov/offices/enforcement/ofac/sdn/index.shtml>, or as otherwise published from time to time, or (ii) (a) an agency of the government of a Sanctioned Country, (b) an organization controlled by a Sanctioned Country, or (c) a Person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC.

“Securities” means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated, certificated or uncertificated, or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

“Securities Act” means the Securities Act of 1933, as amended from time to time, and any successor statute.

“Seller” means Cameron Mitchell Restaurants, LLC, an Ohio limited liability company.

“Solvent”, with respect to any Person, means that as of the date of determination both (i)(a) the then fair valuation and fair saleable value of the property of such Person is (1) greater than the total amount of debts and liabilities (including unliquidated liabilities, unmatured liabilities, contingent liabilities and liabilities that would not be required to be reported under GAAP) of such Person and (2) not less than the amount that will be required to pay the probable liabilities on such Person’s then existing debts and liabilities (including unliquidated liabilities, unmatured liabilities, contingent liabilities and liabilities that would not be required to be reported under GAAP) as they become absolute and due considering all financing alternatives and potential asset sales reasonably available to such Person; (b) such Person’s capital is not unreasonably small in relation to its business or any contemplated or undertaken transaction; and (c) such Person does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due; and (ii) such Person is “solvent” within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual liability.

“Standby Letter of Credit” means any letter of credit or similar instrument other than a Commercial Letter of Credit.

“Subject Lender” has the meaning assigned to that term in subsection 2.9.

“Subordinated Indebtedness” means any Indebtedness of Company incurred from time to time and subordinated in right of payment to the Obligations.

“Subsidiary”, with respect to any Person, means any corporation, partnership, trust, limited liability company, association, Joint Venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the members of the Governing Body is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof.

“Subsidiary Guarantor” means any Domestic Subsidiary of Company that executes and delivers a counterpart of the Subsidiary Guaranty on the Closing Date or from time to time thereafter pursuant to subsection 6.8.

“Subsidiary Guaranty” means the First Amended and Restated Subsidiary Guaranty executed and delivered by existing Domestic Subsidiaries of Company on the Restatement Date and to be executed and delivered by additional Domestic Subsidiaries of Company from time to time thereafter in accordance with subsection 6.8, substantially in the form of Exhibit IX annexed hereto.

“Supplemental Collateral Agent” has the meaning assigned to that term in subsection 9.1B.

“Swap Counterparty” means any Person that was a Lender or an Affiliate of a Lender at the time it entered into a Hedge Agreement with Company or one of its Subsidiaries, the obligations under which are secured pursuant to the Collateral Documents and guaranteed pursuant to the Subsidiary Guaranty.

“Swing Line Lender” means Wells Fargo, or any Person serving as a successor Administrative Agent hereunder, in its capacity as Swing Line Lender hereunder.

“Swing Line Loan Commitment” means the commitment of Swing Line Lender to make Swing Line Loans to Company pursuant to subsection 2.1A(ii).

“Swing Line Loans” means the Loans made by Swing Line Lender to Company pursuant to subsection 2.1A(ii).

“Swing Line Note” means any promissory note of Company issued pursuant to subsection 2.1E to evidence the Swing Line Loans of Swing Line Lender, substantially in the form of Exhibit VI annexed hereto.

“Syndication Agent” has the meaning assigned to that term in the introduction to this Agreement.

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

“Tax” or “Taxes” means any present or future tax, levy, impost, duty, fee, assessment, deduction, withholding or other charge of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed, including interest, penalties, additions to tax and any similar liabilities with respect thereto.

“Total Utilization of Revolving Loan Commitments” means, as at any date of determination, the sum of (i) the aggregate principal amount of all outstanding Revolving Loans plus (ii) the aggregate principal amount of all outstanding Swing Line Loans plus (iii) the Letter of Credit Usage.

“Transaction Costs” means the fees, costs and expenses payable by Company on or before the Restatement Date in connection with the transactions contemplated by the Loan Documents and the Acquisition Agreement.

“UCC” means the Uniform Commercial Code as in effect in any applicable jurisdiction.

“UFOC” means Company’s Uniform Franchise Offering Circular.

“Unasserted Obligations” means, at any time, Obligations for taxes, costs, indemnifications, reimbursements, damages and other liabilities (except for (i) the principal of and interest on, and fees relating to, any Indebtedness and (ii) contingent reimbursement obligations in respect of amounts that may be drawn under Letters of Credit) in respect of which no claim or demand for payment has been made (or, in the case of Obligations for indemnification, no notice for indemnification has been issued by the Indemnatee) at such time.

“Wells Fargo” has the meaning assigned to that term in the introduction to this Agreement.

1.2 Accounting Terms; Utilization of GAAP for Purposes of Calculations Under Agreement

Except as otherwise expressly provided in this Agreement, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by Company to Lenders pursuant to clauses (ii), (iii) and (xii) of subsection 6.1 shall be prepared in accordance with GAAP as in effect at the time of such preparation. Calculations in connection with the definitions, covenants and other provisions of this Agreement shall utilize GAAP as in effect on the date of determination, applied in a manner consistent with that used in preparing the financial statements referred to in subsection 5.3. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and Company or Requisite Lenders shall so request, Administrative Agent, Lenders and Company shall

negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of Requisite Lenders), provided that, until so amended, such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and Company shall provide to Administrative Agent and Lenders reconciliation statements provided for in subsection 6.1(v).

1.3 Other Definitional Provisions and Rules of Construction

A. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference.

B. References to “Sections” and “subsections” in a Loan Document shall be to Sections and subsections, respectively, of such Loan Document unless otherwise specifically provided. Section and subsection headings in this Agreement and other Loan Documents are included herein and therein for convenience of reference only and shall not constitute a part of this Agreement or such Loan Document for any other purpose or be given any substantive effect.

C. The use in any of the Loan Documents 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.

D. Unless otherwise expressly provided herein, references to Organizational Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are not prohibited by any Loan Document.

1.4 Amendment and Restatement

On the Restatement Date, the Original Credit Agreement shall be amended and restated as contemplated hereunder. The parties acknowledge and agree that this Agreement and the other Loan Documents do not constitute a novation, payment and reborrowing or termination of the obligations under the Original Credit Agreement and that all such obligations are in all respects continued and outstanding as obligations under this Agreement and the Notes except to the extent such obligations are modified from and after the Restatement Date as provided in this Agreement, the Notes and the other Loan Documents.

Section 2. AMOUNTS AND TERMS OF COMMITMENTS AND LOANS

2.1 Commitments; Making of Loans; the Register; Optional Notes

A. Commitments. Subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties of Company herein set forth, each Lender hereby severally agrees to make the Loans as described in subsection 2.1A(i) and Swing Line Lender hereby agrees to make the Swing Line Loans as described in subsection 2.1A(ii).

(i) Revolving Loans. Each Revolving Lender severally agrees, subject to the limitations set forth below with respect to the maximum amount of Revolving Loans permitted to be outstanding from time to time, to lend to Company from time to time during the period from the Restatement Date to but excluding the Revolving Loan Commitment Termination Date an aggregate amount not exceeding its Pro Rata Share of the aggregate amount of the Revolving Loan Commitments to be used for the purposes identified in subsection 2.5A. The amount of each Revolving Lender's Revolving Loan Commitment, as of the Restatement Date, is set forth opposite its name on Schedule 2.1 annexed hereto, and the Revolving Loan Commitment Amount, as of the Restatement Date, is \$250,000,000; provided that the amount of the Revolving Loan Commitment of each Revolving Lender shall be adjusted to give effect to any assignment of such Revolving Loan Commitment pursuant to subsection 10.1B and shall be reduced from time to time by the amount of any reductions thereto made pursuant to subsection 2.4. Each Revolving Lender's Revolving Loan Commitment shall expire on the Revolving Loan Commitment Termination Date and all Revolving Loans and all other amounts owed hereunder with respect to the Revolving Loans and the Revolving Loan Commitments shall be paid in full no later than that date. Amounts borrowed under this subsection 2.1A(i) may be repaid and reborrowed to but excluding the Revolving Loan Commitment Termination Date.

Anything contained in this Agreement to the contrary notwithstanding, the Revolving Loans and the Revolving Loan Commitments shall be subject to the limitation that in no event shall the Total Utilization of Revolving Loan Commitments at any time exceed the Revolving Loan Commitment Amount then in effect.

(ii) Swing Line Loans.

(a) General Provisions. Swing Line Lender hereby agrees, subject to the limitations set forth in the last paragraph of subsection 2.1A(i) and set forth below with respect to the maximum amount of Swing Line Loans permitted to be outstanding from time to time, to make a portion of the Revolving Loan Commitments available to Company from time to time during the period from the Restatement Date to but excluding the Revolving Loan Commitment Termination Date by making Swing Line Loans to Company in an aggregate amount not exceeding the amount of the Swing Line Loan Commitment to be used for the purposes identified in subsection 2.5A, notwithstanding the fact that such Swing Line Loans, when aggregated with Swing Line Lender's outstanding Revolving Loans and Swing Line Lender's Pro Rata Share of the Letter of Credit Usage then in effect, may exceed Swing Line Lender's Revolving Loan Commitment. The original amount of the Swing Line Loan Commitment is \$5,000,000; provided that any reduction of the Revolving Loan Commitment Amount made pursuant to subsection 2.4 that reduces the Revolving Loan Commitment Amount to an amount less than the then current amount of the Swing Line Loan Commitment shall result in an automatic corresponding

reduction of the amount of the Swing Line Loan Commitment to the amount of the Revolving Loan Commitment Amount, as so reduced, without any further action on the part of Company, Administrative Agent or Swing Line Lender. The Swing Line Loan Commitment shall expire on the Revolving Loan Commitment Termination Date and all Swing Line Loans and all other amounts owed hereunder with respect to the Swing Line Loans shall be paid in full no later than that date. Amounts borrowed under this subsection 2.1A(ii) may be repaid and reborrowed to but excluding the Revolving Loan Commitment Termination Date.

(b) Swing Line Loan Prepayment with Proceeds of Revolving Loans. With respect to any Swing Line Loans that have not been voluntarily prepaid by Company pursuant to subsection 2.4A(i), Swing Line Lender may, at any time in its sole and absolute discretion, deliver to Administrative Agent (with a copy to Company), no later than 10:00 A.M. (San Francisco time) on the first Business Day in advance of the proposed Funding Date, a notice requesting Revolving Lenders to make Revolving Loans that are Base Rate Loans on such Funding Date in an amount equal to the amount of such Swing Line Loans (the “**Refunded Swing Line Loans**”) outstanding on the date such notice is given. Company hereby authorizes the giving of any such notice and the making of any such Revolving Loans. Anything contained in this Agreement to the contrary notwithstanding, (1) the proceeds of such Revolving Loans made by Revolving Lenders other than Swing Line Lender shall be immediately delivered by Administrative Agent to Swing Line Lender (and not to Company) and applied to repay a corresponding portion of the Refunded Swing Line Loans and (2) on the day such Revolving Loans are made, Swing Line Lender’s Pro Rata Share of the Refunded Swing Line Loans shall be deemed to be paid with the proceeds of a Revolving Loan made by Swing Line Lender, and such portion of the Swing Line Loans deemed to be so paid shall no longer be outstanding as Swing Line Loans and shall no longer be due under the Swing Line Note, if any, of Swing Line Lender but shall instead constitute part of Swing Line Lender’s outstanding Revolving Loans and shall be due under the Revolving Note, if any, of Swing Line Lender. Company hereby authorizes Administrative Agent and Swing Line Lender to charge Company’s accounts with Administrative Agent and Swing Line Lender (up to the amount available in each such account) in order to immediately pay Swing Line Lender the amount of the Refunded Swing Line Loans to the extent the proceeds of such Revolving Loans made by Revolving Lenders, including the Revolving Loan deemed to be made by Swing Line Lender, are not sufficient to repay in full the Refunded Swing Line Loans. If any portion of any such amount paid (or deemed to be paid) to Swing Line Lender should be recovered by or on behalf of Company from Swing Line Lender in any bankruptcy proceeding, in any assignment for the benefit of creditors or otherwise, the loss of the amount so recovered shall be ratably shared among all Revolving Lenders in the manner contemplated by subsection 10.5.

(c) Swing Line Loan Assignments. On the Funding Date of each Swing Line Loan, each Revolving Lender shall be deemed to, and hereby agrees to, purchase an assignment of such Swing Line Loan in an amount equal to its Pro Rata Share. If for any reason (1) Revolving Loans are not made upon the request of Swing Line Lender as provided in the immediately preceding paragraph in an amount sufficient to repay any amounts owed to Swing Line Lender in respect of such Swing Line Loan or (2) the Revolving Loan Commitments are terminated at a time when such Swing Line Loan is outstanding, upon notice from Swing Line Lender as provided below, each Revolving Lender shall fund the purchase of such assignment in an amount equal to its Pro Rata Share (calculated, in the case of the foregoing clause (2), immediately prior to such termination of the Revolving Loan Commitments) of the unpaid amount of such Swing Line Loan together with accrued interest thereon. Upon one Business Day's notice from Swing Line Lender, each Revolving Lender shall deliver to Swing Line Lender such amount in same day funds at the Funding and Payment Office. In order to further evidence such assignment (and without prejudice to the effectiveness of the assignment provisions set forth above), each Revolving Lender agrees to enter into an Assignment Agreement at the request of Swing Line Lender in form and substance reasonably satisfactory to Swing Line Lender. In the event any Revolving Lender fails to make available to Swing Line Lender any amount as provided in this paragraph, Swing Line Lender shall be entitled to recover such amount on demand from such Revolving Lender together with interest thereon at the rate customarily used by Swing Line Lender for the correction of errors among banks for three Business Days and thereafter at the Base Rate. In the event Swing Line Lender receives a payment of any amount with respect to which other Revolving Lenders have funded the purchase of assignments as provided in this paragraph, Swing Line Lender shall promptly distribute to each such other Revolving Lender its Pro Rata Share of such payment.

(d) Revolving Lenders' Obligations. Anything contained herein to the contrary notwithstanding, each Revolving Lender's obligation to make Revolving Loans for the purpose of repaying any Refunded Swing Line Loans pursuant to subsection 2.1A(ii)(b) and each Revolving Lender's obligation to purchase an assignment of any unpaid Swing Line Loans pursuant to the immediately preceding paragraph shall be absolute and unconditional and shall not be affected by any circumstance, including (1) any set-off, counterclaim, recoupment, defense or other right which such Revolving Lender may have against Swing Line Lender, Company or any other Person for any reason whatsoever; (2) the occurrence or continuation of an Event of Default or a Potential Event of Default; (3) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of Company or any of its Subsidiaries; (4) any breach of this Agreement or any other Loan Document by any party thereto; or (5) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing; provided that such obligations of each Revolving Lender are subject to the condition that (x) Swing Line Lender believed in good faith that all conditions under Section 4

to the making of the applicable Refunded Swing Line Loans or other unpaid Swing Line Loans, as the case may be, were satisfied at the time such Refunded Swing Line Loans or unpaid Swing Line Loans were made or (y) the satisfaction of any such condition not satisfied had been waived in accordance with subsection 10.6 prior to or at the time such Refunded Swing Line Loans or other unpaid Swing Line Loans were made.

B. Borrowing Mechanics. Loans made on any Funding Date (other than Swing Line Loans, Revolving Loans made pursuant to a request by Swing Line Lender pursuant to subsection 2.1A(ii) or Revolving Loans made pursuant to subsection 3.3B) shall be in an aggregate minimum amount of \$500,000 and multiples of \$100,000 in excess of that amount. Swing Line Loans made on any Funding Date shall be in an aggregate minimum amount of \$500,000 and multiples of \$100,000 in excess of that amount. Whenever Company desires that Lenders make Revolving Loans it shall deliver to Administrative Agent a duly executed Notice of Borrowing no later than 10:00 A.M. (San Francisco time) at least three Business Days in advance of the proposed Funding Date (in the case of a Eurodollar Rate Loan) or at least one Business Day in advance of the proposed Funding Date (in the case of a Base Rate Loan). Whenever Company desires that Swing Line Lender make a Swing Line Loan, it shall deliver to Administrative Agent a duly executed Notice of Borrowing no later than 10:00 A.M. (San Francisco time) on the proposed Funding Date. Revolving Loans may be continued as or converted into Base Rate Loans and Eurodollar Rate Loans in the manner provided in subsection 2.2D. In lieu of delivering a Notice of Borrowing, Company may give Administrative Agent telephonic notice by the required time of any proposed borrowing under this subsection 2.1B; provided that such notice shall be promptly confirmed in writing by delivery of a duly executed Notice of Borrowing to Administrative Agent on or before the applicable Funding Date.

Neither Administrative Agent nor any Lender shall incur any liability to Company in acting upon any telephonic notice referred to above that Administrative Agent believes in good faith to have been given by an Officer or other Person authorized to borrow on behalf of Company or for otherwise acting in good faith under this subsection 2.1B or under subsection 2.2D, and upon funding of Loans by Lenders, and upon conversion or continuation of the applicable basis for determining the interest rate with respect to any Loans pursuant to subsection 2.2D, in each case in accordance with this Agreement, pursuant to any such telephonic notice Company shall have effected Loans or a conversion or continuation, as the case may be, hereunder.

Company shall notify Administrative Agent prior to the funding of any Loans in the event that any of the matters to which Company is required to certify in the applicable Notice of Borrowing is no longer true and correct as of the applicable Funding Date, and the acceptance by Company of the proceeds of any Loans shall constitute a re-certification by Company, as of the applicable Funding Date, as to the matters to which Company is required to certify in the applicable Notice of Borrowing.

Except as otherwise provided in subsections 2.6B, 2.6C and 2.6G, a Notice of Borrowing for, or a Notice of Conversion/Continuation for conversion to, or continuation of, a Eurodollar Rate Loan (or telephonic notice in lieu thereof) shall be irrevocable on and after the related Interest Rate Determination Date, and Company shall be bound to make a borrowing or to effect a conversion or continuation in accordance therewith.

C. Disbursement of Funds. All Revolving Loans shall be made by Lenders simultaneously and proportionately to their respective Pro Rata Shares, it being understood that neither Administrative Agent nor any Lender shall be responsible for any default by any other Lender in that other Lender's obligation to make a Loan requested hereunder nor shall the amount of the Commitment of any Lender to make the particular type of Loan requested be increased or decreased as a result of a default by any other Lender in that other Lender's obligation to make a Loan requested hereunder. Promptly after receipt by Administrative Agent of a Notice of Borrowing pursuant to subsection 2.1B (or telephonic notice in lieu thereof), Administrative Agent shall notify each Revolving Lender or Swing Line Lender, as the case may be, of the proposed borrowing. Each such Lender (other than Swing Line Lender) shall make the amount of its Loan available to Administrative Agent not later than 11:00 A.M. (San Francisco time) on the applicable Funding Date, and Swing Line Lender shall make the amount of its Swing Line Loan available to Administrative Agent not later than 2:00 P.M. (San Francisco time) on the applicable Funding Date, in each case in same day funds in Dollars, at the Funding and Payment Office. Except as provided in subsection 2.1A(ii) and subsection 3.3B with respect to Revolving Loans used to repay Refunded Swing Line Loans or to reimburse Issuing Lender for the amount of a drawing under a Letter of Credit issued by it, upon satisfaction or waiver of the conditions precedent specified in subsections 4.1 (in the case of Loans made on the Restatement Date) and 4.2 (in the case of all Loans), Administrative Agent shall make the proceeds of such Loans available to Company on the applicable Funding Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Loans received by Administrative Agent from Lenders to be credited to the account of Company at the Funding and Payment Office.

Unless Administrative Agent shall have been notified by any Lender prior to a Funding Date that such Lender does not intend to make available to Administrative Agent the amount of such Lender's Loan requested on such Funding Date, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on such Funding Date and Administrative Agent may, in its sole discretion, but shall not be obligated to, make available to Company a corresponding amount on such Funding Date. If such corresponding amount is not in fact made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from such Funding Date until the date such amount is paid to Administrative Agent, at the customary rate set by Administrative Agent for the correction of errors among banks for three Business Days and thereafter at the Base Rate. If such Lender does not pay such corresponding amount forthwith upon Administrative Agent's demand therefor, Administrative Agent shall promptly notify Company and Company shall immediately pay such corresponding amount to Administrative Agent together with interest thereon, for each day from such Funding Date until the date such amount is paid to Administrative Agent, at the rate payable under this Agreement for Base Rate Loans. Nothing in this subsection 2.1C shall be deemed to relieve any Lender from its obligation to fulfill its Commitments hereunder or to prejudice any rights that Company may have against any Lender as a result of any default by such Lender hereunder.

D. The Register. Administrative Agent, acting for these purposes solely as an agent of Company (it being acknowledged that Administrative Agent, in such capacity, and its officers, directors, employees, agent and affiliates shall constitute Indemnitees under subsection 10.3), shall maintain (and make available for inspection by Company upon reasonable prior notice at reasonable times) at its address referred to in subsection 10.8 a register for the recordation of, and shall record, the names and addresses of Lenders and the respective amounts of the Revolving Loan Commitment, Swing Line Loan Commitment, Revolving Loans and Swing Line Loans of each Lender from time to time (the “**Register**”). Company, Administrative Agent and Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Commitments and Loans listed therein for all purposes hereof; all amounts owed with respect to any Commitment or Loan shall be owed to the Lender listed in the Register as the owner thereof; and any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Loans. Each Lender shall record on its internal records the amount of its Loans and Commitments and each payment in respect hereof, and any such recordation shall be conclusive and binding on Company, absent manifest error, subject to the entries in the Register, which shall, absent manifest error, govern in the event of any inconsistency with any Lender’s records. Failure to make any recordation in the Register or in any Lender’s records, or any error in such recordation, shall not affect any Loans or Commitments or any Obligations in respect of any Loans.

E. Optional Notes. If so requested by any Lender by written notice to Company (with a copy to Administrative Agent) at least two Business Days prior to the Restatement Date or at any time thereafter, Company shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to subsection 10.1) on the Restatement Date (or, if such notice is delivered after the Restatement Date, promptly after Company’s receipt of such notice) a promissory note or promissory notes to evidence such Lender’s Revolving Loans or Swing Line Loans, substantially in the form of Exhibit V or Exhibit VI annexed hereto, respectively, with appropriate insertions.

2.2 Interest on the Loans

A. Rate of Interest. Subject to the provisions of subsections 2.6 and 2.7, each Revolving Loan shall bear interest on the unpaid principal amount thereof from the date made through maturity (whether by acceleration or otherwise) at a rate determined by reference to the Base Rate or the Eurodollar Rate. Subject to the provisions of subsection 2.7, each Swing Line Loan shall bear interest on the unpaid principal amount thereof from the date made through maturity (whether by acceleration or otherwise) at a rate determined by reference to the Base Rate. The applicable basis for determining the rate of interest with respect to any Revolving Loan shall be selected by Company initially at the time a Notice of Borrowing is given with respect to such Loan pursuant to subsection 2.1B, and the basis for determining the interest rate with respect to any Revolving Loan may be changed from time to time pursuant to subsection 2.2D. If on any day a Revolving Loan is outstanding with respect to which notice has not been delivered to Administrative Agent in accordance with the terms of this Agreement specifying the applicable basis for determining the rate of interest, then for that day that Loan shall bear interest determined by reference to the Base Rate.

(i) Subject to the provisions of subsections 2.2E, 2.2G and 2.7, the Revolving Loans shall bear interest through maturity as follows:

(a) if a Base Rate Loan, then at the sum of the Base Rate plus the Base Rate Margin set forth in the table below opposite the applicable Consolidated Leverage Ratio for the four consecutive Fiscal Quarter period for which the applicable Compliance Certificate has been delivered pursuant to subsection 4.1K or 6.1(iv); or

(b) if a Eurodollar Rate Loan, then at the sum of the Eurodollar Rate plus the Eurodollar Rate Margin set forth in the table below opposite the applicable Consolidated Leverage Ratio for the four consecutive Fiscal Quarter period for which the applicable Compliance Certificate has been delivered pursuant to subsection 4.1K or 6.1(iv):

| | <u>Consolidated Leverage Ratio</u> | <u>Eurodollar Rate Margin</u> | <u>Base Rate Margin</u> |
|--|--|-----------------------------------|-----------------------------|
| Greater than or equal to | 3.25:1.00 | 2.00% | 0.75% |
| Greater than or equal to but less than | 2.75:1.00 3.25:1.00 | 1.75% | 0.50% |
| Greater than or equal to but less than | 2.25:1.00 2.75:1.00 | 1.50% | 0.25% |
| Greater than or equal to but less than | 1.75:1.00 2.25:1.00 | 1.25% | 0.00% |
| Less than | 1.75:1.00 | 1.00% | 0.00% |

provided that, until the delivery of the Compliance Certificate for the first full Fiscal Quarter ending after the Restatement Date, the applicable margin for Revolving Loans that are Eurodollar Rate Loans shall be 1.75% per annum and for Revolving Loans that are Base Rate Loans shall be 0.50% per annum.

(ii) Upon delivery of the Compliance Certificate by Company to Administrative Agent pursuant to subsection 6.1(iv), the Base Rate Margin and the Eurodollar Rate Margin shall be adjusted, such adjustment to become effective on the

third succeeding Business Day following the receipt by Administrative Agent of such Compliance Certificate (subject to the provisions of the foregoing clause (i)); provided that, if at any time a Compliance Certificate is not delivered at the time required pursuant to subsection 6.1(iv), from the time such Compliance Certificate was required to be delivered until the third Business Day succeeding delivery of such Compliance Certificate, the applicable margins shall be the maximum percentage amount for the relevant Loan set forth above.

(iii) Subject to the provisions of subsections 2.2E, 2.2G and 2.7, the Swing Line Loans shall bear interest through maturity at the sum of the Base Rate plus the applicable Base Rate Margin for Revolving Loans minus a rate equal to the commitment fee percentage then in effect as determined pursuant to subsection 2.3A.

