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**SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, D.C. 20549

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**FORM S-4**  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

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**Brinker International, Inc.**

(Exact name of registrant as specified in its charter)

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

**5812**  
(Primary Standard Industrial  
Classification Code Number)

**75-1914582**  
(I.R.S. Employer  
Identification Number)

**6820 LBJ Freeway**  
**Dallas, Texas 75240**  
**(972) 980-9917**

(Address, including zip code, and telephone number,  
including area code, of registrant's principal executive offices)

**Roger F. Thomson**  
**Executive Vice President and General Counsel**  
**Brinker International, Inc.**  
**6820 LBJ Freeway**  
**Dallas, Texas 75240**  
**(972) 980-9917**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

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With a copy to:

**Robert H. Craft, Jr.**  
**Sullivan & Cromwell LLP**  
**1701 Pennsylvania Avenue, N.W.**  
**Washington, D.C. 20006**  
**(202) 956-7500**

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Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this registration statement.

If the securities being registered on this form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box.

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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**CALCULATION OF REGISTRATION FEE**

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Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price(1)	Amount of registration fee(1)
5.75% Notes due 2014	\$300,000,000	100%	\$300,000,000	\$38,010

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(1) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(f) under the Securities Act.

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**The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act or until the registration statement shall become effective on such dates as the Commission, acting pursuant to said Section 8(a), may determine.**

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Subject to completion. Dated June 25, 2004

PROSPECTUS



**\$300,000,000**

**Brinker International, Inc.**

**Offer to Exchange Registered 5.75% Notes due 2014  
For Any and All  
Outstanding Unregistered 5.75% Notes due 2014**

We are offering to exchange our 5.75% Notes due 2014, which have been registered under the Securities Act of 1933, as amended, for any and all of our outstanding unregistered 5.75% Notes due 2014. We refer to this offer to exchange as the exchange offer. We issued the original notes on May 14, 2004. As of the date of this prospectus, an aggregate principal amount of \$300,000,000 of original notes is outstanding.

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**THE EXCHANGE OFFER WILL EXPIRE AT 5:00 P.M., NEW YORK CITY TIME, ON \_\_\_\_\_, 2004, UNLESS WE EXTEND IT.**

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Please consider the following:

- You should carefully review the procedures for tendering the original notes described in this prospectus. If you do not follow these procedures, we may not exchange your original notes for new notes.
- We will not receive any proceeds from the exchange offer.
- If you do not tender your original notes, you will continue to hold unregistered securities and your ability to transfer them could be adversely affected.
- You may withdraw tendered original notes at any time before the expiration of the exchange offer.

Information about the new notes:

- The terms of the new notes will be substantially the same as the original notes, except for the elimination of certain transfer restrictions, registration rights and additional interest provisions relating to the original notes.
- The new notes will be our general unsecured obligations and will rank equal in right of payment with all of our other existing and future unsecured and unsubordinated obligations.
- There is currently no public market for the new notes. We do not intend to list the new notes on any securities exchange. Therefore, an active public market for the new notes may not develop.
- We may redeem some or all of the new notes at any time at our option on the terms set forth in this prospectus.

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**See "Risk Factors" beginning on page 6 for a discussion of specific factors that you should consider before participating in this exchange offer.**

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**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

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The date of this prospectus is June \_\_\_\_\_, 2004.

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Each broker-dealer that receives new notes for its own account pursuant to the exchange offer must acknowledge that it will deliver a prospectus in connection with any resale of the new notes it receives. The letter of transmittal states that by so acknowledging and by delivering a prospectus, a broker-dealer will not be deemed to admit that it is an "underwriter" within the meaning of the Securities Act of 1933, as amended, which we refer to as the Securities Act. This prospectus, as it may be amended or supplemented from time to time, may be used by a broker-dealer in connection with resales of new notes received in exchange for original notes where such original notes were acquired by the broker-dealer as a result of market-making activities or other trading activities. We have agreed that, starting on the expiration date of the exchange offer and ending on the close of business one year after the expiration date of the exchange offer, we will make this prospectus available to any broker-dealer for use in connection with any such resale. See "Plan of Distribution."

**You should rely only on the information contained or incorporated by reference in this prospectus. We have not authorized anyone to provide you with different information. We are not making an offer of these notes in any state where the offer is not permitted. You should not assume that the information contained in this prospectus is accurate as of any date other than the date on the front cover of this prospectus.**

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Unless we indicate differently, when we use the term "original notes" in this prospectus, we mean our outstanding unregistered 5.75% Notes due 2014 issued in May 2004, and when we use the term "notes" or "new notes," we mean the 5.75% Notes due 2014 that we will issue to you if you exchange your original notes.

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## WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and periodic reports, proxy statements and other information with the Securities and Exchange Commission, or the SEC. You may read and copy, at prescribed rates, any document we file with the SEC at the SEC's public reference room, 450 Fifth Street, N.W., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. Our SEC filings are also available to the public at the SEC's website at [www.sec.gov](http://www.sec.gov).

We "incorporate by reference" into this prospectus certain information we file with the SEC, which means that we can disclose important information to you by referring to another document filed

separately with the SEC. We incorporate by reference the documents listed below and any future filings made with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, or the Exchange Act, after the date of this prospectus and until this exchange offer is completed:

- Annual report on Form 10-K for the fiscal year ended June 25, 2003;
- Quarterly reports on Form 10-Q for the quarterly periods ended September 24, 2003, December 24, 2003 and March 24, 2004, respectively; and
- Current reports on Form 8-K filed on October 24, 2003, January 23, 2004, April 21, 2004 and May 13, 2004, respectively.

