

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON D.C. 20549

**FORM 10-Q**

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

For the Quarterly Period Ended December 26, 2007

Commission File Number 1-10275

**BRINKER INTERNATIONAL, INC.**

(Exact name of registrant as specified in its charter)

**DELAWARE**  
(State or other jurisdiction of  
incorporation or organization)

**75-1914582**  
(I.R.S. Employer  
Identification No.)

**6820 LBJ FREEWAY, DALLAS, TEXAS 75240**  
(Address of principal executive offices)  
(Zip Code)

**(972) 980-9917**  
(Registrant's telephone number, including area code)

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

Yes  No

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

Large accelerated filer  Accelerated filer  Non-accelerated filer

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

Yes  No

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date.

Class	Outstanding at January 29, 2008
Common Stock, \$0.10 par value	101,187,116 shares

**BRINKER INTERNATIONAL, INC.**

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**PART I. FINANCIAL INFORMATION**

**Item 1. FINANCIAL STATEMENTS**

**BRINKER INTERNATIONAL, INC.**  
**Consolidated Balance Sheets**  
(In thousands, except share and per share amounts)

	December 26, 2007 (Unaudited)	June 27, 2007
<b>ASSETS</b>		
Current Assets:		
Cash and cash equivalents	\$ 82,175	\$ 84,823
Accounts receivable	90,490	49,851
Inventories	28,941	29,189
Prepaid expenses and other	66,698	70,515
Deferred income taxes	23,977	16,100
Assets held for sale	303,054	417,842
Total current assets	<u>595,335</u>	<u>668,320</u>
Property and Equipment at Cost:		
Land	202,182	193,600
Buildings and leasehold improvements	1,488,326	1,395,299
Furniture and equipment	639,254	612,610
Construction-in-progress	75,631	94,636
	<u>2,405,393</u>	<u>2,296,145</u>
Less accumulated depreciation and amortization	(883,031)	(826,559)
Net property and equipment	<u>1,522,362</u>	<u>1,469,586</u>
Other Assets:		
Goodwill	139,064	138,876
Deferred income taxes	16,766	4,778
Other	44,115	36,461
Total other assets	<u>199,945</u>	<u>180,115</u>
Total assets	<u>\$ 2,317,642</u>	<u>\$ 2,318,021</u>

**LIABILITIES AND SHAREHOLDERS’ EQUITY**

Current Liabilities:		
Current installments of long-term debt	\$ 1,865	\$ 1,761
Accounts payable	174,909	167,789
Accrued liabilities	391,596	330,031
Income taxes payable	33,956	21,555
Liabilities associated with assets held for sale	19,354	21,046
Total current liabilities	<u>621,680</u>	<u>542,182</u>

Long-term debt, less current installments	884,414	826,918
Other liabilities	166,659	143,832

#### Commitments and Contingencies (Note 9)

#### Shareholders' Equity:

Common stock — 250,000,000 authorized shares; \$0.10 par value; 176,246,649 shares issued and 101,166,942 shares outstanding at December 26, 2007, and 176,246,666 shares issued and 110,127,072 shares outstanding at June 27, 2007	17,625	17,625
Additional paid-in capital	455,035	450,665
Accumulated other comprehensive loss	(100)	(37)
Retained earnings	1,863,194	1,791,311
	<u>2,335,754</u>	<u>2,259,564</u>
Less Treasury stock, at cost (75,079,707 shares at December 26, 2007 and 66,119,594 shares at June 27, 2007)	(1,690,865)	(1,454,475)
Total shareholders' equity	<u>644,889</u>	<u>805,089</u>
Total liabilities and shareholders' equity	<u>\$ 2,317,642</u>	<u>\$ 2,318,021</u>

See accompanying notes to consolidated financial statements.

**BRINKER INTERNATIONAL, INC.**  
**Consolidated Statements of Income**  
(In thousands, except per share amounts)  
(Unaudited)

	Thirteen Week Periods Ended		Twenty-Six Week Periods Ended	
	December 26, 2007	December 27, 2006	December 26, 2007	December 27, 2006
Revenues	\$ 868,206	\$ 899,571	\$ 1,763,292	\$ 1,768,854
Operating Costs and Expenses:				
Cost of sales	245,283	251,901	490,901	490,316
Restaurant expenses	486,871	493,132	989,024	974,134
Depreciation and amortization	39,089	40,825	77,624	81,055
General and administrative	39,620	44,973	80,558	93,113
Other gains and charges	(21,948)	2,031	(21,436)	(1,210)
Total operating costs and expenses	<u>788,915</u>	<u>832,862</u>	<u>1,616,671</u>	<u>1,637,408</u>
Operating income	79,291	66,709	146,621	131,446
Interest expense	12,476	6,614	25,391	12,851
Other, net	(845)	(795)	(2,102)	(1,632)
Income before provision for income taxes	67,660	60,890	123,332	120,227
Provision for income taxes	<u>21,434</u>	<u>19,900</u>	<u>38,570</u>	<u>39,165</u>
Income from continuing operations	46,226	40,990	84,762	81,062
Income from discontinued operations, net of taxes	<u>8,254</u>	<u>3,202</u>	<u>7,318</u>	<u>10,769</u>
Net income	<u>\$ 54,480</u>	<u>\$ 44,192</u>	<u>\$ 92,080</u>	<u>\$ 91,831</u>
Basic net income per share:				
Income from continuing operations	<u>\$ 0.45</u>	<u>\$ 0.33</u>	<u>\$ 0.81</u>	<u>\$ 0.65</u>
Income from discontinued operations	<u>\$ 0.08</u>	<u>\$ 0.03</u>	<u>\$ 0.07</u>	<u>\$ 0.09</u>
Net income per share	<u>\$ 0.53</u>	<u>\$ 0.36</u>	<u>\$ 0.88</u>	<u>\$ 0.74</u>
Diluted net income per share:				
Income from continuing operations	<u>\$ 0.44</u>	<u>\$ 0.32</u>	<u>\$ 0.79</u>	<u>\$ 0.64</u>
Income from discontinued operations	<u>\$ 0.08</u>	<u>\$ 0.03</u>	<u>\$ 0.07</u>	<u>\$ 0.09</u>
Net income per share	<u>\$ 0.52</u>	<u>\$ 0.35</u>	<u>\$ 0.86</u>	<u>\$ 0.73</u>
Basic weighted average shares outstanding	<u>103,498</u>	<u>123,451</u>	<u>104,981</u>	<u>123,835</u>
Diluted weighted average shares outstanding	<u>105,339</u>	<u>126,641</u>	<u>107,247</u>	<u>126,339</u>
Cash dividends per share	<u>\$ 0.11</u>	<u>\$ 0.09</u>	<u>\$ 0.20</u>	<u>\$ 0.16</u>

**BRINKER INTERNATIONAL, INC.**  
**Consolidated Statements of Cash Flows**  
(In thousands)  
(Unaudited)

	<u>Twenty-Six Week Periods Ended</u>	
	<u>December 26, 2007</u>	<u>December 27, 2006</u>
<b>Cash Flows from Operating Activities:</b>		
Net income	\$ 92,080	\$ 91,831
Adjustments to reconcile net income to net cash provided by operating activities of continuing operations:		
Depreciation and amortization	77,624	81,055
Restructure charges and other impairments	7,798	2,031
Gain on sale of assets	(29,234)	(696)
Stock-based compensation	7,415	17,380
Deferred income taxes	(14,052)	(24,462)
Income from discontinued operations, net of taxes	(7,318)	(10,769)
Changes in assets and liabilities, excluding effects of dispositions:		
Accounts receivable	(39,709)	(24,102)
Inventories	52	2,983
Prepaid expenses and other	5,169	5,794
Other assets	(855)	(4,218)
Accounts payable	24,676	(9,902)
Accrued liabilities	57,123	68,917
Income taxes payable	30,113	47,331
Other liabilities	3,470	13,423
Net cash provided by operating activities of continuing operations	<u>214,352</u>	<u>256,596</u>
<b>Cash Flows from Investing Activities:</b>		
Payments for property and equipment	(149,361)	(185,811)
Proceeds from sale of assets	121,917	23,574
Investment in equity method investee	(6,425)	—
Net cash used in investing activities of continuing operations	<u>(33,869)</u>	<u>(162,237)</u>
<b>Cash Flows from Financing Activities:</b>		
Net proceeds from issuance of debt	399,287	—
Net payments on credit facilities	(341,686)	(12,051)
Payments on long-term debt	(531)	(794)
Purchases of treasury stock	(240,744)	(119,239)
Proceeds from issuances of treasury stock	2,469	38,502
Payments of dividends	(20,637)	(19,425)
Excess tax benefits from stock-based compensation	259	1,954
Net cash used in financing activities of continuing operations	<u>(201,583)</u>	<u>(111,053)</u>
<b>Cash Flows from Discontinued Operations:</b>		
Net cash provided by operating activities of discontinued operations	26,714	36,663
Net cash used in investing activities of discontinued operations	(8,262)	(8,952)
Net cash provided by discontinued operations	<u>18,452</u>	<u>27,711</u>
Net change in cash and cash equivalents	(2,648)	11,017
Cash and cash equivalents at beginning of period	84,823	55,016
Cash and cash equivalents at end of period	<u>\$ 82,175</u>	<u>\$ 66,033</u>

See accompanying notes to consolidated financial statements.

**BRINKER INTERNATIONAL, INC.**  
**Notes to Consolidated Financial Statements**  
(Unaudited)

**1. BASIS OF PRESENTATION**

References to “Brinker,” “the Company,” “we,” “us,” and “our” in this Form 10-Q are references to Brinker International, Inc. and its subsidiaries and any predecessor companies of Brinker International, Inc.

Our consolidated financial statements as of December 26, 2007 and June 27, 2007 and for the thirteen week and twenty-six week periods ended December 26, 2007 and December 27, 2006 have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC"). We own, operate, or franchise various restaurant brands under the names of Chili's Grill & Bar ("Chili's"), Romano's Macaroni Grill ("Macaroni Grill"), On The Border Mexican Grill & Cantina ("On The Border"), and Maggiano's Little Italy ("Maggiano's"). Beginning in the first quarter of fiscal 2008, Macaroni Grill has been presented as discontinued operations in the consolidated financial statements. See Note 5 for additional disclosures.

The information furnished herein reflects all adjustments (consisting only of normal recurring accruals and adjustments) which are, in our opinion, necessary to fairly state the interim operating results for the respective periods. However, these operating results are not necessarily indicative of the results expected for the full fiscal year. Certain information and footnote disclosures normally included in annual financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been omitted pursuant to SEC rules and regulations. The notes to the consolidated financial statements (unaudited) should be read in conjunction with the notes to the consolidated financial statements contained in the June 27, 2007 Form 10-K. We believe the disclosures are sufficient for interim financial reporting purposes.

Certain prior year amounts in the accompanying consolidated financial statements have been reclassified to conform to fiscal 2008 presentation. These reclassifications have no effect on our net income or financial position as previously reported.

## 2. EARNINGS PER SHARE

Basic earnings per share is computed by dividing income available to common shareholders by the weighted average number of common shares outstanding for the reporting period. Diluted earnings per share reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock. For the calculation of diluted net income per share, the basic weighted average number of shares is increased by the dilutive effect of stock options and restricted share awards determined using the treasury stock method. We had approximately 2.3 million stock options and restricted share awards outstanding at December 26, 2007 and 1.1 million stock options and restricted share awards outstanding at December 27, 2006 that were not included in the dilutive earnings per share calculation because the effect would have been antidilutive.

## 3. OTHER GAINS AND CHARGES

In May 2007, we entered into an agreement with ERJ Dining IV, LLC to sell 76 company-owned Chili's restaurants for approximately \$122 million. The assets and liabilities associated with these restaurants were classified as held for sale in the consolidated balance sheet for the fiscal year ended June 27, 2007. The sale was completed in November 2007 and we recorded a gain of \$29.2 million in other gains and charges in the consolidated statements of income. The net assets sold totaled approximately \$88.2 million and consisted primarily of property and equipment of \$86.4 million.

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In the second quarter of fiscal 2008, we recorded \$7.3 million in charges primarily related to long-lived asset impairments. The charges include a \$5.5 million impairment related to two restaurants which were impaired based on an analysis of projected operating performance and operating cash flows. Also included is a \$1.0 million charge related to the decrease in estimated sales value of land associated with previously closed restaurants and \$646,000 related to restaurants closed in the second quarter of fiscal 2008.

In the first quarter of fiscal 2008, we recorded a \$512,000 charge for asset impairments related to the relocation of a restaurant and the decrease in estimated sales value of land associated with a previously closed restaurant.

In the second quarter of fiscal 2007, we made the decision to close restaurants based on a comprehensive analysis that examined restaurants not meeting minimum return on investment thresholds and certain other operating performance criteria. As a result of this analysis, we recorded charges of \$2.0 million in continuing operations and \$8.6 million in discontinued operations for long-lived asset impairments.

In the first quarter of fiscal 2007, we recorded a \$3.2 million gain related to the termination of interest rate swaps on an operating lease commitment.

## 5. DISPOSITION OF MACARONI GRILL

We have committed to a plan to sell Macaroni Grill and expect that the sale will be completed in late fiscal 2008 or early fiscal 2009. The decision to sell the brand was the result of our focus on achieving return on investment and growth targets. As of December 26, 2007, the net assets to be sold totaled approximately \$283.7 million and consisted primarily of property and equipment of \$279.8 million. We are currently in negotiations for the sale of the brand and believe the fair value less costs to sell of the disposal group exceeds the carrying value at December 26, 2007 based on the best information available. However, due to uncertainty in the credit markets and other factors outside of our control, management cannot be certain that an impairment will not be necessary until the transaction is completed.

Macaroni Grill has been presented as discontinued operations in the consolidated financial statements. Discontinued operations includes only the revenues and expenses which can be specifically identified with Macaroni Grill and excludes any allocation of corporate costs, including general and administrative expenses, or rental charges on company-owned properties. The results of Macaroni Grill consist of the following (in thousands):

	Thirteen Week Periods Ended		Twenty-Six Week Periods Ended	
	December 26, 2007	December 27, 2006	December 26, 2007	December 27, 2006
Revenues	\$ 161,579	\$ 171,016	\$ 321,179	\$ 341,668
Other gains and charges (1)	\$ 5,605	\$ 8,599	\$ 13,684	\$ 8,599
Income before taxes from discontinued operations	10,446	3,467	7,637	14,083
Income tax expense	2,192	265	319	3,314
Net income from discontinued operations	\$ 8,254	\$ 3,202	\$ 7,318	\$ 10,769

- (1) Other gains and charges includes a \$3.2 million asset impairment charge associated with restaurant closures and \$1.9 million in incremental charges related to the planned sale of Macaroni Grill recorded in the second quarter of fiscal 2008. During the first quarter of fiscal 2008, we recorded \$9.2 million of impairment charges to adjust the value of the related restaurants' carrying value to fair value less the expected cost to sell to a franchisee. This transaction will not be completed; however, these assets are still held for sale as part of the expected disposition of the Macaroni Grill brand. Other gains and charges in fiscal 2007 includes an \$8.6 million charge for asset impairments associated with restaurant closures.

## 6. TAXES

Effective June 28, 2007, we adopted the provisions of the Financial Accounting Standards Board's ("FASB") Interpretation No. 48, "Accounting for Uncertainty in Income Taxes" ("FIN 48"). As a result of the adoption we recognized an \$847,000 decrease in the liability for unrecognized tax benefits, net of the federal deferred tax benefit, with a corresponding increase to retained earnings.

We file income tax returns in the U.S. federal jurisdiction and various states and foreign jurisdictions. We are no longer subject to U.S. federal examinations by tax authorities for fiscal years before 2006. We are audited by the taxing authorities of most states and certain foreign countries and are subject to examination by these taxing jurisdictions for fiscal years generally after 2003.

The total amount of unrecognized tax benefits as of June 28, 2007 was \$23.2 million (\$17.4 million of which would favorably affect the effective tax rate if resolved in our favor due to the effect of deferred tax benefits). Over the next twelve months, we anticipate that it is reasonably possible that the amount of unrecognized tax benefits could be reduced by approximately \$786,000 (\$604,000 of which would affect the effective tax rate due to the effect of deferred tax benefits) either because our tax position will be sustained upon audit or as a result of the expiration of the statute of limitations for specific jurisdictions.

We recognize accrued interest and penalties related to unrecognized tax benefits in income tax expense. We had \$4.3 million (\$3.3 million net of a \$1.0 million federal deferred tax benefit) of interest and penalties accrued at June 28, 2007.

## 7. SHAREHOLDERS' EQUITY

The Board of Directors has authorized a total of \$2,060.0 million of share repurchases. Pursuant to our stock repurchase plan, we repurchased approximately 9.1 million shares of our common stock for approximately \$240 million during the first two quarters of fiscal 2008. As of December 26, 2007, approximately \$60 million was available under our share repurchase authorizations. The repurchased common stock is reflected as a reduction of shareholders' equity. Our stock repurchase plan has been and will be used to return capital to shareholders and to minimize the dilutive impact of stock options and other share-based awards. In the future, we may consider additional share repurchases based on several factors, including our cash position, share price, operational liquidity, and planned investment and financing needs. In November 2007, we announced the declaration of a dividend to common stock shareholders in the amount of \$0.11 per share. Dividends of \$11.1 million were paid in December 2007 and we have paid approximately \$20.6 million in dividends year-to-date.

## 8. SUPPLEMENTAL CASH FLOW INFORMATION

Cash paid for income taxes and interest for the first two quarters of fiscal 2008 and 2007 are as follows (in thousands):

	<u>December 26, 2007</u>	<u>December 27, 2006</u>
Income taxes, net of refunds	\$ 20,079	\$ 17,657
Interest, net of amounts capitalized	28,043	12,505

Non-cash investing and financing activities for the first two quarters of fiscal 2008 and 2007 are as follows (in thousands):

	<u>December 26, 2007</u>	<u>December 27, 2006</u>
Retirement of fully depreciated assets	\$ 15,920	\$ 23,244

## 9. CONTINGENCIES

As of December 26, 2007, we guarantee lease payments totaling \$166.3 million as a result of the sale of certain brands and the sale of restaurants to franchisees. This amount represents the maximum potential liability of future payments under the guarantees. These leases have been assigned to the buyers and expire at the end of the respective lease terms, which range from fiscal 2008 through fiscal 2023. We remain secondarily liable for the leases. In the event of default, the terms and conditions in our assignment agreements govern our ability to pursue and recover damages incurred. No material liabilities have been recorded as of December 26, 2007.

Certain current and former hourly restaurant employees filed a lawsuit against us in California Superior Court alleging violations of California labor laws with respect to meal and rest breaks. The lawsuit seeks penalties and attorney's fees and was certified as a class action in July 2006. In October 2007, the California Court of Appeal decertified the class action on all claims, but has been asked to reconsider that decision. We intend to vigorously defend our position. It is not possible at this time to reasonably estimate the possible loss or range of loss, if any.

We are engaged in various legal proceedings and have certain unresolved claims pending. The ultimate liability, if any, for the aggregate amounts claimed cannot be determined at this time. However, based upon consultation with legal counsel, we are of the opinion that there are no matters pending or threatened which are expected to have a material adverse effect, individually or in the aggregate, on our consolidated financial condition or results of operations.

## 10. SUBSEQUENT EVENT

In January 2008, we made the decision to close 25 under performing restaurants based on a comprehensive analysis that examined restaurants not meeting minimum return on investment thresholds and certain other operating performance criteria. Based on our preliminary analysis, we expect to record a charge related to these planned closures in the third quarter of fiscal 2008 of approximately \$7.0 to \$9.0 million in continuing operations and approximately \$4.0 to \$6.0 million in discontinued operations, consisting primarily of long-lived asset impairments.

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## Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following table sets forth selected operating data as a percentage of total revenues from continuing operations for the periods indicated. All information is derived from the accompanying consolidated statements of income.

	Thirteen Week Periods Ended		Twenty-Six Week Periods Ended	
	December 26, 2007	December 27, 2006	December 26, 2007	December 27, 2006
Revenues	100.0%	100.0%	100.0%	100.0%
Operating Costs and Expenses:				
Cost of sales	28.2%	28.0%	27.8%	27.7%
Restaurant expenses	56.1%	54.8%	56.1%	55.1%
Depreciation and amortization	4.5%	4.6%	4.4%	4.6%
General and administrative	4.6%	5.0%	4.6%	5.3%
Other gains and charges	(2.5)%	0.2%	(1.2)%	(0.1)%
Total operating costs and expenses	90.9%	92.6%	91.7%	92.6%
Operating income	9.1%	7.4%	8.3%	7.4%
Interest expense	1.4%	0.7%	1.4%	0.7%
Other, net	(0.1)%	(0.1)%	(0.1)%	(0.1)%
Income before provision for income taxes	7.8%	6.8%	7.0%	6.8%
Provision for income taxes	2.5%	2.2%	2.2%	2.2%
Income from continuing operations	5.3%	4.6%	4.8%	4.6%
Income from discontinued operations, net of taxes	1.0%	0.3%	0.4%	0.6%
Net income	6.3%	4.9%	5.2%	5.2%

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The following table details the number of restaurant openings during the second quarter, year-to-date, total restaurants open at the end of the second quarter, and total projected openings in fiscal 2008.

	Second Quarter Openings		Year-to-Date Openings		Total Open at End Of Second Quarter		Projected Openings
	Fiscal 2008	Fiscal 2007	Fiscal 2008	Fiscal 2007	Fiscal 2008	Fiscal 2007	Fiscal 2008
<b>Chili's:</b>							
Company-owned	14	28	28	56	865	944	64-67
Domestic Franchised	11	4	16	8	395	202	28-33
Total	25	32	44	64	1,260	1,146	92-100
<b>Macaroni Grill:</b>							
Company-owned	3	1	3	3	216	224	3
Domestic Franchised	4	2	4	2	17	13	7-9
Total	7	3	7	5	233	237	10-12
<b>On The Border:</b>							
Company-owned	3	3	5	5	137	128	6-8
Domestic Franchised	1	—	3	2	29	23	6-8
Total	4	3	8	7	166	151	12-16
<b>Maggiano's</b>	0	1	0	2	41	39	1

International: (a)							
Company-owned	1	—	1	—	6	5	0-3
Franchised	16	11	20	15	166	134	37-45
Total	17	11	21	15	172	139	37-48
Grand Total	53	50	80	93	1,872	1,712	152-177

(a) At the end of the second quarter of fiscal year 2008, international company-owned restaurants by brand included five Chili's and one Macaroni Grill. International franchise restaurants by brand included 154 Chili's, 11 Macaroni Grill's and one On the Border.

At December 26, 2007, we owned the land and buildings for 231 of the 1,048 company-owned restaurants (excluding Macaroni Grill). The net book values of the land and buildings associated with these restaurants totaled \$184.3 million and \$195.4 million, respectively.

## GENERAL

The following Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") is intended to help the reader understand Brinker International, our operations, and our current operating environment. For an understanding of the significant factors that influenced our performance during the quarters ended December 26, 2007 and December 27, 2006, the MD&A should be read in conjunction with the consolidated financial statements and related notes included in this quarterly report. The results of operations discussed in MD&A exclude discontinued operations, except where otherwise noted.

## OVERVIEW

At December 26, 2007, we owned, operated, or franchised 1,872 restaurants through our four brands: Chili's, Macaroni Grill, On The Border, and Maggiano's. The casual dining industry continues to face a challenging operating environment due to various factors such as the continually expanding array of food options in the marketplace. Consumers have also limited their discretionary spending in response to economic uncertainties and price increases for essential goods and services. In addition, commodity and labor costs have continued to increase, all of which negatively impacted our results during the second quarter of fiscal 2008. While our results for the second quarter fell short of expectations, we are fully committed to aggressively pursuing all avenues to enhance shareholder return from both an operational and financial perspective. We have continued to drive shareholder value by executing several operational and financial strategies over the last eighteen months including selling company-owned restaurants to strong franchisees, closing underperforming locations, divesting of brands, returning capital directly to our shareholders through aggressive share repurchases, growth of our dividend program, reimagining Chili's restaurants and growing our international presence. The achievement of these strategies can be seen in the following highlights from the second quarter of fiscal 2008:

- Sold 76 Chili's restaurants to ERJ Dining IV, LLC;
- Increased royalty revenues from franchisees by 57.4 percent;
- Built 18 new company-owned restaurants and saw franchisees build 27 new restaurants;
- Entered into an agreement with CMR, S.A.B. de C.V. for the joint investment in a new corporation to develop 50 Chili's Grill & Bar and Maggiano's Little Italy restaurants in Mexico, 6 of which have recently opened;
- Increased quarterly dividend by 22 percent to \$0.11 per share; and
- Repurchased 4.1 million common shares.

In addition, we have been very focused on managing operating expenses, including general and administrative expenses, which allows us to deliver the best possible value to our guests. We believe the financial discipline demonstrated during these difficult times gives us the flexibility to make the necessary long-term changes to evolve the business. Our ultimate goal is to build a business model that will enable us to be successful in all macro-economic environments. We believe the key to reaching this goal resides within our existing restaurants, which will be our focus in the coming months. Growing profitable ongoing comparable restaurant sales is a critical component of building this business model, the basis of which will be grounded in our five areas of key focus — hospitality; food and beverage excellence; atmosphere; pace and convenience of the dining experience; and international expansion.