B. Interest Periods. In connection with each Eurodollar Rate Loan, Company may, pursuant to the applicable Notice of Borrowing or Notice of Conversion/Continuation, as the case may be, select an interest period (each an “**Interest Period**”) to be applicable to such Loan, which Interest Period shall be, at Company’s option, either a one, two, three or six month period; provided that:

(i) the initial Interest Period for any Eurodollar Rate Loan shall commence on the Funding Date in respect of such Loan, in the case of a Loan initially made as a Eurodollar Rate Loan, or on the date specified in the applicable Notice of Conversion/Continuation, in the case of a Loan converted to a Eurodollar Rate Loan;

(ii) in the case of immediately successive Interest Periods applicable to a Eurodollar Rate Loan continued as such pursuant to a Notice of Conversion/Continuation, each successive Interest Period shall commence on the day on which the next preceding Interest Period expires;

(iii) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; provided that, if any Interest Period would otherwise expire on a day that is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the next preceding Business Day;

(iv) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clause (v) of this subsection 2.2B, end on the last Business Day of a calendar month;

(v) no Interest Period with respect to any portion of the Revolving Loans shall extend beyond the Revolving Loan Commitment Termination Date;

(vi) there shall be no more than eight Interest Periods outstanding at any time; and

(vii) in the event Company fails to specify an Interest Period for any Eurodollar Rate Loan in the applicable Notice of Borrowing or Notice of Conversion/Continuation, Company shall be deemed to have selected an Interest Period of one month.

C. Interest Payments. Subject to the provisions of subsection 2.2E, interest on each Loan shall be payable in arrears on and to each Interest Payment Date applicable to that Loan, upon any prepayment of that Loan (to the extent accrued on the amount being prepaid) and at maturity (including final maturity); provided that, in the event any Swing Line Loans or any Revolving Loans that are Base Rate Loans are prepaid pursuant to subsection 2.4A(i), interest accrued on such Loans through the date of such prepayment shall be payable on the next succeeding Interest Payment Date applicable to Base Rate Loans (or, if earlier, at final maturity).

D. Conversion or Continuation. Subject to the provisions of subsection 2.6, Company shall have the option (i) to convert at any time all or any part of its outstanding Revolving Loans equal to \$500,000 and multiples of \$100,000 in excess of that amount from Loans bearing interest at a rate determined by reference to one basis to Loans bearing interest at a rate determined by reference to an alternative basis or (ii) upon the expiration of any Interest Period applicable to a Eurodollar Rate Loan, to continue all or any portion of such Loan equal to \$500,000 and multiples of \$100,000 in excess of that amount as a Eurodollar Rate Loan; provided, however, that a Eurodollar Rate Loan may only be converted into a Base Rate Loan on the expiration date of an Interest Period applicable thereto.

Company shall deliver a duly executed Notice of Conversion/Continuation to Administrative Agent no later than 10:00 A.M. (San Francisco time) at least one Business Day in advance of the proposed conversion date (in the case of a conversion to a Base Rate Loan) and at least three Business Days in advance of the proposed conversion/continuation date (in the case of a conversion to, or a continuation of, a Eurodollar Rate Loan). In lieu of delivering a Notice of Conversion/Continuation, Company may give Administrative Agent telephonic notice by the required time of any proposed conversion/continuation under this subsection 2.2D; provided that such notice shall be promptly confirmed in writing by delivery of a duly executed Notice of Conversion/Continuation to Administrative Agent on or before the proposed conversion/continuation date. Administrative Agent shall notify each Lender of any Loan subject to a Notice of Conversion/Continuation.

E. Default Rate. From and after the occurrence and during the continuation of any Event of Default if so elected by Requisite Lenders, the outstanding principal amount of all Loans and, to the extent permitted by applicable law, any interest payments thereon not paid when due and any fees and other amounts then due and payable hereunder, shall, from and after such occurrence, bear interest (including post-petition interest in any proceeding under the Bankruptcy Code or other applicable bankruptcy laws) payable upon demand by Administrative Agent at a rate that is 2% per annum in excess of the interest rate otherwise payable under this Agreement with respect to the applicable Loans (or, in the case of any such fees and other amounts, at a rate which is 2% per annum in excess of the interest rate otherwise payable under this Agreement for Base Rate Loans); provided that, in the case of Eurodollar Rate Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective such Eurodollar Rate Loans shall thereupon become Base Rate Loans and shall thereafter bear interest payable upon demand at a rate which is 2% per annum in excess of the

interest rate otherwise payable under this Agreement for Base Rate Loans. Payment or acceptance of the increased rates of interest provided for in this subsection 2.2E is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Administrative Agent or any Lender.

F. Computation of Interest. Interest on the Loans shall be computed (i) in the case of Base Rate Loans, on the basis of a 365-day or 366-day year, as the case may be, and (ii) in the case of Eurodollar Rate Loans, on the basis of a 360-day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted from a Eurodollar Rate Loan, the date of conversion of such Eurodollar Rate Loan to such Base Rate Loan, as the case may be, shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted to a Eurodollar Rate Loan, the date of conversion of such Base Rate Loan to such Eurodollar Rate Loan, as the case may be, shall be excluded; provided that if a Loan is repaid on the same day on which it is made, one day's interest shall be paid on that Loan.

G. Maximum Rate. Notwithstanding the foregoing provisions of this subsection 2.2, in no event shall the rate of interest payable by Company with respect to any Loan exceed the maximum rate of interest permitted to be charged under applicable law.

2.3 Fees

A. Commitment Fees. Company agrees to pay to Administrative Agent, for distribution to each Revolving Lender in proportion to that Lender's Pro Rata Share, commitment fees for the period from and including the Restatement Date to and excluding the Revolving Loan Commitment Termination Date equal to the average of the daily excess of the Revolving Loan Commitment Amount over the sum of (i) the aggregate principal amount of outstanding Revolving Loans (but not any outstanding Swing Line Loans) plus (ii) the Letter of Credit Usage multiplied by a rate per annum equal to the percentage set forth in the table below opposite the Consolidated Leverage Ratio for the four consecutive Fiscal Quarter period for which the applicable Compliance Certificate has been delivered pursuant to subsection 4.1K or 6.1(iv):

| | <u>Consolidated Leverage Ratio</u> | <u>Commitment Fee Percentage</u> |
|--|--|--------------------------------------|
| Greater than or equal to | 3.25:1.00 | 0.250% |
| Greater than or equal to but less than | 2.75:1.00 3.25:1.00 | 0.250% |
| Greater than or equal to but less than | 2.25:1.00 2.75:1.00 | 0.225% |
| Greater than or equal to but less than | 1.75:1.00 2.25:1.00 | 0.200% |
| Less than | 1.75:1.00 | 0.175% |

such commitment fees to be calculated on the basis of a 360-day year and the actual number of days elapsed and to be payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each calendar year, commencing on March 31, 2008, and on the Revolving Loan Commitment Termination Date; provided that until the delivery of the Compliance Certificate for the first full Fiscal Quarter ending after the Restatement Date, the applicable commitment fee percentage shall be 0.250% per annum. Upon delivery of the Compliance Certificate by Company to Administrative Agent pursuant to subsection 6.1(iv), the applicable commitment fee percentage shall be adjusted, such adjustment to become effective on the third succeeding Business Day following the receipt by Administrative Agent of such Compliance Certificate; provided that, if at any time a Compliance Certificate is not delivered at the time required pursuant to subsection 6.1(iv), from the time such Compliance Certificate was required to be delivered until delivery of such Compliance Certificate, the applicable commitment fee percentage shall be the maximum percentage amount set forth above.

B. Other Fees. Company agrees to pay to Administrative Agent such fees in the amounts and at the times separately agreed upon between Company and Administrative Agent.

2.4 Repayments, Prepayments and Reductions of Revolving Loan Commitment Amount; General Provisions Regarding Payments; Application of Proceeds of Collateral and Payments Under Subsidiary Guaranty

A. Prepayments and Reductions in Revolving Loan Commitment Amount.

(i) Voluntary Prepayments. Company may, upon written or telephonic notice to Administrative Agent on or prior to 12:00 Noon (San Francisco time) (in the case of Swing Line loans) or 10:00 A.M. (San Francisco time) (in the case of Base Rate Loans) on the date of prepayment, which notice, if telephonic, shall be promptly confirmed in writing, at any time and from time to time prepay any Swing Line Loan or Base Rate Loan on any Business Day in whole or in part in an aggregate minimum amount of \$500,000 and multiples of \$100,000 in excess of that amount. Company may, upon not less than three Business Days' prior written or telephonic notice given to Administrative Agent by 12:00 Noon (San Francisco time) on the date required and, if given by telephone, promptly confirmed in writing to Administrative Agent, who will promptly notify each Lender whose Loans are to be prepaid of such prepayment, at any time and from time to time prepay any Eurodollar Rate Loans on any Business Day in whole or in part in an aggregate minimum amount of \$500,000 and multiples of \$100,000 in excess

of that amount. All written notices delivered pursuant to this subsection 2.4A(i) shall be in the form of a Notice of Prepayment and all notices whether written or telephonic delivered pursuant to this subsection 2.4A(i) shall be irrevocable, and once given as aforesaid, the principal amount of the Loans specified in such notice shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied as specified in subsection 2.4A(iv).

(ii) Voluntary Reductions of Revolving Loan Commitments. Company may, upon not less than two Business Days' prior written or telephonic notice confirmed in writing to Administrative Agent, or upon such lesser number of days' prior written or telephonic notice, as determined by Administrative Agent in its sole discretion, at any time and from time to time, terminate in whole or permanently reduce in part, without premium or penalty, the Revolving Loan Commitment Amount in an amount up to the amount by which the Revolving Loan Commitment Amount exceeds the Total Utilization of Revolving Loan Commitments at the time of such proposed termination or reduction; provided that any such partial reduction of the Revolving Loan Commitment Amount shall be in an aggregate minimum amount of \$1,000,000 and multiples of \$100,000 in excess of that amount. Company's notice to Administrative Agent (who will promptly notify each Revolving Lender of such notice) shall be in the form of a Notice of Prepayment and shall designate the date (which shall be a Business Day) of such termination or reduction and the amount of any partial reduction, and such termination or reduction of the Revolving Loan Commitment Amount shall be effective on the date specified in Company's notice and shall be in proportion to each Revolving Lender's Pro Rata Share.

(iii) Mandatory Prepayments and Mandatory Reductions of Revolving Loan Commitments. The Loans shall be prepaid and/or the Revolving Loan Commitment Amount shall be permanently reduced in the amounts and under the circumstances set forth below, all such prepayments and/or reductions to be applied as set forth below or as more specifically provided in subsection 2.4A(iv) and subsection 2.4C, and Company shall deliver to Administrative Agent a Notice of Prepayment in connection therewith:

(a) Prepayments and Reductions From Net Asset Sale Proceeds. No later than the first Business Day following the date of receipt by Company or any Subsidiary Guarantor of any amount in excess of \$7,500,000 in the aggregate of Net Asset Sale Proceeds in respect of Asset Sales consummated after the Restatement Date and permitted by subsection 7.7 or otherwise approved by Administrative Agent and Requisite Lenders (but excluding any amounts of Net Asset Sale Proceeds from (1) sale and lease-back transactions relating to assets not owned by Company or any of its Subsidiaries on or prior to the Restatement Date applied in accordance with subsection 7.9(d) or (2) sales or other transfers of the Metairie Offices in accordance with subsection 7.7(vi)) (such excess amount being referred to herein as "**Excess Net Asset Sale Proceeds**"), Company shall either (x) prepay the Loans and/or the Revolving Loan Commitment Amount shall be permanently reduced in an aggregate amount equal to such Excess Net Asset Sale Proceeds or (y) so long as no Potential Event of Default or Event of Default shall have occurred and be

continuing and to the extent that aggregate Excess Net Asset Sale Proceeds from the Restatement Date through the date of determination do not exceed \$7,500,000, deliver to Administrative Agent an Officer's Certificate setting forth (A) that portion of such Excess Net Asset Sale Proceeds that Company or such Subsidiary intends to reinvest in equipment or other productive assets of the general type used in the business of Company and its Subsidiaries within 360 days of such date of receipt and (B) the proposed use of such portion of such Excess Net Asset Sale Proceeds and such other information with respect to such reinvestment as Administrative Agent may reasonably request, and Company shall, or shall cause one or more of its Subsidiaries to, promptly and diligently apply such portion to such reinvestment purposes; provided, however, that, pending such reinvestment, such portion of such Excess Net Asset Sale Proceeds shall be applied to prepay outstanding Revolving Loans (without a reduction in the Revolving Loan Commitment Amount) to the full extent thereof; provided further, that if (i) Company, within 180 days of receipt of such Excess Net Asset Sale Proceeds, has not reinvested all or any portion of such Excess Net Asset Sale Proceeds as provided above and has not delivered to Administrative Agent evidence reasonably satisfactory to Administrative Agent that Company has entered into one or more binding contractual commitments to so reinvest such Excess Net Asset Sale Proceeds, (ii) Company, within 360 days after the date of receipt of such Excess Net Asset Sale Proceeds, has not reinvested all or any portion of such Excess Net Asset Sale Proceeds as provided above or (iii) a Potential Event of Default or Event of Default shall have occurred and be continuing, Company shall prepay the Loans (and/or the Revolving Loan Commitments shall be reduced) in the full amount of all such Excess Net Asset Sale Proceeds.

(b) Prepayments from Net Insurance/Condemnation Proceeds. No later than the first Business Day following the date of receipt by Administrative Agent or by Company or any Subsidiary Guarantor of any Net Insurance/Condemnation Proceeds that are required to be applied to prepay the Revolving Loans pursuant to the provisions of subsection 6.4C, Company shall prepay the Loans (and/or the Revolving Loan Commitments shall be reduced to the extent required pursuant to subsection 6.4) in the full amount of all such Net Insurance/Condemnation Proceeds.

(c) Prepayments Due to Issuance of Indebtedness. On the date of receipt of the Net Securities Proceeds from the issuance of any Indebtedness of Company or any of its Subsidiaries after the Restatement Date, other than Indebtedness permitted pursuant to subsection 7.1, Company shall prepay the Loans (and/or the Revolving Loan Commitments shall be reduced) in the full amount of all such Net Securities Proceeds.

(d) Calculations of Net Proceeds Amounts; Additional Prepayments and Reductions Based on Subsequent Calculations. Concurrently with any prepayment of the Loans and/or reduction of the Revolving Loan Commitment Amount pursuant to subsections 2.4A(iii)(a)-(c), Company shall deliver to

Administrative Agent an Officer's Certificate demonstrating the calculation of the amount of the applicable Net Asset Sale Proceeds, Net Insurance/Condemnation Proceeds, or Net Securities Proceeds, as the case may be, that gave rise to such prepayment and/or reduction. In the event that Company shall subsequently determine that the actual amount was greater than the amount set forth in such Officer's Certificate, Company shall promptly make an additional prepayment of the Loans (and/or, if applicable, the Revolving Loan Commitment Amount shall be permanently reduced) in an amount equal to the amount of such excess, and Company shall concurrently therewith deliver to Administrative Agent an Officer's Certificate demonstrating the derivation of the additional amount resulting in such excess.

(iv) Application of Prepayments.

(a) Application of Voluntary Prepayments by Type of Loans and Order of Maturity. Any voluntary prepayments pursuant to subsection 2.4A(i) shall be applied as specified by Company in the applicable Notice of Prepayment; provided that in the event Company fails to specify the Loans to which any such prepayment shall be applied, such prepayment shall be applied first to repay outstanding Swing Line Loans to the full extent thereof, and second to repay outstanding Revolving Loans to the full extent thereof.

(b) Application of Mandatory Prepayments by Type of Loans. Except as provided in subsection 2.4C, any amount required to be applied as a mandatory prepayment of the Loans and/or a reduction of the Revolving Loan Commitment Amount pursuant to subsection 2.4A(iii) shall be applied first to prepay the Swing Line Loans to the full extent thereof and to permanently reduce the Revolving Loan Commitment Amount by the amount of such prepayment, and second, to the extent of any remaining portion of such amount, to prepay the Revolving Loans to the full extent thereof and to further permanently reduce the Revolving Loan Commitment Amount by the amount of such prepayment, and third, to the extent of any remaining portion of such amount, to further permanently reduce the Revolving Loan Commitment Amount to the full extent thereof, provided that to the extent any such reduction of the Revolving Loan Commitment Amount would result in the Total Utilization of Revolving Loan Commitments exceeding the Revolving Loan Commitment Amount, Company immediately shall Cash collateralize outstanding Letters of Credit by depositing the requisite amount in the Collateral Account. Any mandatory reduction of the Revolving Loan Commitment Amount pursuant to this subsection 2.4A shall be in proportion to each Revolving Lender's Pro Rata Share.

(c) Application of Prepayments to Base Rate Loans and Eurodollar Rate Loans. Any prepayment of Revolving Loans shall be applied first to Base Rate Loans to the full extent thereof before application to Eurodollar Rate Loans, in each case in a manner that minimizes the amount of any payments required to be made by Company pursuant to subsection 2.6D.

B. General Provisions Regarding Payments.

(i) Manner and Time of Payment. All payments by Company of principal, interest, fees and other Obligations shall be made in Dollars in same day funds, without defense, setoff or counterclaim, free of any restriction or condition, and delivered to Administrative Agent not later than 12:00 Noon (San Francisco time) on the date due at the Funding and Payment Office for the account of Lenders; funds received by Administrative Agent after that time on such due date shall be deemed to have been paid by Company on the next succeeding Business Day.

(ii) Application of Payments to Principal and Interest. Except as provided in subsection 2.2C, all payments in respect of the principal amount of any Loan shall include payment of accrued interest on the principal amount being repaid or prepaid, and all such payments shall be applied to the payment of interest before application to principal.

(iii) Apportionment of Payments. Aggregate payments of principal and interest shall be apportioned among all outstanding Loans to which such payments relate, in each case proportionately to Lenders' respective Pro Rata Shares. Administrative Agent shall promptly distribute to each Lender, at the account specified in the payment instructions delivered to Administrative Agent by such Lender, its Pro Rata Share of all such payments received by Administrative Agent and the commitment fees and letter of credit fees of such Lender, if any, when received by Administrative Agent pursuant to subsections 2.3 and 3.2. Notwithstanding the foregoing provisions of this subsection 2.4B(iii), if, pursuant to the provisions of subsection 2.6C, any Notice of Conversion/Continuation is withdrawn as to any Affected Lender or if any Affected Lender makes Base Rate Loans in lieu of its Pro Rata Share of any Eurodollar Rate Loans, Administrative Agent shall give effect thereto in apportioning interest payments received thereafter.

(iv) Payments on Business Days. Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder or of the commitment fees hereunder, as the case may be.

(v) Notation of Payment. Each Lender agrees that before disposing of any Note held by it, or any part thereof (other than by granting participations therein), that Lender will make a notation thereon of all Loans evidenced by that Note and all principal payments previously made thereon and of the date to which interest thereon has been paid; provided that the failure to make (or any error in the making of) a notation of any Loan made under such Note shall not limit or otherwise affect the obligations of Company hereunder or under such Note with respect to any Loan or any payments of principal or interest on such Note.

C. Application of Proceeds of Collateral and Payments after Event of Default. Upon the occurrence and during the continuation of an Event of Default, if requested

by Requisite Lenders, or upon acceleration of the Obligations pursuant to Section 8, (a) all payments received by Administrative Agent, whether from Company, any Subsidiary Guarantor or otherwise, and (b) all proceeds received by Administrative Agent in respect of any sale of, collection from, or other realization upon all or any part of the Collateral under any Collateral Document may, in the discretion of Administrative Agent, be held by Administrative Agent as Collateral for, and/or (then or at any time thereafter) applied in full or in part by Administrative Agent, in each case in the following order of priority:

(i) to the payment of all costs and expenses of such sale, collection or other realization, all other expenses, liabilities and advances made or incurred by Administrative Agent in connection therewith, and all amounts for which Administrative Agent is entitled to compensation (including the fees described in subsection 2.3), reimbursement and indemnification under any Loan Document and all advances made by Administrative Agent thereunder for the account of the applicable Loan Party, and to the payment of all costs and expenses paid or incurred by Administrative Agent in connection with the Loan Documents, all in accordance with subsections 9.4, 10.2 and 10.3 and the other terms of this Agreement and the Loan Documents;

(ii) thereafter, to the payment of all other Obligations and obligations of Loan Parties under any Hedge Agreement between a Loan Party and a Swap Counterparty for the ratable benefit of the holders thereof (subject to the provisions of subsection 2.4B(ii) hereof); and

(iii) thereafter, to the payment to or upon the order of such Loan Party or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

2.5 Use of Proceeds

A. Revolving Loans; Swing Line Loans. The proceeds of up to \$96,000,000 of the Revolving Loans made on the Restatement Date shall be applied by Company to fund the Acquisition Financing Requirements. The proceeds of any other Revolving Loans and any Swing Line Loans shall be applied by Company for working capital and other general corporate purposes, which may include, among other things, (i) the acquisition of Ruth's Chris restaurant franchises, (ii) the making of intercompany loans to any of Company's wholly-owned Subsidiaries, in accordance with subsection 7.1(iv), for their own general corporate purposes, and (iii) the repurchase of Company's common stock in accordance with subsection 7.5(ii).

B. Margin Regulations. No portion of the proceeds of any borrowing under this Agreement shall be used by Company or any of its Subsidiaries in any manner that might cause the borrowing or the application of such proceeds to violate Regulation U, Regulation T or Regulation X of the Board of Governors of the Federal Reserve System or any other regulation of such Board or to violate the Exchange Act, in each case as in effect on the date or dates of such borrowing and such use of proceeds.

2.6 Special Provisions Governing Eurodollar Rate Loans

Notwithstanding any other provision of this Agreement to the contrary, the following provisions shall govern with respect to Eurodollar Rate Loans as to the matters covered:

A. Determination of Applicable Interest Rate. On each Interest Rate Determination Date, Administrative Agent shall determine in accordance with the terms of this Agreement (which determination shall, absent manifest error, be conclusive and binding upon all parties) the interest rate that shall apply to the Eurodollar Rate Loans for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to Company and each applicable Lender.

B. Inability to Determine Applicable Interest Rate. In the event that Administrative Agent shall have determined (which determination shall be conclusive and binding upon all parties hereto), on any Interest Rate Determination Date that by reason of circumstances affecting the interbank Eurodollar market adequate and fair means do not exist for ascertaining the interest rate applicable to such Loans on the basis provided for in the definition of "Eurodollar Rate," Administrative Agent shall on such date give notice (by telefacsimile or by telephone confirmed in writing) to Company and each Lender of such determination, whereupon (i) no Loans may be made as, or converted to, Eurodollar Rate Loans until such time as Administrative Agent notifies Company and Lenders that the circumstances giving rise to such notice no longer exist and (ii) any Notice of Borrowing or Notice of Conversion/Continuation given by Company with respect to the Loans in respect of which such determination was made shall be deemed to be for a Base Rate Loan.

C. Illegality or Impracticability of Eurodollar Rate Loans. In the event that on any date any Lender shall have determined (which determination shall be conclusive and binding upon all parties hereto but shall be made only after consultation with Company and Administrative Agent) that the making, maintaining or continuation of its Eurodollar Rate Loans (i) has become unlawful as a result of compliance by such Lender in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful) or (ii) has become impracticable, or would cause such Lender material hardship, as a result of contingencies occurring after the date of this Agreement which materially and adversely affect the interbank Eurodollar market or the position of such Lender in that market, then, and in any such event, such Lender shall be an "**Affected Lender**" and it shall on that day give notice (by telefacsimile or by telephone confirmed in writing) to Company and Administrative Agent of such determination. Administrative Agent shall promptly notify each other Lender of the receipt of such notice. Thereafter (a) the obligation of the Affected Lender to make Loans as, or to convert Loans to, Eurodollar Rate Loans shall be suspended until such notice shall be withdrawn by the Affected Lender, (b) to the extent such determination by the Affected Lender relates to a Eurodollar Rate Loan then being requested by Company pursuant to a Notice of Borrowing or a Notice of Conversion/Continuation, the Affected Lender shall make such Loan as (or convert such Loan to, as the case may be) a Base Rate Loan, (c) the Affected Lender's obligation to maintain its outstanding Eurodollar Rate Loans (the "**Affected Loans**") shall be terminated at the earlier to

occur of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law, and (d) the Affected Loans shall automatically convert into Base Rate Loans on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a Eurodollar Rate Loan then being requested by Company pursuant to a Notice of Borrowing or a Notice of Conversion/Continuation, Company shall have the option, subject to the provisions of subsection 2.6D, to rescind such Notice of Borrowing or Notice of Conversion/Continuation as to all Lenders by giving notice (by telefacsimile or by telephone confirmed in writing) to Administrative Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above. Administrative Agent shall promptly notify each other Lender of the receipt of such notice. Except as provided in the immediately preceding sentence, nothing in this subsection 2.6C shall affect the obligation of any Lender other than an Affected Lender to make or maintain Loans as, or to convert Loans to, Eurodollar Rate Loans in accordance with the terms of this Agreement.

D. Compensation For Breakage or Non-Commencement of Interest Periods. Company shall compensate each Lender, upon written request by that Lender pursuant to subsection 2.8, for all reasonable losses, expenses and liabilities (including any interest paid by that Lender to lenders of funds borrowed by it to make or carry its Eurodollar Rate Loans and any loss, expense or liability sustained by that Lender in connection with the liquidation or re-employment of such funds) which that Lender may sustain: (i) if for any reason (other than a default by that Lender) a borrowing of any Eurodollar Rate Loan does not occur on a date specified therefor in a Notice of Borrowing or a telephonic request therefor, or a conversion to or continuation of any Eurodollar Rate Loan does not occur on a date specified therefor in a Notice of Conversion/Continuation or a telephonic request therefor, (ii) if any prepayment or other principal payment or any conversion of any of its Eurodollar Rate Loans (including any prepayment or conversion occasioned by the circumstances described in subsection 2.6C) occurs on a date prior to the last day of an Interest Period applicable to that Loan, (iii) if any prepayment of any of its Eurodollar Rate Loans is not made on any date specified in a Notice of Prepayment given by Company, or (iv) as a consequence of any other default by Company in the repayment of its Eurodollar Rate Loans when required by the terms of this Agreement.

E. Booking of Eurodollar Rate Loans. Any Lender may make, carry or transfer Eurodollar Rate Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of that Lender.

F. Assumptions Concerning Funding of Eurodollar Rate Loans. Calculation of all amounts payable to a Lender under this subsection 2.6 and under subsection 2.7A shall be made as though that Lender had funded each of its Eurodollar Rate Loans through the purchase of a Eurodollar deposit bearing interest at the rate obtained pursuant to clause (i) of the definition of "Eurodollar Rate" in an amount equal to the amount of such Eurodollar Rate Loan and having a maturity comparable to the relevant Interest Period, whether or not its Eurodollar Rate Loans had been funded in such manner.