Any statement contained in a document incorporated or considered to be incorporated by reference in this prospectus shall be considered to be modified or superceded for purposes of this prospectus to the extent that a statement contained in this prospectus or in any subsequently filed document that is, or is considered to be, incorporated by reference herein modifies or supercedes such statement. Any statement that is modified or superceded shall not, except as so modified or superceded, constitute a part of this prospectus.

You may request a copy of the documents incorporated by reference in this prospectus, other than exhibits which are not specifically incorporated by reference into such document, at no cost by writing or telephoning us at the following:

Brinker International, Inc.  
6820 LBJ Freeway  
Dallas, Texas 75240  
Telephone: (972) 980-9917  
Attention: General Counsel

IN ORDER TO ENSURE TIMELY DELIVERY OF THE REQUESTED DOCUMENTS, REQUESTS MUST BE MADE NO LATER THAN , 2004. In the event that we extend the exchange offer, you must submit your request at least five business days before the expiration date, as extended.

## PROSPECTUS SUMMARY

*The following summary highlights selected information from this prospectus and does not contain all of the information that you should consider before participating in this exchange offer. You should read the entire prospectus, the accompanying letter of transmittal and documents incorporated by reference carefully. Investors should also carefully consider the information set forth under "Risk Factors." Unless the context otherwise requires, the term "Brinker International" refers to Brinker International, Inc. and the terms "company," "we," "us" and "our" refer to Brinker International, Inc. and its subsidiaries.*

### Brinker International, Inc.

We are principally engaged in the ownership, operation, development and franchising of the Chili's Grill & Bar, Romano's Macaroni Grill, Maggiano's Little Italy, On The Border Mexican Grill & Cantina, Corner Bakery Cafe and Big Bowl Asian Kitchen restaurant concepts. In addition, we are involved in the joint ownership and development of Rockfish Seafood Grill. At March 24, 2004, we owned, operated, franchised or were involved in the ownership of 1,475 restaurants. Of the 1,475 restaurants, 1,202 were company-owned, 249 were franchised and 24 were jointly owned units. At March 24, 2004, our three largest concepts accounted for 89.0% of our total units and included 962 Chili's Grill & Bar, 217 Romano's Macaroni Grill and 134 On The Border Mexican Grill & Cantina restaurants.

Our principal executive offices are located at 6820 LBJ Freeway, Dallas, Texas 75240. Our telephone number is (972) 980-9917.

### The Exchange Offer

*The following is not intended to be a complete summary of the exchange offer. For a more detailed description of the exchange offer, see "The Exchange Offer" beginning on page 10.*

Notes Offered for Exchange	We are offering up to \$300,000,000 in aggregate principal amount of our new 5.75% Notes due 2014 in exchange for an equal aggregate principal amount of our original 5.75% Notes due 2014 on a one-for-one basis. The new notes have substantially the same terms as the original notes you hold, except that the new notes have been registered under the Securities Act and therefore will be freely tradable.
The Exchange Offer	We are offering to exchange \$1,000 principal amount of new notes for each \$1,000 principal amount of original notes. In order to be exchanged, your original notes must be properly tendered and accepted. All original notes that are validly tendered and not withdrawn will be exchanged.
Ability to Resell Notes	We believe that the new notes issued in the exchange offer may be offered for resale, resold and otherwise transferred by you without compliance with the registration and prospectus delivery provisions of the Securities Act if: <ul style="list-style-type: none"><li>• the new notes issued in the exchange offer are being acquired in the ordinary course of your business;</li><li>• you are not participating, do not intend to participate and have no arrangement or understanding with any person to participate in the distribution of new notes issued to you in the exchange offer;</li></ul>

- you are not an affiliate of Brinker International, Inc.; and
- you are not a broker-dealer tendering original notes acquired directly from us for your own account.

By tendering your original notes as described below, you will be making representations to this effect. See "The Exchange Offer—Representations We Need From You Before You May Participate in the Exchange Offer."

Each broker-dealer that receives new notes for its own account in exchange for original notes, where such original notes were acquired by such broker-dealer as a result of market-making activities or other trading activities, must acknowledge that it will deliver a prospectus in connection with any resale of such new notes. See "Plan of Distribution."

**Those Excluded from the Exchange Offer**

You may not participate in the exchange offer if you are:

- a holder of original notes in any jurisdiction in which the exchange offer is not, or your acceptance will not be, legal under the applicable securities or blue sky laws of that jurisdiction; and
- a holder of original notes who is an affiliate of Brinker International, Inc.

**Consequences of Failure to Exchange Your Original Notes**

After the exchange offer is complete, you will no longer be entitled to exchange your original notes for new notes. If you do not exchange your original notes for new notes in the exchange offer, your original notes will continue to have the restrictions on transfer contained in the original notes and in the indenture governing the original notes. In general, your original notes may not be offered or sold unless registered under the Securities Act, unless there is an exemption from, or unless in a transaction not governed by, the Securities Act and applicable state securities laws. We have no current plans to register your original notes under the Securities Act.

**Expiration Date**

The exchange offer will expire at 5:00 p.m., New York City time, on \_\_\_\_\_, 2004, the expiration date, unless we extend the offer.

**Conditions to the Exchange Offer**

The exchange offer has customary conditions that may be waived by us. There is no minimum amount of original notes that must be tendered to complete the exchange offer.