In the near-term, we are significantly reducing our domestic development and shifting a greater proportion of new restaurant development to our expanding franchise network in the United States and internationally. With our focus on existing company-owned restaurants, we will restrict development to a limited number of restaurants in selected high-potential markets. The restaurant site selection process is critical to our long-term success, and we devote significant effort to the investigation of new locations utilizing a variety of sophisticated analytical techniques. Multiple factors are considered when locating satisfactory sites including lease or purchase terms, construction and equipment costs, our ability to secure appropriate local governmental permits and approvals, and our capacity to supervise construction and recruit and train management personnel. We intend to concentrate on the development of

certain identified markets to achieve penetration levels deemed desirable in order to improve competitive position, marketing potential and profitability. Expansion efforts by us and our franchisees will be focused not only on major metropolitan areas, but also on smaller market areas and non-traditional locations (such as airports and food courts) that can adequately support any of our restaurant brands.

In addition, we intend to pursue domestic and international franchise expansion to achieve our goal of increasing franchise ownership of our brands to at least 35% by the end of fiscal year 2008 through an active program of franchising company-owned Chili's, On The Border and Maggiano's restaurants and development commitments from franchisees. Future franchise development agreements are expected to remain limited to enterprises having significant restaurant or enterprise management experience and proven financial ability to develop multi-unit operations.



As evidenced during fiscal 2008, the restaurant industry is a highly competitive business, which is sensitive to changes in economic conditions, trends in lifestyles and fluctuating costs. Operating margins for restaurants are susceptible to fluctuations in prices of commodities, which include among other things, beef, pork, chicken, seafood, dairy, cheese, produce, energy, wage rates and other necessities to operate a restaurant. Additionally, the restaurant industry is characterized by a high initial capital investment, coupled with high labor costs. Despite these risks, we remain confident in the long-term prospects of the industry and in our ability to perform effectively in an extremely competitive marketplace.

## REVENUES

Revenues for the second quarter of fiscal 2008 were \$868.2 million, a 3.5% decrease from the \$899.6 million generated for the same quarter of fiscal 2007. Revenues for the twenty-six week period ended December 26, 2007 were \$1,763.3 million, a 0.3% decrease from the \$1,768.9 million generated for the same period in fiscal 2007. The decrease in revenue was primarily attributable to declines in comparable restaurant sales and capacity at company-owned restaurants.

	Thirteen Week Period Ended December 26, 2007			
	Comparable Sales	Price Increase	Mix Shift	Capacity
Brinker International (1)	(2.1)%	2.8%	0.3%	(2.9)%
Chili's	(2.4)%	2.8%	0.9%	(4.6)%
On The Border	(4.3)%	2.2%	0.1%	6.8%
Maggiano's	1.7%	3.1%	(2.7)%	6.6%

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	Thirteen Week Period Ended December 27, 2006			
	Comparable Sales	Price Increase	Mix Shift	Capacity
Brinker International (1)	(1.4)%	2.0%	0.3%	9.4%
Chili's	(1.2)%	2.0%	(0.1)%	10.0%
On The Border	(3.6)%	1.8%	3.3%	6.0%
Maggiano's	(1.3)%	1.8%	(0.1)%	5.7%

	Twenty-Six Week Period Ended December 26, 2007			
	Comparable Sales	Price Increase	Mix Shift	Capacity
Brinker International (1)	(1.2)%	2.4%	0.4%	(0.2)%
Chili's	(1.0)%	2.5%	1.1%	(1.5)%
On The Border	(4.8)%	1.7%	(0.4)%	7.3%
Maggiano's	1.2%	2.6%	(2.3)%	8.1%

	Twenty-Six Week Period Ended December 27, 2006			
	Comparable Sales	Price Increase	Mix Shift	Capacity
Brinker International (1)	(1.8)%	2.5%	0.4%	9.7%
Chili's	(1.7)%	2.6%	—%	10.4%
On The Border	(2.9)%	2.1%	3.4%	5.2%
Maggiano's	(1.3)%	2.2%	(0.2)%	8.8%

(1) Brinker International excludes Macaroni Grill.

Our capacity decreased 2.9% for the second quarter and 0.2% for the year-to-date period (as measured by average-weighted sales weeks) compared to the respective prior year periods. The reduction in capacity is primarily due to the sale of 173 company-owned restaurants to franchisees since the second quarter of fiscal 2007 and other restaurant closures. The decline in capacity was partially offset by the development of new company-owned restaurants. Including the impact of restaurant sales to franchisees, we experienced a net decrease of 67 company-owned restaurants since December 27, 2006. Comparable restaurant sales for the second quarter of fiscal 2008 decreased 2.1% compared to the same quarter of prior year primarily due to declines in guest traffic at Chili's and On the Border partially offset by price increases at all brands. Royalty revenues from franchisees increased 57.4% to \$13.7 million in the second quarter of fiscal 2008 compared to \$8.7 million in the prior year. For the year-to-date period, royalty revenues from franchisees increased 50.6% to \$25.9 million compared to \$17.2 million in fiscal 2007. The increases are primarily due to the net addition of 229 franchise restaurants since December 27, 2006. In addition, the company recognized franchise and development fee revenue of \$6.3 million for the second quarter of fiscal 2008 and \$7.7 million for the year-to-date as compared to \$615,000 and \$2.8 million in the respective prior year periods.

## **COSTS AND EXPENSES**

Cost of sales, as a percent of revenues increased to 28.2% for the second quarter from 28.0% in the prior year. Cost of sales, as a percent of revenues increased to 27.8% for the year-to-date period from 27.7% in the prior year. Cost of sales was negatively impacted in the current year by unfavorable commodity prices, primarily beef, ribs, and cheese. Cost of sales was also affected by unfavorable product mix shifts related to new menu items, offset by favorable menu price changes and increased revenues from franchisees.

Restaurant expenses, as a percent of revenues, increased to 56.1% for the second quarter and year-to-date period of fiscal 2008 as compared to 54.8% and 55.1% in the same periods of the prior year. The increase was driven by increased labor costs caused by increases in state minimum wage rates and increased restaurant supply costs, partially offset by increased revenues from franchisees and lower pre-opening and stock-based compensation expenses. The increase in state minimum wages began impacting restaurant expense in January 2007; therefore, we expect that labor costs will be more comparable beginning with the third quarter of fiscal 2008. We anticipate that state and federal minimum wage increases planned for calendar 2008 will have less of an impact on our labor costs in future quarters.

Depreciation and amortization decreased \$1.7 million for the second quarter and \$3.4 million for the year-to-date period in fiscal 2008 compared to the same periods of the prior year primarily driven by the sale of 95 company-owned Chili's restaurants to Pepper Dining, Inc. in the fourth quarter of fiscal 2007 and the sale of 76 company-owned Chili's restaurants to ERJ Dining IV, LLC in the second quarter of fiscal 2008. An increase in fully depreciated assets and restaurant closures also contributed to the decrease. These decreases were partially offset by an increase in depreciation due to the addition of new restaurants and remodel investments.

General and administrative expenses decreased \$5.4 million, or 11.9%, for the second quarter of fiscal 2008 as compared to the same period of fiscal 2007. General and administrative expenses decreased \$12.6 million, or 13.5%, for the year-to-date period of fiscal 2008 as compared to the same period of fiscal 2007. The decrease in fiscal 2007 was primarily due to lower performance and stock-based compensation expenses.

Other gains and charges consist of net gains of \$21.9 and \$21.4 million for the second quarter and year-to-date periods of fiscal 2008 respectively compared to a \$2.0 million net charge for the second quarter and a \$1.2 million net gain for the year-to-date period in fiscal 2007. The increase in fiscal 2008 was primarily related to the \$29.2 million gain recorded in the second quarter related to the sale of 76 Chili's restaurants to ERJ Dining IV, LLC, partially offset by \$7.3 million in charges primarily related to long-lived asset impairments.

Interest expense was \$12.5 million for the second quarter and \$25.4 million for the year-to-date period of fiscal 2008 compared to \$6.6 million for the second quarter and \$12.9 million for the year-to-date period of prior year. The increase in interest expense in fiscal 2008 is primarily due to additional debt outstanding of \$400 million borrowed under a three-year term loan used to fund share repurchases in fiscal 2007 and general corporate purposes.

## **INCOME TAXES**

The effective income tax rate for continuing operations decreased to 31.7% for the second quarter of fiscal 2008 from 32.7% in the prior year and to 31.3% for year-to-date fiscal 2008 as compared to 32.6% for the same period of fiscal 2007. The decrease in the tax rate was primarily due to an increase in federal tax credits, leverage from FICA tip credits and a decrease in stock-based compensation expense.

## **LIQUIDITY AND CAPITAL RESOURCES**

Our primary source of liquidity is cash flows generated from our restaurant operations. We expect our ability to generate strong cash flows from operations to continue into the future. Net cash provided by operating activities of continuing operations decreased to \$214.4 million for the first two quarters of fiscal 2008 from \$256.6 million for the first two quarters of fiscal 2007 primarily due to the sale of 173 restaurants to franchisees as well as declines in operating earnings adjusted for non-cash items and the timing and amount of operational receipts and payments.

Capital expenditures consist of purchases of land for future restaurant sites, new restaurants under construction, purchases of new and replacement restaurant furniture and equipment, and ongoing remodeling programs. Capital expenditures were \$149.4 million for the first two quarters of fiscal 2008 compared to \$185.8 million for the same period of fiscal 2007. We estimate that our capital expenditures for fiscal 2008 will be approximately \$330 to \$340 million and will be funded entirely from operations and existing credit facilities.

In November 2007, we announced the declaration of a cash dividend to common stock shareholders in the amount of \$0.11 per share which represented a 22% increase in our quarterly dividend. Dividends of \$11.1 million were paid in December 2007 and we have paid approximately \$20.6 million in dividends year-to-date.

The Board of Directors has authorized a total of \$2,060.0 million in share repurchases, which has been and will be used to return capital to shareholders and to minimize the dilutive impact of stock options and other share-based awards. In June 2007, we entered into a written trading plan in compliance with Rule 10b5-1 under the Securities Exchange Act of 1934, as amended, which provided for the purchase of up to \$140.0 million of shares of our common stock. Following the expiration of this plan, we entered into another 10b5-1 plan for the purchase of up to \$100.0 million of shares of our common stock in November 2007. We terminated the latest trading plan on November 23, 2007. Pursuant to our stock repurchase plan, we repurchased approximately 9.1 million shares of our common stock for approximately \$240 million during the first two quarters of fiscal 2008, which was funded through existing credit facilities.

In the future, we may consider additional share repurchases based on several factors, including our cash position, share price, operational liquidity, and planned investment and financing needs. The repurchased common stock is reflected as a reduction of shareholders' equity.

In August 2007, we extended the \$50.0 million uncommitted credit facility through August 2008. In September 2007, we increased the \$50.0 million uncommitted credit facility to \$100.0 million and extended the expiration date to September 2008.

On October 24, 2007 we entered into a three-year term loan agreement for \$400.0 million and terminated the one-year unsecured committed credit facility of \$400.0 million set to expire in April 2008. The term loan proceeds were used to pay off all outstanding amounts under the one-year unsecured committed credit facility. The term loan bears interest at LIBOR plus an applicable margin, which is a function of our credit rating at such time, but is subject to a maximum of LIBOR plus 1.5%. Based on our current credit rating, we are paying interest at a rate of LIBOR plus 0.65%.

Excluding the impact of assets held for sale, the working capital deficit increased to \$310.0 million at December 26, 2007 from \$270.7 million at June 27, 2007 primarily due to the increase in gift card liabilities as a result of increased holiday sales and an increase in income taxes payable due to timing of payments. These increases were partially offset by an increase in third party gift card receivables as well as the reclassification of certain tax exposures to long-term pursuant to the adoption of FIN 48.

We believe that our various sources of capital, including availability under existing credit facilities, ability to raise additional financing, and cash flow from operating activities of continuing operations, are adequate to finance operations as well as the repayment of current debt obligations. We are not aware of any other event or trend that would potentially affect our liquidity. In the event such a trend develops, we believe that there are sufficient funds available under our credit facilities and from our internal cash generating capabilities to adequately manage our ongoing business.

## RECENT ACCOUNTING PRONOUNCEMENTS

In December 2007, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards No. 141R, "Business Combinations," ("SFAS 141R"). SFAS 141R requires most identifiable assets, liabilities, noncontrolling interests, and goodwill acquired in a business combination to be recorded at full fair value. The Statement applies to all business combinations, including combinations among mutual entities and combinations by contract alone. Under SFAS 141R, all business combinations will be accounted for by applying the acquisition method. SFAS 141R is effective for periods beginning on or after December 15, 2008 and will be effective for us beginning in the third quarter of fiscal 2009 for business combinations occurring after the effective date.

In December 2007, the FASB issued Statement of Financial Accounting Standards No. 160, "Noncontrolling Interests in Consolidated Financial Statements — an amendment of ARB No. 51," ("SFAS 160"). SFAS 160 will require noncontrolling interests (previously referred to as minority interests) to be treated as a separate component of equity, not as a liability or other item outside of permanent equity. The Statement applies to the accounting for noncontrolling interests and transactions with noncontrolling interest holders in consolidated financial statements. SFAS 160 is effective for periods beginning on or after December 15, 2008 and is effective for us beginning in the third quarter of fiscal 2009. We do not expect that SFAS 160 will have a material impact on our financial statements.

In December 2006, the FASB issued Statement of Financial Accounting Standards No. 157, "Fair Value Measurements," ("SFAS 157"). 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 us beginning in fiscal 2009. In February 2007, the FASB issued Statement of Financial Accounting Standards No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities," ("SFAS 159"). SFAS 159 provides companies with an option to report selected assets and liabilities at fair value. This statement contains financial statement presentation and disclosure requirements for assets and liabilities reported at fair value as a consequence of the election and is effective for us beginning in fiscal 2009. We are currently in the process of assessing the impact that SFAS 157 and SFAS 159 may have on our consolidated financial statements.

The Emerging Issues Task Force ("EITF") reached a consensus on EITF 06-11, "Accounting for Income Tax Benefits of Dividends on Share-Based Payment Awards" ("EITF 06-11") in June 2007. The EITF consensus indicates that the tax benefit received on dividends associated with share-based awards that are charged to retained earnings should be recorded in additional paid-in capital and included in the pool of excess tax benefits available to absorb potential future tax deficiencies on share-based payment awards. The consensus is effective for the tax benefits of dividends declared in fiscal years beginning after December 15, 2007. EITF 06-11 will be effective for us beginning in fiscal 2009. We are currently in the process of evaluating the impact that EITF 06-11 may have on our consolidated financial statements.

## Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

There have been no material changes in our quantitative and qualitative market risks since the prior reporting period.

## Item 4. CONTROLS AND PROCEDURES

Based on their evaluation of our disclosure controls and procedures (as defined in Rules 13a-15 and 15d-15 under the Securities Exchange Act of 1934 [the "Exchange Act"]), as of the end of the period covered by this report, our principal executive officer and principal financial officer have concluded that our disclosure controls and procedures are effective.

There were no changes in our internal control over financial reporting during our second quarter ended December 26, 2007, that have materially affected or are reasonably likely to materially affect, our internal control over financial reporting.

## FORWARD-LOOKING STATEMENTS

We wish to caution you that our business and operations are subject to a number of risks and uncertainties. The factors listed below are important factors that could cause actual results to differ materially from our historical results and from those projected in forward-looking statements contained in this report, in our other filings with the SEC, in our news releases, written or electronic communications, and verbal statements by our representatives.

You should be aware that forward-looking statements involve risks and uncertainties. These risks and uncertainties may cause our or our industry's actual results, performance or achievements to be materially different from any future results, performances or achievements contained in or implied by these

forward-looking statements. Forward-looking statements are generally accompanied by words like “believes,” “anticipates,” “estimates,” “predicts,” “expects,” and other similar expressions that convey uncertainty about future events or outcomes.

## Risks Related to Our Business

*Competition may adversely affect our operations and financial results.*

The restaurant business is highly competitive as to price, service, restaurant location, nutritional and dietary trends and food quality, and is often affected by changes in consumer tastes, economic conditions, financial and credit markets, population and traffic patterns. We compete within each market with locally-owned restaurants as well as national and regional restaurant chains, some of which operate more restaurants and have greater financial resources and longer operating histories than ours. There is active competition for management personnel and hourly employees, and for attractive commercial real estate sites suitable for restaurants.

*Our sales volumes generally decrease in winter months.*

Our sales volumes fluctuate seasonally and are generally higher in the summer months and lower in the winter months, which may cause seasonal fluctuations in our operating results.

*Changes in governmental regulation may adversely affect our ability to open new restaurants and our existing and future operations.*

Each of our restaurants is subject to licensing and regulation by alcoholic beverage control, health, sanitation, safety and fire agencies in the state, county and/or municipality where the restaurant is located. We generally have not encountered any material difficulties or failures in obtaining the required licenses and approvals that could delay or prevent the opening of a new restaurant, or impact the continuing operations of an existing restaurant. Although we do not, at this time, anticipate any occurring in the future, we cannot assure you that we will not experience material difficulties or failures that could delay the opening of restaurants in the future or impact the continuing operations of an existing restaurant.

We are subject to federal and state environmental regulations, and although these have not had a material negative effect on our operations, we cannot ensure that there will not be a material negative effect in the future. More stringent and varied requirements of local and state governmental bodies with respect to zoning, land use and environmental factors could delay or prevent development of new restaurants in particular locations.

We are subject to the Fair Labor Standards Act, which governs such matters as minimum wages, overtime and other working conditions, along with the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986, various family leave mandates and a variety of other laws enacted, or rules and regulations promulgated, by federal, state and local governmental authorities that govern these and other employment matters. We expect increases in payroll expenses as a result of federal and state mandated increases in the minimum wage, and although such increases are not expected to be material, we cannot assure you that there will not be material increases in the future. In addition, our vendors may be affected by higher minimum wage standards, which may increase the price of goods and services they supply to us.

*Inflation may increase our operating expenses.*

We have not experienced a significant overall impact from inflation. Inflation can cause increased food, labor and benefits costs and can increase our operating expenses. As operating expenses increase, we, to the extent permitted by competition, recover increased costs by increasing menu prices, or by reviewing, then implementing, alternative products or processes, or by implementing other cost reduction procedures. We cannot ensure, however, that we will be able to continue to recover increases in operating expenses due to inflation in this manner.

*Our profitability may be adversely affected by increases in energy costs.*

Our success depends in part on our ability to absorb increases in utility costs. Various regions of the United States in which we operate multiple restaurants have experienced significant increases in utility prices. If these increases continue to occur, it would have an adverse effect on our profitability.

*Successful mergers, acquisitions, divestitures and other strategic transactions are important to our future growth and profitability.*

We evaluate potential mergers, acquisitions, franchisees of new and existing restaurants, joint venture investments, and divestitures as part of our strategic planning initiative. These transactions involve various inherent risks, including accurately assessing:

- the value, future growth potential, strengths, weaknesses, contingent and other liabilities and potential profitability of acquisition candidates;
- our ability to achieve projected economic and operating synergies;
- unanticipated changes in business and economic conditions affecting an acquired business;
- the ability to obtain adequate funding and financing for the transaction; and
- our ability to complete divestitures on acceptable terms and at or near the prices estimated as attainable by us.

*If we are unable to meet our strategic plans, our profitability in the future may be adversely affected.*

Our ability to meet our strategic plans is dependent upon, among other things, the ability to:

- identify by us and our franchisees available, suitable and economically viable locations for new restaurants,
- identify adequate sources of capital to fund and finance strategic initiatives, including new restaurant development,

- obtain all required governmental permits (including zoning approvals and liquor licenses) on a timely basis,
- hire all necessary contractors and subcontractors, and
- meet construction schedules.

The costs related to restaurant and brand development include purchases and leases of land, buildings and equipment and facility and equipment maintenance, repair and replacement. The labor and materials costs involved vary geographically and are subject to general price increases. As a result, future capital expenditure costs of restaurant development may increase, reducing profitability. We cannot assure you that we will be able to expand our capacity in accordance with our growth objectives or that the new restaurants and brands opened or acquired will be profitable.

*Unfavorable publicity relating to one or more of our restaurants in a particular brand may taint public perception of the brand.*

Multi-unit restaurant businesses can be adversely affected by publicity resulting from poor food quality, illness or health concerns or operating issues stemming from one or a limited number of restaurants. In particular, since we depend heavily on the Chili's brand for a majority of our revenues, unfavorable publicity relating to one or more Chili's restaurants could have a material adverse effect on the Chili's brand, and consequently on our business, financial condition and results of operations.

*Identification of material weakness in internal control may adversely affect our financial results.*

We are subject to the ongoing internal control provisions of Section 404 of the Sarbanes-Oxley Act of 2002. Those provisions provide for the identification of material weaknesses in internal control. If such a material weakness is identified, it could indicate a lack of adequate controls to generate accurate financial statements. We routinely assess our internal controls, but we cannot assure you that we will be able to timely remediate any material weaknesses that may be identified in future periods, or maintain all of the controls necessary for continued compliance. Likewise, we cannot assure you that we will be able to retain sufficient skilled finance and accounting personnel, especially in light of the increased demand for such personnel among publicly traded companies.

*Other risk factors may adversely affect our financial performance.*

Other risk factors that could cause our actual results to differ materially from those indicated in the forward-looking statements by affecting, among many things, pricing, consumer spending and consumer confidence, include, without limitation, changes in economic conditions and financial and credit markets, credit availability, increased fuel costs and availability for our employees, customers and suppliers, health epidemics or pandemics or the prospects of these events (such as reports on avian flu), consumer perceptions of food safety, changes in consumer tastes and behaviors, governmental monetary policies, changes in demographic trends, availability of employees, terrorist acts, energy shortages and rolling blackouts, and weather (including, major hurricanes and regional snow storms) and other acts of God.

## PART II. OTHER INFORMATION

### Item 1. LEGAL PROCEEDINGS

Information regarding legal proceedings is incorporated by reference from Note 9 to our consolidated financial statements set forth in Part I of this report.

### Item 1A. RISK FACTORS

There has been no material change in the risk factors set forth in Part I, Item 1A, "Risk Factors" in our Annual Report on Form 10-K for the year ended June 27, 2007.

### Item 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Shares repurchased during the second quarter of fiscal 2008 are as follows (in thousands, except share and per share amounts):

	Total Number of Shares Purchased (a)	Average Price Paid per Share	Approximate Dollar Value that May Yet be Purchased Under the Program
September 27, 2007 through October 31, 2007	—	—	\$ 160,052
November 1, 2007 through November 28, 2007	4,123,807	\$ 24.22	\$ 59,797
November 29, 2007 through December 26, 2007	—	—	\$ 59,797
	<u>4,123,807</u>	<u>\$ 24.22</u>	

(a) These amounts include shares purchased as part of the publicly announced programs described in part I of this report.

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

Our Proxy Statement dated September 10, 2007 for the Annual Meeting of Shareholders held on November 1, 2007, as filed with the Securities and Exchange Commission on September 10, 2007, is incorporated herein by reference.

- (a) The Annual Meeting of Shareholders of the Company was held on November 1, 2007.
- (b) Each of the management's nominees, as described in the Proxy Statement referenced above, was elected a director to hold office until the next Annual Meeting of Shareholders or until his or her successor is elected and qualified.

	<u>Votes For</u>	<u>Votes Against or Withheld</u>
Douglas H. Brooks	89,305,573	4,803,664
Marvin J. Girouard	93,985,429	123,808
Ronald Kirk	93,986,998	139,403
John W. Mims	93,969,834	122,239
George R. Mrkonic	93,727,020	382,217
Erle Nye	93,976,189	133,048
James E. Oesterreicher	89,325,431	4,783,806
Rosendo G. Parra	93,985,885	123,352
Cece Smith	93,986,929	122,308

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- (c) The following matter was also voted upon at the meeting and approved by the shareholders:

- (i) proposal to ratify the appointment of KPMG LLP as Independent Auditors for Fiscal 2008

Votes For	93,220,581
Votes Against	869,852
Votes Abstained	18,804

- (d) The following matter was also voted upon at the meeting and rejected by the shareholders:

- (i) shareholder proposal submitted by PETA and Calvert Group, LTD

Votes For	9,200,551
Votes Against	57,193,653
Votes Abstained	20,420,897

**Item 6. EXHIBITS**

- 10(a) \$400,000,000 Term Loan Agreement, dated as of October 24, 2007, by and among Registrant, Brinker Restaurant Corporation, Citibank, N.A., Citigroup Markets, Inc., J.P. Morgan Securities, Inc., Bank of America, N.A., JPMorgan Chase Bank N.A., Wachovia Bank, National Association and the Bank of Tokyo-Mitsubishi UFJ, Ltd.
- 31(a) Certification by Douglas H. Brooks, Chairman of the Board, President and Chief Executive Officer of the Registrant, pursuant to 17 CFR 240.13a - 14(a) or 17 CFR 240.15d - 14(a).
- 31(b) Certification by Charles M. Sonstebly, Executive Vice President and Chief Financial Officer of the Registrant, pursuant to 17 CFR 240.13a - 14(a) or 17 CFR 240.15d - 14(a).
- 32(a) Certification by Douglas H. Brooks, Chairman of the Board, President and Chief Executive Officer of the Registrant, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32(b) Certification by Charles M. Sonstebly, Executive Vice President and Chief Financial Officer of the Registrant, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, we have duly caused this report to be signed on our behalf by the undersigned thereunto duly authorized.

BRINKER INTERNATIONAL, INC.