G. Eurodollar Rate Loans After Default. After the occurrence of and during the continuation of a Potential Event of Default or an Event of Default, (i) Company may not elect to have a Loan be made or maintained as, or converted to, a Eurodollar Rate Loan after

the expiration of any Interest Period then in effect for that Loan and (ii) subject to the provisions of subsection 2.6D, any Notice of Borrowing or Notice of Conversion/Continuation given by Company with respect to a requested borrowing or conversion/continuation that has not yet occurred shall be deemed to be for a Base Rate Loan or, if the conditions to making a Loan set forth in subsection 4.2 cannot then be satisfied, to be rescinded by Company.

2.7 Increased Costs; Taxes; Capital Adequacy

A. Compensation for Increased Costs. Subject to the provisions of subsection 2.7B (which shall be controlling with respect to the matters covered thereby), in the event that any Lender (including Issuing Lender) shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that any Change in Law:

(i) subjects such Lender to any additional tax of any kind whatsoever with respect to this Agreement or any of its obligations hereunder (including with respect to issuing or maintaining any Letters of Credit or purchasing or maintaining any participations therein or maintaining any Commitment hereunder) or any payments to such Lender of principal, interest, fees or any other amount payable hereunder (except for the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender);

(ii) imposes, modifies or holds applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender (other than any such reserve or other requirements with respect to Eurodollar Rate Loans that are reflected in the definition of "Eurodollar Rate"); or

(iii) imposes any other condition (other than with respect to Taxes) on or affecting such Lender or its obligations hereunder or the interbank Eurodollar market;

and the result of any of the foregoing is to increase the cost to such Lender of agreeing to make, making or maintaining its Loans or Commitments or agreeing to issue, issuing or maintaining any Letter of Credit or agreeing to purchase, purchasing or maintaining any participation therein or to reduce any amount received or receivable by such Lender with respect thereto; then, in any such case, Company shall promptly pay to such Lender, upon receipt of the statement referred to in subsection 2.8A, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Lender in its sole discretion shall determine) as may be necessary to compensate such Lender on an after-tax basis for any such increased cost or reduction in amounts received or receivable hereunder. Company shall not be required to compensate a Lender pursuant to this subsection 2.7A for any increased cost or reduction in respect of a period occurring more than 270 days prior to the date on which such Lender notifies Company of such Change in Law and such Lender's intention to claim compensation therefor, except, if the Change in Law giving rise to such increased cost or reduction is retroactive, no such time limitation shall apply so long as such Lender requests compensation within 270 days from the date on which the applicable Government Authority informed such Lender of such Change in Law.

B. Taxes.

(i) Payments to Be Free and Clear. Any and all payments by or on account of any obligation of Company under this Agreement and the other Loan Documents shall be made free and clear of, and without any deduction or withholding on account of, any Indemnified Taxes or Other Taxes.

(ii) Grossing-up of Payments. If Company or any other Person is required by law to make any deduction or withholding on account of any Tax from any sum paid or payable by Company to Administrative Agent or any Lender under any of the Loan Documents:

(a) Company shall notify Administrative Agent of any such requirement or any change in any such requirement as soon as Company becomes aware of it;

(b) Company shall timely pay any such Tax to the relevant Government Authority when such Tax is due, in accordance with applicable law;

(c) unless such Tax is an Excluded Tax, the sum payable by Company shall be increased to the extent necessary to ensure that, after making the required deductions (including deductions applicable to additional sums payable under this subsection 2.7B(ii)), Administrative Agent or such Lender, as the case may be, receives on the due date a net sum equal to the sum it would have received had no such deduction been required or made; and

(d) within 30 days after paying any sum from which it is required by law to make any such deduction, and within 30 days after the due date of payment of any Tax which it is required by clause (b) above to pay, Company shall deliver to Administrative Agent the original or a certified copy of an official receipt or other document satisfactory to the other affected parties to evidence the payment and its remittance to the relevant Government Authority.

(iii) Indemnification by Company. Company shall indemnify Administrative Agent and each Lender, within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including for the full amount of any Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this subsection 2.7B(iii)) paid by Administrative Agent or such Lender, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Government Authority. A certificate as to the amount of such payment or liability delivered to Company by a Lender (with a copy to Administrative Agent), or by Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(iv) Tax Status of Lenders. Unless not legally entitled to do so:

(a) any Lender, if requested by Company or Administrative Agent, shall deliver such forms or other documentation prescribed by applicable law or reasonably requested by Company or Administrative Agent as will enable Company or Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements;

(b) any Foreign Lender that is entitled to an exemption from or reduction of any Tax with respect to payments hereunder or under any other Loan Document shall deliver to Company and Administrative Agent, on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter, as may be necessary in the determination of Company or Administrative Agent, each in the reasonable exercise of its discretion), such properly completed and duly executed forms or other documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate of withholding;

(c) without limiting the generality of the foregoing, in the event that Company is resident for tax purposes in the United States, any Foreign Lender shall deliver to Company and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter, as may be necessary in the determination of Company or Administrative Agent, each in the reasonable exercise of its discretion), whichever of the following is applicable:

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

(2) properly completed and duly executed copies of Internal Revenue Service Form W-8ECI,

(3) in the case of a Foreign Lender claiming the benefits of the exemption “portfolio interest” under Section 881(c) of the Internal Revenue Code, (A) a duly executed certificate to the effect that such Foreign Lender is not (i) a “bank” within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, (ii) a ten-percent shareholder (within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code) of Company or (iii) a controlled foreign corporation described in Section 881(c)(3)(C) of the Internal Revenue Code and (B) properly completed and duly executed copies of Internal Revenue Service Form W-8BEN, or

(4) properly completed and duly executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in any Tax,

in each case together with such supplementary documentation as may be prescribed by applicable law to permit Company and Administrative Agent to determine the withholding or deduction required to be made, if any;

(d) without limiting the generality of the foregoing, in the event that Company is resident for tax purposes in the United States, any Foreign Lender that does not act or ceases to act for its own account with respect to any portion of any sums paid or payable to such Lender under any of the Loan Documents (for example, in the case of a typical participation by such Lender) shall deliver to Administrative Agent and Company (in such number of copies as shall be requested by the recipient), on or prior to the date such Foreign Lender becomes a Lender, or on such later date when such Foreign Lender ceases to act for its own account with respect to any portion of any such sums paid or payable, and from time to time thereafter, as may be necessary in the determination of Company or Administrative Agent (each in the reasonable exercise of its discretion):

(1) duly executed and properly completed copies of the forms and statements required to be provided by such Foreign Lender under clause (c) of subsection 2.7B(iv), to establish the portion of any such sums paid or payable with respect to which such Lender acts for its own account and may be entitled to an exemption from or a reduction of the applicable Tax, and

(2) duly executed and properly completed copies of Internal Revenue Service Form W-8IMY (or any successor forms) properly completed and duly executed by such Foreign Lender, together with any information, if any, such Foreign Lender chooses to transmit with such form, and any other certificate or statement of exemption required under the Internal Revenue Code or the regulations thereunder, to establish that such Foreign Lender is not acting for its own account with respect to a portion of any such sums payable to such Foreign Lender;

(e) without limiting the generality of the foregoing, in the event that Company is resident for tax purposes in the United States, any Lender that is not a Foreign Lender and has not otherwise established to the reasonable satisfaction of Company and Administrative Agent that it is an exempt recipient (as defined in section 6049(b)(4) of the Internal Revenue Code and the United States Treasury Regulations thereunder) shall deliver to Company and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter as prescribed by applicable law or upon the request of Company or Administrative Agent), duly executed and properly completed copies of Internal Revenue Service Form W-9; and

(f) without limiting the generality of the foregoing, each Lender hereby agrees, from time to time after the initial delivery by such Lender of such forms, whenever a lapse in time or change in circumstances renders such forms, certificates or other evidence so delivered obsolete or inaccurate in any material respect, that such Lender shall promptly (1) deliver to Administrative Agent and Company two original copies of renewals, amendments or additional or successor forms, properly completed and duly executed by such Lender, together with any other certificate or statement of exemption required in order to confirm or establish that such Lender is entitled to an exemption from or reduction of any Tax with respect to payments to such Lender under the Loan Documents and, if applicable, that such Lender does not act for its own account with respect to any portion of such payment, or (2) notify Administrative Agent and Company of its inability to deliver any such forms, certificates or other evidence.

C. Capital Adequacy Adjustment. If any Lender shall have determined that any Change in Law regarding capital adequacy has or would have the effect of reducing the rate of return on the capital of such Lender or any corporation controlling such Lender as a consequence of, or with reference to, such Lender's Loans or Commitments or Letters of Credit or participations therein or other obligations hereunder with respect to the Loans or the Letters of Credit to a level below that which such Lender or such controlling corporation could have achieved but for such Change in Law (taking into consideration the policies of such Lender or such controlling corporation with regard to capital adequacy), then from time to time, within five Business Days after receipt by Company from such Lender of the statement referred to in subsection 2.8A, Company shall pay to such Lender such additional amount or amounts as will compensate such Lender or such controlling corporation on an after-tax basis for such reduction. Company shall not be required to compensate a Lender pursuant to this subsection 2.7C for any reduction in respect of a period occurring more than 270 days prior to the date on which such Lender notifies Company of such Change in Law and such Lender's intention to claim compensation therefor, except, if the Change in Law giving rise to such reduction is retroactive, no such time limitation shall apply so long as such Lender requests compensation within 270 days from the date on which the applicable Government Authority informed such Lender of such Change in Law.

2.8 Statement of Lenders; Obligation of Lenders and Issuing Lender to Mitigate

A. Statements. Each Lender claiming compensation or reimbursement pursuant to subsection 2.6D, 2.7 or 2.8B shall deliver to Company (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis of the calculation of such compensation or reimbursement, which statement shall be conclusive and binding upon all parties hereto absent manifest error.

B. Mitigation. Each Lender and Issuing Lender agrees that, as promptly as practicable after the officer of such Lender or Issuing Lender responsible for administering the Loans or Letters of Credit of such Lender or Issuing Lender, as the case may be, becomes aware of the occurrence of an event or the existence of a condition that would cause such Lender to become an Affected Lender or that would entitle such Lender or Issuing Lender to receive payments under subsection 2.7, it will use reasonable efforts to make, issue, fund or maintain the

Commitments of such Lender or the Loans or Letters of Credit of such Lender or Issuing Lender through another lending or letter of credit office of such Lender or Issuing Lender, if (i) as a result thereof the circumstances which would cause such Lender to be an Affected Lender would cease to exist or the additional amounts which would otherwise be required to be paid to such Lender or Issuing Lender pursuant to subsection 2.7 would be materially reduced and (ii) as determined by such Lender or Issuing Lender in its sole discretion, such action would not otherwise be disadvantageous to such Lender or Issuing Lender; provided that such Lender or Issuing Lender will not be obligated to utilize such other lending or letter of credit office pursuant to this subsection 2.8B unless Company agrees to pay all incremental expenses incurred by such Lender or Issuing Lender as a result of utilizing such other lending or letter of credit office as described above.

2.9 Replacement of a Lender

If Company receives a statement of amounts due pursuant to subsection 2.8A from a Lender, a Revolving Lender defaults in its obligations to fund a Revolving Loan pursuant to this Agreement, a Lender (a “**Non-Consenting Lender**”) refuses to consent to an amendment, modification or waiver of this Agreement that, pursuant to subsection 10.6, requires consent of 100% of the Lenders or 100% of the Lenders with Obligations directly affected or a Lender becomes an Affected Lender (any such Lender, a “**Subject Lender**”), so long as (i) no Potential Event of Default or Event of Default shall have occurred and be continuing and Company has obtained a commitment from another Lender or an Eligible Assignee to purchase at par the Subject Lender’s Loans and assume the Subject Lender’s Commitments and all other obligations of the Subject Lender hereunder, (ii) such Lender is not an Issuing Lender with respect to any Letters of Credit outstanding (unless all such Letters of Credit are terminated or arrangements acceptable to such Issuing Lender (such as a “back-to-back” letter of credit) are made) and (iii), if applicable, the Subject Lender is unwilling to withdraw the notice delivered to Company pursuant to subsection 2.8 and/or is unwilling to remedy its default upon ten days prior written notice to the Subject Lender and Administrative Agent, Company may require the Subject Lender to assign all of its Loans and Commitments to such other Lender, Lenders, Eligible Assignee or Eligible Assignees pursuant to the provisions of subsection 10.1B; provided that, prior to or concurrently with such replacement, (a) the Subject Lender shall have received payment in full of all principal, interest, fees and other amounts (including all amounts under subsections 2.6D, 2.7 and/or 2.8B (if applicable)) through such date of replacement and a release from its obligations under the Loan Documents, (b) the processing fee required to be paid by subsection 10.1B(i) shall have been paid to Administrative Agent (provided, however, that the Non-Consenting Lender or the Subject Lender shall not be required to pay such processing fee), (c) all of the requirements for such assignment contained in subsection 10.1B, including the consent of Administrative Agent (if required) and the receipt by Administrative Agent of an executed Assignment Agreement executed by the assignee (Administrative Agent being hereby authorized to execute any Assignment Agreement on behalf of a Subject Lender relating to the assignment of Loans and/or Commitments of such subject Lender) and other supporting documents, have been fulfilled, and (d) in the event such Subject Lender is a Non-Consenting Lender, each assignee shall consent, at the time of such assignment, to each matter in respect of which such Subject Lender was a Non-Consenting Lender and Company also requires each other Subject Lender that is a Non-Consenting Lender to assign its Loans and Commitments.

2.10 Increase in Commitments

A. Request for Increase. Upon notice to Administrative Agent (which shall promptly notify Lenders), Company may from time to time, but on not more than two separate occasions, by written notice to Administrative Agent request an increase in the Revolving Loan Commitments by an amount (for both such requests in the aggregate) not exceeding \$50,000,000; provided that (i) any such request for an increase shall be in a minimum amount of \$10,000,000 or such lesser amount that is equal to the maximum remaining amount of increase permitted pursuant to this subsection 2.10A, (ii) no Event of Default or Potential Event of Default shall have occurred and be continuing or result from such increase in the Revolving Loan Commitments, and (iii) Company and its Subsidiaries shall be in compliance, on a pro forma basis (as though any Loans to be made on the applicable Increase Effective Date have been made), with each of the financial covenants specified in subsection 7.6, before and after giving effect to such increase, as of the last day of the most recently ended Fiscal Quarter in the case of the financial covenant specified in subsection 7.6A and as of the applicable Increase Effective Date in the case of the financial covenant specified in subsection 7.6B.

B. Increase in Commitments; Additional Lenders. Concurrently with any request by Company for an increase in Revolving Loan Commitments pursuant to this subsection 2.10, Company shall notify Administrative Agent of each Lender that has agreed to increase its Revolving Loan Commitment and the amount of each such agreed increase. Company and such Lender shall execute and deliver to Administrative Agent an assumption agreement in form and substance satisfactory to Administrative Agent and its counsel to evidence the increase in such Lender's Revolving Loan Commitment. To achieve the full amount of a requested increase in Revolving Loan Commitments Company may also invite additional Eligible Assignees to become Lenders pursuant to a joinder agreement in form and substance satisfactory to Administrative Agent and its counsel, provided that Administrative Agent shall have consented to any such Eligible Assignee becoming a Lender. Company shall have no right to increase Revolving Loan Commitments pursuant to this subsection 2.10 except to the extent Company obtains the agreement of one or more Lenders and/or Eligible Assignees (and, in the case of any such Eligible Assignee, any requisite consent) to accept such increase in Revolving Loan Commitments. Nothing contained in this paragraph or otherwise in this Agreement is intended to commit any Lender or Administrative Agent to provide any portion of any increase in Revolving Loan Commitments.

C. Effective Date and Allocations. If the Revolving Loan Commitments are increased in accordance with this subsection 2.10, Administrative Agent and Company shall determine the effective date (each, an "**Increase Effective Date**") and the final allocation of such increase in Revolving Loan Commitments. Administrative Agent shall promptly notify Company and Lenders (and any designated Eligible Assignees) of the final allocation of such increase and the applicable Increase Effective Date.

D. Conditions to Effectiveness of Increase. As conditions precedent to each such increase in Revolving Loan Commitments, (i) Company shall pay to Administrative Agent, for distribution to each Lender providing such increase in Revolving Loan Commitments in proportion to that Lender's Pro Rata Share of such increase in Revolving Loan Commitments, a fee, if any, to be agreed upon at the time such increase in Revolving Loan Commitments is provided and (ii) Company shall deliver to Administrative Agent an Officer's Certificate of Company dated as of the applicable Increase Effective Date:

(1) certifying and attaching the resolutions adopted by Company approving or consenting to such increase in Revolving Loan Commitments;

(2) certifying that, before and after giving effect to such increase in Revolving Loan Commitments:

(A) the representations and warranties contained herein and in the other Loan Documents are true, correct and complete in all material respects on and as of the applicable Increase Effective Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties are true, correct and complete in all material respects on and as of such earlier date; provided that where a representation and warranty is already qualified as to materiality, such representation and warranty shall be true, correct and complete as so qualified;

(B) no event has occurred and is continuing or would result from the consummation of the requested increase in Revolving Loan Commitments that would constitute an Event of Default or a Potential Event of Default;

(C) each Loan Party has performed in all material respects all agreements and satisfied all conditions which this Agreement provides shall be performed or satisfied by it on or before the applicable Increase Effective Date; and

(3) demonstrating that Company and its Subsidiaries are in compliance, on a pro forma basis (as though any Loans to be made on the applicable Increase Effective Date have been made), with each of the financial covenants specified in subsection 7.6, before and after giving effect to such increase, as of the last day of the most recently ended Fiscal Quarter in the case of the financial covenant specified in subsection 7.6A and as of the applicable Increase Effective Date in the case of the financial covenant specified in subsection 7.6B.

E. Company shall either (1) prepay any Revolving Loans outstanding on the applicable Increase Effective Date or (2) submit a Notice of Borrowing requesting Revolving Loans as of the applicable Increase Effective Date (which Revolving Loans shall be funded solely by the Revolving Lenders that have increased their respective Revolving Loan Commitments as of such Increase Effective Date), in each case solely to the extent necessary to keep the outstanding Revolving Loans ratable with any revised Pro Rata Shares of Revolving

Loans arising from any nonratable increase in the Revolving Loan Commitments under this subsection 2.10. Company shall execute and deliver any additional Revolving Notes as any Lender may reasonably request and any other documents, instruments and amendments or modifications to this Agreement or any other Loan Document as Administrative Agent may reasonably request. In connection with any increase in Revolving Loan Commitments provided for in this subsection 2.10, conforming amendments shall be made to this Agreement and the other Loan Documents to reflect such increase in Revolving Loan Commitments, including, if applicable, to include Lenders of such increased Revolving Loan Commitments in any determination of Lenders, Requisite Lenders and Pro Rata Share. Any such amendment shall become effective when executed by Administrative Agent and each Lender that has increased its Revolving Loan Commitment. Notwithstanding anything in this Agreement expressed or implied to the contrary (including in subsection 10.6), nothing herein shall be construed to require consent from Lenders that are not lenders of such increased Revolving Loan Commitments to the incurrence of the increase in Revolving Loan Commitments in compliance with this subsection 2.10, and this subsection 2.10 shall supersede any provisions in subsection 10.6 to the contrary.

Section 3. LETTERS OF CREDIT

3.1 **Issuance of Letters of Credit and Lenders' Purchase of Participations Therein**

A. Letters of Credit. Company may request, in accordance with the provisions of this subsection 3.1, from time to time during the period from the Restatement Date to but excluding the 30th day prior to the Revolving Loan Commitment Termination Date, that Issuing Lender issue Letters of Credit for the account of Company for the general corporate purposes of Company or a Subsidiary of Company. Subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties of Company herein set forth, Issuing Lender shall issue such Letters of Credit in accordance with the provisions of this subsection 3.1; provided that Company shall not request that Issuing Lender issue:

(i) any Letter of Credit if, after giving effect to such issuance, the Total Utilization of Revolving Loan Commitments would exceed the Revolving Loan Commitment Amount then in effect;

(ii) any Letter of Credit if, after giving effect to such issuance, the Letter of Credit Usage would exceed \$5,000,000;

(iii) any Standby Letter of Credit having an expiration date later than the earlier of (a) 30 days prior to the Revolving Loan Commitment Termination Date and (b) the date which is one year from the date of issuance of such Standby Letter of Credit; provided that the immediately preceding clause (b) shall not prevent Issuing Lender from agreeing that a Standby Letter of Credit will automatically be extended for one or more successive periods not to exceed one year each unless Issuing Lender elects not to extend for any such additional period; and provided, further that Issuing Lender shall elect not to extend such Standby Letter of Credit if it has knowledge that an Event of Default has occurred and is continuing (and has not been waived in accordance with subsection 10.6) at the time Issuing Lender must elect whether or not to allow such extension;

(iv) any Standby Letter of Credit issued for the purpose of supporting (a) trade payables or (b) any Indebtedness constituting “antecedent debt” (as that term is used in Section 547 of the Bankruptcy Code);

(v) any Commercial Letter of Credit having an expiration date (a) later than the earlier of (1) the date which is 30 days prior to the Revolving Loan Commitment Termination Date and (2) the date which is 180 days from the date of issuance of such Commercial Letter of Credit or (b) that is otherwise unacceptable to Issuing Lender in its reasonable discretion; or

(vi) any Letter of Credit denominated in a currency other than Dollars.

All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Restatement Date shall be subject to and governed by the terms and conditions hereof.

B. Mechanics of Issuance.

(i) Request for Issuance. Whenever Company desires the issuance of a Letter of Credit, it shall deliver to Administrative Agent a Request for Issuance no later than 9:00 A.M. (San Francisco time) at least three Business Days, or such shorter period as may be agreed to by Issuing Lender in any particular instance, in advance of the proposed date of issuance. Issuing Lender, in its reasonable discretion, may require changes in the text of the proposed Letter of Credit or any documents described in or attached to the Request for Issuance. In furtherance of the provisions of subsection 10.8, and not in limitation thereof, Company may submit Requests for Issuance by telefacsimile and Administrative Agent and Issuing Lender may rely and act upon any such Request for Issuance without receiving an original signed copy thereof. No Letter of Credit shall require payment against a conforming demand for payment to be made thereunder on the same business day (under the laws of the jurisdiction in which the office of Issuing Lender to which such demand for payment is required to be presented is located) on which such demand for payment is presented if such presentation is made after 10:00 A.M. (in the time zone of such office of Issuing Lender) on such business day.

(ii) Issuance of Letter of Credit. Upon satisfaction or waiver (in accordance with subsection 10.6) of the conditions set forth in subsection 4.3, Issuing Lender shall issue the requested Letter of Credit in accordance with Issuing Lender’s standard operating procedures.

(iii) Notification to Revolving Lenders. Upon the issuance of or amendment to any Letter of Credit, Issuing Lender shall promptly notify Administrative Agent and Company of such issuance or amendment in writing and such notice shall be accompanied by a copy of such Letter of Credit or amendment. Upon receipt of such notice (or, if Administrative Agent is Issuing Lender, together with such notice), Administrative Agent shall notify each Revolving Lender in writing of such issuance or

amendment and the amount of such Revolving Lender's respective participation in such Letter of Credit or amendment, and, if so requested by a Revolving Lender, Administrative Agent shall provide such Lender with a copy of such Letter of Credit or amendment.

C. Revolving Lenders' Purchase of Participations in Letters of Credit. Immediately upon the issuance of each Letter of Credit, each Revolving Lender shall be deemed to, and hereby agrees to, have irrevocably purchased from the Issuing Lender a participation in such Letter of Credit and any drawings honored thereunder in an amount equal to such Revolving Lender's Pro Rata Share of the maximum amount that is or at any time may become available to be drawn thereunder.

3.2 Letter of Credit Fees

Company agrees to pay the following amounts with respect to Letters of Credit issued hereunder:

(i) with respect to each Letter of Credit, (a) a fronting fee, payable directly to Issuing Lender for its own account, equal to 0.25% per annum of the daily amount available to be drawn under such Letter of Credit and (b) a letter of credit fee, payable to Administrative Agent for the account of Revolving Lenders, equal to the applicable Eurodollar Rate Margin for Revolving Loans plus, upon the application of increased rates of interest pursuant to subsection 2.2E, 2% per annum, multiplied by the daily amount available to be drawn under such Letter of Credit, each such fronting fee or letter of credit fee to be payable in arrears on and to (but excluding) March 31, June 30, September 30 and December 31 of each calendar year, commencing on March 31, 2008, and on the Revolving Loan Commitment Termination Date, in each case computed on the basis of a 360-day year for the actual number of days elapsed;

(ii) with respect to the issuance, amendment or transfer of each Letter of Credit and each payment of a drawing made thereunder (without duplication of the fees payable under clause (i) above), documentary and processing charges payable directly to Issuing Lender for its own account in accordance with Issuing Lender's standard schedule for such charges in effect at the time of such issuance, amendment, transfer or payment, as the case may be.

For purposes of calculating any fees payable under clause (i) of this subsection 3.2, the daily amount available to be drawn under any Letter of Credit shall be determined as of the close of business on any date of determination.

3.3 Drawings and Reimbursement of Amounts Paid Under Letters of Credit

A. Responsibility of Issuing Lender With Respect to Drawings. In determining whether to honor any drawing under any Letter of Credit by the beneficiary thereof, Issuing Lender shall be responsible only to examine the documents delivered under such Letter of Credit with reasonable care so as to ascertain whether they appear on their face to be in accordance with the terms and conditions of such Letter of Credit.