Procedures for Tendering Your Original Notes	<p>If you wish to tender your original notes for exchange in the exchange offer, you or the custodial entity through which you hold your notes must send to Citibank, N.A., the exchange agent, on or before the expiration date of the exchange offer:</p> <ul style="list-style-type: none"> <li>• a properly completed and executed letter of transmittal, which has been provided to you with this prospectus, together with your original notes and any other documentation requested by the letter of transmittal; or</li> <li>• for holders who hold their positions through The Depository Trust Company, referred to as DTC: <ul style="list-style-type: none"> <li>• an agent's message from DTC stating that the tendering participant agrees to be bound by the letter of transmittal and the terms of the exchange offer;</li> <li>• your original notes by timely confirmation of book-entry transfer through DTC; and</li> <li>• all other documents required by the letter of transmittal.</li> </ul> </li> </ul> <p>Holders who hold their positions through Euroclear and Clearstream, Luxembourg must adhere to the procedures described in "The Exchange Offer—Procedures for Tendering Your Original Notes."</p>
Special Procedures for Beneficial Owners	<p>If you beneficially own original notes registered in the name of a broker, dealer, commercial bank, trust company or other nominee and you wish to tender your original notes in the exchange offer, you should contact the registered holder promptly and instruct it to tender on your behalf.</p>
Guaranteed Delivery Procedures for Tendering Original Notes	<p>If you wish to tender your original notes and the original notes are not immediately available, or time will not permit your original notes or other required documents to reach the exchange agent before the expiration date, or the procedure for book-entry transfer cannot be completed on a timely basis, you may tender your original notes according to the guaranteed delivery procedures set forth under "The Exchange Offer—Guaranteed Delivery Procedures."</p>
Withdrawal Rights	<p>You may withdraw the tender of your original notes at any time prior to 5:00 p.m., New York City time, on the expiration date.</p>
Tax Consequences	<p>The exchange pursuant to the exchange offer will not be treated as a taxable event for U.S. federal income tax purposes. See "United States Taxation."</p>
Use of Proceeds	<p>We will not receive any proceeds from the issuance of the new notes in the exchange offer. We will pay all expenses incidental to the exchange offer. See "Use of Proceeds."</p>
Exchange Agent	<p>Citibank, N.A. is serving as the exchange agent. The address, telephone number and facsimile number of the exchange agent are listed under "The Exchange Offer—Exchange Agent."</p>



## The New Notes

The following is not intended to be a complete summary of the terms of the new notes. For a more detailed description of the new notes, see "Description of Notes."

Issuer	Brinker International, Inc.
Securities Offered	Up to \$300,000,000 aggregate principal amount of 5.75% Notes due 2014, which have been registered under the Securities Act.
Maturity Date	June 1, 2014.
Optional Redemption	We may redeem the notes, in whole at any time or in part from time to time, at a redemption price equal to the greater of: <ul style="list-style-type: none"><li>• 100% of the principal amount being redeemed, and</li><li>• the sum of the present values of the remaining scheduled payments of principal and interest on the notes being redeemed, discounted to the redemption date on a semiannual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate (as defined below under "Description of Notes—Certain Definitions") plus 20 basis points,</li></ul> plus, in either case, accrued and unpaid interest on the notes to the redemption date.
Ranking	The notes will be general unsecured obligations of Brinker International and will rank equal in right of payment with all other existing and future unsecured and unsubordinated obligations of Brinker International. The notes will not be guaranteed by any of our subsidiaries and, accordingly, the notes effectively will be subordinated to all existing and future indebtedness and other liabilities of our subsidiaries, including liabilities to trade creditors and any guarantees of our credit facilities (which are currently undrawn). As of March 24, 2004, our subsidiaries had total indebtedness of approximately \$75.7 million.
Interest Payment Dates	June 1 and December 1 of each year, commencing December 1, 2004.
Certain Covenants	We will issue the notes under an indenture containing covenants for your benefit. These covenants restrict our ability and the ability of our subsidiaries, with certain exceptions, to: <ul style="list-style-type: none"><li>• incur debt secured by liens and</li><li>• engage in sale and leaseback transactions.</li></ul> The notes will not be guaranteed by any of our subsidiaries and there is no restriction on debt incurred by our subsidiaries.
Form and Denomination	The notes will be issued in fully registered form. The notes will be issued in denominations of \$1,000 principal amount and integral multiples thereof.

Absence of a Public Market for the Notes

The notes are a new issue of securities for which there is no established market. Accordingly, we cannot guarantee you that any active or liquid market will develop for the notes.

Further Issues

We may from time to time, without notice to or the consent of the holders of the notes, create and issue further notes ranking equally and ratably with the notes offered hereby. Such further notes may be issued under the indenture relating to the notes offered hereby, and may vote with the notes offered hereby as provided in the indenture.

### **Risk Factors**

You should consider carefully all of the information set forth in this prospectus and, in particular, should evaluate the specific risk factors described under the section "Risk Factors" beginning on page 6 of this prospectus.

## RISK FACTORS

*Before tendering original notes in the exchange offer, you should consider carefully each of the following risks and all other information contained or incorporated by reference in this prospectus.*

**If you do not elect to exchange your original notes for new notes, your original notes will remain subject to transfer restrictions.**

Any original notes that remain outstanding after this exchange offer will continue to be subject to restrictions on their transfer. In general, after this exchange offer, your original notes may not be offered or sold unless registered under the Securities Act, unless there is an exemption from, or unless in a transaction not governed by, the Securities Act and applicable state securities laws. We have no current plans to register your original notes under the Securities Act. The liquidity of the market for original notes that are not exchanged could be adversely affected by this exchange offer and you may be unable to sell your original notes.