Date: January 31, 2008

By: /s/ Douglas H. Brooks  
 Douglas H. Brooks,  
 Chairman of the Board,  
 President and Chief Executive Officer  
 (Principal Executive Officer)

Date: January 31, 2008

By: /s/ Charles M. Sonstebly

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Charles M. Sonstebly,  
Executive Vice President and  
Chief Financial Officer  
(Principal Financial Officer)

\$400,000,000

TERM LOAN AGREEMENT

Dated as of October 24, 2007

by and among

BRINKER INTERNATIONAL, INC.,  
as Borrower,

BRINKER RESTAURANT CORPORATION,  
as Guarantor,

CITIBANK, N.A.,  
as Administrative Agent,

CITIGROUP GLOBAL MARKETS INC. and  
J.P. MORGAN SECURITIES INC.,  
as Joint Lead Arrangers  
and Bookrunners

THE FINANCIAL INSTITUTIONS  
PARTY HERETO FROM TIME TO TIME,  
as the Banks,

BANK OF AMERICA, N.A. and  
JPMORGAN CHASE BANK, N.A.  
as Co-Syndication Agents

and  
WACHOVIA BANK, NATIONAL ASSOCIATION and  
THE BANK OF TOKYO-MITSUBISHI UFJ, LTD.,  
as Documentation Agents

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TERM LOAN AGREEMENT (this "Agreement"), dated as of October 24, 2007 by and among BRINKER INTERNATIONAL, INC., a Delaware corporation (the "Borrower"), BRINKER RESTAURANT CORPORATION, a Delaware corporation (the "Guarantor"), the financial institutions listed on the signature pages hereof and the financial institutions who hereafter become parties to this Agreement (individually, a "Bank" and collectively, the "Banks"), and CITIBANK, N.A., as administrative agent (in such capacity, the "Administrative Agent") for the Banks hereunder.

The Borrower has requested that the Banks make loans to it in an aggregate principal amount of \$400,000,000 to refinance the Borrower's obligations under the Existing Bridge Loan Agreement, and the Banks are prepared to make such loans upon and subject to the terms and conditions hereof. Accordingly, the parties hereto agree as follows:

**ARTICLE I****DEFINITIONS AND ACCOUNTING TERMS**

Section 1.01. Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Administrative Agent" has the meaning specified in the introduction hereto.

"Affiliate" means any Person that, directly or indirectly, controls, or is controlled by or under common control with, another Person. For the purposes of this definition, the terms "control", "controlled by" and "under common control with", as used with respect to any Person, means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. Without limiting the generality of the foregoing, a Subsidiary of a Person is an Affiliate of that Person.

"Agreement" has the meaning specified in the introduction hereto.

"Applicable Lending Office" means, with respect to each Bank, such Bank's Domestic Lending Office in the case of a Base Rate Loan, and such Bank's Eurodollar Lending Office in the case of a Eurodollar Rate Loan.

"Applicable Margin" means, at any time, the following percentages determined as a function of the Rating Level at such time:

	Rating Level 1	Rating Level 2	Rating Level 3	Rating Level 4	Rating Level 5
Eurodollar Rate Loan	0.45%	0.55%	0.65%	0.95%	1.50%
Base Rate Loan	0.00%	0.00%	0.00%	0.00%	0.00%

“Applicable Usury Laws”, as used in Section 10.08 of this Agreement and elsewhere in the Credit Documents, means the Texas Finance Code, any other law of the State of Texas or any applicable Federal law to the extent that it permits Banks to contract for, charge, reserve or receive a greater amount of interest than under the Texas Finance Code or other laws of the State of Texas.

“Assignment” means an assignment and acceptance entered into by a Bank and an Eligible Assignee, and accepted by the Administrative Agent, in substantially the form of the attached Exhibit C.

“Banks” has the meaning specified in the introduction hereto.

“Base Rate” means, for any day, a fluctuating interest rate per annum in effect from time to time which rate per annum shall at all times be equal to the higher of:

- (a) the rate of interest announced publicly by Citibank in New York, New York from time to time as Citibank’s base rate; and
- (b) the Federal Funds Rate for such day plus ½ of 1% per annum.

“Base Rate Loan” means a Loan which bears interest as provided in Section 2.07(a)(i).

“Board” means, as to any Person, the Board of Directors of the Person or the Executive Committee thereof.

“Borrower” has the meaning specified in the introduction hereto.

“Borrowing” means a borrowing consisting of simultaneous Loans made on the same day by each of the Banks pursuant to Section 2.02.

“Business Day” means a day of the year on which banks are not required or authorized to close in Dallas, Texas or New York City, New York and, if the applicable Business Day relates to any Eurodollar Rate Loans, on which dealings are carried on in the interbank eurodollar market.

“Capitalized Lease” means at any time, a lease with respect to which the lessee thereunder is required concurrently to recognize the acquisition of an asset and the incurrence of a liability in accordance with GAAP.

“Capitalized Lease Obligations” means, with respect to any Person for any period of determination, the amount of the obligations of such Persons under Capitalized Leases which would be shown as a liability on a balance sheet of such Person prepared in accordance with GAAP.

“Citibank” means Citibank, N.A.

“Code” means, as appropriate, the Internal Revenue Code of 1986, as amended, or any successor Federal tax code, and any reference to any statutory provision shall be deemed to be a reference to any successor provision or provisions.

“Confidential Information” has the meaning specified in Section 10.12.

“Consolidated” refers to the consolidation of the accounts of any Person and its Subsidiaries in accordance with GAAP.

“Controlled Group” means any group of organizations within the meaning of Section 414(b), (c), (m), or (o) of the Code of which the Borrower or its Subsidiaries is a member.

“Corporate Franchise” means the right or privilege granted by the state or government to the Person forming a corporation, and their successors, to exist and do business as a corporation and to exercise the rights and powers incidental to that form of organization or necessarily implied in the grant.

“Credit Documents” means this Agreement, the Notes, and each other agreement, instrument or document executed by the Borrower or the Guarantor at any time in connection with this Agreement.

“Debt” means, in the case of any Person, without duplication, (i) indebtedness of such Person for borrowed money, (ii) obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) Capitalized Lease Obligations, and (iv) obligations of such Person under or relating to letters of credit or guaranties in respect of, and obligations (contingent or otherwise) to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of others of the kinds referred to in clauses (i) through (iii) of this definition. For the purposes of this Agreement, the term Debt shall not include any obligation of the Borrower or the Guarantor incurred by entering into, or by guaranteeing, any transaction that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, foreign exchange transaction, currency swap or option or any similar transaction.

“Debt to Cash Flow Ratio” has the meaning specified in Section 7.01(b).

“Default” has the meaning specified in Section 8.01.

“Domestic Lending Office” means, with respect to any Bank, the office of such Bank specified as its “Domestic Lending Office” opposite its name on Schedule I hereto or in an Assignment or such other office of such Bank as such Bank may from time to time specify to the Borrower and the Administrative Agent.

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“EBIT” means for any period, the Consolidated earnings of a Person during such period from continuing operations, exclusive of gains on sales of assets not in the ordinary course of business (to the extent such gains are included in earnings from continuing operations) and extraordinary items, as determined under GAAP, but without deducting federal, state, foreign and local income taxes and Interest Expense.

“EBITDA” means, for any period, the Consolidated earnings of a Person during such period from continuing operations, exclusive of gains on sales of assets not in the ordinary course of business (to the extent such gains are included in earnings from continuing operations) and extraordinary items, as determined under GAAP, but without deducting federal, state, foreign and local income taxes, Interest Expense, depreciation and amortization.

“Effective Date” means the date that the Administrative Agent notifies the Borrower that the conditions set forth in Section 3.01 shall have been satisfied or waived.

“Eligible Assignee” means (i) a Bank or any Affiliate of any Bank; (ii) a commercial bank or financial institution with an office in the United States of America acceptable to the Administrative Agent and the Borrower, such acceptance not to be unreasonably withheld; (iii) a finance company, insurance company or other financial institution or fund (whether a corporation, partnership or other entity) which is engaged in making, purchasing or otherwise investing in commercial loans in the ordinary course of its business, and having total assets in excess of \$1,000,000,000, or any other Person, in each case, acceptable to the Borrower and the Administrative Agent in their discretion.

“Environment” shall have the meaning set forth in 42 U.S.C. §9601(8) (1982).

“Environmental Protection Statute” shall mean any United States of America local, state or federal, or any foreign, law, statute, regulation, order, consent decree or other Governmental Requirement arising from or in connection with or relating to the protection or regulation of the Environment, including, without limitation, those laws, statutes, regulations, orders, decrees and other Governmental Requirements relating to the disposal, cleanup, production, storing, refining, handling, transferring, processing or transporting of Hazardous Waste, Hazardous Substances or any pollutant or contaminant, wherever located.

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

“Eurocurrency Liabilities” has the meaning assigned to that term in Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

“Eurodollar Lending Office” means, with respect to any Bank, the office of such Bank specified as its “Eurodollar Lending Office” opposite its name on Schedule I hereto or in an Assignment (or, if no such office is specified, its Domestic Lending Office) or such other office of such Bank as such Bank may from time to time specify to the Borrower and the Administrative Agent.

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“Eurodollar Rate” means, for any Interest Period, the offered rate for deposits in U.S. dollars for a period equal to or nearest the number of days in such Interest Period which appears on Telerate Page 3750 as of approximately 11:00 a.m. London time on the date two Business Days prior to the first day of such Interest Period, provided, that (i) if such rates do not appear on such Telerate Page 3750, the “Eurodollar Rate” shall mean, for any Interest Period, the offered rate for deposits in U.S. Dollars for a period equal to or nearest the number of days in such Interest Period which appears on the Reuters Screen LIBO Page, and (ii) if such rate or rates do not appear on either Telerate Page 3750 or the Reuters Screen LIBO Page, the “Eurodollar Rate” shall mean, with respect to each day during such Interest Period, the rate per annum equal to the average (rounded upwards, if necessary, to the nearest 1/16 of 1%) of the respective rates notified to the Administrative Agent by each Reference Bank as the rate at which U.S. Dollar deposits are offered to such Reference Bank by prime banks at or about 11:00 a.m., London time, two Business Days prior to the beginning of such Interest Period in the London interbank market for delivery on the first day of such Interest Period for a period approximately equal to the number of days in such Interest Period and in an amount comparable to the principal amount of the Loans.

“Eurodollar Rate Loan” means any Loan as to which the Borrower shall have selected an interest rate based upon the Eurodollar Rate as provided in Article II.

“Eurodollar Rate Reserve Percentage” of any Bank for any Interest Period for any Eurodollar Rate Loan means the reserve percentage applicable during such Interest Period (or if more than one such percentage shall be so applicable, the daily average of such percentages for those days in such Interest Period during which any such percentage shall be so applicable) under regulations issued from time to time by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including, without limitation, any emergency, supplemental or other marginal reserve requirement) for such Bank with respect to liabilities or assets consisting of or including Eurocurrency Liabilities having a term equal to such Interest Period.

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

“Existing Bridge Loan Agreement” means the \$400,000,000 Term Loan Agreement dated as of April 23, 2007 by and among the Borrower, the Guarantor and Citibank, N.A., as Administrative Agent.

“Facility Amount” means \$400,000,000.

“Federal Funds Rate” means, for any period, a fluctuating interest rate per annum 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 the Administrative Agent from three federal funds brokers of recognized standing selected by it.

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“Financial Officer” means the chief financial officer, the principal accounting officer, any vice president or assistant vice president with accounting or financial responsibilities, or the treasurer or any assistant treasurer of the Borrower.

“Foreign Subsidiary” means a Subsidiary of the Borrower organized under the laws of a jurisdiction located outside the United States of America.

“GAAP” means generally accepted accounting principles for financial reporting as in effect from time to time in the United States of America, applied on a consistent basis.

“Governmental Requirements” means all judgments, orders, writs, injunctions, decrees, awards, laws, ordinances, statutes, regulations, rules, Corporate Franchises, permits, certificates, licenses, authorizations and the like and any other requirements of any government or any commission, board, court, agency, instrumentality or political subdivision thereof.

“Guaranteed Obligations” means all obligations of the Borrower to the Banks and the Administrative Agent hereunder and under the Notes and any other Credit Document to which the Borrower is a party, whether for principal, interest, fees, expenses, indemnities or otherwise, and whether now or hereafter existing.

“Guarantor” has the meaning specified in the introduction hereto.

“Hazardous Substance” shall have the meaning set forth in 42 U.S.C. §9601(14) and shall also include each other substance considered to be a hazardous substance under any Environmental Protection Statute.

“Hazardous Waste” shall have the meaning set forth in 42 U.S.C. §6903(5) and shall also include each other substance considered to be a hazardous waste under any Environmental Protection Statute (including, without limitation, 40 C.F.R. §261.3).

“Insufficiency” means, with respect to any Plan, the amount, if any, by which the present value of the vested benefits under such Plan exceeds the fair market value of the assets of such Plan allocable to such benefits.

“Interest Expense” means, with respect to any Person for any period of determination, its interest expense determined in accordance with GAAP, including, without limitation, all interest with respect to Capitalized Lease Obligations and all capitalized interest, but excluding deferred financing fees.

“Interest Payment Dates” means, with respect to each Loan, the earlier of (i) the last day of the applicable Interest Period related to such Loan, (ii) the Maturity Date, (iii) the date of demand therefor with respect to interest accruing under Section 2.10(f), and (iv) the date of any prepayment of any Loan, whether or not such prepayment is otherwise permitted hereunder.

“Interest Period” means with respect to any Loan:

(a) if such Loan is a Eurodollar Rate Loan, the period commencing on the date of such Loan or on the last day of the immediately preceding Interest Period applicable to such Loan, as the case may be, and ending on the numerically corresponding day (or if there is no corresponding day, the last day) in the calendar month that is one (1), two (2), three (3) or (6) months thereafter, as the Borrower may select, and

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(b) if such Loan is a Base Rate Loan, the period commencing on the date of such Loan or on the last day of the immediately preceding Interest Period applicable to such Loan, as the case may be, and ending ninety (90) days later or, if earlier, on the Maturity Date or the date of the prepayment of such Loan;

in each case, as selected by the Borrower, as provided in Section 2.05. Notwithstanding the foregoing, however:

(i) if any Interest Period would end on a day which shall not be a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, with respect to Eurodollar Rate Loans only, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period for any Loan that would otherwise end later than the Maturity Date shall end on the Maturity Date; and

(iii) Interest Periods commencing on the same date for Loans comprising the same Borrowing shall be of the same duration.

Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of an Interest Period. The Administrative Agent shall promptly advise each Bank in writing of each Interest Period so selected by the Borrower with respect to each Borrowing.

“Investments” has the meaning specified in Section 7.07.

“JPMCB” means JPMorgan Chase Bank, N.A.

“Lien” means any mortgage, lien, pledge, charge, deed of trust, security interest, encumbrance or other type of preferential arrangement to secure or provide for the payment of any obligation of any Person, whether arising by contract, operation of law or otherwise (including, without limitation, the interest of a vendor or lessor under any conditional sale agreement, Capitalized Lease or other title retention agreement).

“Liquid Investments” means:

(a) direct obligations of, or obligations the principal of and interest on which are guaranteed or insured by, the United States of America or any agency or instrumentality thereof;

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(b) (i) negotiable or nonnegotiable certificates of deposit, time deposits, bankers’ acceptances or other similar banking arrangements maturing within twelve (12) months from the date of acquisition thereof (“bank debt securities”), issued by (A) any Bank or any Affiliate of any Bank or (B) any other foreign or domestic bank, trust company or financial institution which has a combined capital surplus and undivided profit of not less than \$100,000,000 or the U.S. Dollar equivalent thereof, if at the time of deposit or purchase, such bank debt securities are rated not less than “BB” (or the then equivalent) by the rating service of S&P or of Moody’s, (ii) commercial paper issued by (A) any Bank or any Affiliate of any Bank or (B) any other Person if at the time of purchase such commercial paper is rated not less than “A-2” (or the then equivalent) by the rating service of S&P or not less than “P-2” (or the then equivalent) by the rating service of Moody’s, or upon the discontinuance of both of such services, such other nationally recognized rating service or services, as the case may be, as shall be selected by the Borrower or the Guarantor, (iii) debt or other securities issued by (A) any Bank or Affiliate of any Bank or (B) or any other Person, if at the time of purchase such Person’s debt or equity securities are rated not less than “BB” (or the then equivalent) by the rating service of S&P or of Moody’s, or upon the discontinuance of both such services, such other nationally recognized rating service or services, as the case may be, as shall be selected by the Borrower or the Guarantor and (iv) marketable securities of a class registered pursuant to Section 12(b) or (g) of the Exchange Act;

(c) repurchase agreements relating to investments described in clauses (a) and (b) above with a market value at least equal to the consideration paid in connection therewith, with any Person who has a combined capital surplus and undivided profit of not less than \$100,000,000 or the U.S. Dollar equivalent thereof, if at the time of entering into such agreement the debt securities of such Person are rated not less than “BBB” (or the then equivalent) by the rating service of S&P or of Moody’s, or upon the discontinuance of both such services, such other nationally recognized rating service or services, as the case may be, as shall be selected by the Borrower or the Guarantor; and

(d) shares of any mutual fund registered under the Investment Company Act of 1940, as amended, which invests solely in underlying securities of the types described in clauses (a), (b) and (c) above.

“Loan” means a loan by a Bank to the Borrower hereunder and refers to a Base Rate Loan or a Eurodollar Rate Loan, each of which shall be a “Type” of Loan.

“Majority Banks” means Banks holding more than fifty percent (50%) of the then aggregate unpaid principal amount of all Loans outstanding.

“Material Adverse Effect” means, relative to any occurrence whatsoever, any effect which (a) is material and adverse to the financial condition or business operations of the Borrower and its Subsidiaries, on a Consolidated basis, or (b) materially and adversely affects the legality, validity or enforceability of this Agreement or any Note, or (c) causes a Default.

“Maturity Date” means October 24, 2010.

“Maximum Rate” shall mean at the particular time in question the maximum non-usurious rate of interest which, under Applicable Usury Law, may then be contracted for, taken, reserved, charged or received under this Agreement, the Notes or under any other agreement entered into in connection with this Agreement or the Notes. If such maximum non-usurious rate of interest changes after the date hereof, the Maximum Rate shall, from time to time, be automatically increased or decreased, as the case may be, as of the effective date of each change in such maximum rate, in each case without notice to Borrower.

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

“Moody’s Rating” means, at any time, the rating of the Borrower’s senior unsecured, long-term, non-credit-enhanced indebtedness for borrowed money then most recently announced by Moody’s.

“Net Worth” of any Person means, as of any date of determination, the excess of total assets of such Person over total liabilities, total assets and total liabilities each to be determined in accordance with GAAP.

“Non-U.S. Bank” has the meaning specified in Section 2.15(e).

“Note” means a promissory note of the Borrower payable to the order of any Bank, in substantially the form of Exhibit A hereto.

“Notice of Borrowing” has the meaning specified in Section 2.02.

“Obligated Party” has the meaning specified in Section 4.03.

“Other Taxes” has the meaning specified in Section 2.16(b).

“PBGC” means the Pension Benefit Guaranty Corporation (and any successor thereto).

“Permitted Liens” means, with respect to any Person, Liens:

- (a) for taxes, assessments or governmental charges or levies on property of such Person incurred in the ordinary course of business to the extent not required to be paid pursuant to Sections 6.01 and 6.06;
- (b) imposed by law, such as landlords’, carriers’, warehousemen’s and mechanics’ liens and other similar Liens arising in the ordinary course of business securing obligations which are not overdue for a period of more than sixty (60) days or which are being contested in good faith and by appropriate proceedings;
- (c) arising in the ordinary course of business (i) out of pledges or deposits under workers’ compensation laws, unemployment insurance, old age pensions or other social security or retirement benefits, or similar legislation or to secure public or statutory obligations of such Person or (ii) which were not incurred in connection with the borrowing of money and do not in the aggregate materially detract from the value or use of the assets of the Borrower and its Subsidiaries in the operation of their business;
- (d) securing Debt existing on the date of this Agreement and listed on the attached Schedule IV or reflected in the financial statements referenced in Section 5.04; provided, that, the Debt secured by such Liens shall not be renewed, refinanced or extended if the amount of such Debt so renewed is greater than the outstanding amount of such Debt on the date of this Agreement;

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- (e) constituting easements, rights-of-way, restrictions and other similar encumbrances incurred in the ordinary course of business and encumbrances consisting of zoning restrictions, easements, licenses, restrictions on the use of property or minor imperfections in title thereto which, in the aggregate, are not material in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of such Person;
- (f) securing judgments against such Person which are being appealed;
- (g) on real property acquired by such Person after the date of this Agreement and securing only Debt of such Person incurred to finance the purchase price of such property; provided, that, any such Lien is created within one hundred eighty (180) days of the acquisition of such property; or
- (h) other than those Liens otherwise permitted above, Liens securing Debt of the Borrower and its Subsidiaries in an aggregate principal amount not in excess of five percent (5.0%) of the Borrower’s Net Worth, on a Consolidated basis, as reflected on the most recent financial statements of the Borrower and its Consolidated Subsidiaries delivered to the Banks pursuant to Section 5.04 or 6.02.

“Person” means an individual, partnership, corporation, limited liability company, limited liability partnership, business trust, joint stock company, trust, unincorporated association, joint venture or other entity, or a government or any political subdivision or agency thereof.

“Plan” means an employee pension benefit plan within the meaning of Title IV of ERISA which is either (a) maintained for employees of the Borrower, of any Subsidiary of the Borrower, or of any member of the Controlled Group, or (b) maintained pursuant to a collective bargaining agreement or any other arrangement under which more than one employer makes contributions and to which the Borrower, any Subsidiary of the Borrower or any member of the Controlled Group is at the time in question making or accruing an obligation to make contributions or has within the preceding five plan years made contributions.

“Pro Rata Share” of a Bank, as it pertains to the Loans, means the applicable percentage set forth opposite the name of that Bank on Schedule II to this Agreement, as such Schedule II may change from time to time in accordance with the terms of this Agreement or in accordance with any effective Assignment.

“Rating” means the Moody’s Rating or the S&P Rating, as the case may be.

“Rating Level” refers to the Rating in effect during any Rating Level Period.

“Rating Level Period” means a Rating Level 1 Period, a Rating Level 2 Period, a Rating Level 3 Period, a Rating Level 4 Period or a Rating Level 5 Period; provided that:

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- (i) “Rating Level 1 Period” means a period during which the Moody’s Rating is at or above Baa1 or the S&P Rating is at or above BBB+;
- (ii) “Rating Level 2 Period” means a period that is not a Rating Level 1 Period, during which the Moody’s Rating is at or above Baa2 or the S&P Rating is at or above BBB;
- (iii) “Rating Level 3 Period” means a period that is not a Rating Level 1 Period or a Rating Level 2 Period, during which the Moody’s Rating is at or above Baa3 or the S&P Rating is at or above BBB-;
- (iv) “Rating Level 4 Period” means a period that is not a Rating Level 1 Period, a Rating Level 2 Period or a Rating Level 3 Period, during which the Moody’s Rating is at or above Ba1 or the S&P Rating is at or above BB+; and
- (v) “Rating Level 5 Period” means a period that is not a Rating Level 1 Period, a Rating Level 2 Period, a Rating Level 3 Period or a Rating Level 4 Period;

it being understood that, in application of the foregoing provisions, if the Moody's Rating and the S&P Rating differ by one Rating Level, then the applicable Rating Level shall be based upon the Rating Level resulting from the higher of such ratings; and provided, that if the Moody's Rating and the S&P Rating differ by more than one Rating Level, then the applicable Rating Level shall be one Rating Level higher than the Rating Level resulting from the application of the lower of such ratings (for which purposes Rating Level 1 is the highest and Rating Level 5 is the lowest); and provided, further, that during any period for which there is no Moody's Rating and no S&P Rating, a Rating Level 5 Period shall apply.

"Reference Banks" mean Citibank and JPMCB.

"Rent Expense" means, for any Person for any period of determination, such Person's operating lease expense computed in accordance with GAAP, including, without limitation, all contingent rentals, but excluding all common area maintenance expenses.

"Reuters Screen LIBO Page" shall mean the display designated as page "LIBO" on the Reuter Monitor Money Rates Service or such other page as may replace the "LIBO" page on that service for the purpose of displaying London interbank offered rates of major banks.

"SEC" means the United States of America Securities and Exchange Commission (and any successor thereto).

"SEC Filing" means a report or statement filed with the SEC pursuant to Sections 13, 14, or 15(d) of the Exchange Act and the regulations thereunder.

"Significant Subsidiary" means any Subsidiary which is a "significant subsidiary" of the Borrower within the meaning of Rule 1-02 of Regulation S-X under the Exchange Act.

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"Solvent" means, with respect to any Person, that, as of any date of determination, (a) the amount of the present fair saleable value of the assets of such Person will, as of such date, exceed the amount of all liabilities of such Person, contingent or otherwise, as of such date, as such terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the present fair saleable value of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, (c) such Person will not have, as of such date, an unreasonably small capital with which to conduct its business, and (d) such Person will be able to pay its debts as they mature. For purposes of this definition, (i) "debt" means liability on a "claim", and (ii) "claim" means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

"S&P" means Standard & Poors Rating Services or any successor thereto.

"S&P Rating" means, at any time, the rating of the Borrower's senior unsecured, long term, non-credit-enhanced indebtedness for borrowed money then most recently announced by S&P.