B. Reimbursement by Company of Amounts Paid Under Letters of Credit. In the event Issuing Lender has determined to honor a drawing under a Letter of Credit issued by it, Issuing Lender shall immediately notify Company and Administrative Agent, and Company shall reimburse Issuing Lender on or before the Business Day immediately following the date on which such drawing is honored (the “**Reimbursement Date**”) in an amount in Dollars and in same day funds equal to the amount of such payment; provided that, anything contained in this Agreement to the contrary notwithstanding, (i) unless Company shall have notified Administrative Agent and Issuing Lender prior to 10:00 A.M. (San Francisco time) on the date such drawing is honored that Company intends to reimburse Issuing Lender for the amount of such payment with funds other than the proceeds of Revolving Loans, Company shall be deemed to have given a timely Notice of Borrowing to Administrative Agent requesting Revolving Lenders to make Revolving Loans that are Base Rate Loans on the Reimbursement Date in an amount in Dollars equal to the amount of such payment and (ii) subject to satisfaction or waiver of the conditions specified in subsection 4.2B, Revolving Lenders shall, on the Reimbursement Date, make Revolving Loans that are Base Rate Loans in the amount of such payment, the proceeds of which shall be applied directly by Administrative Agent to reimburse Issuing Lender for the amount of such payment; and provided, further that if for any reason proceeds of Revolving Loans are not received by Issuing Lender on the Reimbursement Date in an amount equal to the amount of such payment, Company shall reimburse Issuing Lender, on demand, in an amount in same day funds equal to the excess of the amount of such payment over the aggregate amount of such Revolving Loans, if any, which are so received. Nothing in this subsection 3.3B shall be deemed to relieve any Revolving Lender from its obligation to make Revolving Loans on the terms and conditions set forth in this Agreement, and Company shall retain any and all rights it may have against any Revolving Lender resulting from the failure of such Revolving Lender to make such Revolving Loans under this subsection 3.3B.

C. Payment by Lenders of Unreimbursed Amounts Paid Under Letters of Credit.

(i) Payment by Revolving Lenders. In the event that Company shall fail for any reason to reimburse Issuing Lender as provided in subsection 3.3B in an amount equal to the amount of any payment by Issuing Lender, Issuing Lender shall promptly notify Administrative Agent, who shall promptly notify each Revolving Lender of the unreimbursed amount of such honored drawing and of such Revolving Lender’s respective participation therein based on such Revolving Lender’s Pro Rata Share. Each Revolving Lender (other than Issuing Lender) shall make available to Administrative Agent an amount equal to its respective participation, in Dollars, in same day funds, at the Funding and Payment Office, not later than 12:00 Noon (San Francisco time) on the first Business Day after the date notified by Administrative Agent, and Administrative Agent shall make available to Issuing Lender in Dollars, in same day funds, at the office of Issuing Lender on such Business Day the aggregate amount of the payments so received by Administrative Agent. In the event that any Revolving Lender fails to make available to Administrative Agent on such Business Day the amount of such Revolving Lender’s participation in such Letter of Credit as provided in this subsection 3.3C, Issuing Lender shall be entitled to recover such amount on demand from such Revolving Lender together with interest thereon at the rate customarily used by Issuing Lender for the correction of errors among banks for three Business Days and thereafter at the Base

Rate. Nothing in this subsection 3.3C shall be deemed to prejudice the right of Administrative Agent to recover, for the benefit of Revolving Lenders, from Issuing Lender any amounts made available to Issuing Lender pursuant to this subsection 3.3C in the event that it is determined by the final judgment of a court of competent jurisdiction that the payment with respect to a Letter of Credit by Issuing Lender in respect of which payments were made by Revolving Lenders constituted gross negligence or willful misconduct on the part of Issuing Lender.

(ii) Distribution to Lenders of Reimbursements Received From Company. In the event Issuing Lender shall have been reimbursed by other Revolving Lenders pursuant to subsection 3.3C(i) for all or any portion of any payment by Issuing Lender under a Letter of Credit issued by it, and Administrative Agent or Issuing Lender thereafter receives any payments from Company in reimbursement of such payment under the Letter of Credit, to the extent any such payment is received by Issuing Lender, it shall distribute such payment to Administrative Agent, and Administrative Agent shall distribute to each other Revolving Lender that has paid all amounts payable by it under subsection 3.3C(i) with respect to such payment such Revolving Lender's Pro Rata Share of all payments subsequently received by Administrative Agent or by Issuing Lender from Company. Any such distribution shall be made to a Revolving Lender at the account specified in subsection 2.4B(iii).

D. Interest on Amounts Paid Under Letters of Credit.

(i) Payment of Interest by Company. Company agrees to pay to Administrative Agent, with respect to payments under any Letters of Credit issued by Issuing Lender, interest on the amount paid by Issuing Lender in respect of each such payment from the date a drawing is honored to but excluding the date such amount is reimbursed by Company (including any such reimbursement out of the proceeds of Revolving Loans pursuant to subsection 3.3B) at a rate equal to (a) for the period from the date such drawing is honored to but excluding the Reimbursement Date, the rate then in effect under this Agreement with respect to Revolving Loans that are Base Rate Loans and (b) thereafter, a rate which is 2% per annum in excess of the rate of interest otherwise payable under this Agreement with respect to Revolving Loans that are Base Rate Loans. Interest payable pursuant to this subsection 3.3D(i) shall be computed on the basis of a 365-day or 366-day year, as the case may be, for the actual number of days elapsed in the period during which it accrues and shall be payable on demand or, if no demand is made, on the date on which the related drawing under a Letter of Credit is reimbursed in full.

(ii) Distribution of Interest Payments by Administrative Agent. Promptly upon receipt by Administrative Agent of any payment of interest pursuant to subsection 3.3D(i) with respect to a payment under a Letter of Credit, (a) Administrative Agent shall distribute to (x) each Revolving Lender (including Issuing Lender) out of the interest received by Administrative Agent in respect of the period from the date such drawing is honored to but excluding the date on which Issuing Lender is reimbursed for the amount of such payment (including any such reimbursement out of the proceeds of Revolving Loans pursuant to subsection 3.3B), the amount that such Revolving Lender would have been entitled to receive in respect of the letter of credit fee that would have been payable

in respect of such Letter of Credit for such period pursuant to subsection 3.2 if no drawing had been honored under such Letter of Credit, and (y) Issuing Lender the amount, if any, remaining after payment of the amounts applied pursuant to clause (x), and (b) in the event Issuing Lender shall have been reimbursed by other Revolving Lenders pursuant to subsection 3.3C(i) for all or any portion of such payment, Administrative Agent shall distribute to each Revolving Lender (including Issuing Lender) that has paid all amounts payable by it under subsection 3.3C(i) with respect to such payment such Revolving Lender's Pro Rata Share of any interest received by Administrative Agent in respect of that portion of such payment so made by Revolving Lenders for the period from the date on which Issuing Lender was so reimbursed to but excluding the date on which such portion of such payment is reimbursed by Company. Any such distribution shall be made to a Revolving Lender at the account specified in subsection 2.4B(iii).

3.4 Obligations Absolute

The obligation of Company to reimburse Issuing Lender for payments under the Letters of Credit issued by it and to repay any Revolving Loans made by Revolving Lenders pursuant to subsection 3.3B and the obligations of Revolving Lenders under subsection 3.3C(i) shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms of this Agreement under all circumstances including any of the following circumstances:

- (i) any lack of validity or enforceability of any Letter of Credit;
- (ii) the existence of any claim, set-off, defense or other right which Company or any Lender may have at any time against a beneficiary or any transferee of any Letter of Credit (or any Persons for whom any such transferee may be acting), Issuing Lender or other Revolving Lender or any other Person or, in the case of a Revolving Lender, against Company, whether in connection with this Agreement, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between Company or one of its Subsidiaries and the beneficiary for which any Letter of Credit was procured);
- (iii) any draft or other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;
- (iv) payment by Issuing Lender under any Letter of Credit against presentation of a draft or other document which does not strictly comply with the terms of such Letter of Credit;
- (v) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of Company or any of its Subsidiaries;
- (vi) any breach of this Agreement or any other Loan Document by any party thereto;

- (vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing; or
- (viii) the fact that an Event of Default or a Potential Event of Default shall have occurred and be continuing;

provided, in each case, that payment by the Issuing Lender under the applicable Letter of Credit shall not have constituted gross negligence or willful misconduct of Issuing Lender under the circumstances in question (as determined by a final judgment of a court of competent jurisdiction).

3.5 Nature of Issuing Lender's Duties

As between Company and Issuing Lender, Company assumes all risks of the acts and omissions of, or misuse of the Letters of Credit issued by Issuing Lender by, the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, Issuing Lender shall not be responsible for: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of any such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any such Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (iii) failure of the beneficiary of any such Letter of Credit to comply fully with any conditions required in order to draw upon such Letter of Credit; (iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any such Letter of Credit or of the proceeds thereof; (vii) the misapplication by the beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; or (viii) any consequences arising from causes beyond the control of Issuing Lender, including any act or omission by a Government Authority, and none of the above shall affect or impair, or prevent the vesting of, any of Issuing Lender's rights or powers hereunder.

In furtherance and extension and not in limitation of the specific provisions set forth in the first paragraph of this subsection 3.5, any action taken or omitted by Issuing Lender under or in connection with the Letters of Credit issued by it or any documents and certificates delivered thereunder, if taken or omitted in good faith, shall not put Issuing Lender under any resulting liability to Company.

Notwithstanding anything to the contrary contained in this subsection 3.5, Company shall retain any and all rights it may have against Issuing Lender for any liability arising solely out of the gross negligence or willful misconduct of Issuing Lender, as determined by a final judgment of a court of competent jurisdiction.

Section 4. CONDITIONS TO LOANS AND LETTERS OF CREDIT

The obligations of Lenders to amend and restate the Original Credit Agreement and to make Loans and to issue Letters of Credit hereunder are subject to the satisfaction of the following conditions.

4.1 Conditions to Initial Revolving Loans and Swing Line Loans

The effectiveness of this Agreement and the obligations of Lenders to make any Revolving Loans and Swing Line Loans to be made on the Restatement Date are, in addition to the conditions precedent specified in subsection 4.2, subject to prior or concurrent satisfaction of the following conditions:

A. Loan Party Documents. On or before the Restatement Date, Company shall, and shall cause each other Loan Party to, deliver to Lenders (or to Administrative Agent with sufficient originally executed copies, where appropriate, for each Lender) the following with respect to Company or such Loan Party, as the case may be, each, unless otherwise noted, dated the Restatement Date:

(i) Copies of all amendments to the Organizational Documents of such Person executed on or after September 27, 2005 and copies of the Organizational Documents of such Person if such Person was organized on or after September 27, 2005, in each case, certified by the Secretary of State of its jurisdiction of organization or, if such document is of a type that may not be so certified, certified by the secretary or similar officer of the applicable Loan Party, together with a good standing certificate from the Secretary of State of its jurisdiction of organization and, to the extent generally available, a certificate or other evidence of good standing as to payment of any applicable franchise or similar taxes from the appropriate taxing authority of such jurisdiction, each dated a recent date prior to the Restatement Date;

(ii) Resolutions of the Governing Body of such Person approving and authorizing the execution, delivery and performance of the Loan Documents to which it is a party, certified as of the Restatement Date by the secretary or similar officer of such Person as being in full force and effect without modification or amendment;

(iii) Signature and incumbency certificates of the officers of such Person executing the Loan Documents to which it is a party;

(iv) Executed originals of the Loan Documents to which such Person is a party (except for any executed original Loan Documents that have been delivered to Administrative Agent prior to the Restatement Date); and

(v) Such other documents as Administrative Agent may reasonably request.

B. Interest and Fees.

(i) Company shall have paid in full all accrued interest on the loans under the Original Credit Agreement and all accrued fees, costs and expenses thereunder, in each case through the Restatement Date.

(ii) Company shall have paid to Administrative Agent, for distribution (as appropriate) to Administrative Agent and Lenders, the fees payable on the Restatement Date referred to in subsection 2.3B.

C. Representations and Warranties; Performance of Agreements. Company shall have delivered to Administrative Agent an Officer's Certificate, in form and substance satisfactory to Administrative Agent, to the effect that the representations and warranties in Section 5 are true, correct and complete in all material respects on and as of the Restatement Date to the same extent as though made on and as of that date (or, to the extent such representations and warranties specifically relate to an earlier date, that such representations and warranties were true, correct and complete in all material respects on and as of such earlier date) and that Company shall have performed in all material respects all agreements and satisfied all conditions which this Agreement provides shall be performed or satisfied by it on or before the Restatement Date except as otherwise disclosed to and agreed to in writing by Administrative Agent; provided that, if a representation and warranty, covenant or condition is qualified as to materiality, the applicable materiality qualifier set forth above shall be disregarded with respect to such representation and warranty, covenant or condition for purposes of this condition.

D. Financial Statements; Pro Forma Balance Sheet. On or before the Restatement Date, Lenders shall have received from Company (i) audited consolidated financial statements of Company and its Subsidiaries for Fiscal Years 2004, 2005 and 2006, consisting of balance sheets and the related consolidated statements of income, stockholders' equity and cash flows for such Fiscal Years, audited by independent public accountants of recognized national standing and prepared in conformity with GAAP, together with such accountants' report thereon, (ii) audited financial statements of Mitchell's Fish Market for fiscal years 2005 and 2006 and of Cameron's Steakhouse (but excluding the Cameron's Steakhouse located in Glendale (Milwaukee, Wisconsin) and the Mitchell's Steakhouse located at Crosswoods (Columbus, Ohio; relocated to Polaris, Columbus, Ohio)) for fiscal year 2006, consisting of balance sheets and the related statements of income and cash flows for such fiscal years, audited by independent public accountants of recognized national standing and prepared in conformity with GAAP, together with such accountants' report thereon, (iii) unaudited financial statements of Cameron's Steakhouse (but excluding the Cameron's Steakhouse located in Glendale (Milwaukee, Wisconsin)) for fiscal year 2005, consisting of balance sheets and the related statements of income and cash flows for such fiscal year, (iv) unaudited consolidated balance sheets as at the end of the Fiscal Quarters ended March 25, 2007, June 24, 2007, September 30, 2007 and December 30, 2007, and the related consolidated statements of income, stockholders' equity and cash flows of Company and its Subsidiaries for such Fiscal Quarters and for the period from the beginning of Fiscal Year 2007 to the end of each such Fiscal Quarter, all in reasonable detail and certified by the chief financial officer of Company that they fairly present the financial condition of Company and its Subsidiaries as at the date indicated and the results of their operations and their cash flows for the period indicated, subject to changes resulting from audit and normal year-end adjustments, (v) unaudited balance sheets as at the end of the six-month period ended June 30, 2007 and at the end of the fiscal quarters ended September 30, 2007 and December 30,

2007, and the related statements of income and cash flows of the Acquired Business (but excluding the Cameron's Steakhouse located in Glendale (Milwaukee, Wisconsin)) for such six-month period, such fiscal quarters and for the period from January 1, 2007 to the end of each such period, all in reasonable detail, subject to changes resulting from audit and normal year-end adjustments, (vi) a pro forma consolidated balance sheet of Company and its Subsidiaries as at the Restatement Date, prepared in accordance with GAAP and reflecting the consummation of the Acquisition, the related financings and the other transactions contemplated by the Loan Documents and the Acquisition Agreement, which pro forma balance sheet shall be in form and substance satisfactory to Administrative Agent, and (vii) projected financial statements consisting of consolidated balance sheets, statements of income and cash flow statements of Company and its Subsidiaries for Fiscal Years 2008 through and including 2013.

E. Opinions of Counsel to Loan Parties. Lenders shall have received originally executed copies of one or more favorable written opinions of Jones, Walker, Waechter, Poitevent, Carrère & Denègre, L.L.P., counsel for Loan Parties, in form and substance reasonably satisfactory to Administrative Agent and its counsel, dated as of the Restatement Date setting forth the matters as Administrative Agent acting on behalf of Lenders may reasonably request (this Agreement constituting a written request by Company to such counsel to deliver such opinions to Lenders).

F. Opinion of Counsel Delivered Under Acquisition Agreement. Company shall make commercially reasonable efforts to obtain a letter from Seller's counsel authorizing Lenders to rely upon the opinion of such counsel delivered to Company under the Acquisition Agreement to the same extent as though it were addressed to Lenders, together with a copy of such opinion.

G. Evidence of Insurance. Administrative Agent shall have received a certificate from Company's insurance broker or other evidence satisfactory to it that all insurance required to be maintained pursuant to subsection 6.4 is in full force and effect and that Administrative Agent on behalf of Lenders has been named as additional insured to the extent required under subsection 6.4.

H. Necessary Governmental Authorizations and Consents; Expiration of Waiting Periods, Etc. Company shall have obtained all Governmental Authorizations (other than Liquor Licenses and Permits) and all consents of other Persons, in each case that are necessary or reasonably advisable in connection with the Acquisition, the other transactions contemplated by the Loan Documents and the Acquisition Agreement and the continued operation of the Acquired Business in substantially the same manner as conducted prior to the Restatement Date and to the extent any Liquor License or Permit has not been obtained, Company shall have taken all actions necessary or reasonably advisable in order to continue to operate the Acquired Business in substantially the same manner as conducted prior to the Restatement Date. Each such Governmental Authorization and consent shall be in full force and effect, except in a case where the failure to obtain or maintain a Governmental Authorization or consent, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. All applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent or otherwise impose adverse conditions on the Acquisition, the other transactions contemplated by the Loan

Documents or the financing thereof. No action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time for any applicable Government Authority to take action to set aside its consent on its own motion shall have expired.

I. Security Interests in Collateral. Administrative Agent shall have received evidence satisfactory to it that Company and Subsidiary Guarantors shall have taken or caused to be taken all such actions, executed and delivered or caused to be executed and delivered all such agreements, documents and instruments, and made or caused to be made all such filings and recordings (other than the filing or recording of items described in clauses (ii) and (iii) below) that may be necessary or, in the opinion of Administrative Agent, desirable in order to create in favor of Administrative Agent, for the benefit of Lenders, a valid and (upon such filing and recording) perfected First Priority security interest in the Collateral. Such actions shall include the following:

(i) Stock Certificates and Instruments. Delivery to Administrative Agent of (a) certificates (which certificates shall be accompanied by irrevocable undated stock powers, duly endorsed in blank and otherwise satisfactory in form and substance to Administrative Agent) representing all Capital Stock pledged pursuant to the Pledge Agreement and (b) all promissory notes or other instruments (duly endorsed, where appropriate, in a manner satisfactory to Administrative Agent) evidencing any Collateral;

(ii) Lien Searches and UCC Termination Statements. Delivery to Administrative Agent of (a) the results of a recent search, by a Person satisfactory to Administrative Agent, of all effective UCC financing statements and fixture filings and all judgment and tax lien filings which may have been made with respect to any personal or mixed property of any Loan Party, together with copies of all such filings disclosed by such search, and (b) duly completed UCC termination statements, and authorization of the filing thereof from the applicable secured party, as may be necessary to terminate any effective UCC financing statements or fixture filings disclosed in such search (other than any such financing statements or fixture filings in respect of Liens permitted to remain outstanding pursuant to the terms of this Agreement); and

(iii) UCC Financing Statements. Delivery to Administrative Agent of duly completed UCC financing statements with respect to all Collateral of such Loan Party, for filing in all jurisdictions as may be necessary or, in the opinion of Administrative Agent, desirable to perfect the security interests created in such Collateral pursuant to the Collateral Documents.

J. Financial Calculations. Administrative Agent shall have received a certificate signed by Company's chief financial officer demonstrating in reasonable detail Consolidated EBITDA for the four consecutive Fiscal Quarter period ended December 30, 2007 of not less than \$59,000,000.

K. Compliance Certificate. Administrative Agent shall have received a Compliance Certificate demonstrating in reasonable detail, after giving pro forma effect to the transactions contemplated by the Loan Documents, compliance as of the Restatement Date with the restrictions contained in subsection 7.6B.

L. Completion of Proceedings. All corporate and other proceedings taken or to be taken in connection with the transactions contemplated hereby and all documents incidental thereto not previously found acceptable by Administrative Agent, acting on behalf of Lenders, and its counsel shall be satisfactory in form and substance to Administrative Agent and such counsel, and Administrative Agent and such counsel shall have received all such counterpart originals or certified copies of such documents as Administrative Agent may reasonably request.

M. Acquisition Agreement. Any material change in the structure used to consummate the Acquisition (other than with respect to any Liquor License or Permit) contemplated in the Acquisition Agreement shall be in form and substance reasonably satisfactory to Co-Lead Arrangers. Administrative Agent shall have received a fully executed or conformed copy of the Acquisition Agreement and any documents executed in connection therewith, and the Acquisition Agreement shall be in full force and effect and in compliance in all material respects with applicable laws and regulations and no provision of the Acquisition Agreement shall have been amended, supplemented, waived or otherwise modified in any material respect without the prior written consent of Co-Lead Arrangers.

N. Consummation of Acquisition.

(i) All conditions to the Acquisition set forth in Article VIII of the Acquisition Agreement shall have been satisfied or the fulfillment of any such conditions shall have been waived and, in the case of a waiver of any such conditions in any material respect, Co-Lead Arrangers shall have consented to such waiver;

(ii) concurrently with the making of the Loans on the Restatement Date, the Acquisition shall have become effective in accordance with the terms of the Acquisition Agreement;

(iii) the aggregate cash consideration paid to Seller in connection with the Acquisition shall not exceed \$96,000,000;

(iv) Transaction Costs shall not exceed \$3,000,000, and Administrative Agent shall have received evidence to its satisfaction to such effect; and

(v) Administrative Agent shall have received an Officer's Certificate of Company to the effect set forth in clauses (i)-(iv) above and stating that Company will proceed to consummate the Acquisition immediately upon the making of the Loans on the Restatement Date.

O. Solvency Assurances. On the Restatement Date, Administrative Agent and Lenders shall have received an Officer's Certificate of Company, signed by Company's chief financial officer, dated the Restatement Date, substantially in the form of Exhibit XI annexed hereto and with appropriate attachments, demonstrating that, after giving effect to the consummation of the transactions contemplated by the Loan Documents, Company and each Subsidiary Guarantor on a consolidated basis will be Solvent.

P. Patriot Act Certificate. Administrative Agent shall have received a certificate satisfactory to it, for benefit of itself and Lenders, provided by Company that sets forth information required by the Patriot Act including the identity of Company, the name and address of Company and other information that will allow Administrative Agent or any Lender, as applicable, to identify Company in accordance with the Patriot Act.

4.2 Conditions to All Loans

The obligation of each Lender to make its Loans on each Funding Date are subject to the following further conditions precedent:

A. Administrative Agent shall have received before that Funding Date, in accordance with the provisions of subsection 2.1B, a duly executed Notice of Borrowing, in each case signed by a duly authorized Officer of Company.

B. As of that Funding Date:

(i) The representations and warranties contained herein and in the other Loan Documents shall be true, correct and complete in all material respects on and as of that Funding Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true, correct and complete in all material respects on and as of such earlier date; provided, that, if a representation and warranty is qualified as to materiality, the materiality qualifier set forth above shall be disregarded with respect to such representation and warranty for purposes of this condition;

(ii) No event shall have occurred and be continuing or would result from the consummation of the borrowing contemplated by such Notice of Borrowing that would constitute an Event of Default or a Potential Event of Default;

(iii) Each Loan Party shall have performed in all material respects all agreements and satisfied all conditions which this Agreement provides shall be performed or satisfied by it on or before that Funding Date; and

(iv) No order, judgment or decree of any arbitrator or Government Authority shall purport to enjoin or restrain such Lender from making the Loans to be made by it on that Funding Date.

4.3 Conditions to Letters of Credit

The issuance of any Letter of Credit hereunder (whether or not Issuing Lender is obligated to issue such Letter of Credit) is subject to the following conditions precedent:

A. On or before the date of issuance of the initial Letter of Credit pursuant to this Agreement, the initial Loans shall have been made.

B. On or before the date of issuance of such Letter of Credit, Administrative Agent shall have received, in accordance with the provisions of subsection 3.1B(i), an originally executed Request for Issuance (or a facsimile copy thereof) in each case signed by a duly authorized Officer of Company, together with all other information specified in subsection 3.1B(i) and such other documents or information as Issuing Lender may reasonably require in connection with the issuance of such Letter of Credit.

C. On the date of issuance of such Letter of Credit, all conditions precedent described in subsection 4.2B shall be satisfied to the same extent as if the issuance of such Letter of Credit were the making of a Loan and the date of issuance of such Letter of Credit were a Funding Date.

Section 5. COMPANY'S REPRESENTATIONS AND WARRANTIES

In order to induce Lenders to enter into this Agreement and to make the Loans, to induce Issuing Lender to issue Letters of Credit and to induce Revolving Lenders to purchase participations therein, Company represents and warrants to each Lender:

5.1 **Organization, Powers, Qualification, Good Standing, Business and Subsidiaries**

A. Organization and Powers. Company is a corporation, partnership, trust or limited liability company duly organized, validly existing and in good standing under the laws of its jurisdiction of organization as specified in Schedule 5.1 annexed hereto. Company has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Acquisition Agreement and the Loan Documents to which it is a party and to carry out the transactions contemplated thereby.

B. Qualification and Good Standing. Company is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had and could not reasonably be expected to result in a Material Adverse Effect.

C. Conduct of Business. Company and its Subsidiaries are engaged only in the businesses permitted to be engaged in pursuant to subsection 7.10.

D. Subsidiaries. All of the Subsidiaries of Company as of the Restatement Date and their jurisdictions of organization are identified in Schedule 5.1 annexed hereto. The Capital Stock of each of the Subsidiaries of Company identified in Schedule 5.1 annexed hereto is duly authorized, validly issued, fully paid and nonassessable and none of such Capital Stock constitutes Margin Stock. Each of the Subsidiaries of Company identified in Schedule 5.1 annexed hereto is a corporation, partnership, trust or limited liability company duly organized, validly existing and in good standing under the laws of its respective jurisdiction of organization set forth therein, has all requisite power and authority to own and operate its properties and to

carry on its business as now conducted and as proposed to be conducted, and is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, in each case except where failure to be so qualified or in good standing or a lack of such power and authority has not had and could not reasonably be expected to result in a Material Adverse Effect. Schedule 5.1 annexed hereto correctly sets forth the ownership interest of Company and each of its Subsidiaries in each of the Subsidiaries of Company identified therein.

5.2 Authorization of Borrowing, etc.

A. Authorization of Borrowing. The execution, delivery and performance of the Loan Documents and the Acquisition Agreement have been duly authorized by all necessary action on the part of each Loan Party that is a party thereto.

B. No Conflict. The execution, delivery and performance by Loan Parties of the Loan Documents and the Acquisition Agreement to which they are parties and the consummation of the transactions contemplated by the Loan Documents and the Acquisition Agreement do not and will not (i) violate any provision of any law or any governmental rule or regulation applicable to Company or any of its Subsidiaries, the Organizational Documents of Company or any of its Subsidiaries or any order, judgment or decree of any court or other Government Authority binding on Company or any of its Subsidiaries, (ii) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of Company or any of its Subsidiaries, (iii) result in or require the creation or imposition of any Lien upon any of the properties or assets of Company or any of its Subsidiaries (other than any Liens created under any of the Loan Documents in favor of Administrative Agent on behalf of Lenders), or (iv) require any approval of stockholders or any approval or consent of any Person under any Contractual Obligation of Company or any of its Subsidiaries, except for Liquor Licenses and Permits and such other approvals or consents which will be obtained on or before the Restatement Date and disclosed in writing to Lenders.