**Late deliveries of original notes and other required documents could prevent you from exchanging your original notes.**

You are responsible for complying with all exchange offer procedures. The issuance of new notes in exchange for original notes will only occur upon completion of the procedures described in this prospectus under "The Exchange Offer" and in the letter of transmittal. Therefore, if you wish to exchange original notes for new notes, you should allow sufficient time for timely completion of the exchange procedures. Neither we nor the exchange agent are obligated to extend the offer or notify you of any failure to follow the proper procedures.

**We operate primarily through our subsidiaries and, as a result, the notes effectively will be subordinated to the liabilities of our subsidiaries.**

The notes will be unsecured. Also, because we operate primarily through our subsidiaries and our primary assets are our equity interests in those subsidiaries, our obligations, including the notes, effectively will be subordinated to all existing and future indebtedness and other liabilities of our subsidiaries, including liabilities to trade creditors. As of March 24, 2004, our subsidiaries had total indebtedness of approximately \$75.7 million. Our subsidiaries have other liabilities, including contingent liabilities, that may be significant.

**We may be unable to repay the notes if our subsidiaries are unable to pay dividends to us.**

We, as a holding company, are dependent upon dividends from our subsidiaries to enable us to service our outstanding debt, including the notes. If we did not have sufficient funds on hand or available through existing borrowing facilities or through the declaration and payment of dividends to us by our subsidiaries, we would need to seek additional financing to obtain the cash necessary to make payments on our outstanding debt, including the notes. We cannot assure you that additional financing would be available to us on commercially reasonable terms, or at all.

**There has not been, and there may not be, a public market for the new notes.**

The new notes are a new issuance of securities. There can be no assurance as to the development of any market or the liquidity of any market that may develop for the new notes. The liquidity of, and trading markets for, the new notes may also be adversely affected by general economic conditions and by our financial performance.

## FORWARD-LOOKING STATEMENTS

Certain statements contained herein or incorporated herein by reference are "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. All statements in this prospectus or incorporated herein by reference, other than statements of historical fact, that address activities, events or developments that we expect or anticipate may occur in the future, including, but not limited to, statements regarding our future economic performance, restaurant openings, operating margins, the availability of acceptable real estate locations for new restaurants, and the sufficiency of our cash balances and cash generated from operating and financing activities for our future liquidity and capital resources needs, may be considered forward-looking statements. Also, when used in this prospectus, words such as "may," "will," "should," "anticipate," "believe," "estimate," "predict," "expect," "intend," "plan," and the negative of these terms, and other similar expressions, are intended to identify forward-looking statements.

These forward-looking statements involve risks and uncertainties that could cause our or the restaurant industry's actual results, performance or achievements to differ materially from any future results, performance or achievements expressed or implied in the forward-looking statements. These risks and uncertainties include, but are not limited to:

- the highly competitive nature of the restaurant industry,
- general business conditions,
- the seasonality of our business,
- changes in government regulation,
- inflation,
- food, labor, fuel and utilities costs,
- our ability to meet our growth plan,
- unfavorable publicity relating to one or more of our restaurants in a particular brand,
- changes in local, regional and national economic conditions,
- consumer perceptions of food safety,
- changes in consumer tastes,
- governmental monetary policies,
- changes in demographic trends,
- availability of food products, materials and employees,
- terrorist acts, and
- weather and other acts of God.

Except as may be required by applicable law, we undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

## USE OF PROCEEDS

We will not receive any proceeds from the issuance of the new notes in this exchange offer. In consideration for issuing the new notes, we will receive original notes of like principal amount. The original notes surrendered in exchange for the new notes will be cancelled. We will pay all expenses incidental to the exchange offer.

**SELECTED CONSOLIDATED FINANCIAL AND OPERATING DATA**

The following selected consolidated financial and operating data should be read in conjunction with, and is qualified by reference to, our consolidated financial statements and their notes incorporated by reference in this prospectus. The selected consolidated financial and operating data for the fiscal years ended, and as of, June 25, 2003, June 26, 2002, June 27, 2001, June 28, 2000 and June 30, 1999 are derived from consolidated financial statements audited by KPMG LLP, independent registered public accounting firm. The selected consolidated financial and operating data for the thirty-nine week periods ended, and as of, March 24, 2004 and March 26, 2003 are derived from unaudited consolidated financial statements. The unaudited consolidated financial statements have been prepared on the same basis as the audited financial statements and, in the opinion of our management, include all adjustments, consisting only of normal recurring accruals and adjustments, necessary to fairly state the information set forth herein. Interim financial results are not necessarily indicative of results that may be expected for the full fiscal year or any future reporting period.