"Subsidiary" means, as to any Person, any corporation, limited liability company, association or other business entity in which such Person or one or more of its Subsidiaries directly or indirectly through one or more intermediaries owns sufficient equity or voting interests to enable it or them (individually or as a group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such entity, and any partnership or joint venture if more than a fifty percent (50%) interest in the profits or capital thereof is owned directly or indirectly by such Person, or by one or more of its Subsidiaries, or collectively by such Person and one or more of its Subsidiaries (unless such partnership can and does ordinarily take major business actions without the prior approval of such Person or one or more of its Subsidiaries). Unless the context otherwise clearly requires, any reference to a "Subsidiary" is a reference to a direct or indirect Subsidiary of the Borrower.

"Taxes" has the meaning specified in Section 2.15(a).

"Telerate Page 3750" shall mean the display designated as page "3750" on the Telerate Service or such other page as may replace the "3750" page on that service or such other service or services as may be nominated by the British Bankers' Association for the purpose of displaying London interbank offered rates for U.S. dollar deposits.

"Termination Event" means (i) a "reportable event", as such term is described in Section 4043 of ERISA (other than a "reportable event" not subject to the provision for 30 day notice to the PBGC), or an event described in Section 4062(f) of ERISA, or (ii) the withdrawal of the Borrower or any member of the Controlled Group from a Plan during a plan year in which it was a "substantial employer", as such term is defined in Section 4001(a)(2) of ERISA, or the incurrance of liability by the Borrower or any member of the Controlled Group under Section 4064 of ERISA upon the termination of a Plan or Plan, or (iii) the distribution of a notice of intent to terminate a Plan pursuant to Section 4041(a)(2) of ERISA or the treatment of a Plan amendment as a termination under Section 4041 of ERISA, or (iv) the institution of proceedings to terminate a Plan by the PBGC under Section 4042 of ERISA, or (v) any other event or condition which might constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan.

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"Third Party Funds" has the meaning specified in Section 10.05.

"Type" has the meaning set forth in the definition of the term "Loan" above.

"UFCA" means the Uniform Fraudulent Conveyance Act, as amended from time to time.

"UFTA" means the Uniform Fraudulent Transfer Act, as amended from time to time.

"U.S. Dollars" and "\$" mean the lawful currency of the United States of America.



Section 1.02. Computation of Time Periods. In this Agreement in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each means “to but excluding.”

Section 1.03. Accounting Terms. All accounting and financial terms not specifically defined herein and the compliance with each covenant contained herein with respect to financial matters (unless a different procedure is otherwise set forth herein) shall be construed in accordance with GAAP. If subsequent to the date hereof, the accounting principles under GAAP are changed and as a result of such change the calculation of any financial covenant set forth herein is affected, the Banks and Borrower hereby agree to amend such financial covenants in such a manner as to make such financial covenants consistent with the financial covenants in effect hereunder prior to such change in accounting principles and, until such amendment is effected, such financial covenants shall be calculated from financial statements of the Borrower adjusted to reflect the accounting principles followed by the Borrower prior to such change in accounting principles.

Section 1.04. MiscellaneousThe words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Article, Section, Schedule and Exhibit references are to Articles and Sections of and Schedules and Exhibits to this Agreement, unless otherwise specified.

## ARTICLE II

### AMOUNTS AND TERMS OF THE LOANS

Section 2.01 The Loans. Subject to the terms and conditions set forth in this Agreement, each Bank severally agrees to make Loans to Borrower on the Effective Date in an aggregate amount equal to its Pro Rata Share of the Facility Amount. The Loans are not revolving commitments and the Borrower shall have no right to re-borrow any amounts repaid hereunder.

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Section 2.02 Making the Loans.(a) The Borrowing shall be made on notice, given not later than 11:00 A.M. (New York City time) on the third Business Day prior to the date of the proposed Borrowing, by the Borrower to the Administrative Agent, which shall give to each Bank prompt notice thereof by telecopy, telex or cable. The notice of Borrowing (the “Notice of Borrowing”) shall be in writing (including by telecopy), in substantially the form of Exhibit B hereto, executed by the Borrower and the aggregate amount of the Borrowing shall equal the Facility Amount. The Notice of Borrowing shall refer to this Agreement and shall specify the requested (i) date of such Borrowing (which shall be a Business Day), (ii) Type of Loans comprising such Borrowing and (iii) Interest Periods, if selected at the option of the Borrower, for such Borrowing. Each Bank shall, before 1:00 P.M. (New York City time) on the date of the proposed Borrowing, make available for the account of its Applicable Lending Office to the Administrative Agent at its address referred to in Section 10.02, in same day funds, such Bank’s Pro Rata Share of such Borrowing. After the Administrative Agent’s receipt of such funds and upon fulfillment of the applicable conditions set forth in Article III, the Administrative Agent will make such funds available to the Borrower at the Administrative Agent’s aforesaid address.

(b) Notwithstanding anything in subsection (a) above to the contrary, the Borrower may not select Eurodollar Rate Loans for the Borrowing if the obligations of the Banks to make Eurodollar Rate Loans shall then be suspended pursuant to Section 2.12(a) or Section 2.14.

(c) The Notice of Borrowing shall be irrevocable and binding on the Borrower. In the case of a Eurodollar Rate Loan requested by the Borrower in the Notice of Borrowing, the Borrower shall indemnify each Bank against any loss, cost or expense incurred by such Bank as a result of any failure to fulfill, on or before the date specified in such Notice of Borrowing for such Borrowing, the applicable conditions set forth in Article III, including, without limitation, any loss (including loss of anticipated profits), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Bank to fund such Loan to be made by such Bank as part of such Borrowing when such Loan, as a result of such failure, is not made on such date. A certificate in reasonable detail as to the basis for and the amount of such loss, cost or expense submitted to the Borrower and the Administrative Agent by such Bank shall be prima facie evidence of the amount of such loss, cost or expense.

Section 2.03 Notes. If requested by a Bank, the Borrower shall execute and deliver to such Bank a Note, payable to the order of such Bank, in the principal amount of the Loans made by such Bank.

Section 2.04 Several Obligations. The failure of any Bank to make the Loan to be made by it on the Effective Date shall not relieve any other Bank of its obligation, if any, hereunder to make its Loan on the Effective Date, but no Bank shall be responsible for the failure of any other Bank to make the Loan to be made by such other Bank on the Effective Date.

Section 2.05 Conversions and Continuations of Loans.

(a) Subject to the limitations set forth in Section 2.14, the Borrower shall have the right at any time upon prior irrevocable notice to the Administrative Agent (i) not later than 11:00 A.M. (New York City time) on the last day of the Interest Period therefor, to convert any Eurodollar Rate Loan into a Base Rate Loan and (ii) not later than 10:00 A.M. (New York City time) three (3) Business Days prior to the date of conversion or continuation, to convert any Base Rate Loan into a Eurodollar Rate Loan or to continue any Eurodollar Rate Loan for an additional Interest Period, subject in each case to the following:

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(A) each conversion or continuation shall be made pro rata among the Banks in accordance with the respective principal amounts of the Loans comprising the converted or continued Loan;

(B) if less than all the outstanding principal amount of any Loan shall be converted or continued, the aggregate principal amount of such Loan converted or continued shall be in an amount of \$10,000,000 or an integral multiple of \$1,000,000 in excess thereof;

(C) accrued interest on a Loan (or portion thereof) being converted or continued shall be paid by the Borrower at the time of conversion or continuation;

(D) if any Eurodollar Rate Loan is converted at a time other than the end of the Interest Period applicable thereto, the Borrower shall pay, upon demand, any amounts due to the Banks pursuant to Section 2.11 as a result of such conversion;

(E) no Interest Period may be selected for any Eurodollar Rate Loan that would end later than the Maturity Date;

(F) no Default shall have occurred and be continuing at the time of, or result from, such conversion or continuation;

(G) each such conversion or continuation shall constitute a representation and warranty by the Borrower and the Guarantor that no Default (i) has occurred and is continuing at the time of such conversion or continuation, or (ii) would result from such conversion or continuation; and

(H) after giving effect to the conversions of Loans from one Type to the other and all continuations of Loans as the same Type, there shall not be more than five (5) Interest Periods in effect at one time with respect to Eurodollar Rate Loans.

(b) Each notice pursuant to Section 2.05(a) shall be irrevocable, shall be in writing (or telephone notice promptly confirmed in writing) and shall refer to this Agreement and specify (i) the identity and amount of the Loan that the Borrower requests be converted or continued, (ii) whether such Loan is to be converted to or continued as a Eurodollar Rate Loan or a Base Rate Loan, (iii) if such notice requests a conversion, the date of such conversion (which shall be a Business Day) and (iv) if such Loan is to be converted to or continued as a Eurodollar Rate Loan, the Interest Period with respect to any conversion to or continuation as a Eurodollar Rate Loan, the Interest Period with respect thereto. If no Interest Period is specified in any such notice with respect to any conversion to or continuation as a Eurodollar Rate Loan, the Borrower shall be deemed to have selected an Interest Period of one (1) month's duration. The Administrative Agent shall promptly advise the other Banks of any notice given pursuant to Section 2.06(a) and of each Bank's portion of any converted or continued Loan. If the Borrower shall not have given notice in accordance with Section 2.06(a) to continue any Eurodollar Rate Loan into a subsequent Interest Period (and shall not otherwise have given notice in accordance with Section 2.06(a) to convert such Eurodollar Rate Loan), such Eurodollar Rate Loan shall, at the end of the Interest Period applicable thereto (unless repaid pursuant to the terms hereof), automatically be continued for a new Interest Period as a Base Rate Loan.

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#### Section 2.06. Repayment of Loans; Voluntary Prepayment.

(a) The Borrower agrees to repay the Loans in full on the Maturity Date.

(b) The Borrower may, upon at least one (1) Business Day's notice in respect of Base Rate Loans, and, in respect of Eurodollar Rate Loans, upon at least three (3) Business Days' notice, to the Administrative Agent stating the proposed date (which shall be a Business Day) and aggregate principal amount of the prepayment, and if such notice is given the Borrower shall, prepay the outstanding principal amounts of the Loans, together with accrued interest to the date of such prepayment on the principal amount prepaid and amounts, if any, required to be paid pursuant to Section 2.11 as a result of such prepayment; provided, however, that each partial prepayment pursuant to this Section 2.06(b) shall be in an aggregate principal amount not less than \$10,000,000 and increments of \$1,000,000 in excess thereof, and amounts prepaid may not be reborrowed.

(c) Each notice of prepayment shall specify the prepayment date and the aggregate principal amount of each Loan to be prepaid, shall be irrevocable and shall commit the Borrower to prepay such Loan by the amount stated therein. All prepayments under this Section 2.06 shall be accompanied by accrued interest on the principal amount being prepaid to the date of prepayment.

#### Section 2.07. Interest on Loans.

(a) Interest on Loans. The Borrower shall pay interest on the unpaid principal amount of each Loan made by each Bank from the date of such Loan until such principal amount shall be paid in full, at the following rates per annum:

(i) if such Loan is a Base Rate Loan, a rate per annum equal at all times during the Interest Period for such Loan to the Base Rate in effect from time to time during such Interest Period for such Loan plus the Applicable Margin for Base Rate Loans in effect from time to time, payable on the last day of such Interest Period; and

(ii) if such Loan is a Eurodollar Rate Loan, a rate per annum equal at all times during the Interest Period for such Loan to the sum of the Eurodollar Rate for such Interest Period plus the Applicable Margin for Eurodollar Rate Loans in effect from time to time, payable on the last day of such Interest Period.

(b) Additional Interest on Eurodollar Rate Loans. The Borrower shall pay to each Bank, so long as such Bank shall be required under regulations of the Board of Governors of the Federal Reserve System to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency Liabilities, additional interest on the unpaid principal amount of each Eurodollar Rate Loan of such Bank, from the date of such Loan until such principal amount is paid in full, at an interest rate per annum equal at all times to the remainder obtained by subtracting (i) the Eurodollar Rate for each Interest Period for such Loan from (ii) the rate obtained by dividing such Eurodollar Rate by a percentage equal to one hundred percent (100%) minus the Eurodollar Rate Reserve Percentage of such Bank for such Interest Period, payable on the date on which interest is payable on such Loan. Such additional interest shall be determined by such Bank and notified to the Borrower through the Administrative Agent. A certificate as to the amount of such additional interest submitted to the Borrower and the Administrative Agent by such Bank shall be conclusive and binding for all purposes, absent error.

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(c) Payment of Interest. All accrued but unpaid interest on all Loans shall be due and payable on the Interest Payment Dates related thereto.

(d) Maximum Interest. The parties hereto agree that the sum of (i) interest payable in accordance with this Section 2.07, plus (ii) other consideration payable hereunder or under the Notes which constitutes interest under Applicable Usury Law (whether or not denoted as interest), shall not exceed the maximum amount allowed under Applicable Usury Law.

Section 2.08. Interest Rate Determination. The Administrative Agent shall give prompt notice to the Borrower and the Banks of the applicable interest rate for each Loan determined by the Administrative Agent for purposes of Section 2.07 and the Applicable Margin used in determining the applicable interest rate under Section 2.07.

Section 2.09. Administrative Agent's Fees. The Borrower agrees to pay to the Administrative Agent, for its sole account, the fees specified in the fee Letter dated September 27, 2007 among the Borrower and Citigroup Global Markets Inc.

Section 2.10. Payments; Computations; Interest on Overdue Amounts.

(a) The Borrower shall make each payment hereunder and under the Notes to be made by it not later than 11:00 A.M. (New York City time) on the day when due in U.S. Dollars to the Administrative Agent at its address referred to in Section 10.02 in same day funds. The Administrative Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal interest or fees ratably (other than amounts payable pursuant to Section 2.11, 2.12 or 2.15) to the Banks for the account of their respective Applicable Lending Offices, and like funds relating to the payment of any other amount payable to any Bank to such Bank for the account of its Applicable Lending Office, in each case to be applied in accordance with the terms of this Agreement.

(b) All computations of interest based on the Base Rate shall be made by the Administrative Agent on the basis of a year of 365 or 366 days, as the case may be, and all computations of interest based on the Eurodollar Rate shall be made by the Administrative Agent on the basis of a year of 360 days, and all computations of interest pursuant to Section 2.07(b) shall be made by a Bank on the basis of a year of 360 days, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable. Each determination by the Administrative Agent (or, in the case of Section 2.07(b), by a Bank) of an interest rate hereunder shall be conclusive and binding for all purposes, absent error.

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(c) Whenever any payment hereunder or under the Notes shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest, as the case may be; provided, however, that if such extension would cause payment of interest on or principal of Eurodollar Rate Loans to be made in the next following calendar month, such payment shall be made on the next preceding Business Day.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due by the Borrower to any Bank hereunder that the Borrower will not make such payment in full, the Administrative Agent may assume that the Borrower has made such payment in full to the Administrative Agent on such date and the Administrative Agent may, in reliance upon such assumption, cause to be distributed to each Bank on such due date an amount equal to the amount then due such Bank. If and to the extent the Borrower shall not have so made such payment in full to the Agent, each Bank shall repay to the Administrative Agent forthwith on demand such amount distributed to such Bank together with interest thereon, for each day from the date such amount is distributed to such Bank until the date such Bank repays such amount to the Administrative Agent, at the Federal Funds Rate.

(e) Whenever any reference is made to any Bank's "ratable share", "ratable portion" or "Pro Rata Share" (or any similar reference) of any amount hereunder, such share or portion shall be calculated to not more than four decimal places, rounding up or down, as appropriate.

(f) Notwithstanding the foregoing, upon the occurrence and during the continuance of any Default, the Applicable Margin shall automatically be increased by 2% per annum.

Section 2.11. Consequential Losses on Eurodollar Rate Loans. If (a) any payment (or purchase pursuant to Section 2.13) of principal of any Eurodollar Rate Loan is made other than on the last day of an Interest Period relating to such Loan, as a result of a prepayment pursuant to Section 2.06(b), or Section 2.14 or acceleration of the maturity of the Notes and the outstanding principal amount of the Loans pursuant to Section 8.01 on a day other than the last day of such Interest Period or for any other reason or as a result of any such purchase; (b) a Eurodollar Rate Loan is converted pursuant to Section 2.05 at a time other than the end of an Interest Period; or (c) the Borrower fails to make a principal or interest payment with respect to any Eurodollar Rate Loan on the date such payment is due and payable, the Borrower shall, upon demand by any Bank (with a copy of such demand to the Administrative Agent), pay to the Administrative Agent for the account of such Bank any amounts required to compensate such Bank for any additional losses, costs or expenses which it may reasonably incur as a result of any such payment or purchase, including, without limitation, any loss (including loss of reasonably anticipated profits, except in the case of such a purchase pursuant to Section 2.13), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Bank to fund or maintain such Loan.

Section 2.12. Increased Costs.

(a) If, due to the introduction of or any change (including without limitation, but without duplication, any change by way of imposition or increase of reserve requirements included, in the case of Eurodollar Rate Loans, in the Eurodollar Rate Reserve Percentage) in or in the interpretation, application or applicability of any law, regulation, guideline or request from any central bank or other governmental authority (whether or not having the force of law), there shall be any increase in the cost to any Bank of agreeing to make any Eurodollar Rate Loan to the Borrower, then the Borrower shall from time to time, upon demand by such Bank (with a copy of such demand to the Administrative Agent), pay to the Administrative Agent for the account of such Bank additional amounts sufficient to compensate such Bank for such increased cost. A certificate as to the amount of such increased cost, submitted to the Borrower and the Administrative Agent by such Bank, shall be prima facie evidence of the amount of such increased cost. Promptly after any Bank becomes aware of any such introduction, change or proposed compliance, such Bank shall notify the Borrower thereof, provided, that, the failure to provide such notice shall not affect such Bank's rights hereunder, except that such Bank's right to recover such increased costs from the Borrower for any period prior to such notice shall be limited to the period of ninety (90) days immediately prior to the date such notice is given to the Borrower.

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(b) If any Bank determines that the introduction of or any change in any law or regulation or any guideline or request from any central bank or other governmental authority (whether or not having the force of law) affects or would affect the amount of capital required or expected to be maintained by such Bank or any corporation controlling such Bank and that the amount of such capital is increased by or based upon the existence of such Bank's Loans and other loans of this type, then, upon receipt of a demand by such Bank (with a copy of such demand to the Administrative Agent), the Borrower shall, within ten (10) days of such demand, notify such Bank and the Administrative Agent that the Borrower desires to replace such Bank in accordance with Section 2.13. If the Borrower either fails to notify such Bank and the Administrative Agent in accordance with the prior sentence or fails to replace such Bank within the time periods specified in Section 2.13, the Borrower shall promptly pay to the Administrative Agent for the account of such Bank, from time to time as specified by such Bank, additional amounts sufficient to compensate such Bank or such corporation in the light of such circumstances, to the extent that such Bank reasonably determines such increase in capital to be allocable to the existence of such Bank's Loans hereunder. A certificate as to such amounts submitted to the Borrower and the Administrative Agent by such Bank shall be conclusive and binding for all purposes, absent error.

Section 2.13. Replacement of Banks. In the event that any Bank makes a demand for payment under Section 2.07(b) or Section 2.12, or in the event that Borrower is required to make any payment in respect of Taxes or Other Taxes pursuant to Section 2.15, the Borrower may within ninety (90) days of such demand or payment, if no Default then exists, replace such Bank with another commercial bank, financial institution or other Person in accordance with all of the provisions of Section 10.06(a) (including execution of an appropriate Assignment); provided, that, (i) all obligations of such Bank to lend hereunder shall be terminated and the Note payable to such Bank and all other obligations owed to such Bank hereunder shall be purchased in full without recourse at par plus accrued interest at or prior to such replacement, (ii) such replacement shall be reasonably satisfactory to the Administrative Agent, (iii) if such replacement bank is not already a Bank hereunder, the Borrower (and, for the avoidance of doubt, not the replacement bank) shall pay to the Administrative Agent an assignment fee of \$3,500 in connection with such replacement, (iv) such replacement shall, from and after such replacement, be deemed for all purposes to be a "Bank" hereunder and shall have all of the rights, duties and obligations hereunder of the Bank being replaced, and (v) such other actions shall be taken by the Borrower, such Bank and such replacement bank as may be appropriate to effect the replacement of such Bank with such replacement bank on terms such that such replacement bank has all of the rights, duties and obligations hereunder as such Bank (including, without limitation, execution and delivery of new Notes to such replacement bank, redelivery to the Borrower in due course of the Notes payable to such Bank and specification of the information contemplated by Schedule I as to such replacement bank).

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Section 2.14. Illegality and Unavailability. (a) Notwithstanding any other provision of this Agreement, if any Bank shall notify the Administrative Agent that the introduction of or any change in or in the interpretation of any law or regulation shall make it unlawful, or any central bank or other governmental authority shall assert that it is unlawful, for such Bank or its Applicable Lending Office to make any Eurodollar Rate Loan or to continue to fund or maintain any Eurodollar Rate Loan hereunder, then, on notice thereof to the Borrower by the Administrative Agent, (i) the obligation of such Bank to make, continue or maintain any Eurodollar Rate Loan shall be suspended until the Administrative Agent shall notify the Borrower and the Banks that the circumstances causing such suspension no longer exist, and (ii) the Eurodollar Rate Loans then outstanding of such Bank together with all accrued interest thereon and all amounts payable pursuant to Section 2.11, shall be automatically converted to Base Rate Loans or, at the option of the Borrower, prepaid in full, unless such Bank shall determine in good faith in its sole opinion that it is lawful to maintain such Loans made by such Bank to the end of the Interest Period then applicable thereto.

(b) If, with respect to any conversion of a Base Rate Loan to a Eurodollar Rate Loan or the continuation of any Eurodollar Rate Loan pursuant to Section 2.05:

(i) the Reference Banks fail to furnish timely information to the Administrative Agent for determining the Eurodollar Rate for the applicable Eurodollar Rate Loan; or

(ii) the Majority Banks advise the Administrative Agent that the Eurodollar Rate as determined by the Administrative Agent will not adequately and fairly reflect the cost to such Banks of maintaining the applicable Eurodollar Rate Loan;

then the Administrative Agent forthwith shall give notice thereof to the Borrower and the Banks, whereupon until the Administrative Agent notifies the Borrower that the circumstances giving rise to such suspension no longer exist, the obligation of the Banks to convert or continue after the current Interest Period(s) any Eurodollar Rate Loans shall be suspended until the Administrative Agent shall notify the Borrower and the Banks that the circumstances causing such suspension no longer exist.

Section 2.15. Taxes.

(a) Any and all payments by the Borrower or the Guarantor hereunder or under the Notes or any other Credit Document shall be made, in accordance with Section 2.10 and subject to Sections 2.15(c) and 2.15(e), free and clear of and without deduction for any and all taxes, levies, imposts, deductions, charges or withholdings with respect thereto, and all liabilities with respect thereto, including any interest, additions to tax or penalties applicable thereto, excluding in the case of each Bank and the Administrative Agent (i) taxes imposed directly or indirectly on or measured by its net income, and franchise taxes imposed on it in lieu of net income taxes, by any jurisdiction (or any political subdivision thereof) under the laws of which such Bank or the Administrative Agent (as the case may be) is organized or, in the case of a Bank, maintains a lending office and at which such Bank now or hereafter does business, and (ii) United States of America income taxes (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes"). If the Borrower or the Guarantor shall be required by law to deduct any Taxes from or in respect of any sum payable by it hereunder or under any Note or other Credit Document to any Bank or the Administrative Agent, (x) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.15) such Bank or the Administrative Agent (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (y) the Borrower or the Guarantor, as the case may be, shall make such deductions and (z) the Borrower or the Guarantor, as the case may be, shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law.

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(b) In addition, the Borrower or the Guarantor, as the case may be, agrees to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies which arise from any payment made by the Borrower or the Guarantor hereunder or under any Note or other

Credit Document executed by it or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or any Note or other Credit Document (hereinafter referred to as "Other Taxes").

(c) Within thirty (30) days after the date of the payment of Taxes by or at the direction of the Borrower or the Guarantor, the Borrower will furnish to the Administrative Agent, at its address referred to in Section 10.02, the original or a certified copy of a receipt evidencing payment thereof. If a Bank receives from the relevant jurisdiction imposing such Tax a refund of a specific Tax item for which it has been indemnified by the Borrower with respect to which the Borrower has paid additional amounts pursuant to this Section 2.15, it shall pay the Borrower an amount equal to such refund, together with any interest paid by such jurisdiction with respect to such refund, provided that the Borrower, upon the request of such Bank, agrees to promptly repay the amount (or portion thereof) paid over to the Borrower by such Bank in the event such Bank is required to repay the refund (or portion thereof) to such jurisdiction.

(d) Without prejudice to the survival of any other agreement of the Borrower or the Guarantor hereunder, the agreements and obligations of the Borrower and the Guarantor contained in this Section 2.15 shall survive the payment in full of principal and interest hereunder and under the Notes and other Credit Documents.