C. Governmental Consents. The execution, delivery and performance by Loan Parties of the Loan Documents and the Acquisition Agreement to which they are parties and the consummation of the transactions contemplated by the Loan Documents and the Acquisition Agreement do not and will not require any Governmental Authorization, except for Liquor Licenses, Permits and any other Governmental Authorizations that have been obtained.

D. Binding Obligation. Each of the Loan Documents and the Acquisition Agreement has been duly executed and delivered by each Loan Party that is a party thereto and is the legally valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

5.3 Financial Condition

Company has heretofore delivered to Lenders, at Lenders' request, the financial statements and information described in subsection 4.1D. All such statements other than pro

forma financial statements were prepared in conformity with GAAP and fairly present, in all material respects, the financial position (on a consolidated basis) of the entities described in such financial statements as at the respective dates thereof and the results of operations and cash flows (on a consolidated basis) of the entities described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments. Except as set forth in Schedule 5.6 annexed hereto, neither Company nor any of its Subsidiaries has (and will not have following the funding of the Loans made on the Restatement Date) any Contingent Obligation, contingent liability or liability for taxes, long-term lease or unusual forward or long-term commitment (other than any obligations arising under the Loan Documents) that, as of the Restatement Date, is not reflected in the foregoing financial statements or the notes thereto and, as of any Funding Date subsequent to the Restatement Date, is not reflected in the most recent financial statements delivered to Lenders pursuant to subsection 6.1 or the notes thereto and that, in any such case, is material in relation to the business, operations, properties, assets, condition (financial or otherwise) or prospects of Company or any of its Subsidiaries.

5.4 No Material Adverse Change; No Restricted Junior Payments

Since December 31, 2006, no event or change has occurred that has resulted in, either in any case or in the aggregate, a Material Adverse Effect.

5.5 Title to Properties; Liens; Real Property; Intellectual Property

A. Title to Properties; Liens. Company and its Subsidiaries have (i) good, sufficient and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), or (iii) good title to (in the case of all other personal property), all of their respective properties and assets reflected in the financial statements referred to in subsection 5.3 or in the most recent financial statements delivered pursuant to subsection 6.1, in each case except for assets disposed of since the date of such financial statements in the ordinary course of business or as otherwise permitted under subsection 7.7. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens.

B. Intellectual Property. As of the Restatement Date, Company and its Subsidiaries own or have the right to use, all Intellectual Property used in the conduct of their business, except where the failure to own or have such right to use in the aggregate could not reasonably be expected to result in a Material Adverse Effect. No claim has been asserted and is pending by any Person challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does Company know of any valid basis for any such claim, except for such claims that in the aggregate could not reasonably be expected to result in a Material Adverse Effect. The use of such Intellectual Property by Company and its Subsidiaries does not infringe on the rights of any Person, except for such claims and infringements that, in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. All material federal, state and foreign registrations of and applications for Intellectual Property, and all material unregistered Intellectual Property, that are owned or licensed by Company or any of its Subsidiaries as of the Restatement Date are described on Schedule 5.5 annexed hereto.

5.6 Litigation; Adverse Facts

Except as set forth in Schedule 5.6 annexed hereto, there are no Proceedings (whether or not purportedly on behalf of Company or any of its Subsidiaries) at law or in equity, or before or by any court or other Government Authority (including any Environmental Claims) that are pending or, to the knowledge of Company, threatened against or affecting Company or any of its Subsidiaries or any property of Company or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. Neither Company nor any of its Subsidiaries (i) is in violation of any applicable laws (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, or (ii) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or other Government Authority that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

5.7 Payment of Taxes

Except to the extent permitted by subsection 6.3, all tax returns and reports of Company and its Subsidiaries required to be filed by any of them have been timely filed, and all taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges upon Company and its Subsidiaries and upon their respective properties, assets, income, businesses and franchises that are due and payable have been paid when due and payable, except where the failure to pay could not reasonably be expected to result in a Material Adverse Effect. Company knows of no proposed tax assessment against Company or any of its Subsidiaries that is not being actively contested by Company or such Subsidiary in good faith and by appropriate proceedings; provided that such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

5.8 Governmental Regulation

Neither Company nor any of its Subsidiaries is subject to regulation under the Federal Power Act, the Interstate Commerce Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable.

5.9 Securities Activities

A. Neither Company nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock.

B. Following application of the proceeds of each Loan, not more than 25% of the value of the assets (either of Company only or of Company and its Subsidiaries on a consolidated basis) subject to the provisions of subsection 7.2 or 7.7 or subject to any restriction contained in any agreement or instrument, between Company and any Lender or any Affiliate of any Lender, relating to Indebtedness and within the scope of subsection 8.2, will be Margin Stock.

5.10 Employee Benefit Plans

A. Company, each of its Subsidiaries and each of their respective ERISA Affiliates are in material compliance with all applicable provisions and requirements of ERISA and the regulations and published interpretations thereunder with respect to each Employee Benefit Plan, and have performed all their obligations under each Employee Benefit Plan. To the knowledge of Company and each of its Subsidiaries, each Employee Benefit Plan that is intended to qualify under Section 401(a) of the Internal Revenue Code is so qualified.

B. No ERISA Event has occurred or is reasonably expected to occur.

C. Except to the extent required under Section 4980B of the Internal Revenue Code, no Employee Benefit Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of Company, any of its Subsidiaries or any of their respective ERISA Affiliates.

D. Neither Company, any of its Subsidiaries nor any of their respective ERISA Affiliates sponsor or contribute to, nor have ever sponsored or contributed to, any Pension Plan or Multiemployer Plan.

5.11 Certain Fees

No broker's or finder's fee or commission will be payable with respect to this Agreement or any of the transactions contemplated hereby, and Company hereby indemnifies Lenders against, and agrees that it will hold Lenders harmless from, any claim, demand or liability for any such broker's or finder's fees alleged to have been incurred in connection herewith or therewith and any expenses (including reasonable fees, expenses and disbursements of counsel) arising in connection with any such claim, demand or liability.

5.12 Environmental Protection

Except as set forth in Schedule 5.12 annexed hereto:

(i) neither Company nor any of its Subsidiaries nor any of their respective Facilities or operations are subject to any outstanding written order, consent decree or settlement agreement with any Person relating to (a) any Environmental Law, (b) any Environmental Claim, or (c) any Hazardous Materials Activity that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(ii) neither Company nor any of its Subsidiaries has received any letter or request for information under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9604) or any comparable state law;

(iii) there are and, to Company's knowledge, have been no conditions, occurrences, or Hazardous Materials Activities that could reasonably be expected to form the basis of an Environmental Claim against Company or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(iv) neither Company nor any of its Subsidiaries nor, to Company's knowledge, any predecessor of Company or any of its Subsidiaries has filed any notice under any Environmental Law indicating past or present treatment of Hazardous Materials at any Facility, and none of Company's or any of its Subsidiaries' operations involves the generation, transportation, treatment, storage or disposal of hazardous waste, as defined under 40 C.F.R. Parts 260-270 or any state equivalent; and

(v) compliance with all current Environmental Laws would not, individually or in the aggregate, be reasonably expected to result in a Material Adverse Effect.

5.13 **Employee Matters**

There is no strike or work stoppage in existence or threatened involving Company or any of its Subsidiaries that could reasonably be expected to result in a Material Adverse Effect.

5.14 **Solvency**

Each Loan Party is and, upon the incurrence of any Obligations by such Loan Party on any date on which this representation is made, will be, Solvent.

5.15 **Matters Relating to Collateral**

A. Governmental Authorizations. No authorization, approval or other action by, and no notice to or filing with, any Government Authority is required for either (i) the pledge or grant by any Loan Party of the Liens purported to be created in favor of Administrative Agent pursuant to any of the Collateral Documents or (ii) the exercise by Administrative Agent of any rights or remedies in respect of any Collateral (whether specifically granted or created pursuant to any of the Collateral Documents or created or provided for by applicable law), except for filings or recordings contemplated by the Collateral Documents and except as may be required, in connection with the disposition of any Pledged Collateral, by laws generally affecting the offering and sale of securities.

B. Margin Regulations. The pledge of the Pledged Collateral pursuant to the Collateral Documents does not violate Regulation T, U or X of the Board of Governors of the Federal Reserve System.

C. Information Regarding Collateral. All information supplied to Administrative Agent by or on behalf of any Loan Party 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.

5.16 Disclosure

No representation or warranty of Company or any of its Subsidiaries contained in the Confidential Information Memorandum, in any Loan Document, the Acquisition Agreement or in any other document, certificate or written statement furnished to Lenders by or on behalf of Company or any of its Subsidiaries for use in connection with the transactions contemplated by this Agreement contains any untrue statement of a material fact or omits to state a material fact (known to Company, in the case of any document not furnished by it) necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. Any projections and pro forma financial information contained in such materials are based upon good faith estimates and assumptions believed by Company to be reasonable at the time made, it being recognized by Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results. There are no facts known (or which should upon the reasonable exercise of diligence be known) to Company that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect and that have not been disclosed herein or in such other documents, certificates and statements furnished to Lenders for use in connection with the transactions contemplated hereby.

5.17 UFOC

(i) Company and each of its Subsidiaries have delivered to Administrative Agent true and correct copies of the UFOC, which is currently being used in connection with the offers to sell and the sale of its and their franchises; and

(ii) the UFOC (a) complies in all material respects with all applicable laws, rules, regulations and orders of any Government Authority pertaining to offers to sell and the sale of franchises in jurisdictions in which they are being used, including in the United States, the Uniform Franchise Offering Circular Guidelines adopted by the North American Securities Administrators Association in April 25, 1993 and approved by the Federal Trade Commission on December 30, 1993 as an alternative to the Federal Trade Commission disclosure statement, and (b) does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; in all cases, except where any failure to comply or an untrue statement or omission could not reasonably be expected to result in a Material Adverse Effect.

5.18 Acquisition Agreement

A. Delivery of Acquisition Agreement. Company has delivered to Lenders complete and correct copies of the Acquisition Agreement and all exhibits and schedules thereto.

B. Warranties of Company. Subject to the qualifications set forth therein, each of the representations and warranties given by Company to Seller in the Acquisition Agreement is true and correct in all material respects as of the date hereof and will be true and correct in all material respects as of the Restatement Date.

C. Survival. Notwithstanding anything in the Acquisition Agreement to the contrary, the representations and warranties of Company set forth in subsection 5.18B shall, solely for purposes of this Agreement, survive the Restatement Date for the benefit of Lenders.

5.19 Compliance with OFAC Rules and Regulations.

Neither Company, nor any Subsidiary or, to Company's knowledge, any Affiliate of Company (i) is a Sanctioned Person, (ii) has any of its assets in Sanctioned Countries, or (iii) derives any of its operating income from investments in, or transactions with, Sanctioned Persons or Sanctioned Countries. No part of the proceeds of any Loan hereunder will be used directly or indirectly to fund any operations in, finance any investments or activities in or make any payments to, a Sanctioned Person or a Sanctioned Country.

5.20 Foreign Assets Control Regulations, Etc.

Neither Company nor any Subsidiary is an "enemy" or an "ally of the enemy" within the meaning of Section 2 of the Trading with the Enemy Act of the United States of America (50 U.S.C. App. §§ 1 et seq.), as amended. Neither Company nor any or Subsidiary is in violation of (a) the Trading with the Enemy Act, as amended, (b) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto or (c) the Patriot Act. No Company nor any Subsidiary (i) is a blocked person described in Section 1 of the Anti-Terrorism Order or (ii) to the best of Company's knowledge, engages in any dealings or transactions, or is otherwise associated, with any such blocked person.

Section 6. COMPANY'S AFFIRMATIVE COVENANTS

Company covenants and agrees that, so long as any of the Commitments hereunder shall remain in effect and until payment in full of all of the Loans and other Obligations (other than Unasserted Obligations) and the cancellation or expiration of all Letters of Credit, unless Requisite Lenders shall otherwise give prior written consent, Company shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 6.

6.1 Financial Statements and Other Reports

Company will maintain, and cause each of its Subsidiaries to maintain, a system of accounting established and administered in accordance with sound business practices to permit preparation of financial statements in conformity with GAAP. Company will deliver to Administrative Agent and Lenders:

(i) Events of Default, etc.: promptly upon any officer of Company obtaining knowledge (a) of any condition or event that constitutes an Event of Default or Potential Event of Default, or becoming aware that any Lender has given any notice (other than to Administrative Agent) or taken any other action with respect to a claimed Event of Default or Potential Event of Default, (b) that any Person has given any notice to Company or any of its Subsidiaries or taken any other action with respect to a claimed default or event or condition of the type referred to in subsection 8.2, (c) of any condition or event that would be required to be disclosed in a current report filed by Company with

the Securities and Exchange Commission on Form 8-K if Company were required to file such reports under the Exchange Act, or (d) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, an Officer's Certificate specifying the nature and period of existence of such condition, event or change, or specifying the notice given or action taken by any such Person and the nature of such claimed Event of Default, Potential Event of Default, default, event or condition, and what action Company has taken, is taking and proposes to take with respect thereto;

(ii) Quarterly Financials: as soon as available and in any event within 45 days after the end of each of the first three Fiscal Quarters of each Fiscal Year, (a) the consolidated balance sheet of Company and its Subsidiaries as at the end of such Fiscal Quarter and the related consolidated statements of income, stockholders' equity and cash flows of Company and its Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding Fiscal Quarters of the previous Fiscal Year, all in reasonable detail and certified by the chief financial officer of Company that they fairly present, in all material respects, the financial condition of Company and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments, and (b) a narrative report describing the operations of Company and its Subsidiaries in the form prepared for presentation to senior management for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter;

(iii) Year-End Financials: as soon as available and in any event within 90 days after the end of each Fiscal Year, (a) the consolidated balance sheet of Company and its Subsidiaries as at the end of such Fiscal Year and the related consolidated statements of income, stockholders' equity and cash flows of Company and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year, all in reasonable detail and certified by the chief financial officer of Company that they fairly present, in all material respects, the financial condition of Company and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, (b) a narrative report describing the operations of Company and its Subsidiaries in the form prepared for presentation to senior management for such Fiscal Year, and (c) in the case of such consolidated financial statements, a report thereon of KPMG, LLP or other independent certified public accountants of recognized national standing selected by Company and satisfactory to Administrative Agent, which report shall be unqualified, shall express no doubts, assumptions or qualifications concerning the ability of Company and its Subsidiaries to continue as a going concern, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Company and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards;

(iv) Compliance Certificates: together with each delivery of financial statements pursuant to subdivisions (ii) and (iii) above, (a) an Officer's Certificate of Company stating that the signers have reviewed the terms of this Agreement and have made, or caused to be made under their supervision, a review in reasonable detail of the transactions and condition of Company and its Subsidiaries during the accounting period covered by such financial statements and that such review has not disclosed the existence during or at the end of such accounting period, and that the signers do not have knowledge of the existence as at the date of such Officer's Certificate, of any condition or event that constitutes an Event of Default or Potential Event of Default, or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action Company has taken, is taking and proposes to take with respect thereto; and (b) in the case of financial statements delivered for a Fiscal Quarter or a Fiscal Year, a Compliance Certificate demonstrating in reasonable detail compliance during and at the end of the applicable accounting periods with the restrictions contained in subsection 7.6, in each case to the extent compliance with such restrictions is required to be tested at the end of the applicable accounting period;

(v) Reconciliation Statements: if, as a result of any change in accounting principles and policies from those used in the preparation of the audited financial statements referred to in subsection 5.3, the consolidated financial statements of Company and its Subsidiaries delivered pursuant to subdivisions (ii), (iii) or (xii) of this subsection 6.1 will differ in any material respect from the consolidated financial statements that would have been delivered pursuant to such subdivisions had no such change in accounting principles and policies been made, then (a) together with the first delivery of financial statements pursuant to subdivision (ii), (iii) or (xii) of this subsection 6.1 following such change, consolidated financial statements of Company and its Subsidiaries for (y) the current Fiscal Year to the effective date of such change and (z) the two full Fiscal Years immediately preceding the Fiscal Year in which such change is made, in each case prepared on a pro forma basis as if such change had been in effect during such periods, and (b) together with each delivery of financial statements pursuant to subdivision (ii), (iii) or (xii) of this subsection 6.1 following such change, if required pursuant to subsection 1.2, a written statement of the chief accounting officer or chief financial officer of Company setting forth the differences (including any differences that would affect any calculations relating to the financial covenants set forth in subsection 7.6) which would have resulted if such financial statements had been prepared without giving effect to such change;

(vi) Accountants' Certification: together with each delivery of consolidated financial statements pursuant to subdivision (iii) above, a written statement by the independent certified public accountants giving the report thereon (a) stating that their audit examination has included a review of the terms of this Agreement and the other Loan Documents as they relate to accounting matters, (b) stating whether, in connection with their audit examination, any condition or event that constitutes an Event of Default or Potential Event of Default has come to their attention and, if such a condition or event has come to their attention, specifying the nature and period of existence thereof; provided that such accountants shall not be liable by reason of any failure to obtain knowledge of any such Event of Default or Potential Event of Default that would not be

disclosed in the course of their audit examination, and (c) stating that based on their audit examination nothing has come to their attention that causes them to believe either or both that the information contained in the certificates delivered therewith pursuant to subdivision (iv) above is not correct or that the matters set forth in the Compliance Certificates delivered therewith pursuant to clause (b) of subdivision (iv) above for the applicable Fiscal Year are not stated in accordance with the terms of this Agreement;

(vii) Accountants' Reports: promptly upon receipt thereof (unless restricted by applicable professional standards), copies of all reports submitted to Company by independent certified public accountants in connection with each annual, interim or special audit of the financial statements of Company and its Subsidiaries made by such accountants, including any comment letter submitted by such accountants to management in connection with their annual audit;

(viii) Securities and Exchange Commission Filings and Press Releases: promptly upon their becoming available, copies of (a) all financial statements, reports, notices and proxy statements sent or made available generally by Company to its security holders or by any Subsidiary of Company to its security holders other than Company or another Subsidiary of Company, (b) all regular and periodic reports and all registration statements (other than on Form S-8 or a similar form) and prospectuses, if any, filed by Company or any of its Subsidiaries with any securities exchange or with the Securities and Exchange Commission or any governmental or private regulatory authority, and (c) all press releases and other statements made available generally by Company or any of its Subsidiaries to the public concerning material developments in the business of Company or any of its Subsidiaries;

(ix) Litigation or Other Proceedings: promptly upon, and in any event no later than five days after, any Officer of Company obtaining knowledge of (1) the institution of, or receipt in writing of notice of a non-frivolous threat of, any Proceeding against or affecting Company or any of its Subsidiaries or any property of Company or any of its Subsidiaries not previously disclosed in writing by Company to Lenders or (2) any material development in any Proceeding that, in any case:

(x) has a reasonable possibility of (A) giving rise to liability of, or claims against or affecting, Company or any of its Subsidiaries equal to or greater than \$2,500,000 or (B) otherwise giving rise to a Material Adverse Effect; or

(y) seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby;

written notice thereof together with such other information as may be reasonably available to Company to enable Lenders and their counsel to evaluate such matters;

(x) ERISA Events: promptly upon becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event, a written notice specifying the nature

thereof, what action Company, any of its Subsidiaries or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto;

(xi) ERISA Notices: with reasonable promptness, copies of (a) all notices received by Company, any of its Subsidiaries or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event; and (b) copies of such other documents or governmental reports or filings relating to any Employee Benefit Plan as Administrative Agent shall reasonably request;

(xii) Financial Plans: as soon as practicable and in any event no later than 30 days after the beginning of each Fiscal Year, a consolidated plan and financial forecast for such Fiscal Year, including (a) a forecasted consolidated balance sheet and forecasted consolidated statements of income and cash flows of Company and its Subsidiaries for such Fiscal Year, together with an explanation of the assumptions on which such forecasts are based, (b) forecasted consolidated statements of income and cash flows of Company and its Subsidiaries for each Fiscal Quarter of such Fiscal Year, together with an explanation of the assumptions on which such forecasts are based, and (c) such other financial information as Administrative Agent may reasonably request;

(xiii) Insurance: as soon as practicable after any material change in insurance coverage maintained by Company and its Subsidiaries notice thereof to Administrative Agent specifying the changes and reasons therefor;

(xiv) Governing Body: with reasonable promptness, written notice of any change in the Governing Body of Company;

(xv) New Subsidiaries: promptly, and in any event within 30 days after any Person becoming a Subsidiary of Company, a written notice setting forth with respect to such Person (a) the date on which such Person became a Subsidiary of Company and (b) all of the data required to be set forth in Schedule 5.1 annexed hereto with respect to all Subsidiaries of Company; and

(xvi) Other Information: with reasonable promptness, such other information and data with respect to Company or any of its Subsidiaries as from time to time may be reasonably requested by any Lender.

Financial statements and other documents required to be delivered pursuant to this subsection 6.1 (to the extent any such financial statements or other documents are included in reports or other materials otherwise filed with the Securities and Exchange Commission) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which (1) Company posts such financial statements or other documents, or provides a link thereto, on Company's website on the Internet or (2) such financial statements or other documents are posted on Company's behalf on an Internet or intranet website, if any, to which each Lender and Administrative Agent have access (whether a commercial, third-party website or whether sponsored by Administrative Agent); provided that (x) Company shall deliver paper

copies of such financial statements and other documents to Administrative Agent or any Lender that requests Company to deliver such paper copies until a written request to cease delivering paper copies is given by Administrative Agent or such Lender, as the case may be, and (y) Company shall notify Administrative Agent of the posting of any such financial statements and other documents and provide to Administrative Agent electronic versions thereof.

6.2 Existence, etc.

Except as permitted under subsection 7.7, Company will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect its existence in the jurisdiction of organization specified on Schedule 5.1 and all rights and franchises material to its business; provided, however that neither Company nor any of its Subsidiaries shall be required to preserve any such right or franchise if the Governing Body of Company or such Subsidiary shall determine that the preservation thereof is no longer desirable in the conduct of the business of Company or such Subsidiary, as the case may be, and that the loss thereof is not disadvantageous in any material respect to Company, such Subsidiary or Lenders.

6.3 Payment of Taxes and Claims; Tax

A. Company will, and will cause each of its Subsidiaries to, pay all taxes, assessments and other governmental charges imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided that no such tax, assessment, charge or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (i) such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made therefor and (ii) in the case of a tax, assessment, charge or claim which has or may become a Lien against any of the Collateral, such proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such charge or claim.

B. Company will not, nor will it permit any of its Subsidiaries to, file or consent to the filing of any consolidated income tax return with any Person (other than Company or any of its Subsidiaries).

6.4 Maintenance of Properties; Insurance; Application of Net Insurance/ Condemnation Proceeds

A. Maintenance of Properties. Company will, and will cause each of its Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all material properties used or useful in the business of Company and its Subsidiaries (including all Intellectual Property) and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof.

B. Insurance. Company will maintain or cause to be maintained, with financially sound and reputable insurers, such public liability insurance, third party property damage insurance, business interruption insurance and casualty insurance with respect to

liabilities, losses or damage in respect of the assets, properties and businesses of Company and its Subsidiaries as may customarily be carried or maintained under similar circumstances by corporations of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for corporations similarly situated in the industry. Each such policy of insurance shall name Administrative Agent for the benefit of Lenders as an additional insured thereunder as its interests may appear. In connection with the renewal of each such policy of insurance, Company promptly shall deliver to Administrative Agent a certificate from Company's insurance broker or other evidence satisfactory to Administrative Agent that Administrative Agent on behalf of Lenders has been named as additional insured.

C. Application of Net Insurance/Condemnation Proceeds.

(i) Business Interruption Insurance. Upon receipt by Company or any of its Subsidiaries of any business interruption insurance proceeds constituting Net Insurance/Condemnation Proceeds, (a) so long as no Event of Default or Potential Event of Default shall have occurred and be continuing, Company or such Subsidiary may retain and apply such Net Insurance/Condemnation Proceeds for working capital purposes, and (b) if an Event of Default or Potential Event of Default shall have occurred and be continuing, Company shall apply an amount equal to such Net Insurance/Condemnation Proceeds to prepay the Loans (but without any reduction in the Revolving Loan Commitment Amount) as provided in subsections 2.4A and 2.4C.

(ii) Net Insurance/Condemnation Proceeds. Upon receipt by Company or any of its Subsidiaries of any amount in excess of \$10,000,000 in the aggregate of Net Insurance/Condemnation Proceeds other than from business interruption insurance (such excess amount being referred to herein as "**Excess Net Insurance/Condemnation Proceeds**"), Company shall apply an amount equal to such Excess Net Insurance/Condemnation Proceeds to prepay the Loans (and/or the Revolving Loan Commitment Amount shall be reduced) as provided in subsection 2.4A; provided that so long as no Event of Default or Potential Event of Default shall have occurred and be continuing, Company may, or may cause one or more of its Subsidiaries to, promptly and diligently apply such Excess Net Insurance/Condemnation Proceeds to pay or reimburse or establish reserves for the costs of repairing, restoring or replacing the assets in respect of which such Excess Net Insurance/Condemnation Proceeds were received or acquiring or repairing other fixed or capital assets useful and necessary in its business, to the extent not so applied, to prepay the Loans (and/or the Revolving Loan Commitments shall be reduced) as provided in subsection 2.4A; provided, however, if (a) Company, within 180 days of receipt of such Excess Net Insurance/Condemnation Proceeds, has not used all or any portion of such Excess Net Insurance/Condemnation Proceeds as provided above and has not delivered to Administrative Agent evidence reasonably satisfactory to Administrative Agent that Company has entered into one or more binding contractual commitments to so use such Excess Net Insurance/Condemnation Proceeds, (b) Company, within 360 days after the date of receipt of such Excess Net Insurance/Condemnation Proceeds, has not used all or any portion of such Excess Net Insurance/Condemnation Proceeds or (c) an Event of Default or Potential Event of

Default shall have occurred and be continuing, Company shall apply an amount equal to such Excess Net Insurance/Condemnation Proceeds to prepay the Loans (and/or the Revolving Loan Commitments shall be reduced) as provided in subsection 2.4A.