	Thirty-Nine Week Periods Ended		Fiscal Years				
	March 24, 2004	March 26, 2003	2003	2002	2001	2000	1999(a)
	(unaudited)						
	(in thousands, except per share amounts and number of restaurants)						
<b>Consolidated Income Statement Data:</b>							
Revenues	\$ 2,689,310	\$ 2,409,178	\$ 3,285,394	\$ 2,887,111	\$ 2,406,874	\$ 2,100,496	\$ 1,818,008
<b>Operating Costs and Expenses:</b>							
Cost of sales	740,878	659,151	900,379	796,714	663,357	575,570	507,103
Restaurant expenses	1,485,112	1,322,855	1,798,752	1,582,644	1,303,349	1,138,487	984,027
Depreciation and amortization	130,617	116,238	158,153	130,102	100,064	90,647	82,385
General and administrative	109,339	99,131	131,763	121,420	109,110	100,123	90,311
Restructure charges and other impairments	68,535	9,454	29,744	8,723	—	—	—
<b>Total operating costs and expenses</b>	<b>2,534,481</b>	<b>2,206,829</b>	<b>3,018,791</b>	<b>2,639,603</b>	<b>2,175,880</b>	<b>1,904,827</b>	<b>1,663,826</b>
Operating income	154,829	202,349	266,603	247,508	230,994	195,669	154,182
Interest expense	8,973	10,151	12,449	13,327	8,608	10,746	9,241
Other, net	1,973	(593)	567	2,332	459	3,381	14,402
Income before provision for income taxes and cumulative effect of accounting change	143,883	192,791	253,587	231,849	221,927	181,542	130,539
Provision for income taxes	54,439	64,402	84,951	79,136	76,779	63,702	45,297
Income before cumulative effect of accounting change	89,444	128,389	168,636	152,713	145,148	117,840	85,242
Cumulative effect of accounting change	—	—	—	—	—	—	6,407
<b>Net income</b>	<b>\$ 89,444</b>	<b>\$ 128,389</b>	<b>\$ 168,636</b>	<b>\$ 152,713</b>	<b>\$ 145,148</b>	<b>\$ 117,840</b>	<b>\$ 78,835</b>
<b>Net income per share</b>							
Basic	\$ 0.93	\$ 1.32	\$ 1.74	\$ 1.56	\$ 1.46	\$ 1.20	\$ 0.80
Diluted	\$ 0.91	\$ 1.30	\$ 1.70	\$ 1.52	\$ 1.42	\$ 1.17	\$ 0.77

	Thirty-Nine Week Periods Ended		Fiscal Years				
	March 24, 2004	March 26, 2003	2003	2002	2001	2000	1999(a)
	(unaudited)						
(in thousands, except per share amounts and number of restaurants)							
<b>Consolidated Balance Sheet Data:</b>							
Working capital deficit	\$ (120,986)	\$ (171,161)	\$ (143,744)	\$ (160,266)	\$ (110,006)	\$ (127,377)	\$ (86,969)
Total assets	2,032,263	1,889,852	1,943,290	1,783,336	1,445,320	1,162,328	1,093,463
Total debt	373,182	412,953	371,414	443,971	253,695	124,958	197,793
Long-term obligations	497,756	503,936	492,829	504,020	294,803	169,120	234,086
Shareholders' equity	1,163,070	1,078,579	1,140,250	977,096	900,287	762,208	661,439
<b>Other Data:</b>							
Net cash provided by operating activities	\$ 351,409	\$ 306,814	\$ 448,871	\$ 390,708	\$ 247,499	\$ 268,994	\$ 193,226
Capital expenditures	224,321	245,093	326,525	371,052	205,160	165,397	181,088
Rent expense	87,878	79,232	107,170	100,444	89,245	81,835	69,656
<b>Number of restaurants (as of end of period):</b>							
Company-operated	1,202	1,118	1,145	1,039	899	774	707
Franchised/joint venture	273	252	257	229	244	264	226
Total restaurants	1,475	1,370	1,402	1,268	1,143	1,038	933

(a) Fiscal year 1999 consisted of 53 weeks, while all other fiscal years presented consisted of 52 weeks.

### Computation of Ratio of Earnings to Fixed Charges (in thousands, except ratios)

	Thirty-Nine Week Period Ended		Fiscal Years				
	March 24, 2004		2003	2002	2001	2000	1999
<b>Earnings:</b>							
Pre-tax income	\$ 143,883	\$ 253,587	\$ 231,849	\$ 221,927	\$ 181,542	\$ 130,539	
Equity investee losses	1,051	2,771	1,661	838	2,519	11,341	
Fixed charges	39,658	52,662	51,690	41,739	41,787	37,501	
Amortization of capitalized interest	1,560	1,804	1,580	1,442	1,280	1,081	
Capitalized interest	(2,566)	(5,566)	(4,508)	(2,770)	(3,234)	(3,969)	
Total earnings	\$ 183,586	\$ 305,258	\$ 282,272	\$ 263,175	\$ 223,894	\$ 176,493	
<b>Fixed Charges:</b>							
Interest expense	\$ 8,973	\$ 12,449	\$ 13,327	\$ 8,608	\$ 10,746	\$ 9,241	
Capitalized interest	2,566	5,566	4,508	2,770	3,234	3,969	
Gross interest	11,539	18,015	17,835	11,378	13,980	13,210	
Estimate of interest in rent	28,119	34,647	33,855	30,361	27,807	24,291	
Total fixed charges	\$ 39,658	\$ 52,662	\$ 51,690	\$ 41,739	\$ 41,787	\$ 37,501	
<b>Ratio of Earnings to Fixed Charges:</b>	4.63	5.80	5.46	6.31	5.36	4.71	

## THE EXCHANGE OFFER

### Purpose and Effect of Exchange Offer; Registration Rights

In connection with the sale of the original notes in May 2004, we entered into a registration rights agreement with Citigroup Global Markets Inc. and J.P. Morgan Securities Inc., as representatives of the initial purchasers of the original notes. The registration rights agreement requires us to file a registration statement under the Securities Act offering to exchange your original notes for new notes. Accordingly, we are offering you the opportunity to exchange your original notes for the same principal amount of new notes. The new notes will be registered and issued without a restrictive legend. The registration rights agreement also requires us to use reasonable efforts to cause the registration statement to be declared effective by the SEC on or prior to November 25, 2004 and to complete the exchange offer by December 25, 2004. In the event that we are unable to satisfy these requirements, holders of the original notes would be entitled to additional interest on the original notes at a rate equal to 0.25% per annum for the first 90 days, and 0.50% per annum thereafter. The aggregate amount of the additional interest in respect of each note payable will in no event exceed 0.50% per annum. The registration rights agreement provides that the accrual of additional interest will cease once we satisfy the requirements described above.