(e) Each Bank that is organized under the laws of any jurisdiction other than the United States of America or any state or political subdivision thereof (for purposes of this Section 2.15(e), each a "Non-U.S. Bank") shall deliver to the Borrower and the Administrative Agent on or prior to the date of this Agreement or upon the effectiveness of any Assignment, or at such other times prescribed by applicable law, (i) two (2) properly completed and signed originals of United States of America Internal Revenue Service form W-8BEN or W-8ECI, as appropriate, or any successor applicable form, as the case may be, certifying that such Bank is entitled to benefits under an income tax treaty to which the United States is a party that eliminates or reduces the rate of withholding tax on payments under this Agreement and the other Credit Documents or certifying that the income receivable pursuant to this Agreement and the other Credit Documents is effectively connected with the conduct of a trade or business in the United States, or (ii) if such Non-U.S. Bank is not a "bank" or other Person described in Code Section 881(c)(3), two properly completed and signed originals of a statement substantially in the form of Exhibit E hereto, together with two properly completed and signed originals of Internal Revenue Service form W-8BEN, upon which the Borrower is entitled to rely, from any such Non-U.S. Bank, or any successor applicable form, together with any other certificate or statement of exemption or reduction required under the Code, in order to establish that such Non-U.S. Bank is entitled to treat the interest payments under this Agreement and the other Credit Documents as portfolio interest that is exempt from withholding tax under the Code. Thereafter, upon the reasonable request of the Borrower or the Administrative Agent, each such Non-U.S. Bank shall (A) upon the obsolescence of any form previously delivered by such Non-U.S. Bank, promptly submit to Administrative Agent and Borrower such additional properly completed and signed originals of such forms (or such successor forms as shall be adopted from time to time by the relevant United States taxing authorities) as may then be available under then current United States laws and regulations to qualify for a deduction in United States withholding taxes, or such evidence as is satisfactory to Borrower and Administrative Agent of an available exemption from United States withholding taxes, in respect of all payments to be made to such Non-U.S. Bank by Borrower pursuant to the Credit Documents, and (B) promptly notify Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption. A Non-U.S. Bank shall not be required to deliver any form or statement pursuant to this Section 2.15 that such Non-U.S. Bank is not legally able to deliver. The Borrower shall not be required to pay additional amounts to any Bank pursuant to this Section 2.15 to the extent that such Bank did not qualify for a complete exemption from United States withholding taxes at the time such Bank became a party to this agreement and to the extent that the obligation to pay additional amounts would not have arisen but for the failure of such Bank to comply with this paragraph (e), except to the extent such Bank is not able to comply as a result of a change in law. Any assignee of all or any portion of any Bank's rights and obligations under this Agreement shall be subject to this Section 2.15(e) as well as Section 10.05 of this Agreement.

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(f) Upon the reasonable request of the Borrower, any Bank claiming any additional amounts payable pursuant to this Section 2.15 shall use its reasonable efforts (consistent with its internal policies and requirements of law) to change the jurisdiction of its Applicable Lending Office if such a change would reduce any such additional amounts (or any similar amount that may thereafter accrue) and would not, in the sole determination of such Bank, be otherwise disadvantageous to such Bank.

Section 2.16. Payments Pro Rata. Except as provided in Sections 2.11, 2.12, 2.14 or 2.15, each of the Banks agrees that if it should receive any payment (whether by voluntary payment, by realization upon security, by the exercise of the right of setoff or banker's lien, by counterclaim or cross action, by the enforcement of any right under this Agreement or the Notes or other Credit Documents, or otherwise) in respect of any obligation of the Borrower or Guarantor hereunder or under the Notes or other Credit Documents of a sum which with respect to the related sum or sums received by other Banks is in a greater proportion than the total amount of principal, interest, fees or any other obligation incurred hereunder, as the case may be, then owed and due to such Bank bears to the total amount of principal, interest, fees or any such other obligation then owed and due to all of the Banks immediately prior to such receipt, then such Bank receiving such excess payment shall purchase for cash without recourse from the other Banks an interest in the obligations of the Borrower to such Banks in such amount as shall result in a proportional participation by all of the Banks in the aggregate unpaid amount of principal, interest, fees or any such other obligation, as the case may be, owed to all of the Banks, provided, that if all or any portion of such excess payment is thereafter recovered from such purchasing Bank, such purchase from each other Bank shall be rescinded and each such other Bank shall repay to the purchasing Bank the purchase price to the extent of such other Bank's ratable share (according to the proportion of (i) the amount of the participation purchased from such other Bank as a result of such excess payment to (ii) the total amount of such excess payment) of such recovery together with an amount equal to such other Bank's ratable share (according to the proportion of (a) the amount of such other Bank's required repayment to (b) the total amount so recovered from the purchasing Bank) of any interest or other amount paid or payable by the purchasing Bank in respect of the total amount so recovered. The Borrower agrees that any Bank so purchasing a participation from another Bank pursuant to this Section 2.16 may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Bank were the direct creditor of the Borrower in the amount of such participation.

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### ARTICLE III

### CONDITIONS

Section 3.01. Conditions Precedent to Effectiveness. This Agreement shall become effective upon the satisfaction of all of the following conditions precedent:

(a) Documentation. The Administrative Agent shall have received the following duly executed by all the parties thereto, in form and substance satisfactory to the Administrative Agent and the Banks, and in sufficient copies for each Bank:

(i) this Agreement duly executed by the Borrower, the Guarantor, each Bank and the Administrative Agent;

(ii) a certificate of the Secretary or an Assistant Secretary of the Borrower certifying (a) the Borrower's certificate of incorporation and by-laws, (b) the names and true signatures of the officers of the Borrower authorized to sign this Agreement and the Notes and (c) that a true, correct and complete copy of the resolutions of the Borrower's Board authorizing the transactions contemplated hereby is attached thereto and that such resolutions are in full force and effect;

(iii) a certificate of the Secretary or an Assistant Secretary of the Guarantor certifying (a) the Guarantor's certificate of incorporation and by-laws, (b) the names and true signatures of the officers of the Guarantor authorized to sign this Agreement and (c) that a true, correct and complete copy of the resolutions of the Guarantor's Board authorizing the making and performance of this Agreement by the Guarantor is attached hereto and that such resolutions are in full force and effect;

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(iv) a favorable opinion of Jackson Walker L.L.P., legal counsel for each of the Borrower and the Guarantor, substantially in the form of Exhibit D hereto;

(v) a favorable opinion of Hughes & Luce, L.L.P., special counsel for the Administrative Agent, substantially in the form of Exhibit E hereto; and

(vi) certificates or telex confirmation as of a date reasonably close to the date hereof from the Secretary of State of the state of incorporation of each of the Borrower and the Guarantor as to the existence and good standing of the Borrower and the Guarantor, as applicable.

(b) No Material Adverse Change. No event or events which have or would reasonably be expected to have a Material Adverse Effect shall have occurred since June 27, 2007.

(c) No Default. No Default or event which, with the giving of notice, the lapse of time or both, would constitute a Default, shall have occurred and be continuing.

(d) Representations and Warranties. The representations and warranties contained in Article V hereof shall be true and correct in all material respects on and as of the Effective Date.

(e) No Material Litigation. No legal or regulatory action or proceeding has commenced and is continuing against the Borrower or any of its Subsidiaries since the date of this Agreement which has, or would reasonably be expected to have, a Material Adverse Effect.

(f) Repayment and Termination of Bridge Loan. The Administrative Agent shall have received satisfactory evidence that all amounts owed under the Existing Bridge Loan Agreement have been or simultaneously with the making of the Loans hereunder and pursuant to an irrevocable instruction and notice will be, paid in full and all commitments thereunder have been terminated.

(g) Notice of Borrowing. The Administrative Agent shall have received a Notice of Borrowing in accordance with Section 2.02.

Section 3.02. Administrative Agent. The Administrative Agent shall be entitled to assume that the conditions set forth in Sections 3.01(b), 3.01(c), 3.01(d), and 3.01(e), have been satisfied unless the Administrative Agent has received, at its address specified herein, actual written notice to the contrary from the Borrower, the Guarantor or a Bank.

#### **ARTICLE IV**

#### **GUARANTY**

Section 4.01. Guaranty. The Guarantor hereby unconditionally guarantees the punctual payment of the Guaranteed Obligations when due, whether at stated maturity, by acceleration or otherwise, and agrees to pay any and all reasonable expenses (including counsel fees and expenses) incurred by the Administrative Agent or any Bank in enforcing any rights hereunder. Without limiting the generality of the foregoing, the Guarantor's liability shall extend to all amounts which constitute part of the Guaranteed Obligations and would be owed by the Borrower under this Agreement or any of the Notes but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving the Borrower. The guaranty set forth in this Article IV is a guaranty of payment and not of collection.

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Section 4.02. Payment. At the time the Guarantor pays any sum which may become due to the Administrative Agent for the benefit of a Bank under the terms of this Article IV, written notice of such payment shall be delivered to the Administrative Agent by the Guarantor, and in the absence of such notice, any sum received by the Administrative Agent on behalf of a Bank on account of any of the Guaranteed Obligations shall be conclusively deemed paid by the Borrower. All sums paid to the Administrative Agent, on behalf of a Bank, by the Guarantor may be applied by the Administrative Agent, on behalf of a Bank, at its discretion, upon any of the Guaranteed Obligations.

Section 4.03. Waiver. The Guarantor hereby waives all notices in connection herewith or in connection with the Guaranteed Obligations, including, without limitation, notice of intent to accelerate and notice of acceleration, and waives diligence, presentment, demand, protest, and suit on the part of the Administrative Agent or any Bank in the collection of any of the Guaranteed Obligations, and agrees that neither the Administrative Agent nor any Bank shall be required to first endeavor to collect any of the Guaranteed Obligations from the Borrower, or any other party liable for payment of the Guaranteed

Obligations (hereinafter referred to as an “Obligated Party”), before requiring Guarantor to pay the full amount of the Guaranteed Obligations. Without impairing the rights of the Administrative Agent or any Bank against the Guarantor, the Borrower or any other Obligated Party, suit may be brought and maintained against the Guarantor at the election of the Administrative Agent or any Bank with or without joinder of the Borrower, or any other Obligated Party, any right to any such joinder being hereby waived by the Guarantor.

Section 4.04. Acknowledgments and Representations. The Guarantor acknowledges and represents to the Administrative Agent and each Bank that it is receiving direct and indirect financial and other benefits as a result of this Article IV; represents to the Administrative Agent and each Bank that after giving effect to this Article IV and the contingent obligations evidenced hereby it is, and will be, Solvent; acknowledges that it will derive substantial direct and indirect benefit from the transactions contemplated by this Agreement; acknowledges that its liability hereunder shall be cumulative and in addition to any other liability or obligation to the Administrative Agent and each Bank, whether the same is incurred through the execution of a note, a similar guaranty, through endorsement, or otherwise; acknowledges that neither the Administrative Agent, any Bank nor any officer, employee, agent, attorney or other representative of any of them has made any representation, warranty or statement to the Guarantor to induce it to execute this Agreement; and acknowledges that it has made its own credit analysis and decision to enter into this Agreement and undertake the guaranty set forth in this Article IV.

Section 4.05. Subordination. Notwithstanding anything to the contrary contained herein, any right, claim or action which the Guarantor may have against the Borrower or any other Obligated Party arising out of or in connection with the guaranty set forth in this Article IV or any other document evidencing or securing the Guaranteed Obligations, including, without limitation, any right or claim of subrogation, contribution, reimbursement, exoneration or indemnity, shall be subordinated to the prior payment in full of any amounts then due under this Agreement or the Notes. If any amount shall be paid to the Guarantor on account of any such subrogation, reimbursement, exoneration or indemnity notwithstanding the foregoing subordination, such amount shall be held in trust for the benefit of the Banks and shall forthwith be paid to the Administrative Agent to be credited and applied upon the Guaranteed Obligations then due.

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Section 4.06. Guaranty Absolute. The Guarantor hereby agrees that its obligations under this Agreement shall be absolute and unconditional, irrespective of (a) the validity or enforceability of the Guaranteed Obligations or of the Notes, or any other Credit Document evidencing all or any part of the Guaranteed Obligations, (b) the absence of any attempt to collect the Guaranteed Obligations from the Borrower or any other Obligated Party or other action to enforce the same, (c) the waiver or consent by the Administrative Agent and/or any Bank with respect to any provision of any instrument evidencing the Guaranteed Obligations, or any part thereof, or any other agreement now or hereafter executed by the Borrower and delivered to the Administrative Agent and/or any Bank, (d) the surrender, release, exchange, or alteration by the Administrative Agent and/or any Bank of any security or collateral for the Guaranteed Obligations, or (e) any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor.

Section 4.07. No Waiver; Remedies. No failure on the part of the Administrative Agent or any Bank to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Section 4.08. Continuing Guaranty. The guaranty set forth in this Article IV is a continuing guaranty and shall (a) remain in full force and effect until the payment in full of the Guaranteed Obligations and all other amounts payable under this guaranty, (b) be binding upon the Guarantor, its successors and assigns, (c) inure to the benefit of, and be enforceable by, the Administrative Agent and each of the Banks and their respective successors, transferees and assigns, and (d) not be terminated by the Guarantor or the Borrower.

Section 4.09. Limitation. Notwithstanding any other provision of this Article IV, the Guarantor’s liability hereunder shall be limited to the lesser of the following amounts minus, in either case, \$100.00:

- (a) the lowest amount which would render the guaranty pursuant to this Article IV a fraudulent transfer under Section 548 of the Bankruptcy Code (11 U.S.C. § 101 et seq.); or
- (b) if the guaranty pursuant to this Article IV is subject to the UFTA or the UFCA or any similar or analogous statute or rule of law, then the lowest amount which would render the guaranty pursuant to this Article IV a fraudulent transfer or fraudulent conveyance under the UFTA, the UFCA, or any such similar or analogous statute or rule of law.

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The amount of the limitation imposed upon the Guarantor’s liability under the terms of the preceding sentence shall be subject to redetermination as of each date a “transfer” is deemed to have been made on account of the Guaranty pursuant to this Article IV under applicable law.

Section 4.10. Effect of Bankruptcy. In the event that, pursuant to any insolvency, bankruptcy, reorganization, receivership or other debtor relief law, or any judgment, order or decision thereunder, any Bank must rescind or restore any payment, or any part thereof, received by such Bank in satisfaction of the Guaranteed Obligations, any prior release or discharge from the terms of the guaranty set forth in this Article IV given to the Guarantor by the Banks shall be without effect, and the guaranty set forth in this Article IV shall remain in full force and effect. It is the intention of the Guarantor that its obligations hereunder shall not be discharged except by its performance of such obligations and then only to the extent of such performance.

## **ARTICLE V**

### **REPRESENTATIONS AND WARRANTIES**

Each of the Borrower and the Guarantor represents and warrants as follows:

Section 5.01. Corporate Existence. Each of the Borrower and the Guarantor is a corporation duly organized, validly existing and in good standing under the laws of its respective state of incorporation. Each of the Borrower and the Guarantor has all corporate powers and all governmental licenses, authorizations, certificates, consents and approvals required to carry on its business as now conducted except where the failure to comply does not or would not reasonably be expected to have a Material Adverse Effect. Each Significant Subsidiary is a Person duly organized, validly existing and in good standing

under the laws of its jurisdiction of formation. Each Significant Subsidiary has all corporate powers and all governmental licenses, authorizations, certificates, consents and approvals required to carry on its business as now conducted except where the failure to comply does not and would not reasonably be expected to have a Material Adverse Effect.

Section 5.02. Corporate Power. The execution, delivery and performance by the Borrower and the Guarantor of the Credit Documents to which each is a party and the consummation of the transactions contemplated by such Credit Documents are within the Borrower's and the Guarantor's corporate powers, respectively, have been duly authorized by all necessary corporate action, do not contravene (a) the Borrower's or the Guarantor's Certificate of Incorporation or Bylaws or (b) any law or any contractual restriction binding on or affecting the Borrower or the Guarantor and will not result in or require the creation or imposition of any Lien prohibited by this Agreement. The use of the proceeds of the Loans is within the Borrower's corporate powers, has been duly authorized by all necessary corporate action, will not contravene (i) the Borrower's Certificate of Incorporation or Bylaws or (ii) any law or any contractual restriction binding on or affecting the Borrower and will not result in or require the creation or imposition of any Lien prohibited by this Agreement.

Section 5.03. Enforceable Obligations. This Agreement has been duly executed and delivered by the Borrower and the Guarantor. This Agreement is the legal, valid and binding obligation of the Borrower and the Guarantor enforceable against the Borrower and the Guarantor, respectively, in accordance with its terms, except as such enforceability may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally. The Notes are the legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms, except as such enforceability may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally. The making and performance by the Borrower and the Guarantor of this Agreement and the other Credit Documents do not require any license, consent or approval of, registration with, or any other action by, any governmental authority.

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Section 5.04. Financial Statements. (a) The Consolidated balance sheet of the Borrower and its Subsidiaries as of June 27, 2007 and the related Consolidated statements of income and cash flows of the Borrower and its Subsidiaries for the fiscal year then ended, copies of which have been furnished to each Bank, as included in an SEC Filing which has been furnished to each Bank, fairly present the Consolidated financial condition of the Borrower and its Subsidiaries as of such date and the Consolidated results of operations of the Borrower and its Subsidiaries ended on such date, in accordance with GAAP, except as disclosed therein or on Schedule VI to this Agreement.

(b) Since June 27, 2007 and except as disclosed in an SEC Filing which has been delivered to each Bank or on a Schedule to this Agreement, no event which has or would reasonably be expected to have a Material Adverse Effect has occurred.

Section 5.05. Litigation. Except as otherwise disclosed in writing by the Borrower or the Guarantor to the Banks and the Administrative Agent and approved by the Majority Banks, there is no pending or, to the knowledge of the Borrower or the Guarantor, threatened action or proceeding affecting the Borrower or any of its Significant Subsidiaries before any court, governmental agency or arbitrator, which has, or would reasonably be expected to have, a Material Adverse Effect.

Section 5.06. Margin Stock; Use of Proceeds. Neither the Borrower nor any of its Subsidiaries is engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation T, U or X issued by the Board of Governors of the Federal Reserve System and except in connection with employee plans disclosed to the Administrative Agent), and no proceeds of any Loan will be used for the purpose, whether immediate, incidental or ultimate, of buying or carrying any such margin stock under such circumstances as to involve the Borrower, the Guarantor, any of their Subsidiaries or any Bank in a violation of Regulation U.

Section 5.07. Investment Company Act. Neither the Borrower nor any of its Subsidiaries is an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

Section 5.08. ERISA. The Borrower and its Subsidiaries are in compliance with the applicable provisions of ERISA, except to the extent that non-compliance thereunder does not have and would not reasonably be expected to have, a Material Adverse Effect. Neither the Borrower nor any of its Subsidiaries has incurred any Insufficiency or any material liability to the PBGC in connection with any Plan established or maintained by the Borrower or such Subsidiaries which would have, or would reasonably be expected to have, a Material Adverse Effect.

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Section 5.09. Taxes. As of the date of this Agreement, the United States of America federal income tax returns of the Borrower and its Subsidiaries have been examined through the fiscal year ended June 29, 2005. The Borrower and its Significant Subsidiaries have filed all United States of America Federal income tax returns and all other material domestic tax returns which are required to be filed by them and have paid, or provided for the payment before the same become delinquent of, all taxes due pursuant to such returns or pursuant to any assessment received by the Borrower or any such Significant Subsidiary, other than those taxes (a) contested in good faith by appropriate proceedings or (b) the nonpayment of which does not have, and would not reasonably be expected to have a Material Adverse Effect. The charges, accruals and reserves on the books of the Borrower and its Subsidiaries in respect of taxes are adequate in the aggregate.

Section 5.10. Environmental Condition. To the best of Borrower's knowledge, the Borrower and its Subsidiaries are in compliance with all Environmental Protection Statutes except to the extent that failure to comply does not have, and would not reasonably be expected to have, a Material Adverse Effect.

Section 5.11. Ownership of Guarantor. On the date hereof the Borrower owns, directly or indirectly, 100% of the issued and outstanding voting stock of the Guarantor.

Section 5.12. Solvency. Each of the Borrower and the Guarantor is, and after giving effect to the making of the Loans and to the application of the proceeds therefrom will be, Solvent.



## AFFIRMATIVE COVENANTS

So long as any Loan shall remain unpaid, unless the Majority Banks shall otherwise consent in writing:

Section 6.01. Compliance with Laws, Etc. Each of the Borrower and the Guarantor will comply, and Borrower will cause each Significant Subsidiary to comply, in all material respects with all applicable laws (including without limitation ERISA and applicable Environmental Protection Statutes), rules, regulations and orders, subject to the exceptions provided elsewhere in this Agreement in provisions relating to laws, rules, regulations and orders of the nature referenced therein and except where the failure to comply (a) is contested in good faith by appropriate proceedings or (b) does not have, and would not reasonably be expected to have, a Material Adverse Effect.

Section 6.02. Reporting Requirements. The Borrower and/or the Guarantor will furnish to each of the Banks:

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(a) As soon as possible and in any event within five (5) days after a Financial Officer of the Borrower or Guarantor obtains knowledge of a Default or an event which, with the giving of notice, the lapse of time or both, would constitute a Default, which shall have occurred and is continuing on the date of such statement, a statement of a Financial Officer, setting forth the details of such Default or event and the actions, if any, which the Borrower has taken and proposes to take with respect thereto.

(b) Promptly after they are available, and in any event within sixty (60) days after the end of each of the first three (3) quarters of each fiscal year of the Borrower, Consolidated financial statements of the Borrower and its Consolidated Subsidiaries for such quarter showing on a Consolidated basis the financial position, results of operations and cash flows as of the end of and for the thirteen (13) week period of such quarter and for the period from the beginning of the fiscal year to the end of such quarter, in each case setting forth the comparable information for the comparable period in the preceding fiscal year, and accompanied by a certificate of a Financial Officer to the effect that such financial statements present fairly in all material respects the Consolidated financial position, results of operations and cash flows of the Borrower and its Consolidated Subsidiaries as of the end of and for the respective period in conformity with GAAP, subject to year-end audit adjustments and the absence of certain notes. For any such fiscal quarter the foregoing requirements may be satisfied by the delivery of the Borrower's SEC Filing on Form 10-Q for such quarter.

(c) Promptly after they are available, and in any event within ninety (90) days after the end of each fiscal year of the Borrower, Consolidated financial statements of the Borrower and its Consolidated Subsidiaries for the fifty-two/fifty-three week period of such fiscal year showing the financial position, results of operations and cash flows as of the end of and for such fiscal year, in each case setting forth the comparable information for the preceding fiscal year, and accompanied by the report of KPMG Peat Marwick or other independent certified public accountants of recognized national standing, to the effect that based on an audit using generally accepted auditing standards the financial statements present fairly, in all material respects, the Consolidated financial position, results of operations and cash flows of the Borrower and its Consolidated Subsidiaries for the respective periods in conformity with GAAP. For any fiscal year this requirement may be satisfied by the delivery of the Borrower's SEC Filing on Form 10-K for the year.

(d) Concurrently with the delivery of the financial statements referred to in Sections 6.02(b) and (c), the Borrower will also furnish to each Bank (i) a certificate of a Financial Officer to the effect that no Default or an event which, with the giving of notice, the lapse of time or both, would constitute a Default, which shall have occurred and is continuing with respect to the covenants contained in Section 7.01 (together with appropriate supporting schedule setting forth the calculations relating to such covenants) or, if such Financial Officer has knowledge of a Default or an event which, with the giving of notice, the lapse of time or both, would constitute a Default, which shall have occurred and is continuing with respect to Section 7.01, specifying the nature thereof, and (ii) a complete and correct list of the Significant Subsidiaries as of the date thereof, showing, as to each Significant Subsidiary, the correct name thereof, the jurisdiction of its organization and such Significant Subsidiaries' proportionate share of the Consolidated assets of the Borrower.

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(e) Promptly after they are available, the Borrower will furnish to the Administrative Agent and each Bank copies of (i) each SEC Filing, (ii) any reports provided by the Borrower to its stockholders, and (iii) any press releases or other statements made available by the Borrower or any of its Subsidiaries to the public generally concerning material developments in the business or affairs of the Borrower or any of its Subsidiaries. Any matter disclosed in a SEC Filing or other report or press release delivered to Banks shall be deemed disclosed in writing to Banks for all purposes of this Agreement, except with respect to the reporting requirement set forth in Section 6.02(a).

(f) Promptly upon the recurrence of any change in a Rating, notice thereof.

(g) Such other information respecting the financial condition of the Borrower and its Subsidiaries as any Bank through the Administrative Agent may from time to time reasonably request in writing.

Section 6.03. Use of Proceeds. The Borrower will use the proceeds of the Loans only to repay all amounts outstanding under the Existing Bridge Loan Agreement.

Section 6.04. Maintenance of Insurance. The Borrower will maintain, or cause to be maintained, insurance coverages on or in respect of its and its Subsidiaries' business or properties with such insurers, in such amounts and covering such risks as is consistent with Borrower's normal practices in effect from time to time. Such insurance arrangements may include self-insurance or insurance through an Affiliate.

Section 6.05. Preservation of Corporate Existence, Etc. Each of the Borrower and the Guarantor will preserve and maintain, and cause each of its Subsidiaries to preserve and maintain, its Corporate Franchises in the jurisdiction of its incorporation, and qualify and remain qualified, and cause each Subsidiary to qualify and remain qualified, as a foreign corporation in each jurisdiction in which qualification is necessary or desirable in view of its business and operations or the ownership of its properties unless the failure to so qualify as a foreign corporation does not have, or would not reasonably be expected to have, a Material Adverse Effect; provided, however, that nothing herein contained shall prevent any transaction permitted by Section 7.03.

Section 6.06. Payment of Taxes, Etc. Each of the Borrower and the Guarantor will pay and discharge, and cause each of its Subsidiaries to pay and discharge, before the same shall become delinquent, (a) all taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits of property that are material in amount, prior to the date on which penalties attach thereto and (b) all lawful claims that are material in amount which, if unpaid, might by law become a Lien upon its property unless the failure to timely pay any of the foregoing does not have and would not reasonably be expected to have a Material Adverse Effect; provided, however, that neither the Borrower, the Guarantor, nor any such Subsidiary shall be required to pay or discharge any such tax, assessment, charge, levy, or claim which is being contested in good faith and by appropriate proceedings.