6.5 Inspection Rights; Lender Meeting

A. Inspection Rights. Company shall, and shall cause each of its Subsidiaries to, permit any authorized representatives designated by Administrative Agent (which representative may be accompanied by any authorized representative designated by any Lender) to visit and inspect any of the properties of Company or of any of its Subsidiaries, to inspect, copy and take extracts from its and their financial and accounting records, and to discuss its and their affairs, finances and accounts with its and their officers and independent public accountants (provided that Company may, if it so chooses, be present at or participate in any such discussion), all upon reasonable notice and at such reasonable times during normal business hours and as often as may reasonably be requested or at any time or from time to time following the occurrence and during the continuation of an Event of Default.

B. Lender Meeting. Company will, upon the request of Administrative Agent or Requisite Lenders, participate in a meeting of Administrative Agent and Lenders once during each Fiscal Year to be held at Company's principal offices (or at such other location as may be agreed to by Company and Administrative Agent) at such time as may be agreed to by Company and Administrative Agent.

6.6 Compliance with Laws, etc.

Company shall comply, and shall cause each of its Subsidiaries and all other Persons on or occupying any Facilities to comply, with the requirements of all applicable laws, rules, regulations and orders of any Government Authority (including all Environmental Laws), noncompliance with which could reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect.

6.7 Environmental Matters

A. Environmental Disclosure. Company will deliver to Administrative Agent and Lenders:

(i) Notice of Certain Releases, Remedial Actions, Etc. Promptly upon, and in any event no later than five Business Days after, the occurrence thereof, written notice describing in reasonable detail (a) any Release required to be reported to any Government Authority under any applicable Environmental Laws that could reasonably be expected to result in a Material Adverse Effect, (b) any remedial action taken by Company or any other Person in response to (1) any Hazardous Materials Activities the existence of which could reasonably be expected to result in one or more Environmental Claims that could reasonably be expected to result in a Material Adverse Effect or (2) any Environmental Claims that could reasonably be expected to result in a Material Adverse Effect, and (c) Company's discovery of any occurrence or condition on any real property adjoining or in the vicinity of any Facility that could reasonably be expected to cause such Facility or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws.

(ii) Written Communications Regarding Environmental Claims, Releases, Etc. As soon as practicable following the sending or receipt thereof by Company or any of its Subsidiaries, a copy of any and all written communications with respect to (a) any Environmental Claims that could reasonably be expected to result in a Material Adverse Effect and (b) any request for information from any Government Authority that suggests such Government Authority is investigating whether Company or any of its Subsidiaries may be potentially responsible for any Hazardous Materials Activity that could reasonably be expected to result in a Material Adverse Effect.

(iii) Notice of Certain Proposed Actions Having Environmental Impact. Prompt written notice describing in reasonable detail any proposed acquisition of stock, assets, or property by Company or any of its Subsidiaries that could reasonably be expected to (1) expose Company or any of its Subsidiaries to, or result in, Environmental Claims that could reasonably be expected to result in a Material Adverse Effect or (2) affect the ability of Company or any of its Subsidiaries to maintain in full force and effect all Governmental Authorizations required under any Environmental Laws for their respective operations.

B. Company's Actions Regarding Hazardous Materials Activities, Environmental Claims and Violations of Environmental Laws.

(i) Remedial Actions Relating to Hazardous Materials Activities. Company shall, in compliance with all applicable Environmental Laws, promptly undertake, and shall cause each of its Subsidiaries promptly to undertake, any and all investigations, studies, sampling, testing, abatement, cleanup, removal, remediation or other response actions necessary to remove, remediate, clean up or abate any Hazardous Materials Activity on, under or about any Facility that is in violation of any Environmental Laws or that presents a reasonable risk of giving rise to an Environmental Claim.

(ii) Actions with Respect to Environmental Claims and Violations of Environmental Laws. Company shall promptly take, and shall cause each of its Subsidiaries promptly to take, any and all actions necessary to (a) cure any violation of applicable Environmental Laws by Company or its Subsidiaries and (b) make an appropriate response to any Environmental Claim against Company or any of its Subsidiaries.

6.8 Execution of Subsidiary Guaranty and Collateral Documents After the Restatement Date

A. Execution of Subsidiary Guaranty and Collateral Documents. In the event that any Person becomes a Subsidiary of Company after the Restatement Date, Company will promptly notify Administrative Agent of that fact and cause such Subsidiary to execute and deliver to Administrative Agent a counterpart of the Subsidiary Guaranty and Pledge Agreement and to take all such further actions and execute all such further documents and instruments

(including actions, documents and instruments comparable to those described in subsection 4.1I) as may be necessary or, in the opinion of Administrative Agent, reasonably desirable to create in favor of Administrative Agent, for the benefit of Lenders, a valid and perfected First Priority Lien on all of the Capital Stock of the Subsidiaries of such Subsidiary. In addition, Company shall, or shall cause the Subsidiary that owns the Capital Stock of such Person to, execute and deliver to Administrative Agent a counterpart or supplement to the Pledge Agreement, as appropriate, and to deliver to Administrative Agent all certificates representing such Capital Stock of such Person (accompanied by irrevocable undated stock powers, duly endorsed in blank).

B. Foreign Subsidiaries. Notwithstanding the provisions of subsection 6.8A, (i) no Foreign Subsidiary shall be required to execute and deliver the Subsidiary Guaranty or the Pledge Agreement, and (ii) no Capital Stock of a Foreign Subsidiary shall be required to be pledged pursuant to the provisions of the Pledge Agreement, in each case to the extent material adverse Tax consequences to Company could reasonably be expected to result therefrom, it being understood and agreed that a pledge by Company or a Subsidiary Guarantor of 66% of the Capital Stock of a Foreign Subsidiary will not cause material adverse Tax consequences to Company.

C. Subsidiary Organizational Documents, Legal Opinions, Etc. Company shall deliver to Administrative Agent, together with such Loan Documents, (i) certified copies of such Subsidiary's Organizational Documents, together with, if such Subsidiary is a Domestic Subsidiary, a good standing certificate from the Secretary of State of the jurisdiction of its organization and, to the extent generally available, a certificate or other evidence of good standing as to payment of any applicable franchise or similar taxes from the appropriate taxing authority of such jurisdiction, each to be dated a recent date prior to their delivery to Administrative Agent, (ii) a certificate executed by the secretary or similar officer of such Subsidiary as to (a) the fact that the attached resolutions of the Governing Body of such Subsidiary approving and authorizing the execution, delivery and performance of such Loan Documents are in full force and effect and have not been modified or amended and (b) the incumbency and signatures of the officers of such Subsidiary executing such Loan Documents, and (iii) to the extent requested by Administrative Agent, a favorable opinion of counsel to such Subsidiary, in form and substance satisfactory to Administrative Agent and its counsel, as to (a) the due organization and good standing of such Subsidiary, (b) the due authorization, execution and delivery by such Subsidiary of such Loan Documents, (c) the enforceability of such Loan Documents against such Subsidiary and (d) such other matters (including matters relating to the creation and perfection of Liens in any Collateral pursuant to such Loan Documents) as Administrative Agent may reasonably request, all of the foregoing to be satisfactory in form and substance to Administrative Agent and its counsel.

Section 7. COMPANY'S NEGATIVE COVENANTS

Company covenants and agrees that, so long as any of the Commitments hereunder shall remain in effect and until payment in full of all of the Loans and other Obligations (other than Unasserted Obligations) and the cancellation or expiration of all Letters of Credit, unless Requisite Lenders shall otherwise give prior written consent, Company shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 7.

7.1 Indebtedness

Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness, except:

(i) Company may become and remain liable with respect to the Obligations;

(ii) Company and its Subsidiaries may become and remain liable with respect to Contingent Obligations permitted by subsection 7.4 and, upon any matured obligations actually arising pursuant thereto, the Indebtedness corresponding to the Contingent Obligations so extinguished;

(iii) Company and its Subsidiaries may become and remain liable with respect to Indebtedness in respect of Capital Leases in an aggregate amount, together with the aggregate principal amount of any Indebtedness outstanding pursuant to subsection 7.1(vi), not to exceed \$5,000,000 at any one time;

(iv) Company may become and remain liable with respect to Indebtedness to any wholly-owned Domestic Subsidiary, and any wholly-owned Domestic Subsidiary may become and remain liable with respect to Indebtedness to Company or any Domestic Subsidiary; provided that (a) a security interest in all such intercompany Indebtedness shall have been granted to Administrative Agent for the benefit of Lenders and (b) if such intercompany Indebtedness is evidenced by a promissory note or other instrument, such promissory note or instrument shall have been pledged to Administrative Agent pursuant to the Security Agreement;

(v) Company and its Subsidiaries, as applicable, may remain liable with respect to Indebtedness described in Schedule 7.1 annexed hereto and any extensions, renewals and refinancings of such Indebtedness; provided that the principal amount of such Indebtedness (including guaranteed Indebtedness) being extended, renewed or refinanced is not increased; and

(vi) Company and its Subsidiaries may become and remain liable with respect to other Indebtedness, including Indebtedness secured by Liens permitted by subsection 7.2A(ii), in an aggregate principal amount, together with the aggregate amount of any Indebtedness outstanding pursuant to subsection 7.1(iii), not to exceed \$5,000,000 at any time outstanding.

7.2 Liens and Related Matters

A. Prohibition on Liens. Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of Company or any of its Subsidiaries, whether now owned or hereafter acquired, or any income or profits therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income or profits under the UCC or under any similar recording or notice statute, except:

(i) Permitted Encumbrances;

(ii) Liens to secure the payment of all or any part of the purchase price of an asset upon the acquisition of such asset by Company or a Subsidiary or to secure any Indebtedness permitted by subsection 7.1(vi) incurred by Company or a Subsidiary at the time of or within ninety days after the acquisition of such asset, which Indebtedness is incurred for the purpose of financing all or any part of the purchase price thereof; provided, however, that the Lien shall apply only to the asset so acquired and proceeds thereof;

(iii) Liens described in Schedule 7.2 annexed hereto or incurred in connection with the extension, renewal or refinancing of the Indebtedness secured by such Liens; provided that any extension, renewal or replacement Lien shall be limited to the property encumbered by such Lien and the principal amount of the Indebtedness being extended, renewed or refinanced is not increased; and

(iv) other Liens on equipment, Cash or Cash Equivalents with an aggregate fair market value, when combined with the aggregate fair market value of assets subject to Liens permitted by subsections 7.2A(ii) and 7.2A(iii) and clause (viii) of the definition of "Permitted Encumbrances", not to exceed \$5,000,000 at any time outstanding.

B. No Further Negative Pledges. Neither Company nor any of its Subsidiaries shall enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired, other than (i) this Agreement and the other Loan Documents, (ii) an agreement prohibiting only the creation of Liens securing Subordinated Indebtedness, (iii) any agreement evidencing Indebtedness secured by Liens permitted by subsections 7.2A(ii), 7.2A(iii) and 7.2A(iv), as to the assets securing such Indebtedness, and (iv) any agreement evidencing an asset sale, as to the assets being sold.

C. No Restrictions on Subsidiary Distributions to Company or Other Subsidiaries. Company will not, and will not permit any of its Subsidiaries to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any such Subsidiary to (i) pay dividends or make any other distributions on any of such Subsidiary's Capital Stock owned by Company or any other Subsidiary of Company, (ii) repay or prepay any Indebtedness owed by such Subsidiary to Company or any other Subsidiary of Company, (iii) make loans or advances to Company or any other Subsidiary of Company, or (iv) transfer any of its property or assets to Company or any other Subsidiary of Company, except (a) as provided in this Agreement and (b), as to transfers of assets, as may be provided in an agreement with respect to a sale of such assets.

7.3 **Investments; Acquisitions**

Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, make or own any Investment in any Person, including any Joint Venture, or acquire, by purchase or otherwise, all or substantially all the business, property or fixed assets of, or Capital Stock of any Person, or any division or line of business of any Person except:

(i) Company and its Subsidiaries may make and own Investments in Cash and Cash Equivalents;

(ii) Company and its wholly-owned Domestic Subsidiaries may make and own additional equity Investments in their respective wholly-owned Domestic Subsidiaries;

(iii) Company and its Domestic Subsidiaries may make intercompany loans to the extent permitted under subsection 7.1(iv);

(iv) Company and its Subsidiaries may make Consolidated Capital Expenditures (including acquisitions of Ruth's Chris restaurants from Ruth's Chris franchisees) if no Default or Potential Event of Default exists at the time of or would result after giving effect to any such Consolidated Capital Expenditure; provided that in the case of any acquisition of a Ruth's Chris restaurant (a) such restaurant is wholly-owned by Company or a Subsidiary of Company upon consummation of such acquisition and (b) after giving effect to any such acquisition and the related adjustments (on a reasonable and prudent pro forma basis in accordance with the standards set forth under Article 11 of Regulation S-X under the Securities Act) as determined in writing by the chief executive officer or chief financial officer of Company, as if such acquisition had occurred on the first day of the most recent twelve-month period for which Company's results of operations are available, Company would be in compliance with the covenant set forth in subsection 7.6A and the Consolidated Leverage Ratio would be at least 0.25 below the Consolidated Leverage Ratio required as of such date pursuant to subsection 7.6B, and Company has delivered to Administrative Agent an Officer's Certificate so stating and attaching financial information and calculations in form and substance reasonably satisfactory to Administrative Agent required to confirm such statement;

(v) Company and its Subsidiaries may continue to own the Investments owned by them and described in Schedule 7.3 annexed hereto; and

(vi) Company and its Subsidiaries may make acquisitions of all the Capital Stock of a Person or substantially all of the assets of a Person provided that (a) such Person is in the same or similar line of business as Company and its Subsidiaries, (b) no Default or Potential Event of Default exists at the time of or would result after giving effect to such acquisition, (c) the sole consideration for such acquisition consists of common stock of Company, (d) the prior effective written consent to or approval of such acquisition from the board of directors or equivalent governing body of such Person is obtained and (e) after giving effect to any such acquisition and the related adjustments (on a reasonable and prudent pro forma basis in accordance with the standards set forth under Article 11 of Regulation S-X under the Securities Act) as determined in writing by the chief executive officer or chief financial officer of Company, as if such acquisition had occurred on the first day of the most recent twelve-month period for which

Company's results of operations are available, Company would be in compliance with the covenant set forth in subsection 7.6A and the Consolidated Leverage Ratio would be at least 0.25 below the Consolidated Leverage Ratio required as of such date pursuant to subsection 7.6B, and Company has delivered to Administrative Agent an Officer's Certificate so stating and attaching financial information and calculations in form and substance reasonably satisfactory to Administrative Agent required to confirm such statement.

7.4 **Contingent Obligations**

Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create or become or remain liable with respect to any Contingent Obligation, except:

- (i) Company may become and remain liable with respect to Contingent Obligations in respect of Letters of Credit;
- (ii) Company may become and remain liable with respect to Contingent Obligations under Hedge Agreements; provided that such Hedge Agreements are not entered into for speculative purposes and are treated as Hedge Agreements under GAAP;
- (iii) Company and its Subsidiaries, as applicable, may remain liable with respect to Contingent Obligations described in Schedule 7.4 annexed hereto;
- (iv) Company and its Subsidiaries may become and remain liable in respect of Contingent Obligations with respect to which the primary obligor is a Subsidiary Guarantor or Company and the primary obligation is permitted by this Agreement; and
- (v) Company and its Subsidiaries may become and remain liable in respect of Contingent Obligations arising in connection with any settlement entered into with the landlord under the lease of the Manhattan UN Facility in an aggregate amount not to exceed \$4,000,000, provided that not more than \$2,000,000 of such Contingent Obligations could become payable on or prior to the Revolving Loan Commitment Termination Date.

7.5 **Restricted Junior Payments**

Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, declare, order, pay, make or set apart any sum for any Restricted Junior Payment; provided that (i) Company may make Restricted Junior Payments so long as no Event of Default shall have occurred and be continuing or shall be caused thereby in an aggregate amount not to exceed \$3,000,000 in any Fiscal Year (a) for purposes of paying dividends on Company's common stock or (b) to the extent necessary to permit Company to repurchase shares of Capital Stock of Company (or options or warrants to acquire Capital Stock of Company) from former officers, directors or employees of Company or any of its Subsidiaries following the death, disability or termination of employment of such officers, directors or employees, and (ii) Company may repurchase shares of its common stock in an aggregate amount not to exceed \$50,000,000 so long as, after giving effect to any such repurchase, (a) the Consolidated Leverage Ratio, calculated on a pro forma basis, does not exceed 3.00 to 1.00, and (b) the Revolving Loan Commitment Amount exceeds the Total Utilization of Revolving Loan Commitments by at least \$15,000,000.

7.6 Financial Covenants

A. Minimum Adjusted Fixed Charge Coverage Ratio. Company shall not permit the ratio of (i) Consolidated EBITDAR minus (a) taxes based on income of Company and its Subsidiaries on a consolidated basis paid in Cash and (b) Consolidated Maintenance Capital Expenditures to (ii) Consolidated Fixed Charges, in each case, for any four consecutive Fiscal Quarter period to be less than 1.50:1.00.

B. Maximum Consolidated Leverage Ratio. Company shall not permit the Consolidated Leverage Ratio as at any date to exceed 3.50:1.00.

7.7 Restriction on Fundamental Changes; Asset Sales

Company shall not, and shall not permit any of its Subsidiaries to, alter the corporate, capital or legal structure of Company or any of its Subsidiaries, or enter into any transaction of merger or consolidation, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, lease or sub-lease (as lessor or sublessor), transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, property or assets (including its notes or receivables and Capital Stock of a Subsidiary, whether newly issued or outstanding), whether now owned or hereafter acquired, except:

(i) any Subsidiary of Company may be merged with or into Company or any wholly-owned Subsidiary Guarantor, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to Company or any wholly-owned Subsidiary Guarantor; provided that, in the case of such a merger, Company or such wholly-owned Subsidiary Guarantor shall be the continuing or surviving Person;

(ii) Company and its Subsidiaries may sell or otherwise dispose of assets in transactions that do not constitute Asset Sales; provided that the consideration received for such assets shall be in an amount at least equal to the fair market value thereof;

(iii) Company and its Subsidiaries may dispose of obsolete, worn out or surplus property in the ordinary course of business;

(iv) in order to resolve disputes that occur in the ordinary course of business, Company and its Subsidiaries may discount or otherwise compromise for less than the face value thereof, notes or accounts receivable;

(v) Company and its Subsidiaries may sell or dispose of shares of Capital Stock of any of its Subsidiaries in order to qualify members of the Governing Body of the Subsidiary if required by applicable law;

(vi) Company and its Subsidiaries may (a) make dispositions permitted pursuant to subsection 7.9, (b) sell or otherwise transfer the Metarie Offices and (c) make other Asset Sales of assets having a fair market value not to exceed \$15,000,000 in the aggregate, in each case provided that (1) the consideration received for such assets shall be in the form of Cash or Cash Equivalents in an amount at least equal to the fair market value thereof, (2) the proceeds of such dispositions or other Asset Sales shall be applied as required by subsection 2.4A(iii)(a), and (3) after giving effect to each such Asset Sale, on a reasonable and prudent pro forma basis (in accordance with the standards set forth in Article 11 of Regulation S-X under the Securities Act) as determined by the chief executive officer or chief financial officer of Company, as if such Asset Sale had occurred on the first day of the most recent twelve-month period for which Company's results of operations are available, Company would be in compliance with the covenants set forth in subsection 7.6, and Company has delivered to Administrative Agent an Officer's Certificate so stating and attaching financial information and calculations in form and substance satisfactory to Administrative Agent required to confirm such statement, provided that no such Officer's Certificate or related information and calculations shall be required to be delivered to Administrative Agent in the case of any Asset Sale of a restaurant made in connection with a relocation of such restaurant within the same metropolitan area if the new relocated restaurant is open at the time of such Asset Sale; and

(vii) any Person may be merged with or into any Subsidiary if the acquisition of the Capital Stock of such Person by such Subsidiary would have been permitted pursuant to subsection 7.3; provided that if a Subsidiary is not the surviving or continuing Person, the surviving Person becomes a Subsidiary and complies with the provisions of subsection 6.8 and (b) no Potential Event of Default or Event of Default shall have occurred or be continuing after giving effect thereto.

7.8 Transactions with Shareholders and Affiliates

Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any holder of 5% or more of any class of equity Securities of Company or with any Affiliate of Company or of any such holder, on terms that are less favorable to Company or that Subsidiary, as the case may be, than those that might be obtained at the time from Persons who are not such a holder or Affiliate; provided that the foregoing restriction shall not apply to (i) any transaction between Company and any of its wholly-owned Subsidiaries or between any of its wholly-owned Subsidiaries or (ii) reasonable and customary fees paid to members of the Governing Bodies of Company and its Subsidiaries.

7.9 Sales and Lease-Backs

Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease, whether an Operating Lease or a Capital Lease, of any property (whether real, personal or mixed), whether now owned or hereafter acquired, (i) that Company or any of its Subsidiaries has sold or transferred or is to sell or transfer to any other Person (other than Company or any of

its Subsidiaries) or (ii) that Company or any of its Subsidiaries intends to use for substantially the same purpose as any other property that has been or is to be sold or transferred by Company or any of its Subsidiaries to any Person (other than Company or any of its Subsidiaries) in connection with such lease; provided, however, that Company and its Subsidiaries may engage in such sale and lease-back transactions if all of the following conditions are satisfied: (a) any asset sold or otherwise transferred and leased back in such transaction by Company and its Subsidiaries was acquired in connection with the development of a Ruth's Chris restaurant, (b) such sale and lease-back transaction is consummated no later than one year after the opening of such Ruth's Chris restaurant, (c) in the case of such transactions involving the sale or other transfer of assets owned by Company or any of its Subsidiaries on or prior to the Restatement Date, the proceeds of such sale or transfer are promptly applied as required by subsection 2.4A(iii)(a), and (d) in the case of such transactions involving the sale or other transfer of assets not owned by Company or any of its Subsidiaries on or prior to the Restatement Date, the proceeds of such sale or transfer are promptly applied by Company to prepay outstanding Revolving Loans (without a reduction in the Revolving Loan Commitment Amount) to the full extent thereof in accordance with subsection 2.4A(i).

7.10 Conduct of Business

From and after the Restatement Date, Company shall not, and shall not permit any of its Subsidiaries to, engage in any business other than (i) the businesses engaged in by Company and its Subsidiaries on the Restatement Date and similar or related businesses and (ii) such other lines of business as may be consented to by Requisite Lenders.

7.11 Amendments of Organizational Documents

Neither Company nor any of its Subsidiaries will amend any Organizational Document after the Restatement Date in a manner that is adverse to the rights of Lenders under the Loan Documents without in each case obtaining the prior written consent of Requisite Lenders to such amendment.

7.12 Fiscal Year

Company shall not change its Fiscal Year-end from the last Sunday in December of each calendar year.

7.13 UFOC

Company shall not fail to maintain the UFOC in compliance with the representation and warranty contained subsection 5.17.

Section 8. EVENTS OF DEFAULT

If any of the following conditions or events ("**Events of Default**") shall occur:

8.1 Failure to Make Payments When Due

Failure by Company to pay any installment of principal of any Loan when due, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment or otherwise; failure by Company to pay when due any amount payable to Issuing Lender in reimbursement of any drawing under a Letter of Credit; or failure by Company to pay any interest on any Loan or any fee or any other amount due under this Agreement within five Business Days after the date due; or

8.2 Default in Other Agreements

(i) Failure of Company or any of its Subsidiaries to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in subsection 8.1) or Contingent Obligations in an individual principal amount of \$2,500,000 or more or with an aggregate principal amount of \$2,500,000 or more, in each case beyond the end of any grace period provided therefor; or

(ii) breach or default by Company or any of its Subsidiaries with respect to any other material term of (a) one or more items of Indebtedness or Contingent Obligations in the individual or aggregate principal amounts referred to in clause (i) above or (b) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness or Contingent Obligation(s), if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness or Contingent Obligation(s) (or a trustee on behalf of such holder or holders) to cause, that Indebtedness or Contingent Obligation(s) to become or be declared due and payable prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be (upon the giving or receiving of notice, lapse of time, both, or otherwise); or

8.3 Breach of Certain Covenants

Failure of Company to perform or comply with any term or condition contained in subsection 2.5, 6.1(i) or 6.2 or Section 7 of this Agreement; or

8.4 Breach of Warranty

Any representation, warranty, certification or other statement made by Company or any of its Subsidiaries in any Loan Document or in any statement or certificate at any time given by Company or any of its Subsidiaries in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect on the date as of which made; or

8.5 Other Defaults Under Loan Documents

Any Loan Party shall default in the performance of or compliance with any term contained in this Agreement or any of the other Loan Documents, other than any such term referred to in any other subsection of this Section 8, and such default shall not have been remedied or waived within thirty days after the earlier of (i) an Officer of Company or such Loan Party becoming aware of such default or (ii) receipt by Company and such Loan Party of notice from Administrative Agent or any Lender of such default; or

8.6 Involuntary Bankruptcy; Appointment of Receiver, etc.

(i) A court having jurisdiction in the premises shall enter a decree or order for relief in respect of Company or any of its Subsidiaries in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or

(ii) an involuntary case shall be commenced against Company or any of its Subsidiaries under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Company or any of its Subsidiaries, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of Company or any of its Subsidiaries for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of Company or any of its Subsidiaries, and any such event described in this clause (ii) shall continue for 60 days unless dismissed, bonded or discharged; or

8.7 Voluntary Bankruptcy; Appointment of Receiver, etc.

(i) Company or any of its Subsidiaries shall have an order for relief entered with respect to it or commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or Company or any of its Subsidiaries shall make any assignment for the benefit of creditors; or

(ii) Company or any of its Subsidiaries shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the Governing Body of Company or any of its Subsidiaries (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to in clause (i) above or this clause (ii); or

8.8 Judgments and Attachments

Any money judgment, writ or warrant of attachment or similar process involving (i) in any individual case an amount in excess of \$2,500,000 or (ii) in the aggregate at any time an amount in excess of \$2,500,000, in either case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage, shall be entered or filed against Company or any of its Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of 60 days (or in any event later than five days prior to the date of any proposed sale thereunder); or

8.9 Nonmonetary Judgments

Any nonmonetary judgment, writ or warrant of attachment or similar process that could reasonably be expected to result in a Material Adverse Effect shall be entered or filed against Company or any of its Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of 60 days (or in any event later than five days prior to the date of any proposed sale thereunder); or

8.10 Dissolution

Any order, judgment or decree shall be entered against Company or any of its Subsidiaries decreeing the dissolution or split up of Company or that Subsidiary and such order shall remain undischarged or unstayed for a period in excess of 30 days; or

8.11 Employee Benefit Plans

There shall occur one or more ERISA Events that individually or in the aggregate result in or might reasonably be expected to result in liability of Company, any of its Subsidiaries or any of their respective ERISA Affiliates in excess of \$2,500,000 during the term of this Agreement; or Company, any of its Subsidiaries or any of their respective Affiliates shall adopt or become obligated to contribute to any Pension Plan or Multiemployer Plan; or

8.12 Change in Control

A Change in Control shall have occurred; or

8.13 Invalidity of Loan Documents; Failure of Security; Repudiation of Obligations

At any time after the execution and delivery thereof, (i) any Loan Document or any provision thereof, for any reason other than the satisfaction in full of all Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void, (ii) Administrative Agent shall not have or shall cease to have a valid and perfected First Priority Lien in any Collateral purported to be covered by the Collateral Documents, in each case for any reason other than the failure of Administrative Agent or any Lender to take any action within its control, or (iii) any Loan Party shall contest the validity or enforceability of any Loan Document or any provision thereof in writing or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any Loan Document or any provision thereof to which it is a party; or

8.14 Failure to Consummate Acquisition

The Acquisition shall not be consummated in accordance with this Agreement and the Acquisition Agreement concurrently with the making of the Loans on the Restatement Date, or the Acquisition shall be unwound, reversed or otherwise rescinded in whole or in substantial part for any reason:

THEN (i) upon the occurrence of any Event of Default described in subsection 8.6 or 8.7, each of (a) the unpaid principal amount of and accrued interest on the Loans, (b) an amount equal to the maximum amount that may at any time be drawn under all Letters of Credit then outstanding (whether or not any beneficiary under any such Letter of Credit shall have presented, or shall be entitled at such time to present, the drafts or other documents or certificates required to draw under such Letter of Credit), and (c) all other Obligations shall automatically become immediately due and payable, without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by Company, and the obligation of each Lender to make any Loan, the obligation of Administrative Agent to issue any Letter of Credit and the right of Issuing Lender to issue any Letter of Credit hereunder shall thereupon terminate, and (ii) upon the occurrence and during the continuation of any other Event of Default, Administrative Agent shall, upon the written request or with the written consent of Requisite Lenders, by written notice to Company, declare all or any portion of the amounts described in clauses (a) through (c) above to be, and the same shall forthwith become, immediately due and payable, and the obligation of each Lender to make any Loan, the obligation of Issuing Lender to issue any Letter of Credit hereunder shall thereupon terminate; provided that the foregoing shall not affect in any way the obligations of Revolving Lenders under subsection 3.3C(i) or the obligations of Revolving Lenders to purchase assignments of any unpaid Swing Line Loans as provided in subsection 2.1A(ii).