A copy of the registration rights agreement has been filed as an exhibit to this registration statement. You are strongly encouraged to read the entire text of the agreement. Except as discussed below, we will have no further obligation to register your original notes upon the completion of the exchange offer.

We believe that the notes issued to you in this exchange offer may be offered for resale, sold and otherwise transferred by you, without compliance with the registration and prospectus delivery provisions of the Securities Act, only if you are able to make these four representations:

- you are acquiring the notes issued in the exchange offer in the ordinary course of your business;
- you are not participating, do not intend to participate and have no arrangement or understanding with any person to participate in the distribution of the notes issued to you in the exchange offer;
- you are not an affiliate, as defined under the Securities Act, of Brinker International, Inc.; and
- you are not a broker-dealer tendering original notes acquired directly from us for your own account.

Our belief is based upon existing interpretations by the SEC's staff contained in several "no-action" letters to third parties unrelated to us. If you tender your original notes in the exchange offer for the purpose of participating in a distribution of new notes, you cannot rely on these interpretations by the SEC's staff and you must comply with the registration and prospectus delivery requirements of the Securities Act in connection with a secondary resale transaction.

The SEC considers broker-dealers that acquired original notes directly from us, but not as a result of market-making activities or other trading activities, to be making a distribution of the new notes if they participate in the exchange offer. Consequently, these broker-dealers cannot use this prospectus for the exchange offer in connection with a resale of the new notes and, absent an exemption, must comply with the registration and prospectus delivery requirements of the Securities Act in connection with a resale of the new notes. These broker-dealers cannot rely on the position of the SEC's staff set forth in the Exxon Capital Holdings Corporation no-action letter (available May 13, 1988) or similar letters.

A broker-dealer that acquired original notes as a result of market-making or other trading activities must deliver a prospectus in order to resell any new notes it receives for its own account in

the exchange offer. The SEC has taken the position that such broker-dealers may fulfill their prospectus delivery requirements with respect to the new notes by delivering the prospectus contained in the registration statement for the exchange offer. Accordingly, this prospectus may be used by such a broker-dealer to resell any of its new notes. We have agreed in the registration rights agreement to send a prospectus to any broker-dealer that requests copies in the notice and questionnaire included in the letter of transmittal accompanying the prospectus for a period of up to one year after the date of expiration of this exchange offer. Unless you are required to do so because you are such a broker-dealer, you may not use this prospectus for an offer to resell, resale or other retransfer of new notes.

We are not making this exchange offer to, nor will we accept tenders for exchange from, holders of original notes in any jurisdiction in which the exchange offer or the acceptance of it would not be in compliance with the securities or blue sky laws of that jurisdiction.

You may suffer adverse consequences if you fail to exchange your original notes. Following the completion of the exchange offer, except as set forth below and in the registration rights agreement, you will not have any further registration rights and your original notes will continue to be subject to certain restrictions on transfer. Accordingly, if you do not participate in the exchange offer, your ability to sell your original notes could be adversely affected.

Under the registration rights agreement, we have agreed in certain circumstances to file a shelf registration statement with the SEC to cover resales of the original notes or the new notes by holders, and to use reasonable efforts to cause it to be declared effective, including if we are not permitted to consummate the exchange offer because we determine that the exchange offer is not permitted by applicable law or SEC policy, if for any reason the exchange offer is not consummated on or prior to December 25, 2004 or if any holder of original notes is not eligible to participate in the exchange offer.

If we are obligated to file a shelf registration statement, we have agreed to use reasonable efforts to keep such shelf registration statement effective for up to two years.

### **Representations We Need From You Before You May Participate in the Exchange Offer**

We need representations from you before you can participate in the exchange offer.

These representations are that:

- the new notes that you will acquire in the exchange offer are being obtained in the ordinary course of your business;
- neither you nor any person you are acting for is engaging in or intends to engage in a distribution of the new notes;
- neither you nor any person you are acting for has an arrangement or understanding with any person to participate in the distribution of new notes;
- neither you nor any person you are acting for is our "affiliate," as defined under Rule 405 of the Securities Act;
- you acknowledge and agree that if you are a broker-dealer registered under the Exchange Act, or you are participating in the exchange offer for the purposes of distributing the new notes, you must comply with the registration and prospectus delivery requirements of the Securities Act in connection with a secondary resale of the notes, including the requirement that any secondary resale transaction be covered by an effective registration statement containing the selling security holder information required by Item 507 of Regulation S-K under the Securities Act, and you cannot rely on the position of the SEC staff in its no-action letters described above under "—Purpose and Effect of Exchange Offer; Registration Rights"; and



- if you or any other person you are acting for is a broker-dealer, and you receive new notes for your own account in exchange for original notes that were acquired as a result of market-making or other trading activities, you will deliver a prospectus in connection with any resale of such new notes.