Section 6.07. Visitation Rights. The Borrower shall permit the representatives of each Bank, at the expense of such Bank and upon reasonable prior notice to the Borrower, to visit the principal executive office of the Borrower, and to discuss the affairs, finances and accounts of the Borrower and its Subsidiaries at the Borrower's offices with Financial Officers.

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Section 6.08. Compliance with ERISA and the Code. The Borrower and its Subsidiaries will comply, and will cause each other member of any Controlled Group to comply, with all minimum funding requirements, and all other material requirements, of ERISA and the Code, if applicable, to any Plan it or they sponsor or maintain, so as not to (a) give rise to any liability thereunder which has, or would reasonably be expected to have, a Material Adverse Effect or (b) cause any Termination Event to occur which has, or would reasonably be expected to have, a Material Adverse Effect.

## ARTICLE VII

### NEGATIVE COVENANTS

So long as any Loan shall remain unpaid, without the written consent of the Majority Banks:

Section 7.01. Financial Covenants. The Borrower will not:

(a) as of the last day of each fiscal quarter for the immediately preceding twelve (12) month period, permit the ratio of (i) the sum of (A) EBIT of the Borrower, on a Consolidated basis, plus (B) Rent Expense of the Borrower, on a Consolidated basis, to (ii) the sum of (A) Interest Expense of the Borrower, on a Consolidated basis, plus (B) Rent Expense of the Borrower, on a Consolidated basis, to be less than 1.5 to 1.0, or

(b) as of the last day of each fiscal quarter, permit the ratio (the "Debt to Cash Flow Ratio") of (i) the sum of (x) Debt of the Borrower, on a Consolidated basis, plus (y) the product of six multiplied by Rent Expense of the Borrower, on a Consolidated basis, for the immediately preceding twelve-month period, to (ii) the sum of (a) EBITDA of the Borrower, on a Consolidated basis, for the immediately preceding twelve-month period, plus (b) Rent Expense of the Borrower, on a Consolidated basis, for the immediately preceding twelve-month period to exceed 3.5 to 1.0.

Section 7.02. Negative Pledge. Neither the Borrower nor the Guarantor will create, assume, incur or suffer to exist, or permit any of its respective Subsidiaries to create, assume, incur or suffer to exist, any Lien on or in respect of any of its or their assets or property used, created or consumed in the operation of its or their business, whether, real, personal, or mixed, whether tangible or intangible, whether now owned or hereafter acquired, including, without limitation, the capital stock of any Subsidiary of the Borrower, but excluding any margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), or assign or otherwise convey, or permit any such Subsidiary to assign or otherwise convey, any right to receive income, in each case to secure or provide for the payment of any Debt of any Person, except Permitted Liens.

Section 7.03. Merger and Sale of Assets. Neither the Borrower, the Guarantor nor any of their respective Subsidiaries will:

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(a) merge or consolidate with or into any other Person unless (i) (A) either the Borrower or the Guarantor is the surviving entity, (B) such merger or consolidation is between Subsidiaries, or (C) such merger or consolidation is between a Subsidiary and another Person, and (ii) no Default or an event which, with the giving of notice, the lapse of time or both, would constitute a Default, which shall have occurred and is continuing at the time of, or results from, such merger or consolidation, or

(b) sell, lease or otherwise transfer all or substantially all of the Consolidated assets of the Borrower in any transaction or series of related transactions outside of the ordinary course of business (including, without limitation, the merger or consolidation of a Subsidiary with a Person which will not thereafter be a Subsidiary), unless (i) such sales, leases or transfers are between the Borrower, the Guarantor or any of their Subsidiaries, or (ii) the proceeds of such sales, leases and transfers are (a) applied to the outstanding principal balance and interest of the Notes, (b) used in Borrower's business, or (c) utilized to fund stock repurchases or dividends by Borrower from time to time authorized by Borrower's Board; provided, however, that, notwithstanding the foregoing, no such sale, lease or transfer shall be permitted if a Default or an event which, with the giving of notice, the lapse of time or both, would constitute a Default, which shall have occurred and is continuing at the time of, or result from, any such sale, lease or transfer.

Section 7.04. Agreements to Restrict Dividends and Certain Transfers. Neither the Borrower nor the Guarantor will enter into or suffer to exist, or permit any Significant Subsidiary to enter into or suffer to exist, any consensual encumbrance or restriction on the ability of any Significant Subsidiary (a) to pay, directly or indirectly, dividends or make any other distributions in respect of its capital stock or pay any Debt or other obligation owed to the Borrower or to any Significant Subsidiary or (b) to make loans or advances to the Borrower or any Significant Subsidiary, except those encumbrances and restrictions existing on the date hereof and described in Schedule V and those now or hereafter existing that are not more restrictive in any respect than such encumbrances and restrictions described in Schedule V.

Section 7.05. Transactions with Affiliates. Except as otherwise permitted in Section 7.03, neither the Borrower nor the Guarantor will make any material sale to, make any material purchase from, extend material credit to, make material payment for services rendered by, or enter into any other material transaction with, or permit any of their respective Subsidiaries to make, any material sale to, make any material purchase from, extend material credit to, make material payment for services rendered by, or enter into any other material transaction with, any Affiliate of the Borrower or the Guarantor or of such Subsidiary unless such sales, purchases, extensions of credit, rendition of services and other transactions are (at the time such sale, purchase, extension of

credit, rendition of services or other transaction is entered into) (a) in the ordinary course of business, or (b) on terms and conditions believed by the Borrower to be fair in all material respects to the Borrower or the Guarantor or such Subsidiary, as the case may be.

Section 7.06. Change of Business. The Borrower, the Guarantor and their Subsidiaries, on an aggregate basis, will not materially change the general nature of their primary business.

Section 7.07. Limitation on Loans, Advances and Investments. Neither the Borrower nor the Guarantor will, or will permit any of their respective Subsidiaries to, make or permit to exist, any loans, advances or capital contributions to, or make any investment in, or purchase or commit to purchase any stock or other securities or evidences of indebtedness of or interests in any Person which is not, or which will not become in connection with such transaction, a Subsidiary ("Investments"), except the following:

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- (a) Liquid Investments;
- (b) trade and customer accounts receivable which are for goods furnished or services rendered in the ordinary course of business and are payable in accordance with customary trade terms;
- (c) Investments in respect of joint ventures or similar arrangements relating to the ownership or operation of food service businesses in which the Borrower and its Subsidiaries in the aggregate are the beneficial owners of not less than 50% of the outstanding equity interests;
- (d) Investments not otherwise permitted by this Section 7.07 in any Person; provided, that, the aggregate amount of such Investments made and outstanding at any time shall not exceed thirty percent (30%) of the Consolidated assets of the Borrower as set forth on the most recent financial statements of the Borrower and its Consolidated Subsidiaries delivered to the Banks pursuant to Sections 5.04 or 6.02;
- (e) Investments existing on the date hereof and described on Schedule VII; and
- (f) Investments by Foreign Subsidiaries in other Subsidiaries or other Persons, provided that such investments in other Persons is from the retained earnings of a Foreign Subsidiary or other Person, and any retention by a Subsidiary or other Person of net income.

Section 7.08. Maintenance of Books and Records. The Borrower and its Significant Subsidiaries will maintain its books of record and account in conformity with GAAP.

Section 7.09. Debt. The Borrower and the Guarantor will not, and will not permit any of their respective Subsidiaries to, directly or indirectly, create, incur or suffer to exist any direct, indirect, fixed or contingent liability for any Debt, other than (a) the obligations pursuant to the Credit Documents, (b) the Debt described on Schedule VIII, (c) additional Debt of the Borrower which may be guaranteed by the Guarantor (but not guaranteed by any of the Borrower's or the Guarantor's Subsidiaries, other than the Guarantor in the case of Debt of the Borrower), (d) intercompany Debt and (e) additional Debt of the Guarantor and the Borrower's and the Guarantor's Subsidiaries, provided, however, the aggregate of all Debt of the Guarantor and all such Subsidiaries under this clause (e) (exclusive of Debt permitted under clause (c) above), whether secured or unsecured, must not exceed \$50,000,000 in the aggregate at any one time.

## ARTICLE VIII

### DEFAULTS

Section 8.01. Defaults. If any of the following events (each individually, a "Default") shall occur and be continuing:

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- (a) the Borrower (i) shall fail to pay any principal of any Loan when the same becomes due and payable in accordance with the terms hereof, or (ii) shall fail to pay any interest on any Loan or any fee or other amount to be paid by it hereunder within three (3) Business Days of the date on which such payment is due; or
- (b) any certification, representation or warranty made by the Borrower or the Guarantor herein or by the Borrower or the Guarantor (or any of their respective officers) in writing (including representations and warranties deemed made pursuant to Section 2.05(a)(G)) under or in connection with any Credit Document shall prove to have been incorrect in any material respect when made or deemed made; or
- (c) the Borrower or the Guarantor shall fail to perform or observe (i) any term, covenant or agreement contained in Sections 6.02 or 6.05 (other than with respect to maintaining the corporate existence of the Borrower or the Guarantor or maintaining any Corporate Franchise of the Borrower or the Guarantor which is material to the Borrower's or the Guarantor's business and operations) on its part to be performed or observed and such failure shall continue for thirty (30) Business Days after the earlier of the date notice thereof shall have been given to the Borrower or the Guarantor by the Administrative Agent, or (ii) any term, covenant or agreement contained in any Credit Document (other than a term, covenant or agreement described in clause (i) of this clause (c)) on its part to be performed or observed and such failure shall continue for twenty (20) Business Days after the earlier of the date notice thereof shall have been given to the Borrower or the Guarantor by the Administrative Agent; or
- (d) the Borrower, the Guarantor, or any of their respective Subsidiaries shall fail to pay any principal of or premium or interest on any of its Debt which is outstanding in a principal amount of at least \$50,000,000 in the aggregate (excluding Debt evidenced by the Notes) when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt, or any event of default or other event shall occur or condition shall exist under any agreement or instrument creating or evidencing such Debt in such principal amount, and shall continue after the applicable grace period, if any, specified in such agreement or instrument if the effect of such event or condition is to accelerate the maturity of such Debt; provided, however, a Default or an event which, with the giving of notice, the lapse of time or both, would constitute a Default, shall have occurred or be continuing for purposes of this

clause (d) shall not be deemed to exist due to the acceleration of the maturity of any obligation to a Bank or an affiliate (within the meaning of Regulation U) of a Bank solely by reason of a default in the performance of a term or condition in any agreement or instrument under or by which such obligation is created, evidenced or secured, which term or condition restricts the right of the Borrower or any other Person to sell, pledge or otherwise dispose of any margin stock (within the meaning of Regulation U) held by the Borrower or any such other Person; or

(e) the Borrower, the Guarantor, or any Significant Subsidiary shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against the Borrower, the Guarantor, or any Significant Subsidiary seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), shall remain undismissed or unstayed for a period of sixty (60) days; or the Borrower, the Guarantor, or any Significant Subsidiary shall take any corporate action to authorize any of the actions set forth above in this clause (e); or

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(f) any judgment or order against the Borrower, the Guarantor or any of their respective Consolidated Subsidiaries is rendered for the payment of money in excess of \$50,000,000 over the sum of available insurance therefor and adequate cash reserves for which have not been established and set aside solely for the purpose of payment of such judgment or order and such judgment or order remains unsatisfied and either (i) enforcement proceedings shall have been commenced by the creditor upon such judgment or order or (ii) there shall be any period of sixty consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(g) the Borrower shall cease to own directly or indirectly 100% of the issued and outstanding voting stock of the Guarantor; or

(h) any Person shall become, directly or indirectly, the beneficial owner of 50% or more of the outstanding voting common stock of the Borrower;

then, and in any such event, the Administrative Agent shall at the request, or may with the consent, of the Majority Banks, after notice to the Borrower declare the Notes and the outstanding principal amount of all Loans, all interest thereon and all other amounts payable by the Borrower and the Guarantor under this Agreement to be forthwith due and payable, whereupon such Notes and the outstanding principal amount of all Loans, such interest and all such amounts shall become and be forthwith due and payable, without requirement of any presentment, demand, protest, notice of intent to accelerate, further notice of acceleration or other further notice of any kind (other than the notice expressly provided for above), all of which are hereby expressly waived by the Borrower and the Guarantor; provided, however, that in the event of any Default described in Section 8.01(e) with respect to the Borrower or the Guarantor, the Loans and Notes, all such interest and all such amounts shall automatically become and be due and payable, without presentment, demand, protest, notice of intent to accelerate, notice of acceleration or any other notice of any kind, all of which are hereby expressly waived by the Borrower and the Guarantor.

## ARTICLE IX

### THE ADMINISTRATIVE AGENT

Section 9.01. Authorization and Action. Each Bank hereby appoints and authorizes the Administrative Agent to take such action as administrative agent on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent by the terms hereof, together with such powers as are reasonably incidental thereto. As to any matters not expressly provided for by this Agreement (including, without limitation, enforcement or collection of the Loans), the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Majority Banks, and such instructions shall be binding upon all Banks; provided, however, that the Administrative Agent shall not be required to take any action which exposes the Administrative Agent to personal liability or which is contrary to this Agreement or applicable law. The Administrative Agent agrees to give to each Bank prompt notice of each notice given to it by the Borrower pursuant to the terms of this Agreement.

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Section 9.02. Administrative Agent's Reliance, Etc. Neither the Administrative Agent nor any of its directors, officers, agents or employees shall be liable to the Banks for any action taken or omitted to be taken by it or them under or in connection with this Agreement, except for its or their own gross negligence or willful misconduct. Without limitation of the generality of the foregoing, the Administrative Agent: (i) may consult with legal counsel (including counsel for the Borrower), independent public accountants and other experts selected by it and shall not be liable to the Banks for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts; (ii) makes no warranty or representation to any Bank and shall not be responsible to any Bank for any statements, warranties or representations (whether written or oral) made in or in connection with this Agreement; (iii) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement on the part of the Borrower or to inspect the property (including the books and records) of the Borrower or any of its Subsidiaries; (iv) shall not be responsible to any Bank for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other instrument or document furnished pursuant hereto; and (v) shall incur no liability to the Banks under or in respect of this Agreement by acting upon any notice, consent, certificate or other instrument or writing (which may be by telecopier, telegram, cable or telex) believed by it to be genuine and signed or sent by the proper party or parties.

Section 9.03. Defaults. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of a Default (other than a failure to make a payment of principal of or interest on the Loans) unless the Administrative Agent has received notice from a Bank or the Borrower specifying such Default and stating that such notice is a "Notice of Default". In the event that the Administrative Agent receives such a notice of a Default, the Administrative Agent shall give prompt notice thereof to the Banks. The Administrative Agent shall (subject to Section 9.08 hereof) take such action with respect to such Default as shall be directed by the Majority Banks, provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default as it shall deem advisable in the best interest of the Banks except to the extent that this Agreement expressly requires that such action be taken, or not be taken, only with the consent or upon the authorization of the Majority Banks or all of the Banks.

Section 9.04. Citibank and Affiliates. With respect to the Loans made by it, Citibank shall have the same rights and powers under this Agreement as any other Bank and may exercise the same as though it were not the Administrative Agent; and the term “Bank” or “Banks” shall, unless otherwise expressly indicated, include Citibank in its individual capacity. Citibank and its Affiliates may accept deposits from, lend money to, act as trustee under indentures of, and generally engage in any kind of business with, the Borrower, any of its Subsidiaries and any Person who may do business with or own securities of the Borrower or any such Subsidiary, all as if Citibank were not the Administrative Agent and without any duty to account therefor to the Banks.

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Section 9.05. Bank Credit Decision. Each Bank acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Bank and based on the financial statements referred to in Section 5.04 and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Bank and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement.

Section 9.06. Successor Administrative Agent. The Administrative Agent may resign at any time by giving written notice thereof to the Banks and the Borrower and may be removed at any time with or without cause by the Majority Banks. Upon any such resignation or removal, the Majority Banks shall have the right to appoint a successor Administrative Agent that, unless a Default shall have occurred and then be continuing, is acceptable to the Borrower. If no successor Administrative Agent shall have been so appointed by the Majority Banks, and shall have accepted such appointment, within 30 days after the retiring Administrative Agent’s giving of notice of resignation or the Majority Banks’ removal of the retiring Administrative Agent, then the retiring Administrative Agent may, on behalf of the Banks, appoint a successor Administrative Agent, which shall be a commercial bank organized under the laws of the United States of America or of any State thereof and having total assets of at least \$1,000,000,000. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such 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. After any retiring Administrative Agent’s resignation or removal hereunder as Administrative Agent, the provisions of this Article IX shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement.

Section 9.07. Joint Lead Arrangers, Bookrunners, Syndication Agents and Documentation Agents. The Joint Lead Arrangers, Bookrunners, Syndication Agents and Documentation Agents named on the cover page of this Agreement, in their capacities as such, shall have no obligation, responsibility or required performance hereunder and shall not become liable in any manner to any party hereto in respect hereof.

Section 9.08. INDEMNIFICATION. THE ADMINISTRATIVE AGENT SHALL NOT BE REQUIRED TO TAKE ANY ACTION HEREUNDER OR TO PROSECUTE OR DEFEND ANY SUIT IN RESPECT OF THIS AGREEMENT OR THE NOTES, UNLESS INDEMNIFIED TO ITS SATISFACTION BY THE BANKS AGAINST LOSS, COST, LIABILITY AND EXPENSE. IF ANY INDEMNITY FURNISHED TO THE ADMINISTRATIVE AGENT SHALL BECOME IMPAIRED, IT MAY CALL FOR ADDITIONAL INDEMNITY AND CEASE TO DO THE ACTS INDEMNIFIED AGAINST UNTIL SUCH ADDITIONAL INDEMNITY IS GIVEN. IN ADDITION, THE BANKS, JOINTLY AND SEVERALLY, AGREE TO INDEMNIFY THE ADMINISTRATIVE AGENT (TO THE EXTENT NOT REIMBURSED BY THE BORROWER OR THE GUARANTOR) FROM AND AGAINST ANY AND ALL LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, AGREEMENTS, SUITS, COSTS, EXPENSES OR DISBURSEMENTS OF ANY KIND OR NATURE WHATSOEVER WHICH MAY BE IMPOSED ON, INCURRED BY, OR ASSERTED AGAINST THE ADMINISTRATIVE AGENT IN ANY WAY RELATING TO OR ARISING OUT OF THE CREDIT DOCUMENTS OR ANY ACTION TAKEN OR OMITTED BY THE ADMINISTRATIVE AGENT UNDER THE CREDIT DOCUMENTS, PROVIDED, THAT, NO BANK SHALL BE LIABLE TO THE ADMINISTRATIVE AGENT FOR ANY PORTION OF SUCH LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, AGREEMENTS, SUITS, COSTS, EXPENSES OR DISBURSEMENTS RESULTING FROM THE ADMINISTRATIVE AGENT’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. WITHOUT LIMITATION OF THE FOREGOING, EACH BANK EXPRESSLY AGREES TO INDEMNIFY THE ADMINISTRATIVE AGENT FROM ITS OWN NEGLIGENCE. EACH BANK AGREES TO REIMBURSE THE ADMINISTRATIVE AGENT PROMPTLY UPON DEMAND FOR ITS RATABLE SHARE OF ANY OUT-OF-POCKET EXPENSES (INCLUDING COUNSEL FEES INCURRED BY THE ADMINISTRATIVE AGENT IN CONNECTION WITH THE PREPARATION, EXECUTION, DELIVERY, ADMINISTRATION, MODIFICATION, AMENDMENT OR ENFORCEMENT WHETHER THROUGH NEGOTIATIONS, LEGAL PROCEEDINGS OR OTHERWISE OF, OR LEGAL ADVICE IN RESPECT OF RIGHTS OR RESPONSIBILITIES UNDER, THE CREDIT DOCUMENTS) TO THE EXTENT THAT THE ADMINISTRATIVE AGENT IS NOT REIMBURSED FOR SUCH EXPENSES BY THE BORROWER OR THE GUARANTOR.

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## ARTICLE X

### MISCELLANEOUS

Section 10.01. Amendments, Etc. No amendment or waiver of any provision of any Credit Document, nor consent to any departure by the Borrower or the Guarantor therefrom, shall in any event be effective unless the same shall be in writing and signed by the Borrower and the Majority Banks, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no amendment, waiver or consent shall, unless in writing and signed by all the Banks, do any of the following: (a) subject any of the Banks to any additional obligations, (b) reduce the principal of, or interest on, the Notes or the Loans or any fees or other amounts payable hereunder, (c) postpone any date fixed for any payment of principal of, or interest on, the Notes or the Loans or any fees or other amounts payable hereunder, (d) take action which requires the signing of all the Banks pursuant to the terms of this Agreement, (e) change the percentage of the aggregate unpaid principal amount of the Loans, or the number of Banks, which shall be required for the Banks or any of them to take any action under this Agreement or any other Credit Document, (f) release the Guarantor or otherwise change any obligation of the Guarantor to pay any amount payable by the Guarantor hereunder or (g) amend this Section 10.01; provided, further, that no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Banks required above to take such action, affect the rights or duties of the Administrative Agent under any Credit Document; and provided, further, that no amendment, waiver or consent shall, unless in writing and signed by the Guarantor in addition to any other party required above to take such action, affect the rights or duties of the Guarantor under any Credit Document.

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Section 10.02. Notices, Etc.

(a) Subject to clauses (b) through (f) of this Section 10.02, all notices and other communications provided for hereunder shall be in writing (including teletype or email communication) and mailed, telecopied or emailed or delivered, if to any Bank as specified on Schedule I hereto or specified pursuant to an Assignment, if to the Borrower or the Guarantor, as specified opposite its name on Schedule III hereto; or, as to the Borrower, the Guarantor or the Administrative Agent, at such other address as shall be designated by such party in a written notice to the other parties and, as to each other party, at such other address as shall be designated by such party in a written notice to the Borrower, the Guarantor and the Administrative Agent. All such notices and communications shall, when mailed, telecopied or emailed, be effective when deposited in the mails, sent by teletype to any party to the telecopier number as set forth herein or on Schedule I or Schedule III hereto (or other teletype number specified by such party in a written notice to the other parties hereto), or sent by email to the addresses set forth herein on Schedule I or Schedule III hereto, respectively, except that notices to the Administrative Agent pursuant to Article II shall not be effective until received by the Administrative Agent.

(b) The Borrower hereby agrees that it will provide to the Administrative Agent all information, documents and other materials that it is obligated to furnish to the Administrative Agent pursuant to this Agreement, including, without limitation, all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) relates to a request for a conversion of an existing Loan (including any election of an interest rate or Interest Period relating thereto), (ii) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (iii) provides notice of any Default or event which, with the giving of notice, the lapse of time or both, would constitute a Default, that shall have occurred or be continuing under this Agreement or (iv) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or any borrowing hereunder (all such non-excluded communications being referred to herein collectively as "Communications"), by transmitting the Communications in an electronic/soft medium in a format acceptable to the Administrative Agent to [oploanswebadmin@citigroup.com](mailto:oploanswebadmin@citigroup.com). In addition, the Borrower agrees to continue to provide the Communications to the Administrative Agent in the manner specified in this Agreement but only to the extent requested by the Administrative Agent.

(c) The Borrower further agrees that the Administrative Agent may make the Communications available to the Banks by posting the Communications on Intralinks or a substantially similar electronic transmission system (the "Platform").

(d) THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE". THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS, OR THE ADEQUACY OF THE PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, AN 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 THE AGENT PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT OR ANY OF ITS AFFILIATES OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ADVISORS OR REPRESENTATIVES (COLLECTIVELY, "AGENT PARTIES") HAVE ANY LIABILITY TO THE BORROWER, ANY BANK OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF THE BORROWER'S OR THE ADMINISTRATIVE AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET, EXCEPT TO THE EXTENT THE LIABILITY OF ANY AGENT PARTY IS FOUND IN A FINAL NON-APPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED PRIMARILY FROM SUCH AGENT PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

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(e) The Administrative Agent agrees that the receipt of the Communications by the Administrative Agent at its e-mail address set forth above shall constitute effective delivery of the Communications to the Administrative Agent for purposes of this Agreement. Each Bank agrees that notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform shall constitute effective delivery of the Communications to such Bank for purposes of this Agreement. Each Bank agrees to notify the Administrative Agent in writing (including by electronic communication) from time to time of such Bank's e-mail address to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such e-mail address.

(f) Nothing herein shall prejudice the right of the Administrative Agent or any Bank to give any notice or other communication pursuant to this Agreement in any other manner specified herein.

Section 10.03. No Waiver; Remedies. No failure on the part of any Bank or the Administrative Agent to exercise, and no delay in exercising, any right under any Credit Document shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in the Credit Documents are cumulative and not exclusive of any remedies provided by law.

Section 10.04. Costs, Expenses and Taxes.

(a) The Borrower agrees to pay on demand (i) all reasonable out-of-pocket costs and expenses of the Administrative Agent in connection with the preparation, execution, delivery, administration, modification and amendment of any Credit Document, including, without limitation, the reasonable fees and out-of-pocket expenses of Chadbourne & Parke LLP, special counsel to the Administrative Agent, and Hughes & Luce, L.L.P., special Texas counsel to the Administrative Agent, with respect to advising the Administrative Agent and (ii) all reasonable out-of-pocket costs and expenses, if any (including, without limitation, reasonable counsel fees and expenses), of the Administrative Agent and each Bank in connection with the enforcement (whether through negotiations, legal proceedings or otherwise) against the Borrower or the Guarantor of any Credit Document.