Any amounts described in clause (b) above, when received by Administrative Agent, shall be held by Administrative Agent pursuant to the terms of the Pledge Agreement and shall be applied as therein provided.

Section 9. ADMINISTRATIVE AGENT

9.1 Appointment

A. Appointment of Administrative Agent. Wells Fargo is hereby appointed Administrative Agent hereunder and under the other Loan Documents. Each Lender hereby authorizes Administrative Agent to act as its agent in accordance with the terms of this Agreement and the other Loan Documents. Wells Fargo agrees to act upon the express conditions contained in this Agreement and the other Loan Documents, as applicable. The provisions of this Section 9 are solely for the benefit of Agents and Lenders and no Loan Party shall have rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties under this Agreement, Administrative Agent (other than as provided in subsection 2.1D) shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Company or any other Loan Party.

Administrative Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact appointed by Administrative Agent in its sole discretion. Administrative Agent and any such sub-agent may perform any and all of the duties of Administrative Agent and exercise the rights and powers of

Administrative Agent by or through their respective Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person's Affiliates ("**Related Parties**"). The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of Administrative Agent and any such sub-agent.

B. Appointment of Supplemental Collateral Agents. It is the purpose of this Agreement and the other Loan Documents that there shall be no violation of any law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. It is recognized that in case of litigation under this Agreement or any of the other Loan Documents, and in particular in case of the enforcement of any of the Loan Documents, or in case Administrative Agent deems that by reason of any present or future law of any jurisdiction it may not exercise any of the rights, powers or remedies granted herein or in any of the other Loan Documents or take any other action which may be desirable or necessary in connection therewith, it may be necessary that Administrative Agent appoint an additional individual or institution as a separate trustee, co-trustee, collateral agent or collateral co-agent (any such additional individual or institution being referred to herein individually as a "**Supplemental Collateral Agent**" and collectively as "**Supplemental Collateral Agents**").

In the event that Administrative Agent appoints a Supplemental Collateral Agent with respect to any Collateral, (i) each and every right, power, privilege or duty expressed or intended by this Agreement or any of the other Loan Documents to be exercised by or vested in or conveyed to Administrative Agent with respect to such Collateral shall be exercisable by and vest in such Supplemental Collateral Agent to the extent, and only to the extent, necessary to enable such Supplemental Collateral Agent to exercise such rights, powers and privileges with respect to such Collateral and to perform such duties with respect to such Collateral, and every covenant and obligation contained in the Loan Documents and necessary to the exercise or performance thereof by such Supplemental Collateral Agent shall run to and be enforceable by either Administrative Agent or such Supplemental Collateral Agent, and (ii) the provisions of this Section 9 and of subsections 10.2 and 10.3 that refer to Administrative Agent shall inure to the benefit of such Supplemental Collateral Agent and all references therein to Administrative Agent shall be deemed to be references to Administrative Agent and/or such Supplemental Collateral Agent, as the context may require.

Should any instrument in writing from Company or any other Loan Party be required by any Supplemental Collateral Agent so appointed by Administrative Agent for more fully and certainly vesting in and confirming to him or it such rights, powers, privileges and duties, Company shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments promptly upon request by Administrative Agent. In case any Supplemental Collateral Agent, or a successor thereto, shall die, become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Collateral Agent, to the extent permitted by law, shall vest in and be exercised by Administrative Agent until the appointment of a new Supplemental Collateral Agent.

C. Control. Each Lender and Administrative Agent hereby appoint each other Lender as agent for the purpose of perfecting Administrative Agent's security interest in assets that, in accordance with the UCC, can be perfected by possession or control.

9.2 Powers and Duties; General Immunity.

A. Powers; Duties Specified. Each Lender irrevocably authorizes Administrative Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Loan Documents as are specifically delegated or granted to Administrative Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Administrative Agent shall have only those duties and responsibilities that are expressly specified in this Agreement and the other Loan Documents. Administrative Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. Administrative Agent shall not have, by reason of this Agreement or any of the other Loan Documents, a fiduciary relationship in respect of any Lender or Company; and nothing in this Agreement or any of the other Loan Documents, expressed or implied, is intended to or shall be so construed as to impose upon Administrative Agent any obligations in respect of this Agreement or any of the other Loan Documents except as expressly set forth herein or therein.

B. No Responsibility for Certain Matters. No Agent shall be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectibility or sufficiency of this Agreement or any other Loan Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by such Agent to Lenders or by or on behalf of Company to such Agent or any Lender in connection with the Loan Documents and the transactions contemplated thereby or for the financial condition or business affairs of Company or any other Person liable for the payment of any Obligations, nor shall such Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Loan Documents or as to the use of the proceeds of the Loans or the use of the Letters of Credit or as to the existence or possible existence of any Event of Default or Potential Event of Default. Anything contained in this Agreement to the contrary notwithstanding, Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Loans or the Letter of Credit Usage or the component amounts thereof.

C. Exculpatory Provisions. No Agent or any of its officers, directors, employees or agents shall be liable to Lenders for any action taken or omitted by such Agent under or in connection with any of the Loan Documents except to the extent caused by such Agent's gross negligence or willful misconduct. An Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection with this Agreement or any of the other Loan Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until such Agent shall have received instructions in respect thereof from Requisite Lenders (or such other Lenders as may be required to give such instructions under subsection 10.6) and, upon receipt of such instructions from Requisite Lenders (or such other Lenders, as the case may be), such Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions; provided that no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable law. Without prejudice to the generality of the

foregoing, (i) each Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication (including any electronic message, Internet or intranet website posting or other distribution), instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Company and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against an Agent as a result of such Agent acting or (where so instructed) refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of Requisite Lenders (or such other Lenders as may be required to give such instructions under subsection 10.6).

D. Agents Entitled to Act as Lender. The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, an Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Loans and the Letters of Credit, an Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as though it were not performing the duties and functions delegated to it hereunder, and the term “Lender” or “Lenders” or any similar term shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity. An Agent and its Affiliates may accept deposits from, lend money to, acquire equity interests in and generally engage in any kind of commercial banking, investment banking, trust, financial advisory or other business with Company or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from Company for services in connection with this Agreement and otherwise without having to account for the same to Lenders.

9.3 Independent Investigation by Lenders; No Responsibility For Appraisal of Creditworthiness

Each Lender agrees that it has made its own independent investigation of the financial condition and affairs of Company and its Subsidiaries in connection with the making of the Loans and the issuance of Letters of Credit hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of Company and its Subsidiaries. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy or the completeness of any information provided to Lenders.

9.4 Right to Indemnity

Each Lender, in proportion to its Pro Rata Share, severally agrees to indemnify each Agent and its officers, directors, employees, agents, attorneys, professional advisors and Affiliates to the extent that any such Person shall not have been reimbursed by Company, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements and fees and disbursements of any financial advisor engaged by Agents) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against an Agent or such other Person in exercising

the powers, rights and remedies of an Agent or performing duties of an Agent hereunder or under the other Loan Documents or otherwise in its capacity as Agent in any way relating to or arising out of this Agreement or the other Loan Documents; provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of an Agent resulting solely from such Agent's gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction. If any indemnity furnished to an Agent or any other such Person for any purpose shall, in the opinion of such Agent, be insufficient or become impaired, such Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished.

9.5 Resignation of Agents; Successor Administrative Agent and Swing Line Lender

A. Resignation; Successor Administrative Agent. Any Agent may resign at any time by giving 30 days' prior written notice thereof to Lenders and Company. Upon any such notice of resignation by Administrative Agent, Requisite Lenders shall have the right, upon five Business Days' notice to Company, to appoint a successor Administrative Agent. If no such successor shall have been so appointed by Requisite Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, the retiring Administrative Agent may, on behalf of Lenders, appoint a successor Administrative Agent. If Administrative Agent shall notify Lenders and Company that no Person has accepted such appointment as successor Administrative Agent, such resignation shall nonetheless become effective in accordance with Administrative Agent's notice and (i) the retiring Administrative Agent shall be discharged from its duties and obligations under the Loan Documents, except that any Collateral held by Administrative Agent will continue to be held by it until a Person shall have accepted the appointment of successor Administrative Agent, and (ii) all payments, communications and determinations provided to be made by, to or through Administrative Agent shall instead be made by, to or through each Lender directly, until such time as Requisite Lenders appoint a successor Administrative Agent in accordance with this subsection 9.5A. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent and the retiring Administrative Agent shall be discharged from its duties and obligations under this Agreement (if not already discharged as set forth above). After any retiring Agent's resignation hereunder, the provisions of this Section 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was an Agent under this Agreement.

B. Successor Swing Line Lender. Any resignation of Administrative Agent pursuant to subsection 9.5A shall also constitute the resignation of Wells Fargo or its successor as Swing Line Lender, and any successor Administrative Agent appointed pursuant to subsection 9.5A shall, upon its acceptance of such appointment, become the successor Swing Line Lender for all purposes hereunder. In such event (i) Company shall prepay any outstanding Swing Line Loans made by the retiring Administrative Agent in its capacity as Swing Line Lender, (ii) upon such prepayment, the retiring Administrative Agent and Swing Line Lender shall surrender any Swing Line Note held by it to Company for cancellation, and (iii) if so requested by the successor Administrative Agent and Swing Line Lender in accordance with subsection 2.1E,

Company shall issue a Swing Line Note to the successor Administrative Agent and Swing Line Lender substantially in the form of Exhibit VI annexed hereto, in the amount of the Swing Line Loan Commitment then in effect and with other appropriate insertions.

9.6 Collateral Documents and Subsidiary Guaranty

Each Lender (which term shall include, for purposes of this subsection 9.6, any Swap Counterparty) hereby further authorizes (and, with respect to actions taken prior to the Restatement Date, ratifies the actions taken by) Administrative Agent, on behalf of and for the benefit of Lenders, to enter into each Collateral Document as secured party and to be the agent for and representative of Lenders under the Subsidiary Guaranty, and each Lender agrees to be bound by the terms of each Collateral Document and the Subsidiary Guaranty; provided that Administrative Agent shall not (i) enter into or consent to any material amendment, modification, termination or waiver of any provision contained in any Collateral Document or the Subsidiary Guaranty or (ii) release any Collateral (except as otherwise expressly permitted or required pursuant to the terms of this Agreement or the applicable Collateral Document), in each case without the prior consent of Requisite Lenders (or, if required pursuant to subsection 10.6, all Lenders); provided further, however, that, without further written consent or authorization from Lenders, Administrative Agent may execute any documents or instruments necessary to (a) release any Lien encumbering any item of Collateral that is the subject of a sale or other disposition of assets permitted by this Agreement or to which Requisite Lenders have otherwise consented, (b) release any Subsidiary Guarantor from the Subsidiary Guaranty if all of the Capital Stock of such Subsidiary Guarantor is sold to any Person (other than an Affiliate of Company) pursuant to a sale or other disposition permitted hereunder or to which Requisite Lenders have otherwise consented or (c) subordinate the Liens of Administrative Agent, on behalf of Lenders, to any Liens permitted by subsection 7.2A (except for Liens permitted by clause (iv) thereof); provided that, in the case of a sale of such item of Collateral or stock referred to in subdivision (a) or (b), the requirements of subsection 10.14 are satisfied. Anything contained in any of the Loan Documents to the contrary notwithstanding, Company, Administrative Agent and each Lender hereby agree that (1) no Lender shall have any right individually to realize upon any of the Collateral under any Collateral Document or to enforce the Subsidiary Guaranty, it being understood and agreed that all powers, rights and remedies under the Collateral Documents and the Subsidiary Guaranty may be exercised solely by Administrative Agent for the benefit of Lenders in accordance with the terms of the Collateral Documents and the Subsidiary Guaranty, and (2) in the event of a foreclosure by Administrative Agent on any of the Collateral pursuant to a public or private sale, Administrative Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and Administrative Agent, as agent for and representative of Lenders (but not any Lender or Lenders in its or their respective individual capacities unless Requisite Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Administrative Agent at such sale.

Without derogating from any other authority granted to Administrative Agent herein or in the Collateral Documents or any other document relating thereto, each Lender hereby specifically (i) authorizes Administrative Agent to enter into pledge agreements, security

agreements or any other agreements or instruments pursuant to this subsection 9.6 with respect to the Capital Stock of any existing and future Foreign Subsidiaries, which agreements or instruments may be governed by the laws of each of the jurisdictions of formation of such Foreign Subsidiaries, as agent on behalf of each Lender, with the effect that Lenders each become a secured party thereunder and (ii) appoints Administrative Agent as its attorney-in-fact granting it the powers to execute each such agreement or instrument and any registrations of the security interest thereby created, in each case in its name and on its behalf, with the effect that each Lender becomes a secured party thereunder. With respect to each such pledge agreement, Administrative Agent has the power to sub-delegate to third parties its powers as attorney-in-fact of each Lender.

9.7 Duties of Other Agents

To the extent that any Lender is identified in this Agreement as a co-agent, documentation agent or syndication agent, such Lender shall not have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders as such. Without limiting the foregoing, none of such Lenders shall have or be deemed to have a fiduciary relationship with any Lender.

9.8 Administrative Agent May File Proofs of Claim

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to Company or any of the Subsidiaries of Company, Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on Company) shall be entitled and empowered, by intervention in such proceeding or otherwise

(i) to file and prove a claim for the whole amount of principal and interest owing and unpaid in respect of the Loans and any other Obligations that are owing and unpaid and to file such other papers or documents as may be necessary or advisable in order to have the claims of Lenders and Agents (including any claim for the reasonable compensation, expenses, disbursements and advances of Lenders and Agents and their agents and counsel and all other amounts due Lenders and Agents under subsections 2.3 and 10.2) allowed in such judicial proceeding, and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to Lenders, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Agents and their agents and counsel, and any other amounts due Agents under subsections 2.3 and 10.2.

Nothing herein contained shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization,

arrangement, adjustment or composition affecting the Obligations or the rights of any Lenders or to authorize Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

Section 10. MISCELLANEOUS

10.1 Successors and Assigns; Assignments and Participations in Loans and Letters of Credit

A. General. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Lenders (it being understood that Lenders' rights of assignment are subject to the further provisions of this subsection 10.1). Neither Company's rights or obligations hereunder nor any interest therein may be assigned or delegated by Company without the prior written consent of all Lenders (and any attempted assignment or transfer by Company without such consent shall be null and void). No sale, assignment or transfer or participation of any Letter of Credit or any participation therein may be made separately from a sale, assignment, transfer or participation of a corresponding interest in the Revolving Loan Commitment and the Revolving Loans of the Revolving Lender effecting such sale, assignment, transfer or participation. Anything contained herein to the contrary notwithstanding, except as provided in subsection 2.1A(ii) and subsection 10.5, the Swing Line Loan Commitment and the Swing Line Loans of Swing Line Lender may not be sold, assigned or transferred as described below to any Person other than a successor Administrative Agent and Swing Line Lender to the extent contemplated by subsection 9.5. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Affiliates of each of Administrative Agent and Lenders and Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

B. Assignments.

(i) Amounts and Terms of Assignments. Any Lender may assign to one or more Eligible Assignees all or any portion of its rights and obligations under this Agreement; provided that (a), except (1) in the case of an assignment of the entire remaining amount of the assigning Lender's rights and obligations under this Agreement or (2) in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund of a Lender, the aggregate amount of the Revolving Loan Exposure of the assigning Lender and the assignee subject to each such assignment shall not be less than \$5,000,000 (aggregating concurrent assignments to two or more Affiliated Funds for purposes of determining such minimum amount), unless each of Administrative Agent and, so long as no Potential Event of Default or Event of Default has occurred and is continuing, Company otherwise consents (each such consent not to be unreasonably withheld or delayed), (b) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned, and any assignment of all or any portion of a Revolving Loan Commitment, Revolving Loan or Letter of Credit participation shall be made only as an assignment of the same proportionate part of the

assigning Lender's Revolving Loan Commitment, Revolving Loans and Letter of Credit participations, (c) the parties to each assignment shall execute and deliver to Administrative Agent an Assignment Agreement, together with a processing and recordation fee of \$3,500 (unless the assignee is an Affiliate or an Approved Fund of the assignor, in which case no fee shall be required); provided that only one such fee shall be required in connection with concurrent assignments to two or more Affiliated Funds, and the Eligible Assignee, if it shall not be a Lender, shall deliver to Administrative Agent information reasonably requested by Administrative Agent, including such forms, certificates or other evidence, if any, with respect to United States federal income tax withholding matters as the assignee under such Assignment Agreement may be required to deliver to Administrative Agent pursuant to subsection 2.7B(iv) and (d), except in the case of an assignment to another Lender, an Affiliate of a Lender or an Approved Fund of a Lender, Administrative Agent and, if no Potential Event of Default or Event of Default has occurred and is continuing, Company, shall have consented thereto (which consent shall not be unreasonably withheld).

Upon such execution, delivery and consent, from and after the effective date specified in such Assignment Agreement, (y) the assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder and (z) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, relinquish its rights (other than any rights which survive the termination of this Agreement under subsection 10.9B) and be released from its obligations under this Agreement (and, in the case of an Assignment Agreement covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto; provided that, anything contained in any of the Loan Documents to the contrary notwithstanding, if such Lender is Issuing Lender such Lender shall continue to act as Issuing Lender until it resigns or is removed as provided in Subsection 10.21). The assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its Notes, if any, to Administrative Agent for cancellation, and thereupon new Notes shall, if so requested by the assignee and/or the assigning Lender in accordance with subsection 2.1E, be issued to the assignee and/or to the assigning Lender, substantially in the form of Exhibit V annexed hereto, with appropriate insertions, to reflect the amounts of the new Commitments and/or outstanding Revolving Loans of the assignee and/or the assigning Lender. Other than as provided in subsection 2.1A(ii) and subsection 10.5, any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection 10.1B shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection 10.1C.

(ii) Acceptance by Administrative Agent; Recordation in Register. Upon its receipt of an Assignment Agreement executed by an assigning Lender and an assignee representing that it is an Eligible Assignee, together with the processing and recordation fee referred to in subsection 10.1B(i) and any forms, certificates or other evidence with respect to United States federal income tax withholding matters that such assignee may

be required to deliver to Administrative Agent pursuant to subsection 2.7B(iv), Administrative Agent shall, if Administrative Agent and Company have consented to the assignment evidenced thereby (in each case to the extent such consent is required pursuant to subsection 10.1B(i)), (a) accept such Assignment Agreement by executing a counterpart thereof as provided therein (which acceptance shall evidence any required consent of Administrative Agent to such assignment), (b) record the information contained therein in the Register, and (c) give prompt notice thereof to Company. Administrative Agent shall maintain a copy of each Assignment Agreement delivered to and accepted by it as provided in this subsection 10.1B(ii).

(iii) **Deemed Consent by Company.** If the consent of Company to an assignment or to an Eligible Assignee is required hereunder (including a consent to an assignment which does not meet the minimum assignment thresholds specified in subsection 10.1B(i)), Company shall be deemed to have given its consent five Business Days after the date notice thereof has been delivered by the assigning Lender (through Administrative Agent) unless such consent is expressly refused by Company prior to such fifth Business Day.

C. Participations. Any Lender may, without the consent of, or notice to, Company or Administrative Agent, sell participations to one or more Persons (other than a natural Person or Company or any of its Affiliates) in all or a portion of such Lender's rights and/or obligations under this Agreement; provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) Company, Administrative Agent and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver directly affecting (i) the extension of the scheduled final maturity date of any Loan allocated to such participation or (ii) a reduction of the principal amount of or the rate of interest payable on any Loan allocated to such participation. Subject to the further provisions of this subsection 10.1C, Company agrees that each Participant shall be entitled to the benefits of subsections 2.6D and 2.7 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection 10.1B. To the extent permitted by law, each Participant also shall be entitled to the benefits of subsection 10.4 as though it were a Lender, provided such Participant agrees to be subject to subsection 10.5 as though it were a Lender. A Participant shall not be entitled to receive any greater payment under subsections 2.6D and 2.7 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant unless the sale of the participation to such Participant is made with Company's prior written consent. No Participant shall be entitled to the benefits of subsection 2.7 unless Company is notified of the participation sold to such Participant and such Participant agrees, for the benefit of Company, to comply with subsection 2.7B(iv) as though it were a Lender.

D. Pledges and Assignments. Any Lender may at any time pledge or assign a security interest in all or any portion of its Loans, and the other Obligations owed to such

Lender, to secure obligations of such Lender, including any pledge or assignment to secure obligations to any Federal Reserve Bank; provided that (i) no Lender shall be relieved of any of its obligations hereunder as a result of any such assignment or pledge and (ii) in no event shall any assignee or pledgee be considered to be a "Lender" or be entitled to require the assigning Lender to take or omit to take any action hereunder.

E. Information. Each Lender may furnish any information concerning Company and its Subsidiaries in the possession of that Lender from time to time to assignees and participants (including prospective assignees and participants), subject to subsection 10.19.

F. Agreements of Lenders. Each Lender listed on the signature pages hereof hereby agrees, and each Lender that becomes a party hereto pursuant to an Assignment Agreement shall be deemed to agree, (i) that it is an Eligible Assignee described in clause (ii) of the definition thereof; (ii) that it has experience and expertise in the making of or purchasing loans such as the Loans; and (iii) that it will make or purchase Loans for its own account in the ordinary course of its business and without a view to distribution of such Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this subsection 10.1, the disposition of such Loans or any interests therein shall at all times remain within its exclusive control).

10.2 Expenses

Whether or not the transactions contemplated hereby shall be consummated, Company agrees to pay promptly (i) all reasonable costs and expenses of negotiation, preparation and execution of the Loan Documents and any consents, amendments, waivers or other modifications thereto; (ii) all costs and expenses of furnishing all opinions by counsel for Company (including any opinions requested by Agents or Lenders as to any legal matters arising hereunder) and of Company's performance of and compliance with all agreements and conditions on its part to be performed or complied with under this Agreement and the other Loan Documents including with respect to confirming compliance with environmental, insurance and solvency requirements; (iii) all reasonable fees, expenses and disbursements of counsel to Administrative Agent (including allocated costs of internal counsel) in connection with the negotiation, preparation, execution and administration of the Loan Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by Company; (iv) all costs and expenses of creating and perfecting Liens in favor of Administrative Agent on behalf of Lenders pursuant to any Collateral Document, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, and reasonable fees, expenses and disbursements of counsel to Administrative Agent and of counsel providing any opinions that Administrative Agent or Requisite Lenders may request in respect of the Collateral Documents or the Liens created pursuant thereto; (v) all costs and expenses incurred by Administrative Agent in connection with the custody or preservation of any of the Collateral; (vi) all other reasonable costs and expenses incurred by Administrative Agent in connection with the syndication of the Commitments; (vii) all costs and expenses, including reasonable attorneys' fees (including allocated costs of internal counsel) and fees, costs and expenses of accountants, advisors and consultants, incurred by Administrative Agent and its counsel relating to efforts to (a) evaluate or assess any Loan Party, its business or financial condition and (b) protect, evaluate, assess or dispose of any of the Collateral; and (viii) all costs and expenses, including reasonable

attorneys' fees (including allocated costs of internal counsel), fees, costs and expenses of accountants, advisors and consultants and costs of settlement, incurred by Administrative Agent and Lenders in enforcing any Obligations of or in collecting any payments due from any Loan Party hereunder or under the other Loan Documents (including in connection with the sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Loan Documents) or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or pursuant to any insolvency or bankruptcy proceedings.