### **Terms of the Exchange Offer**

We will accept any validly tendered original notes that are not withdrawn prior to 5:00 p.m., New York City time, on the expiration date. We will issue \$1,000 principal amount of new notes in exchange for each \$1,000 principal amount of your original notes tendered. Holders may tender some or all of their original notes in the exchange offer.

The form and terms of the new notes will be substantially the same as the form and terms of your original notes except that:

- interest on the new notes will accrue from the last interest payment date on which interest was paid on your original notes, or, if no interest has been paid on the original notes, from the date of the original issuance of your original notes;
- the new notes have been registered under the Securities Act and will not bear a legend restricting their transfer; and
- the provisions for payment of additional interest in the case of non-registration will be eliminated.

The new notes will be issued under, and entitled to the benefits of, the same indenture governing your original notes.

This prospectus and the documents you received with this prospectus are being sent to you and to others believed to have beneficial interests in the original notes. We intend to conduct the exchange offer in accordance with the applicable requirements of the Exchange Act and the rules and regulations of the SEC.

We will have accepted your validly tendered original notes when we have given oral or written notice to the exchange agent. The exchange agent will act as agent for you for the purpose of receiving the notes. If any tendered original notes are not accepted for exchange because of an invalid tender, the occurrence of certain other events or otherwise, certificates sent to the exchange agent will be returned, without expense, as promptly as practicable after the expiration date to you, unless you request in the letter of transmittal that the notes be sent to someone else.

You will not be required to pay brokerage commissions, fees or transfer taxes in the exchange of your original notes. We will pay all charges and expenses in connection with the exchange offer except for any taxes you may incur in effecting the transfer of your original notes or new notes to some other person, or if a transfer tax is imposed for any reason other than the exchange of notes pursuant to the exchange offer.

### **Expiration Date; Extensions; Amendments**

The exchange offer will expire at 5:00 p.m., New York City time, on \_\_\_\_\_, 2004, unless we extend the exchange offer, in which case the exchange offer shall terminate at 5:00 p.m., New York City time, on the last day of the extension. In any event, the exchange offer will be held open for at least 20 business days. In order to extend the exchange offer, we will issue a notice by press release or other public announcement.

We reserve the right, in our sole discretion:

- to delay accepting your original notes;

- to extend the exchange offer;
- to terminate the exchange offer, if any of the conditions shall not have been satisfied; or
- to amend the terms of the exchange offer in any manner.

If we delay, extend, terminate or amend the exchange offer, we will give notice to the exchange agent and issue a press release or other public announcement.

### Procedures for Tendering Your Original Notes

Except in limited circumstances, only a DTC participant listed on a DTC securities position listing with respect to the original notes may tender original notes in the exchange offer. Except as stated below under "—Book-Entry Transfer," to tender in the exchange offer:

- if you do not hold your position through DTC, Euroclear or Clearstream, Luxembourg, you must, on or before the expiration date, deliver a duly completed letter of transmittal together with certificates for your original notes and any other documentation requested by the letter of transmittal to the exchange agent at its address specified in the letter of transmittal;
- if you hold your position through DTC, you must instruct DTC and a DTC participant by completing the form "*Instruction to Registered Holder from Beneficial Holder*" accompanying this prospectus of your intention whether or not you wish to tender your original notes for new notes, and you must in turn follow the procedures for book-entry transfer as set forth below under "—Book-Entry Transfer" and in the letter of transmittal; or
- if you hold your position through Euroclear or Clearstream, Luxembourg, the form "*Instruction to Registered Holder from Beneficial Holder*" with respect to original notes held through Euroclear or Clearstream, Luxembourg must be completed by a direct accountholder in Euroclear or Clearstream, Luxembourg, and interests in the original notes must be tendered in compliance with procedures established by Euroclear or Clearstream, Luxembourg.

If you intend to use the guaranteed delivery procedures, you must comply with the guaranteed delivery procedures described below.

Neither we nor the exchange agent will be responsible for the communication of tenders by holders to the accountholders in DTC, Euroclear or Clearstream, Luxembourg through which they hold original notes or by such accountholders to the exchange agent, DTC, Euroclear or Clearstream, Luxembourg.

Holders will not be responsible for the payment of any fees or commissions to the exchange agent for the original notes.

In no event should a holder submitting a tender for exchange send a letter of transmittal or original notes to any agent of Brinker International, Inc. other than the exchange agent, or to DTC, Euroclear or Clearstream, Luxembourg.

Holders may contact the exchange agent for assistance in filling out and delivering letters of transmittal and for additional copies of the exchange offer materials.

To be tendered effectively, a letter of transmittal or, as described below under "—Book-Entry Transfer," an "agent's message" and other required documents must be received by Citibank, N.A. at its address set forth under "—Exchange Agent" below prior to the expiration date.

If you do not withdraw your tender before the expiration date, your tender will constitute an agreement between you and us in accordance with the terms and conditions in this prospectus and in the letter of transmittal.

The method of delivery of your original notes, the letter of transmittal and all other required documents to be delivered to Citibank, N.A. is at your election and risk. Instead of delivery by mail, it is recommended that you use an overnight or hand delivery service. In all cases, you should allow sufficient time to ensure delivery to Citibank, N.A. before the expiration date. No letter of transmittal or original notes should be sent to us. You may request your brokers, dealers, commercial banks, trust companies or nominees to effect these transactions on your behalf.