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(b) EACH OF THE BORROWER AND THE GUARANTOR, JOINTLY AND SEVERALLY, AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD HARMLESS THE ADMINISTRATIVE AGENT AND EACH BANK AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND DISBURSEMENTS OF COUNSEL), FOR WHICH ANY OF THEM MAY BECOME LIABLE OR WHICH MAY BE INCURRED BY OR ASSERTED AGAINST THE ADMINISTRATIVE AGENT OR SUCH BANK OR ANY SUCH DIRECTOR, OFFICER, EMPLOYEE OR AGENT (OTHER THAN BY ANOTHER BANK OR ANY SUCCESSOR OR ASSIGN OF ANOTHER BANK OR BY THE BORROWER OR GUARANTOR), IN EACH CASE IN CONNECTION WITH OR ARISING OUT OF OR BY REASON OF ANY INVESTIGATION, LITIGATION, OR PROCEEDING, WHETHER OR NOT THE ADMINISTRATIVE AGENT OR SUCH BANK OR ANY SUCH DIRECTOR, OFFICER OR EMPLOYEE IS A PARTY THERETO, ARISING OUT OF, RELATED TO OR IN CONNECTION WITH ANY CREDIT DOCUMENT OR ANY TRANSACTION IN WHICH ANY PROCEEDS OF ALL OR ANY PART OF THE LOANS ARE APPLIED, OTHER THAN ANY SUCH CLAIM, DAMAGE, LIABILITY OR EXPENSE TO THE EXTENT ATTRIBUTABLE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF, OR VIOLATION OF ANY LAW OR REGULATION BY, ANY SUCH INDEMNIFIED PARTY. NO PARTY SHALL BE LIABLE TO ANY OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES.

Section 10.05. Right of Set-off. Upon (i) the occurrence and during the continuance of a Default pursuant to Section 8.01(a) or (ii) the making of the request or the granting of the consent specified by Section 8.01 to authorize the Administrative Agent to declare the principal amount of the Loans and the Notes due and payable pursuant to the provisions of Section 8.01, each Bank is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Bank or any affiliate of such Bank to or for the credit or the account of the Borrower or the Guarantor (but not any other Person) against any and all of the obligations of the Borrower or the Guarantor now or hereafter existing under the Credit Documents, irrespective of whether or not such Bank shall have made any demand under this Agreement or such Notes and although such obligations may be unmaturing; provided that no Bank shall exercise such set off rights with respect to deposits that such Bank knows are held by the Borrower or the Guarantor for the benefit of another Person (such deposits, "Third Party Funds"), and each Bank agrees that if it has exercised its set off rights under the Section 10.05 with respect to Third Party Funds such Bank shall promptly return such Third Party Funds to the Borrower or the Guarantor, as applicable. Each Bank agrees to notify the Borrower and the Guarantor promptly after such set-off and application made by such Bank; provided, that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Bank under this Section 10.05 are in addition to other rights and remedies (including, without limitation, other rights of set-off) which such Bank may have.

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#### Section 10.06. Bank Assignments and Participations.

(a) Assignments. Any Bank may assign to one or more banks or other entities all or any portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of the Loans owing to it, and the Notes held by it) with the consent, not to be unreasonably withheld, of the Administrative Agent and, so long as no Default under Section 8.01(a) or (e) has occurred and is continuing, the Borrower; provided, however, that (i) the amount of the resulting Loans of the assigning Bank (unless it is assigning all its Loans) and the assignee Bank pursuant to each such assignment (determined as of the date of the Assignment with respect to such assignment) shall in no event be less than \$10,000,000 and shall be an integral multiple of \$1,000,000, (ii) each such assignment shall be to an Eligible Assignee, (iii) the parties to each such assignment shall execute and deliver to the Administrative Agent for its acceptance and recording in the Register, an Assignment, together with the Note or Notes subject to such assignment and shall pay all legal and other expenses in respect of such assignment and (iv) each Eligible Assignee not already a Bank hereunder shall pay to the Administrative Agent an assignment fee of \$3,500 in connection with such assignment. Upon such execution, delivery, acceptance and recording, from and after the effective date specified in each Assignment, which effective date shall be at least three (3) Business Days after the execution thereof, (A) the assignee thereunder shall be a party hereto for all purposes and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment, have the rights and obligations of a Bank hereunder and (B) such Bank thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment, relinquish its rights and be released from its obligations to lend under this Agreement (and, in the case of an Assignment covering all or the remaining portion of such Bank's rights and obligations under this Agreement, such Bank shall cease to be a party hereto).

(b) Terms of Assignments. By executing and delivering an Assignment, the Bank thereunder and the assignee thereunder confirm to and agree with each other and the other parties hereto the matters set forth in paragraphs 2 and 3 of such Assignment.

(c) The Register. The Administrative Agent shall maintain at its address referred to on Schedule I a copy of each Assignment delivered to and accepted by it and a register for the recordation of the names and addresses of the Banks and the principal amount of the Loans owing to each Bank from time to time (the "Register"). The entries in the Register shall be conclusive and binding for all purposes, absent error, and the Borrower, the Guarantor, the Administrative Agent and the Banks may treat each Person whose name is recorded in the Register as a Bank hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower, the Guarantor or any Bank at any reasonable time and from time to time upon reasonable prior notice.

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(d) Procedures. Upon its receipt of an Assignment executed by a Bank and an Eligible Assignee, together with the Note or Notes subject to such assignment, the Administrative Agent shall, if such Assignment has been completed and is in substantially the form of the attached Exhibit C, (i) accept such Assignment, (ii) record the information contained therein in the Register, and (iii) give prompt notice thereof to the Borrower and the Guarantor. Within five (5) Business Days after its receipt of such notice, the Borrower, at its own expense, shall execute and deliver to the Administrative Agent in exchange for the surrendered Note, a new Note to the order of such Eligible Assignee in an amount equal to the principal amount of the Loans assumed by it pursuant to such Assignment and, if such assigning Bank has retained any Loans hereunder, a new Note to the order of such Bank in an amount equal to the Loans retained by it hereunder. Such Notes shall be dated the effective date of such Assignment and shall otherwise be in substantially the form of the attached Exhibit A.

(e) Participations. Each Bank may sell participations to one or more banks or other entities in or to all or a portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of the Loans owing to it, and the Notes held by it); provided, however, that (i) such Bank's obligations under this Agreement shall remain unchanged, (ii) such Bank shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) such Bank shall remain the holder of any such Notes for all purposes of this Agreement, (iv) the Borrower, the

Guarantor, the Administrative Agent and the other Banks shall continue to deal solely and directly with such Bank in connection with such Bank's rights and obligations under this Agreement and shall have no duties or responsibilities to the participant, (v) such Bank shall not require the participant's consent to any matter under this Agreement, except for changes in the principal amount of Loans owed to such Bank in which the participant has an interest, reductions in fees or interest, the date any amount is due hereunder, or extending the Maturity Date, and (vi) such Bank shall give prompt notice to the Borrower of each such participation sold by such Bank. No participants shall have any rights under any provisions of any of the Credit Documents.

(f) Permitted Assignments. Notwithstanding any other provision set forth in this Agreement, any Bank may assign all or any portion of its rights under this Agreement (including, without limitation, rights to payments of principal and/or interest under any Notes held by it) to any subsidiary of such Bank or to any Federal Reserve Bank, without notice to or consent from the Borrower or the Administrative Agent; provided, however, that such Bank shall not be released from any of its obligations hereunder as a result of such assignment.

Section 10.07. Governing Law. This Agreement, the Notes and the other Credit Documents shall be governed by, and construed in accordance with, the laws of the State of Texas.

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Section 10.08. Interest.

(a) It is the intention of the parties hereto that the Administrative Agent and each Bank shall conform strictly to Applicable Usury Laws from time to time in effect. Accordingly, if the transactions with the Administrative Agent or any Bank contemplated hereby would be usurious under Applicable Usury Law, then, in that event, notwithstanding anything to the contrary in this Agreement, the Notes, or any other agreement entered into in connection with or as security for this Agreement or the Notes, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under Applicable Usury Law that is contracted for, taken, reserved, charged or received by the Administrative Agent or such Bank, as the case may be, under this Agreement, the Notes, or under any other agreement entered into in connection with or as security for this Agreement or the Notes shall under no circumstances exceed the maximum amount allowed by such Applicable Usury Law and any excess shall be canceled automatically and, if theretofore paid, shall at the option of the Administrative Agent or such Bank, as the case may be, be credited by the Administrative Agent or such Bank, as the case may be, on the principal amount of the obligations owed to the Administrative Agent or such Bank, as the case may be, by the Borrower or refunded by the Administrative Agent or such Bank, as the case may be, to the Borrower, and (ii) in the event that the maturity of any Note or other obligation payable to the Administrative Agent or such Bank, as the case may be, is accelerated or in the event of any required or permitted prepayment, then such consideration that constitutes interest under Applicable Usury Law, may never include more than the maximum amount allowed by such Applicable Usury Law and excess interest, if any to the Administrative Agent or such Bank, as the case may be, provided for in this Agreement or otherwise shall be canceled automatically as of the date of such acceleration or prepayment and, if theretofore paid, shall, at the option of the Administrative Agent or such Bank, as the case may be, be credited by the Administrative Agent or such Bank, as the case may be, on the principal amount of the obligations owed to the Administrative Agent or such Bank, as the case may be, by the Borrower or refunded by the Administrative Agent or such Bank, as the case may be, to the Borrower.

(b) In the event that at any time the rate of interest applicable to any Loan made by any Bank would exceed the Maximum Rate, thereby causing the interest payable under this Agreement or the Notes to be limited to the Maximum Rate, then any subsequent reductions in the applicable rate of interest hereunder or under the Notes shall not reduce the rate of interest charged hereunder or under the Notes below the Maximum Rate until the total amount of interest accrued under this Agreement and the Notes from and after the date hereof equals the amount of interest that would have accrued hereon or thereon if the rates of interest otherwise applicable to this Agreement and the Notes (without limitation by the Maximum Rate) had at all times been in effect. In the event that upon the final payment of the Loans made by any Bank, the total amount of interest paid to such Bank hereunder and under the Notes is less than the total amount of interest which would have accrued if the interest rates applicable to such Loans pursuant to Section 2.07(a), (b) and (c) had at all times been in effect, then the Borrower agrees to pay to such Bank, to the extent permitted by Applicable Usury Law, an amount equal to the excess of (a) the lesser of (i) the amount of interest which would have accrued on such Loans if the Maximum Rate had at all times been in effect or (ii) the amount of interest rates applicable to such Loans pursuant to Section 2.07(a), (b) and (c) had at all times been in effect over (b) the amount of interest otherwise accrued on such Loans in accordance with this Agreement.

(c) The maximum non-usurious rate of interest shall be determined by utilizing the applicable weekly ceiling from time to time in effect pursuant to Chapter 303 of the Texas Finance Code. Pursuant to Section 346.004 of the Texas Finance Code, the parties hereto agree that in no event will the provisions of Chapter 346 of the Texas Finance Code be applicable to the transactions contemplated by the Credit Documents.

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Section 10.09. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

Section 10.10. Survival of Agreements, Representations and Warranties, Etc. All warranties, representations and covenants made by the Borrower or the Guarantor or any officer of the Borrower or the Guarantor herein or in any certificate or other document delivered in connection with this Agreement shall be considered to have been relied upon by the Banks and shall survive the issuance and delivery of the Notes and the making of the Loans regardless of any investigation. The indemnities and other obligations of the Borrower contained in this Agreement, and the indemnities by the Banks in favor of the Agent and its officers, directors, employees and agents, will survive the repayment of the Loans and the termination of this Agreement.

Section 10.11. The Borrower's Right to Apply Deposits. In the event that any Bank is placed in receivership or enters a similar proceeding, the Borrower may, to the full extent permitted by law, make any payment due to such Bank hereunder, to the extent of finally collected unrestricted deposits of the Borrower in U.S. Dollars held by such Bank, by giving notice to the Administrative Agent and such Bank directing such Bank to apply such deposits to such indebtedness. If the amount of such deposits is insufficient to pay such indebtedness then due and owing in full, the Borrower shall pay the balance of such insufficiency in accordance with this Agreement.

Section 10.12. Confidentiality. Each Bank and the Administrative Agent agree that they will not disclose without the prior consent of the Borrower and the Guarantor (other than to employees, auditors, accountants, counsel or other professional advisors of the Agent or any Bank who have a contractual, fiduciary or professional duty to maintain the confidentiality of the information) any information with respect to the Borrower or the Guarantor or their



Subsidiaries which is furnished pursuant to this Agreement and which is not disclosed in an SEC Filing, a report to shareholders, a press release, or has otherwise become generally available to the public otherwise than through a breach hereof (the "Confidential Information"), provided, that, any Bank may disclose any such Confidential Information (a) as may be required or appropriate in any report, statement or testimony submitted to or required by any municipal, state or Federal regulatory body having or claiming to have jurisdiction over such Bank or submitted to or required by the Board of Governors of the Federal Reserve System or the Federal Deposit Insurance Corporation or similar organizations (whether in the United States of America or elsewhere) or their successors, (b) as may be required or appropriate in response to any summons or subpoena in connection with any litigation, (c) in order to comply with any law, order, regulation or ruling applicable to such Bank, and (d) to an Eligible Assignee, but not to a prospective participant, in connection with any contemplated transfer of any of the Loans or the Notes or any interest therein by such Bank, provided, that, such Eligible Assignee executes an agreement with the Borrower and the Guarantor agreeing to comply with the provisions contained in this Section 10.12. In the event that the Administrative Agent or any Bank becomes legally compelled or otherwise obligated to disclose any of the Confidential Information and unless otherwise prohibited by applicable banking laws or regulations, such Person will promptly, after obtaining knowledge of its obligation to disclose such information, provide the Borrower with notice so that the Borrower may seek a protective order or other appropriate remedy or waive compliance with this Section. In the event such protective order or other remedy is not obtained, such Person will furnish only that portion of the Confidential Information which it is advised by legal counsel is legally required and will exercise its best efforts to obtain reliable assurances that confidential treatment will be accorded the Confidential Information. In the event that compliance with this Section is waived by the Borrower, such Person may disclose any and all information at issue without liability to the Borrower, the Guarantor or any other Person.

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Section 10.13. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Borrower, the Guarantor, the Administrative Agent, each Bank and their respective successors and assigns, except that the Borrower and the Guarantor shall not have the right to assign any of their respective rights hereunder or any interest herein without the prior written consent of the Banks.

Section 10.14. ENTIRE AGREEMENT. PURSUANT TO SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE, A LOAN AGREEMENT IN WHICH THE AMOUNT INVOLVED IN THE LOAN AGREEMENT EXCEEDS \$50,000 IN VALUE IS NOT ENFORCEABLE UNLESS THE LOAN AGREEMENT IS IN WRITING AND SIGNED BY THE PARTY TO BE BOUND OR THAT PARTY'S AUTHORIZED REPRESENTATIVE.

THE RIGHTS AND OBLIGATIONS OF THE PARTIES TO AN AGREEMENT SUBJECT TO THE PRECEDING PARAGRAPH SHALL BE DETERMINED SOLELY FROM THE WRITTEN LOAN AGREEMENT, AND ANY PRIOR ORAL AGREEMENTS BETWEEN THE PARTIES ARE SUPERSEDED BY AND MERGED INTO THE LOAN AGREEMENT. THIS WRITTEN AGREEMENT AND THE CREDIT DOCUMENTS, AS DEFINED IN THIS AGREEMENT, REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. IN CASE OF A CONFLICT BETWEEN THE COMMITMENT LETTER DATED AS OF SEPTEMBER 26, 2007 BETWEEN EACH OF THE JOINT LEAD ARRANGERS AND BOOKRUNNERS NAMED ON THE COVER PAGE OF THIS AGREEMENT, JPMCB AND THE BORROWER, AND THIS AGREEMENT, THIS AGREEMENT SHALL CONTROL.

Section 10.15. USA PATRIOT ACT. Each Bank hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Bank to identify the Borrower in accordance with the Act.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

**BORROWER:**

BRINKER INTERNATIONAL, INC.

By: /s/ Charles M. Sonstebly  
Name: Charles M. Sonstebly  
Title: Executive Vice President and Chief  
Financial Officer

**GUARANTOR:**

BRINKER RESTAURANT CORPORATION

By: /s/ Roger F. Thomson  
Name: Roger F. Thomson  
Title: President and Secretary

**ADMINISTRATIVE AGENT:**

CITIBANK, N.A.

By: /s/ Kevin A. Ege  
Name: Kevin A. Ege  
Title: Vice President

**BANKS:**

CITIBANK, N.A.

By: /s/ Kevin A. Ege

Name: Kevin A. Ege

Title: Vice President

JPMORGAN CHASE BANK, N.A.

By: /s/ Scott Harvey

Name: Scott Harvey

Title: Senior Vice President

BANK OF AMERICA, N.A.

By: /s/ John H. Schmidt

Name: John H. Schmidt

Title: Vice President

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THE BANK OF TOKYO-MITSUBISHI UFJ, LTD.

By: /s/ Douglas M. Barnell

Name: Douglas M. Barnell

Title: Vice President and Manager, Southwest  
Corporate

WACHOVIA BANK, NATIONAL ASSOCIATION

By: /s/ Thomas M. Harper

Name: Thomas M. Harper

Title: Senior Vice President and Managing  
Director

NATIONAL CITY BANK

By: /s/ Jennifer Obers

Name: Jennifer Obers

Title: Portfolio Manager

BANK OF CHINA, LOS ANGELES BRANCH

By: /s/ Jason Fu

Name: Jason Fu

Title: Vice President

FIFTH THIRD BANK

By: /s/ Mike Mendenhall

Name: Mike Mendenhall

Title: Vice President

SUNTRUST BANK

By: /s/ Jean-Paul Purdy

Name: Jean-Paul Purdy

Title: Director

US BANK, N.A.

By: /s/ Frances W. Josephic

Name: Frances W. Josephic

Title: Vice President

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WELLS FARGO BANK, N.A.

By: /s/ Greg Campbell

Name: Greg Campbell

Title: Vice President

THE NORINCHUKIN BANK, New York Branch

By: /s/ Noritsugu Sato

Name: Noritsugu Sato

Title: General Manager

FIRST COMMERCIAL BANK, Los Angeles Branch

By: /s/ Larry Jen-Yu Lai

Name: Larry Jen-Yu Lai

Title: SAVP & Deputy General Manager

GREENSTONE FARM CREDIT BANK, ACA/FLCA

By: /s/ Jeff Pavlik

Name: Jeff Pavlik

Title: Assistant Vice President/Lending Officer

**EXHIBIT A**

**FORM OF NOTE**

U.S.

\$ Dated: [ ], 20

FOR VALUE RECEIVED, the undersigned, Brinker International, Inc., a Delaware corporation (the "Borrower"), HEREBY PROMISES TO PAY to the order of (the "Bank"), for the account of its Applicable Lending Office (as defined in the Term Loan Agreement referred to below) or any other office designated by the Bank, the principal amount of \$ on the Maturity Date as defined in said Term Loan Agreement.

The Borrower promises to pay interest on the unpaid principal amount hereof from the date hereof until such principal amount is paid in full, at such interest rates, and payable at such times, as are specified in the Term Loan Agreement.

Both principal and interest are payable in lawful money of the United States of America to Citibank, N.A., as Administrative Agent, at 2 Penns Way, Suite 200, New Castle, DE 19720, in same day funds.

This Promissory Note is one of the Notes referred to in, and is subject to and entitled to the benefits of, the Term Loan Agreement dated as of October 24, 2007 (as it may be amended from time to time in accordance with its terms, the "Term Loan Agreement"), among the Borrower, Brinker Restaurant Corporation, a Delaware corporation, as Guarantor, the Bank and certain other banks parties thereto (collectively, the "Banks") and Citibank, N.A., as Administrative Agent for the Banks. The Term Loan Agreement, among other things, provides for the making of loans by the Bank to the Borrower and (ii) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events and also for prepayments on account of principal hereof prior to the maturity hereof upon the terms and conditions therein specified. Capitalized terms used herein which are not defined herein and are defined in the Term Loan Agreement are used herein as therein defined.

The Borrower hereby waives presentment for payment, notice of nonpayment, demand, protest, notice of protest, notice of dishonor, notice of intent to accelerate, notice of acceleration and any other notice of any kind, except as provided in the Term Loan Agreement. No failure to exercise, and no delay in exercising, any rights hereunder on the part of the holder hereof shall operate as a waiver of such rights.

This Promissory Note shall be governed by, and construed in accordance with, the laws of the State of Texas.

BRINKER INTERNATIONAL, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT B**

**FORM OF NOTICE OF BORROWING**

[Date]

Citibank, N.A., as Administrative Agent  
for the Banks parties  
to the Term Loan Agreement

referred to below

Two Penns Way, Suite 200  
New Castle, Delaware 19720  
Attention: Rose Delp

Telephone: (302) 894 - 6004  
Telecopy: (212) 994 - 0961

Ladies and Gentlemen:

The undersigned, Brinker International, Inc., a Delaware corporation (the "Borrower"), refers to the Term Loan Agreement, dated as of October 24, 2007 (as amended from time to time in accordance with its terms, the "Term Loan Agreement"; capitalized terms defined therein and not defined herein being used herein as therein defined), among the undersigned, Brinker Restaurant Corporation, a Delaware corporation, as Guarantor, certain Banks parties thereto, and Citibank, N.A., as Administrative Agent, and hereby gives you notice, irrevocably pursuant to Section 2.02 of the Term Loan Agreement, that the undersigned hereby requests a Borrowing under the Term Loan Agreement, and in that connection sets forth below the information relating to such Borrowing (the "Proposed Borrowing") as required by Section 2.02 of the Term Loan Agreement:

<u>Borrowing Amount</u>	<u>Type of Loan(1)</u>	<u>Interest Period(2)</u>
\$		
\$		
\$		
Total: <u>\$400,000,000</u>		

(1) Eurodollar Rate Loan or Base Rate Loan.

(2) Which shall have a duration in the case of a Eurodollar Rate Loan, of one (1), two (2), three (3) or six (6) months and which shall end not later than the Maturity Date.

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The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the date of the Proposed Borrowing:

(a) the representations and warranties contained in Article V of the Term Loan Agreement are correct in all material respects on and as of the date of the Proposed Borrowing, before and after giving effect to the Proposed Borrowing and to the application of the proceeds therefrom, as though made on and as of such date; and

(b) no event has occurred and is continuing, or would result from the Proposed Borrowing or from the application of the proceeds therefrom, which constitutes a Default or an event which, with the giving of notice, the lapse of time or both, would constitute a Default.

Very truly yours,

BRINKER INTERNATIONAL, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**EXHIBIT C**

**FORM OF ASSIGNMENT**

Dated \_\_\_\_\_,

Reference is made to the Term Loan Agreement, dated as of October 24, 2007 (as the same may be amended or modified from time to time, the "Term Loan Agreement") among Brinker International, Inc., a Delaware corporation (the "Borrower"), Brinker Restaurant Corporation, a Delaware

corporation (the "Guarantor"), the Banks named therein, and Citibank, N.A., as Administrative Agent for the Banks. Capitalized terms not otherwise defined in this Assignment (this "Assignment") shall have the meanings assigned to them in the Term Loan Agreement.

Pursuant to the terms of the Term Loan Agreement, \_\_\_\_\_ wishes to assign and delegate \_\_\_\_\_ % of its rights and obligations under the Term Loan Agreement in connection with its outstanding Loans and Note. Therefore, \_\_\_\_\_ (the "Assignor"), \_\_\_\_\_ (the "Assignee"), and the Administrative Agent agree as follows:

1. The Assignor hereby sells and assigns and delegates to the Assignee, and the Assignee hereby purchases and assumes from the Assignor, as of the Effective Date (as defined below), without recourse to the Assignor and without representation or warranty except for the representations and warranties specifically set forth in clauses (a), (b), and (c) of Section 2 hereof, [(a)] a \_\_\_\_\_ %(1) interest in and to all of the Assignor's rights and obligations under the Term Loan Agreement, its outstanding Loans and its Note.

2. The Assignor (a) represents and warrants that, prior to executing this Assignment (i) the aggregate outstanding principal amount of the Loans (without giving effect to assignments thereof which have not yet become effective) owed to it by the Borrower is \$ \_\_\_\_\_; (b) represents and warrants that it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim; (c) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties, or representations made in or in connection with the Term Loan Agreement or any other Credit Document or the execution, legality, validity, enforceability, genuineness, sufficiency, or value of the Term Loan Agreement or any other Credit Document or any other instrument or document furnished pursuant thereto; (d) makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Borrower or the Guarantor or the performance or observance by the Borrower or the Guarantor of any of their respective obligations under the Term Loan Agreement or any other Credit Document or any other instrument or document furnished pursuant thereto; and (e) attaches the Note referred to in Section 1 above and requests that the Administrative Agent [(i)] exchange such Note for [a] new Note dated \_\_\_\_\_, in the principal amount of \$ \_\_\_\_\_ payable to the order of the Assignee[, and a new Note dated \_\_\_\_\_, in the principal amount of \$ \_\_\_\_\_ payable to the order of Assignor].