10.3 **Indemnity**

In addition to the payment of expenses pursuant to subsection 10.2, whether or not the transactions contemplated hereby shall be consummated, Company agrees to defend (subject to Indemnitees' selection of counsel), indemnify, pay and hold harmless Agents and Lenders (including Issuing Lenders), the Affiliates of Agents and Lenders and their respective officers, directors, trustees, employees, agents and advisors (collectively called the "**Indemnitees**"), from and against any and all Indemnified Liabilities (as hereinafter defined); provided that Company shall not have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise solely from the gross negligence or willful misconduct of that Indemnitee as determined by a final judgment of a court of competent jurisdiction.

As used herein, "**Indemnified Liabilities**" means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, actions, judgments, suits, claims (including Environmental Claims), costs (including the costs of any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to remove, remediate, clean up or abate any Hazardous Materials Activity), expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for Indemnitees (including allocated costs of internal counsel) in connection with any investigative, administrative or judicial proceeding commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of (i) this Agreement, the other Loan Documents or the Acquisition Agreement or the transactions contemplated hereby or thereby (including Lenders' agreement to make the Loans hereunder or the use or intended use of the proceeds thereof or the issuance of Letters of Credit hereunder or the use or intended use of any thereof, the failure of Issuing Lender to honor a drawing under a Letter of Credit as a result of any act or omission, whether rightful or wrongful, of any present or future de jure or de facto Government Authority, or any enforcement of any of the Loan Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Subsidiary Guaranty)), (ii) the statements contained in the commitment letter delivered by any Lender to Company with respect thereto, or (iii) any Environmental Claim or any Hazardous Materials Activity relating to or arising from, directly or indirectly, any past or present activity, operation, land ownership, or practice of Company or any of its Subsidiaries.

To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this subsection 10.3 may be unenforceable in whole or in part because they are violative of any law or public policy, Company shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them.

10.4 Set-Off

In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence and during the continuation of any Event of Default each of Lenders and their Affiliates is hereby authorized by Company at any time or from time to time, without notice to Company or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, time or demand, provisional or final, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Indebtedness at any time held or owing by that Lender or any Affiliate of that Lender to or for the credit or the account of Company and each other Loan Party against and on account of the Obligations of Company or any other Loan Party to that Lender (or any Affiliate of that Lender) or to any other Lender (or any Affiliate of any other Lender) under this Agreement, the Letters of Credit and participations therein and the other Loan Documents, including all claims of any nature or description arising out of or connected with this Agreement, the Letters of Credit and participations therein or any other Loan Document, irrespective of whether or not (i) that Lender shall have made any demand hereunder or (ii) the principal of or the interest on the Loans or any amounts in respect of the Letters of Credit or any other amounts due hereunder shall have become due and payable pursuant to Section 8 and although said obligations and liabilities, or any of them, may be contingent or unmatured.

10.5 Ratable Sharing

Lenders hereby agree among themselves that if any of them shall, whether by voluntary or mandatory payment (other than a payment or prepayment of Loans made and applied in accordance with the terms of this Agreement), by realization upon security, through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Loan Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, amounts payable in respect of Letters of Credit, fees and other amounts then due and owing to that Lender hereunder or under the other Loan Documents (collectively, the **"Aggregate Amounts Due"** to such Lender) that is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment shall, unless such proportionately greater payment is required by the terms of this Agreement, (i) notify Administrative Agent and each other Lender of the receipt of such payment and (ii) apply a portion of such payment to purchase assignments (which it shall be deemed to have purchased from each seller of an assignment simultaneously upon the receipt by such seller of its portion of

such payment) of the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders in proportion to the Aggregate Amounts Due to them; provided that (A) if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of Company or otherwise, those purchases shall be rescinded and the purchase prices paid for such assignments shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest and (B) the foregoing provisions shall not apply to (1) any payment made by Company pursuant to and in accordance with the express terms of this Agreement or (2) any payment obtained by a Lender as consideration for the assignment (other than an assignment pursuant to this subsection 10.5) of or the sale of a participation in any of its Obligations to any Eligible Assignee or Participant pursuant to subsection 10.1B or 10.1C. Company expressly consents to the foregoing arrangement and agrees that any purchaser of an assignment so purchased may exercise any and all rights of a Lender as to such assignment as fully as if that Lender had complied with the provisions of subsection 10.1B with respect to such assignment. In order to further evidence such assignment (and without prejudice to the effectiveness of the assignment provisions set forth above), each purchasing Lender and each selling Lender agree to enter into an Assignment Agreement at the request of a selling Lender or a purchasing Lender, as the case may be, in form and substance reasonably satisfactory to each such Lender.

10.6 Amendments and Waivers

Subject to subsection 2.10, no amendment, modification, termination or waiver of any provision of this Agreement or of the Notes, and no consent to any departure by Company therefrom, shall in any event be effective without the written concurrence of Requisite Lenders; provided that no such amendment, modification, termination, waiver or consent shall, without the consent of:

(a) each Lender with Obligations directly affected (whose consent shall be sufficient for any such amendment, modification, termination or waiver without the consent of Requisite Lenders) (1) reduce the principal amount of any Loan, (2) postpone the date or reduce the amount of any scheduled payment (but not prepayment) of principal of any Loan, (3) postpone the date on which any interest or any fees are payable, (4) decrease the interest rate borne by any Loan (other than any waiver of any increase in the interest rate applicable to any of the Loans pursuant to subsection 2.2E) or the amount of any fees payable hereunder (other than any waiver of any increase in the fees applicable to Letters of Credit pursuant to subsection 3.2 following an Event of Default) including any change in the manner in which any financial ratio used in determining any interest rate or fee is calculated that would result in a reduction of any such rate or fee, (5) reduce the amount or postpone the due date of any amount payable in respect of any Letter of Credit, (6) extend the expiration date of any Letter of Credit beyond the Revolving Loan Commitment Termination Date, (7) extend the Revolving Loan Commitment Termination Date or (8) change in any manner the obligations of Revolving Lenders relating to the purchase of participations in Letters of Credit;

(b) each Lender, (1) change in any manner the definition of “Pro Rata Share”, the definition of “Requisite Lenders” (except for any changes resulting solely from an increase in the aggregate amount of the Commitments approved by Requisite Lenders) or the provisions of subsection 2.4A(ii), 2.4A(iv)(b) or 2.4B(iii) in any manner that would alter the pro rata sharing of payments or reduction of the Revolving Loan Commitment Amount, (2) change in any manner any provision of this Agreement that, by its terms, expressly requires the approval or concurrence of all Lenders, (3) increase the maximum duration of Interest Periods permitted hereunder, (4) release any Lien granted in favor of Administrative Agent with respect to all or substantially all of the Collateral or release all or substantially all of the Subsidiary Guarantors from their obligations under the Subsidiary Guaranty, in each case other than in accordance with the terms of the Loan Documents or (5) change in any manner or waive the provisions contained in subsection 2.4C, subsection 8.1, subsection 10.5 or this subsection 10.6.

In addition, no amendment, modification, termination or waiver of any provision (i) of any Note shall be effective without the written concurrence of the Lender which is the holder of that Note, (ii) of subsection 2.1A(ii) or of any other provision of this Agreement relating to the Swing Line Loan Commitment or the Swing Line Loans shall be effective without the written concurrence of Swing Line Lender, (iii) of Section 3 shall be effective without the written concurrence of Administrative Agent and, with respect to the purchase of participations in Letters of Credit, without the written concurrence of Issuing Lender, (iv) of Section 9 or of any other provision of this Agreement which, by its terms, expressly requires the approval or concurrence of Administrative Agent shall be effective without the written concurrence of Administrative Agent, and (v) that increases the amount of a Commitment of a Lender shall be effective without the consent of such Lender.

Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of that Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on Company in any case shall entitle Company to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this subsection 10.6 shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by Company, on Company.

10.7 Independence of Covenants

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 not result in a default under subsection 7.6 shall not avoid the occurrence of an Event of Default or Potential Event of Default if such action is taken or condition exists.

10.8 Notices; Effectiveness of Signatures

Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, or sent by telefacsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service, upon receipt during normal business hours on a Business Day of telefacsimile in complete and legible form, or three Business Days after depositing it in the United States mail (certified or registered if any such notice relates to non-compliance with the terms hereof) with postage prepaid and properly addressed; provided that notices to Administrative Agent, Swing Line Lender and Issuing Lender shall not be effective until received. For the purposes hereof, the address of each party hereto shall be as set forth under such party's name on the signature pages hereof or (i) as to Company and Administrative Agent, such other address as shall be designated by such Person in a written notice delivered to the other parties hereto and (ii) as to each other party, such other address as shall be designated by such party in a written notice delivered to Administrative Agent.

Loan Documents and notices under the Loan Documents may be transmitted and/or signed by telefacsimile. The effectiveness of any such documents and signatures shall, subject to applicable law, have the same force and effect as an original copy with manual signatures and shall be binding on all Loan Parties, Administrative Agent and Lenders. Administrative Agent may also require that any such documents and signature be confirmed by a manually-signed copy thereof; provided, however, that the failure to request or deliver any such manually-signed copy shall not affect the effectiveness of any facsimile document or signature.

Notwithstanding the foregoing, Company agrees that Administrative Agent may make any material delivered by Company to Administrative Agent, as well as any amendments, waivers, consents and other written information, documents, instruments and other materials relating to Company, any of its Subsidiaries, or any other materials or matters relating to the Loan Documents or any of the transactions contemplated hereby that Administrative Agent is required or authorized pursuant to the terms hereof or of any Loan Document to provide to Lenders (collectively, the "**Communications**") available to Lenders by posting such notices on a Platform. Company acknowledges that (a) the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution, (b) a Platform is provided "as is" and "as available" and (c) neither Administrative Agent nor any of its Affiliates warrants the accuracy, completeness, timeliness, sufficiency, or sequencing of the Communications posted on a Platform. Administrative Agent and its Affiliates expressly disclaim with respect to a Platform any liability for errors in transmission, incorrect or incomplete downloading, delays in posting or delivery, or problems accessing the Communications posted on such Platform and any liability for any losses, costs, expenses or liabilities that may be suffered or incurred in connection with such Platform. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by Administrative Agent or any of its Affiliates in connection with any Platform.

Each Lender agrees that notice to it (as provided in the next sentence) specifying that any Communication has been posted to a Platform shall for purposes of this Agreement

constitute effective delivery to such Lender of such information, documents or other materials comprising such Communication. Each Lender agrees (1) to notify, on or before the date such Lender becomes a party to this Agreement, Administrative Agent in writing of such Lender's e-mail address to which a notice may be sent (and from time to time thereafter to ensure that Administrative Agent has on record an effective e-mail address for such Lender) and (2) that any notice may be sent to such e-mail address.

10.9 Survival of Representations, Warranties and Agreements

A. All representations, warranties and agreements made herein shall survive the execution and delivery of this Agreement and the making of the Loans and the issuance of the Letters of Credit hereunder.

B. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements of Company set forth in subsections 2.6D, 2.7, 10.2, 10.3, 10.4, 10.17 and 10.18 and the agreements of Lenders set forth in subsections 9.2C, 9.4, 10.5 and 10.18 shall survive the payment of the Loans, the cancellation or expiration of the Letters of Credit and the reimbursement of any amounts drawn thereunder, and the termination of this Agreement.

10.10 Failure or Indulgence Not Waiver; Remedies Cumulative

No failure or delay on the part of an Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Loan 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 Loan Documents are cumulative to, and not exclusive of, any rights or remedies otherwise available.

10.11 Marshalling; Payments Set Aside

Neither any Agent nor any Lender shall be under any obligation to marshal any assets in favor of Company or any other party or against or in payment of any or all of the Obligations. To the extent that Company makes a payment or payments to Administrative Agent or Lenders (or to Administrative Agent for the benefit of Lenders), or Agents or Lenders enforce any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

10.12 Severability

In case any provision in or obligation under this Agreement or the Notes 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.

10.13 Obligations Several; Independent Nature of Lenders' Rights; Damage Waiver

The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Commitments of any other Lender hereunder. Nothing contained herein or in any other Loan Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders, or Lenders and Company, as a partnership, an association, a Joint Venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and, subject to subsection 9.6, each Lender shall be entitled to protect and enforce its rights arising out of this Agreement and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

To the extent permitted by law, Company shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with or as a result of this Agreement (including subsection 2.1C hereof), any other Loan Document, any transaction contemplated by the Loan Documents, any Loan or the use of proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with the Loan Documents or the transactions contemplated thereby.

10.14 Release of Security Interest or Subsidiary Guaranty

Upon the proposed sale or other disposition of any Collateral to any Person (other than an Affiliate of Company) that is permitted by this Agreement or to which Requisite Lenders have otherwise consented, or the sale or other disposition of all of the Capital Stock of a Subsidiary Guarantor to any Person (other than an Affiliate of Company) that is permitted by this Agreement or to which Requisite Lenders have otherwise consented, for which a Loan Party desires to obtain a security interest release or a release of the Subsidiary Guaranty from Administrative Agent, such Loan Party shall deliver an Officer's Certificate (i) stating that the Collateral or the Capital Stock subject to such disposition is being sold or otherwise disposed of in compliance with the terms hereof and (ii) specifying the Collateral or Capital Stock being sold or otherwise disposed of in the proposed transaction. Upon the receipt of such Officer's Certificate, Administrative Agent shall, at such Loan Party's expense, so long as Administrative Agent (a) has no reason to believe that the facts stated in such Officer's Certificate are not true and correct and (b), if the sale or other disposition of such item of Collateral or Capital Stock constitutes an Asset Sale, shall have received evidence satisfactory to it that arrangements satisfactory to it have been made for delivery of the Net Asset Sale Proceeds if and as required by subsection 2.4, execute and deliver such releases of its security interest in such Collateral or such Subsidiary Guaranty, as may be reasonably requested by such Loan Party.

10.15 Applicable Law

THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN ANY SUCH LOAN DOCUMENT), AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE APPLICATION OF ANOTHER LAW.

10.16 Construction of Agreement; Nature of Relationship

Each of the parties hereto acknowledges that (i) it has been represented by counsel in the negotiation and documentation of the terms of this Agreement, (ii) it has had full and fair opportunity to review and revise the terms of this Agreement, (iii) this Agreement has been drafted jointly by all of the parties hereto, and (iv) neither Administrative Agent nor any Lender or other Agent has any fiduciary relationship with or duty to Company arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between Administrative Agent, the other Agents and Lenders, on one hand, and Company, on the other hand, in connection herewith or therewith is solely that of debtor and creditor. Accordingly, each of the parties hereto acknowledges and agrees that the terms of this Agreement shall not be construed against or in favor of another party.

10.17 Consent to Jurisdiction and Service of Process

ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST COMPANY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY OBLIGATIONS HEREUNDER AND THEREUNDER, MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY AND CITY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, COMPANY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY

(I) ACCEPTS GENERALLY AND UNCONDITIONALLY THE NONEXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS;

(II) WAIVES ANY DEFENSE OF *FORUM NON CONVENIENS*;

(III) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO COMPANY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SUBSECTION 10.8;

(IV) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (III) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER COMPANY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT;

(V) AGREES THAT LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST COMPANY IN THE COURTS OF ANY OTHER JURISDICTION; AND

(VI) AGREES THAT THE PROVISIONS OF THIS SUBSECTION 10.17 RELATING TO JURISDICTION AND VENUE SHALL BE BINDING AND ENFORCEABLE TO THE FULLEST EXTENT PERMISSIBLE UNDER NEW YORK GENERAL OBLIGATIONS LAW SECTION 5-1402 OR OTHERWISE.

10.18 Waiver of Jury Trial

EACH OF THE PARTIES TO THIS AGREEMENT HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims. Each party hereto acknowledges that this waiver is a material inducement to enter into a business relationship, that each has already relied on this waiver in entering into this Agreement, and that each will continue to rely on this waiver in their related future dealings. Each party hereto further warrants and represents that it has reviewed this waiver with its legal counsel and that it knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. **THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SUBSECTION 10.18 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER.** In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

10.19 Confidentiality

Each Lender shall hold all non-public information obtained pursuant to the requirements of this Agreement that has been identified in writing as confidential by Company in accordance with such Lender's customary procedures for handling confidential information of this nature, it being understood and agreed by Company that in any event a Lender may make disclosures (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such

disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential), (b) to the extent requested by any Government Authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (f) subject to an agreement containing provisions substantially the same as those of this subsection 10.19, to (i) any Eligible Assignee of or participant in, or any prospective Eligible Assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any direct or indirect contractual counterparty or prospective counterparty (or such contractual counterparty's or prospective counterparty's professional advisor) to any credit derivative transaction relating to obligations of Company, (g) with the consent of Company, (h) to the extent such information (i) becomes publicly available other than as a result of a breach of this subsection 10.19 or (ii) becomes available to Administrative Agent or any Lender on a nonconfidential basis from a source other than Company or (i) to the National Association of Insurance Commissioners or any other similar organization or any nationally recognized rating agency that requires access to information about a Lender's or its Affiliates' investment portfolio in connection with ratings issued with respect to such Lender or its Affiliates and that no written or oral communications from counsel to an Agent and no information that is or is designated as privileged or as attorney work product may be disclosed to any Person unless such Person is a Lender or a Participant hereunder; provided that, unless specifically prohibited by applicable law or court order, each Lender shall notify Company of any request by any Government Authority or representative thereof (other than any such request in connection with any examination of the financial condition of such Lender by such Government Authority) for disclosure of any such non-public information prior to disclosure of such information; and provided, further that in no event shall any Lender be obligated or required to return any materials furnished by Company or any of its Subsidiaries. In addition, Administrative Agent and Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry, and service providers to Administrative Agent and Lenders, and Administrative Agent or any of its Affiliates may place customary "tombstone" advertisements relating hereto in publications (including publications circulated in electronic form) of its choice at its own expense.

10.20 Counterparts; Effectiveness

This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto.

10.21 Successor Issuing Lender

Issuing Lender may resign at any time by giving written notice thereof to Administrative Agent (who shall promptly notify Lenders thereof) and Company, such

resignation to be effective on the date that is the later of (i) the thirtieth day following delivery of such written notice to Administrative Agent and Company and (ii) the appointment of and acceptance by a successor Issuing Lender, as provided below; provided, however, that to the extent Administrative Agent fails to appoint a successor Issuing Lender that accepts such appointment within such time, Issuing Lender may appoint a Revolving Lender as successor Issuing Lender. Unless Issuing Lender is Administrative Agent, Issuing Lender may be removed at any time with or without cause by an instrument or concurrent instruments in writing delivered to Company and Administrative Agent and signed by Requisite Lenders, such removal to become effective immediately upon the appointment of and acceptance by a successor Issuing Lender, as provided below. Upon any such notice of resignation or removal, Administrative Agent shall have the right, upon five Business Days' notice to Company, to appoint a successor Issuing Lender. Any appointment of a successor Issuing Lender, whether by Administrative Agent or Issuing Lender, shall be subject to consent of Company and Administrative Agent, which, in either case, shall not be unreasonably withheld or delayed. Upon the acceptance of any appointment as Issuing Lender hereunder by a successor Issuing Lender, and consent of Company and Administrative Agent, that successor Issuing Lender shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Issuing Lender and the retiring or removed Issuing Lender shall be discharged from its duties and obligations under this Agreement; provided that, anything contained in this subsection 10.21 or otherwise in any of the Loan Documents to the contrary notwithstanding, the resigning or removed Issuing Lender shall continue to have all rights and obligations of Issuing Lender, with respect to any Letter of Credit issued prior to the effective date of the appointment of a successor Issuing Lender until the cancellation or expiration of such Letter of Credit and the reimbursement of any amounts drawn thereunder.

10.22 Patriot Act Notice.

Each Lender and Administrative Agent (for itself and not on behalf of any other party) hereby notifies Company that, pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies Company, which information includes the name and address of Company and other information that will allow such Lender or Administrative Agent, as applicable, to identify Company in accordance with the Patriot Act.

10.23 Advertising, Promotion and Marketing.

Administrative Agent and each Lender may, and Company hereby authorizes Administrative Agent and each Lender to, include references to Company, its Subsidiaries and any other Loan Party, and utilize any logo or other distinctive symbol associated with Company, its Subsidiaries or any other Loan Party, in connection with any advertising, promotion or marketing undertaken by Administrative Agent or such Lender.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

COMPANY:

RUTH'S CHRIS STEAK HOUSE, INC.

By: /s/ THOMAS J. PENNISON, JR.

Title: Thomas J. Pennison, Jr.
Chief Financial Officer
Senior Vice President

Notice Address:
500 International Parkway, Suite 100
Heathrow, Florida 32746
Attention: Chief Financial Officer

LENDERS:

WELLS FARGO BANK, NATIONAL ASSOCIATION,
individually as a Lender, as Co-Lead Arranger and as
Administrative Agent

By: /s/ J. NICHOLAS COLE

Name: J. Nicholas Cole

Title: Managing Director

Notice Address:

Wells Fargo Restaurant Finance
5938 Priestly Drive, Suite 200
Carlsbad, California 92008

BANK OF AMERICA, N.A.,
individually as a Lender and as Syndication Agent

By: /s/ John Schmidt

Title: Vice President

WACHOVIA BANK, NATIONAL ASSOCIATION,
individually as a Lender and as Co-Documentation Agent

By: /s/ Anthony Braxton

Title: Director

JPMORGAN CHASE BANK, N.A.,
individually as a Lender and as Co-Documentation Agent

By: /s/ Lynn Richard

Title: Senior Vice President

CAROLINA FIRST BANK, as a Lender

By: /s/ Alan T. Ennis

Title: Sr. Vice President

CITIBANK N.A., as a lender

By: /s/ Gregory Roll

Title: Vice President

**FIRST TENNESSEE BANK NATIONAL
ASSOCIATION, as a lender**

By: /s/ Doug Kilton

Title: Senior Vice President

**COOPERATIEVE CENTRALE RAIFFEISEN-
BOERENLEENBANK B.A. "ROBOBANK
NEDERLAND", NEW YORK BRANCH, as a lender**

By: /s/ Tamira S. Treffers-Herrera

Title: Executive Director

By: /s/ Brett Delfino

Title: Executive Director

RAYMOND JAMES BANK, FSB, as a lender

By: /s/ Andrew Hahn

Title: Senior Vice President

S-10

FIFTH THIRD BANK, as a lender

By: /s/ Jackson Young

Title: Vice President

SCHEDULE 2.1

LENDERS' COMMITMENTS AND PRO RATA SHARES

| <u>Lender</u> | <u>Revolving Loan Commitment</u> | <u>Pro Rata Share</u> |
|--|--|---------------------------|
| Wells Fargo Bank, National Association | \$ 37,500,000.00 | 15.0000000000% |
| Bank of America, N.A. | \$ 37,500,000.00 | 15.0000000000% |
| JPMorgan Chase Bank, N.A. | \$ 30,000,000.00 | 12.0000000000% |
| Wachovia Bank, National Association | \$ 30,000,000.00 | 12.0000000000% |
| Raymond James Bank, FSB | \$ 27,000,000.00 | 10.8000000000% |
| Citibank N.A. | \$ 24,000,000.00 | 9.6000000000% |
| Fifth Third Bank | \$ 24,000,000.00 | 9.6000000000% |
| Carolina First Bank | \$ 15,000,000.00 | 6.0000000000% |
| Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A. "Rabobank Nederland", New York Branch | \$ 15,000,000.00 | 6.0000000000% |
| First Tennessee Bank National Association | \$ 10,000,000.00 | 4.0000000000% |
| TOTAL | \$250,000,000.00 | 100.0000000000% |

Schedule 2.1-1

List of Subsidiaries of the Registrant

| <u>Entity</u> | <u>Jurisdiction</u> |
|--|---------------------|
| Ruth's Chris Steak House Franchise, Inc. | Louisiana |
| R.F., Inc. | Louisiana |
| R.C. Equipment, Inc. | Louisiana |
| RCSH Promotions, LLC | Louisiana |
| RCSH Management, Inc. | Louisiana |
| RCSH Holdings, Inc. | Louisiana |
| RCSH Millwork, LLC | Florida |
| RCSH Operations, LLC | Louisiana |
| RCSH Operations, Inc. | California |
| Ruth's Chris Steak House #15, Inc. | Louisiana |
| Ruth's Chris Steak House Texas, L.P. | Texas |
| Ruth's Chris Steak House Dallas, L.P. | Texas |
| Ruth's Chris Steak House Boston, LLC | Louisiana |
| RCSH Utah, Inc. | Utah |
| RHG Kingfish, LLC | Florida |
| RHG Fish Market, Inc. | Florida |

Consent of Independent Registered Public Accounting Firm

The Board of Directors

Ruth's Chris Steak House, Inc.:

We consent to the incorporation by reference in the registration statement (No. 333-127681) on Form S-8 of Ruth's Chris Steak House, Inc. of our reports dated March 11, 2008, with respect to the consolidated balance sheets of Ruth's Chris Steak House, Inc. and subsidiaries as of December 31, 2006 and December 30, 2007, and the related consolidated statements of income, stockholders' equity (deficit) and cash flows for the fifty-two weeks ended December 25, 2005, fifty-three weeks ended December 31, 2006, and fifty-two weeks ended December 30, 2007, and the effectiveness of internal control over financial reporting as of December 30, 2007, which reports appear in the December 30, 2007, annual report on Form 10-K of Ruth's Chris Steak House, Inc.

Our report on the consolidated financial statements dated March 11, 2008, contains an explanatory paragraph that states that the Company adopted the provisions of Statement of Financial Accounting Standard No. 123(R), *Share-Based Payment*, in fiscal year 2006, and Financial Accounting Standards Board Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*, in fiscal year 2007.

/s/ KPMG LLP

Orlando, Florida

March 11, 2008

Certified Public Accountants

CERTIFICATIONS

I, Craig S. Miller, certify that:

1. I have reviewed this annual report on Form 10-K of Ruth's Chris Steak House, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including our consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 11, 2008

By _____ /s/ CRAIG S. MILLER
Craig S. Miller
Chief Executive Officer and President

Certifications of Chief Financial Officer pursuant to 18 U.S.C. § 1350 as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002

In connection with the Annual Report on Form 10-K of Ruth's Chris Steak House, Inc. for the year ended December 30, 2007, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, the Senior Vice President, Chief Financial Officer and Assistant Secretary of Ruth's Chris Steak House, Inc., certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Ruth's Chris Steak House, Inc.

A signed original of this written statement required by Section 906 has been provided to Ruth's Chris Steak House, Inc. and will be retained by Ruth's Chris Steak House, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

Date: March 11, 2008

/s/ THOMAS J. PENNISON, JR.

Thomas J. Pennison, Jr.
Senior Vice President, Chief Financial Officer
and Assistant Secretary