3. The Assignee (a) confirms that it has received a copy of the Term Loan Agreement, together with copies of the financial statements referred to in Section 5.04 thereof and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment; (b) agrees that it will, independently and without reliance upon the Administrative Agent, the Assignor, or any other Bank and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Term Loan Agreement; (c) appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under the Term Loan Agreement as are delegated to the Administrative Agent by the terms thereof, together with such powers as are reasonably incidental thereto; (d) agrees that it will perform in accordance with their terms all of the obligations which by the terms of the Term Loan Agreement are required to be performed by it as a Bank; (e) specifies as its Domestic Lending Office (and address for notices) and Eurodollar Lending Office the offices set forth beneath its name on the signature pages hereof; (f) attaches the forms prescribed by the Internal Revenue Service of the United States of America certifying as to the Assignee's status for purposes of determining exemption from United States of America withholding taxes with respect to all payments to be made to the Assignee under the Term Loan Agreement and its Note or such other documents as are necessary to indicate that all such payments are subject to such rates at a rate reduced by an applicable tax treaty<sup>2/</sup>; (g) represents that it is an Eligible Assignee, and (h) agrees that it will keep confidential all information with respect to the Borrower furnished to it by Borrower or the Assignor (other than information generally available to the public or otherwise available to the Assignor on a non-confidential basis) as provided in Section 10.12 of the Term Loan Agreement.

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4. The effective date for this Assignment shall be \_\_\_\_\_ (the "Effective Date")(3) and following the execution of this Assignment, the Administrative Agent will record it.

5. Upon such recording, and as of the Effective Date, (i) the Assignee shall be a party to the Term Loan Agreement for all purposes, and, to the extent provided in this Assignment, have the rights and obligations of a Bank thereunder and (ii) the Assignor shall, to the extent provided in this Assignment, relinquish its rights (other than rights against the Borrower pursuant to Section 10.04 of the Term Loan Agreement, which shall survive this assignment) and be released from its obligations under the Term Loan Agreement.

6. Upon such recording, from and after the Effective Date, the Administrative Agent shall make all payments under the Term Loan Agreement and the Note in respect of the interest assigned hereby (including, without limitation, all payments of principal, interest, and fees) to the Assignee. The Assignor and Assignee shall make all appropriate adjustments in payments under the Term Loan Agreement and the Note for periods prior to the Effective Date directly between themselves.

7. This Assignment shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas.

The parties hereto have caused this Assignment to be duly executed as of the date first above written.

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[ASSIGNOR]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telecopy: \_\_\_\_\_

Telephone: \_\_\_\_\_

[ASSIGNEE]

Domestic Lending Office:

[ASSIGNOR]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Attention: \_\_\_\_\_

Telecopy: \_\_\_\_\_

Telephone: \_\_\_\_\_

Eurodollar Lending Office:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Attention: \_\_\_\_\_

Telecopy: \_\_\_\_\_

Telephone: \_\_\_\_\_

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CITIBANK, N.A., as Administrative Agent for  
itself and the Banks

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Attention: \_\_\_\_\_

Telecopy: \_\_\_\_\_

Telephone: \_\_\_\_\_

- (1) Specify percentage in no more than 4 decimal points.
- (2) If the Assignee is organized under the laws of a jurisdiction outside the United States of America.
- (3) See Section 10.06(a) of the Term Loan Agreement. Such date shall be at least three (3) Business Days after the execution of this Assignment.

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**EXHIBIT D**

**FORM OF LEGAL OPINION OF BORROWER'S AND GUARANTOR'S COUNSEL**

[ , 2007]

To each of the Banks parties to the  
Term Loan Agreement herein described  
and to Citibank, N.A., as Administrative Agent

Ladies and Gentlemen:

This opinion is furnished to you pursuant to Section 3.01(a)(iv) of the \$400,000,000 Term Loan Agreement, dated as of October 24, 2007 (the "Term Loan Agreement"), among Brinker International, Inc., a Delaware corporation, as borrower (the "Borrower"); Brinker Restaurant Corporation, a Delaware corporation, as guarantor (the "Guarantor"); the banks party thereto (the "Banks"); and Citibank, N.A., as Administrative Agent for such Banks (in such

capacity, the "Administrative Agent"). Capitalized terms defined in the Term Loan Agreement are used herein with the same meaning unless otherwise defined herein.

## DOCUMENTS EXAMINED

In our capacity as special counsel for the Borrower and the Guarantor, we have examined the originals, copies or forms, certified or otherwise identified to our satisfaction, of the following documents (the "Documents"):

- (i) The Term Loan Agreement;
- (ii) Certificate of Incorporation of the Borrower as filed with the Secretary of State of Delaware on September 30, 1983 and all amendments thereto through the date hereof (the "Borrower Certificate of Incorporation");
- (iii) Certificate of Incorporation of the Guarantor as filed with the Secretary of State of Delaware on June 19, 1990 and all amendments thereto through the date hereof (the "Guarantor Certificate of Incorporation");
- (iv) Bylaws of the Borrower (the "Borrower Bylaws"); and
- (v) Bylaws of the Guarantor (the "Guarantor Bylaws").

In addition, we have examined and relied upon such certificates of public officials and other certificates, opinions and instruments as we have deemed relevant and necessary as a basis for our opinion hereinafter set forth. As to matters of fact material to our opinion, we have, when relevant facts were not independently established, relied upon certificates of representatives of the Borrower and the Guarantor and upon representations and warranties set forth in the Term Loan Agreement, and have not conducted any special inquiry or investigation in respect of such matters.

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As used herein, (i) "Disclosed" means disclosed in or contemplated by the Term Loan Agreement or any SEC Filing and (ii) "Knowledge" means the current, actual knowledge of the attorneys of this firm who are involved in the representation of the Borrower and the Guarantor in connection with the transactions contemplated by the Term Loan Agreement, without any independent investigation.

## ASSUMPTIONS

In rendering this opinion, we have assumed, with your consent and without any independent investigation, all of the following:

- (A) the genuineness of all signatures (other than those of the officers of the Borrower and the Guarantor who executed the Term Loan Agreement and the Notes), the authenticity of all documents submitted to us as originals and the conformity to authentic original documents of all documents submitted as certified, conformed or photostatic copies;
- (B) that each of the parties to the Documents other than the Borrower and the Guarantor (the "Other Parties") is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation and has full power and authority to execute, deliver and perform its obligations under each of the Documents to which it is a party, that each of the Documents has been duly authorized, executed and delivered by each of the parties thereto, that each of the Documents constitutes a valid and legally binding obligation of each of the Other Parties thereto and is enforceable against the Other Parties in accordance with its terms that each of the Other Parties has fulfilled and complied with its obligations under the Documents to the extent required thereunder to date, and that the Borrower and the Guarantor have received or will concurrently herewith receive the consideration provided in the Documents to be received at or prior to the date hereof;
- (C) that all of the Documents will be performed strictly in accordance with the terms thereof; and
- (D) that the representations and warranties as to factual matters contained in the Documents are true and correct.

## OPINION

Based upon the foregoing and having due regard for the legal considerations we deem relevant, and subject to the further qualifications and limitations hereinafter set forth, we are of the opinion that:

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1. Each of the Borrower and the Guarantor is a corporation duly incorporated, validly existing and in good standing under the Delaware General Corporation Law, as amended (the "DGCL"), and has the corporate power and authority under the DGCL to enter into and perform the Term Loan Agreement and the Notes.

2. The Term Loan Agreement has been duly and validly authorized, executed and delivered by the Borrower, and constitutes and each Note when duly executed and delivered for value in accordance with the Term Loan Agreement will constitute, a valid and binding obligation of the Borrower enforceable against the Borrower in accordance with its terms, in each case except as enforcement of the Term Loan Agreement or the Notes may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, fraudulent transfer, moratorium or other laws affecting creditors' rights generally, and subject to general equity principles and to limitations on availability of equitable relief, including specific performance.

3. The Term Loan Agreement has been duly and validly authorized, executed and delivered by the Guarantor, and constitutes a valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, fraudulent transfer, moratorium or other laws affecting creditors' rights generally, and subject to general equity principles and to limitations on availability of equitable relief, including specific performance.

4. Neither the execution and delivery of the Term Loan Agreement or the Notes or the consummation of the transactions contemplated therein will violate any provision of the Borrower Certificate of Incorporation, the Guarantor Certificate of Incorporation, the Borrower Bylaws or the Guarantor Bylaws, or to our Knowledge, conflict with or violate any statute, judgment, order, decree or regulation or rule of any court, governmental authority or arbitrator applicable or relating to the Borrower or the Guarantor.

5. To our Knowledge and except as Disclosed, there are no actions, suits, proceedings or claims or investigations pending or threatened against or affecting the Borrower or the Guarantor or any of their respective properties before any court, governmental agency or regulatory authority which would (i) have a Material Adverse Effect or (ii) impair the ability of the Borrower or the Guarantor to perform their obligations under the Term Loan Agreement or the Notes.

6. Neither the Borrower nor the Guarantor is an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

#### FURTHER QUALIFICATIONS AND LIMITATIONS

The opinions expressed above are expressly subject to the following qualifications and limitations:

(a) We express no opinion as to (i) the specific remedy that any court or other authority or body might grant in connection with the enforcement of rights under any of the Documents, as to the availability of equitable remedies, as such, in connection with the enforcement of such rights, or as to the effects of the application of principles of equity (regardless of whether enforcement is considered in proceedings in law or in equity), (ii) the application of any securities laws to any of the transactions contemplated by any of the Documents, or (iii) the effect of any environmental, antitrust or tax laws of the United States of America or of the State of Texas.

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(b) We express no opinion as to the validity or enforceability of (i) any provisions purporting to entitle a party to indemnification or release from liability in respect of any matters arising in whole or in part by reason of any illegal, wrongful, knowing or negligent act or omission of such party, (ii) any provisions that purport to restrict access to or waive remedies or defenses, to waive any rights to notices or to establish evidentiary standards, (iii) any provisions relating to liquidated damages, waivers, releases, suretyship defenses, delays or omissions of enforcement of rights or remedies, severability, consent judgments or summary proceedings, (iv) any provisions purporting to irrevocably appoint attorneys-in-fact or other agents, (v) any provisions purporting to restrict or limit transfer, alienation or encumbering of property, (vi) any provisions that relate to submissions to jurisdiction, waivers or ratifications of future acts, the rights of, third parties or transferability of assets which by their nature are nontransferable, (vii) provisions that contain any agreement to agree, or (viii) provisions that purport to negate or control over present or future laws which are contrary to such provisions.

(c) To the extent that the opinions given in Sections 2, 3 and 4 constitute opinions with respect to laws relating to usury, such opinions are expressly limited to the opinion that the Term Loan Agreement and the Notes do not require the payment of interest at a rate which is usurious. In rendering such opinion, we have relied upon and assumed the applicability of Chapter 303 of the Texas Finance Code, as currently in effect, and have assumed that (i) there are no fees, points or other charges or forms of compensation to Administrative Agent or any Bank in respect of the Term Loan Agreement or the issuance of the Notes or any commitment to pay any such charges or other forms of compensation, other than those specifically disclosed in the Term Loan Agreement, (ii) all fees and charges provided for in the Term Loan Agreement and the Notes to be paid by Borrower or Guarantor to Administrative Agent or any Bank constitute bona fide commitment fees and not interest, (iii) all charges for reimbursement of services paid to third parties will be for actual out-of-pocket expenses paid to third parties for services actually rendered by such parties, (iv) Administrative Agent, the Banks, Borrower and Guarantor will comply with the "usury savings clause" and other provisions of the Term Loan Agreement to the effect that the Borrower and the Guarantor will never be required to pay interest (including all compensation that constitutes interest under applicable law) on the Notes or otherwise in respect of the Term Loan Agreement in excess of the maximum rate or amount of interest that may lawfully be contracted for, charged or collected thereon or in connection therewith under applicable Texas law (collectively, the "Savings Clauses"), and (v) in complying with the provisions of the Saving Clauses, Administrative Agent and such Bank will give due consideration to all fees, charges or other compensation which under applicable Texas law may be or is deemed to be interest.

(d) We are members of the Bar of the State of Texas. This opinion relates only to the laws of the State of Texas and the DGCL as currently in effect, and we express no opinion with regard to any matters that may be governed or affected by any other laws.

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(e) This opinion is limited solely to the matters stated herein and no opinion is to be inferred or may be implied beyond the matters expressly stated herein.

The opinions expressed herein are solely for the benefit of you and your counsel in connection with the transactions contemplated by the Term Loan Agreement and may not be used or relied upon by any other person or entity or for any other purpose whatsoever. The opinions expressed herein are as of the date first set forth above, and we do not assume or undertake any responsibility or obligation to supplement or to update such opinions to reflect any facts or circumstances which may hereafter come to our attention or any changes in the laws which may hereafter occur.

Very truly yours,

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**FORM OF LEGAL OPINION OF SPECIAL COUNSEL TO  
ADMINISTRATIVE AGENT**

[                   , 2007]

To each of the Banks parties to  
the Term Loan Agreement herein described and to  
Citibank, N.A.,  
as Administrative Agent

Ladies and Gentlemen:

We have acted as special counsel to Citibank, N.A., acting for itself and as Administrative Agent in connection with the preparation, execution and delivery of that certain Term Loan Agreement, dated as of October 24, 2007 (the "Term Loan Agreement"), among Brinker International, Inc., a Delaware corporation, as borrower (the "Borrower"), Brinker Restaurant Corporation, a Delaware corporation, as guarantor (the "Guarantor"), Citibank, N.A., as Administrative Agent (the "Administrative Agent") and each of you (the "Banks"). Terms defined in the Term Loan Agreement are used herein as therein defined.

In that connection, we have examined the following documents:

- (1) counterparts of the Term Loan Agreement, executed by the Borrower, the Guarantor, the Banks, and the Administrative Agent, respectively;  
and
- (2) the opinion dated as of the date hereof of Jackson Walker L.L.P. for each of the Borrower and the Guarantor (the "Opinion").

In our examination of the documents referred to above, we have assumed the authenticity of all such documents submitted to us as originals, the genuineness of all signatures and the conformity to the originals of all such documents submitted to us as copies. We have also assumed that each of the Borrower, the Guarantor, the Banks, and the Administrative Agent has duly executed and delivered, with all necessary power and authority (corporate and otherwise), the Term Loan Agreement. We have also assumed that no Bank has requested that the Opinion required by Section 3.01(a)(iv) of the Term Loan Agreement contain any other matters not contained in the form of opinion set forth as Exhibit D to the Term Loan Agreement.

Based upon the foregoing examination of documents and assumptions and upon such other investigation as we have deemed necessary, we are of the opinion that the Opinion is substantially responsive to the requirements of the Term Loan Agreement.

This opinion is solely for the benefit of the Banks, the Administrative Agent, their respective successors, assigns, participants and other transferees and may be relied upon only by such Persons.

Very truly yours.  
HUGHES & LUCE L.L.P.

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**EXHIBIT F**

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**

This certificate is delivered pursuant to Section 2.17(e) of the Term Loan Agreement, dated as of October 24, 2007 (the "Term Loan Agreement") among BRINKER INTERNATIONAL, INC. (the "Borrower"), the several banks and other financial institutions from time to time parties thereto and CITIBANK, N.A., as Administrative Agent (the "Administrative Agent"). Unless otherwise defined herein, terms defined in the Term Loan Agreement shall have the same respective meanings when set forth therein.

The undersigned hereby represents and warrants to the Administrative Agent and the Borrower that:

1. the undersigned is the sole record and beneficial owner of the Loans or the transactions evidenced by the Note registered in its name in respect of which it is providing this certificate;
2. the undersigned is not a bank (within the meaning of Section 881(c)(3)(A) of the Code) and, in this regard, further represents and warrants that:
  - (a) the undersigned is not subject to regulatory or other legal requirements as a bank in any jurisdiction; and
  - (b) the undersigned has not been treated as a bank for purposes of any tax, securities law or other filing or submission made to any Governmental Authority, any application made to a rating agency or qualification for any exemption from tax, securities law or other legal requirements;
3. the undersigned is not a 10-percent shareholder (within the meaning of Section 881(c)(3)(B) of the Code) of the Borrower;
4. the income from the Note held by the undersigned is not effectively connected with the conduct of a trade or business with the United States; and
5. the undersigned is not a controlled foreign corporation related (within the meaning of Section 864(d)(4) of the Code) to the Borrower.

The undersigned has furnished you with a certificate of our non-U.S. person status on Internal Revenue Service Form W-8BEN. By executing this certificate, the undersigned agrees that (a) if the information provided on this certificate changes, the undersigned shall so inform the Administrative Agent and the Borrower in writing within thirty days of such change and (b) the undersigned shall furnish to the Administrative Agent and the Borrower a properly completed and currently effective certificate in either the calendar year in which payment is to be made by the Borrower to the undersigned under the Term Loan Agreement, or in either of the two calendar years preceding such payment.

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IN WITNESS WHEREOF, the undersigned has caused this certificate to be executed as of \_\_\_\_\_, 200\_\_.

[NAME OF BANK]

By: \_\_\_\_\_  
Name:  
Title:

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### SCHEDULE I

#### BANK AND ADMINISTRATIVE AGENT ADDRESSES

##### ADMINISTRATIVE AGENT:

CITIBANK, N.A.  
Two Penns Way, Suite 200  
New Castle, Delaware 19720  
Attn: Rose Delp

Telephone: (302) 894 - 6004  
Telecopy: (212) 994 - 0961

##### SCHEDULE I-1

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##### BANKS:

CITIBANK, N.A.  
Two Penns Way, Suite 200  
New Castle, Delaware 19720  
Attn: Rose Delp

Telephone: (302) 894 - 6004  
Telecopy: (212) 994 - 0961

JPMORGAN CHASE BANK, N.A.  
1111 Fannin, Floor 10  
Houston, TX 77002-6925  
Attn: Ms. Marlies Iida  
Mail Code: TX2-F046

Telephone: (713) 750 - 2353  
Telecopy: (713) 750 - 2892

BANK OF AMERICA, N.A.  
100 Federal St.  
MA5-100-09-06  
Boston, MA 02110  
Attn: Mr. John H. Schmidt

Telephone: (617) 434-4044  
Telecopy: (617) 434-0637

THE BANK OF TOKYO-MITSUBISHI UFJ, LTD.  
2001 Ross Ave., #3150  
Dallas, TX 75201  
Attn: Mr. Doug Barnell

Telephone: (214) 954-1240  
Telecopy: (214) 954-1007

WACHOVIA BANK, NATIONAL ASSOCIATION  
One South Broad Street  
MC: PA4843  
Philadelphia, PA 19107  
Attn: Mr. Mark S. Supple

Telephone: (267) 321-6634  
Telecopy: (267) 321-6700

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SCHEDULE I-2

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NATIONAL CITY BANK  
155 East Broad Street  
Columbus, OH 43215-0077  
Attn: Jennifer Obers

Telephone: (614) 463-7108  
Telecopy: (614) 463-8572

BANK OF CHINA, LOS ANGELES BRANCH  
444 S. Flower Street, #3900  
Los Angeles, CA 90071  
Attn: Mr. Jason Fu

Telephone: (213) 688-8700 x235  
Telecopy: (213) 688-1015

FIFTH THIRD BANK  
38 Fountain Sq. Plaza  
Cincinnati, OH 45202  
Attn: Mr. Mike Mendenhall

Telephone: (513) 534-6915  
Telecopy: (513) 534-5947

SUNTRUST BANK  
303 Peachtree St., 3<sup>rd</sup> Fl.  
Atlanta, GA 30308  
Attn: Mr. Jean-Paul Purdy

Telephone: (404) 581-1518  
Telecopy: (404) 588-7189

US BANK, N.A.  
425 Walnut Street, 8<sup>th</sup> Fl.  
Cincinnati, OH 45202  
Attn: Ms. Veronica Morrissette

Telephone: (404) 226-2222  
Telecopy: (513) 632-4894

WELLS FARGO BANK, N.A.  
201 Third St. - 8<sup>th</sup> Floor  
San Francisco, CA 94104  
Attn: Rosanna Roxas

Telephone: (415) 477-5424  
Telecopy: (415) 979-0675

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SCHEDULE I-3

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THE NORINCHUKIN BANK, NEW YORK BRANCH  
245 Park Ave., 21<sup>st</sup> Fl.  
New York, NY 10167  
Attn: Yuichiro Hara

Telephone: (212) 808-4195  
Telecopy: (212) 697-5754

FIRST COMMERCIAL BANK, LOS ANGELES BRANCH  
515 South Flower Street, Suite 1050  
Los Angeles, CA 90071  
Attn: Josephine Chong

Telephone: (213) 405-1133  
Telecopy: (213) 362-0219

GREENSTONE FARM CREDIT BANK, ACA/FLCA  
1760 Abbey Rd., Ste. 310  
East Lansing, MI 48823  
Attn: Jeff Pavlik

Telephone: (517) 318-4130  
Telecopy: (517) 318-4148

SCHEDULE I-4

SCHEDULE II

PRO RATA SHARES

<u>Bank</u>	<u>Pro Rata Share</u>	<u>Pro Rata Share of Facility Amount</u>
Citibank, N.A.	12.5000%	\$ 50,000,000
JPMorgan Chase Bank, N.A.	12.5000%	\$ 50,000,000
Bank of America, N.A.	11.2500%	\$ 45,000,000
The Bank of Tokyo-Mitsubishi UFJ, Ltd.	10.0000%	\$ 40,000,000
Wachovia Bank, National Association	10.0000%	\$ 40,000,000
National City Bank	7.5000%	\$ 30,000,000
Bank of China, Los Angeles Branch	6.2500%	\$ 25,000,000
Fifth Third Bank	6.2500%	\$ 25,000,000
SunTrust Bank	6.2500%	\$ 25,000,000
US Bank, N.A.	5.0000%	\$ 20,000,000
Wells Fargo Bank, N.A.	5.0000%	\$ 20,000,000
The Norinchukin Bank, New York Branch	2.5000%	\$ 10,000,000
First Commercial Bank, Los Angeles Branch	2.5000%	\$ 10,000,000
GreenStone Farm Credit Services, ACA/FLCA	2.5000%	\$ 10,000,000
<b>TOTAL</b>	<b>100.0000%</b>	<b>\$ 400,000,000</b>

SCHEDULE II-1

SCHEDULE III

**BORROWER AND GUARANTOR ADDRESSES**

**BORROWER:**

BRINKER INTERNATIONAL, INC.  
6820 LBJ Freeway  
Dallas, Texas 75240

Attn: General Counsel  
Telephone: (972) 980 - 9917  
Telecopy: (972) 770 - 9465

Copy to: Vice President and Treasurer  
Telephone: (972) 770 - 1276  
Telecopy: (972) 770 - 8863

**GUARANTOR:**

BRINKER RESTAURANT CORPORATION  
6820 LBJ Freeway  
Dallas, Texas 75240

Attn: General Counsel  
Telephone: (972) 980 - 9917  
Telecopy: (972) 770 - 9465

Copy to: Vice President and Treasurer

Telephone: (972) 770 - 1276  
Telecopy: (972) 770 - 8863

SCHEDULE III-1

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SCHEDULE IV

PERMITTED LIENS

<b>Subsidiary</b>	<b>Amount</b>	<b>Description</b>	<b>Maturity</b>
Brinker Restaurant Corporation	\$ 48,268,000	Capital Lease Obligations	Various dates through March 2020

SCHEDULE IV-1

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SCHEDULE V

AGREEMENTS RESTRICTING DIVIDENDS AND CERTAIN TRANSFERS

1. \$300 Million Revolving Loan Agreement dated October 6, 2004.

SCHEDULE V-1

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SCHEDULE VI

GAAP EXCEPTIONS

None.

SCHEDULE VI-1

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SCHEDULE VII

INVESTMENTS

<b>Company</b>	<b>Amount</b>	<b>Description</b>
Strang Corporation	\$ 1,164,114	Loan associated with sale of restaurants

SCHEDULE VII-1

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SCHEDULE VIII

PERMITTED DEBT

<b>Description</b>	<b>Amount</b>
5.75% Notes	\$ 300,000,000
Committed Credit Facilities	\$ 400,000,000
Committed Credit Facilities	£ 5,000,000
Uncommitted Credit Facilities	\$ 300,000,000
Capital Lease Obligations	\$ 48,268,000

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## CERTIFICATIONS

I, Douglas H. Brooks, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Brinker International, 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(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - A. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - B. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally acceptable 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(s) 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

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- 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: January 31, 2008

/s/ Douglas H. Brooks  
Douglas H. Brooks,  
Chairman of the Board,  
President and Chief Executive Officer  
(Principal Executive Officer)

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## CERTIFICATIONS

I, Charles M. Sonsteby, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Brinker International, 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(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - A. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - B. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally acceptable 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(s) 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

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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: January 31, 2008

/s/ Charles M. Sonsteby  
\_\_\_\_\_  
Charles M. Sonsteby,  
Executive Vice President and  
Chief Financial Officer  
(Principal Financial Officer)

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CERTIFICATION

Pursuant to 18 U.S.C. Section 1350, the undersigned officer of Brinker International, Inc. (the "Company"), hereby certifies that the Company's quarterly report on Form 10-Q for the quarter ended December 26, 2007 (the "Report") fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: January 31, 2008

By: /s/ Douglas H. Brooks  
Douglas H. Brooks,  
Chairman of the Board,  
President and Chief Executive Officer  
(Principal Executive Officer)

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## CERTIFICATION

Pursuant to 18 U.S.C. Section 1350, the undersigned officer of Brinker International, Inc. (the "Company"), hereby certifies that the Company's quarterly report on Form 10-Q for the quarter ended December 26, 2007 (the "Report") fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: January 31, 2008

By: /s/ Charles M. Sonsteby  
Charles M. Sonsteby,  
Executive Vice President and  
Chief Financial Officer  
(Principal Financial Officer)

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