### **Procedures if the Original Notes Are Not Registered in Your Name**

If your original notes are registered in the name of a broker, dealer, commercial bank, trust company or other nominee and you wish to tender your original notes, then you should contact the registered holder promptly and instruct the registered holder to tender on your behalf. If you wish to tender on behalf of a registered owner, you must, prior to completing and executing a letter of transmittal and delivering the registered owner's original notes, either make appropriate arrangements to register ownership of the original notes in your name or obtain a properly completed power of attorney or other proper endorsement from the registered holder. We strongly urge you to act immediately since the transfer of registered ownership may take considerable time.

### **Signature Requirements and Signature Guarantees**

Signatures on a letter of transmittal or a notice of withdrawal must be guaranteed by an "eligible guarantor institution" within the meaning of Rule 17Ad-15 under the Exchange Act, referred to as an eligible institution, that is a member of specified signature guarantee programs. Signatures on a letter of transmittal or a notice of withdrawal will not be required to be guaranteed if the original notes are tendered:

- by a registered holder that has not completed the box entitled "Special Issuance Instructions" or "Special Delivery Instructions" on the letter of transmittal; or
- for the account of an eligible institution.

If a letter of transmittal or any notes or powers of attorney are signed by trustees, executors, administrators, guardians, attorneys-in-fact, officers of corporations or others acting in a fiduciary or representative capacity, such persons should so indicate when signing. Evidence satisfactory to us of their authority to so act must be submitted with such letter of transmittal unless waived by us.

### **Conditions to the Exchange Offer**

All questions as to the validity, form, eligibility (including time of receipt), acceptance and withdrawal of tendered original notes will be determined by us, in our sole discretion, and our determination will be final and binding. We reserve the absolute right to reject any and all original notes not properly tendered or any original notes the acceptance of which would be unlawful in the opinion of us or our counsel. We also reserve the absolute right to waive any defects, irregularities or conditions of tender as to particular original notes. Our interpretation of the terms and conditions of the exchange offer, including the instructions in a letter of transmittal, will be final and binding on all parties. Any defects or irregularities in connection with tenders of original notes must be cured within such time as we shall determine, unless waived by us. Although we intend to notify you of defects or irregularities with respect to tenders of original notes, neither we, Citibank, N.A. nor any other person shall be under any duty to give such notification or shall incur any liability for failure to give such notification. Tendere of original notes will not be deemed to have been made until all such defects and irregularities have been cured or waived. Any original notes received by Citibank, N.A. that are not properly tendered and as to which the defects or irregularities have not been cured or waived will be returned by Citibank, N.A. as soon as practicable following the expiration date to you, unless you request in the letter of transmittal that the notes be sent to someone else.

In addition, we reserve the right in our sole discretion to purchase or make offers for any original notes that remain outstanding after the expiration date and, to the extent permitted by applicable law, to purchase original notes in the open market in privately negotiated transactions, or otherwise. The terms of any such purchases or offers could differ from the terms of this exchange offer.

Despite any other term of the exchange offer, we will not be required to accept for exchange, or exchange new notes for, any original notes, and we may terminate the exchange offer, if:

- the exchange offer, or the making of any exchange by a holder, violates, in our good faith determination or on the advice of counsel, any applicable law, rule or regulation or any applicable interpretation of the staff of the SEC;
- any action or proceeding is instituted or threatened in any court or by the SEC or any other governmental agency with respect to the exchange offer that, in our judgment, would impair our ability to proceed with the exchange offer; or
- we have not obtained any governmental approval which we, in our sole discretion, consider necessary for the completion of the exchange offer as contemplated by this prospectus.

The conditions listed above are for our sole benefit and may be asserted by us at any time, regardless of the circumstances giving rise to any of these conditions, or may be waived by us in whole or in part at any time in our sole discretion. The failure by us to exercise any of our rights shall not be a waiver of our rights. We are required to use reasonable efforts to obtain the withdrawal of any stop order at the earliest possible time.

In all cases, the issuance of new notes for tendered original notes that are accepted for exchange in the exchange offer will be made only after timely receipt by the exchange agent of:

- certificates for original notes or a timely confirmation from DTC of such original notes into the exchange agent's account at DTC,
- a properly completed and duly executed letter of transmittal or, with respect to DTC and its participants, an "agent's message" described further below in which the tendering holder acknowledges its receipt of and agreement to be bound by the letter of transmittal for such exchange offer, and
- all other required documents.

If we do not accept your tendered original notes or if you submit original notes for a greater aggregate principal amount than you desire to exchange, then the unaccepted or unexchanged original notes will be returned without expense to you or, in the case of notes tendered by book-entry transfer into the exchange agent's account at DTC pursuant to the book-entry transfer procedures described below, such non-exchanged notes will be credited to an account maintained with DTC, as promptly as practicable after the expiration or termination of the exchange offer.

#### **Book-Entry Transfer**

We understand that the exchange agent will make a request promptly after the date of this prospectus to establish accounts with respect to the original notes at DTC for the purpose of facilitating the exchange offer. Any financial institution that is a participant in DTC's system may make book-entry delivery of original notes by causing DTC, Euroclear or Clearstream, Luxembourg, as the case may be, to transfer such original notes into the exchange agent's DTC account in accordance with DTC's electronic Automated Tender Offer Program procedures for such transfer. The exchange of new notes for tendered original notes will only be made after timely:

- confirmation of book-entry transfer of the original notes into the exchange agent's account; and

- receipt by the exchange agent of an executed and properly completed letter of transmittal or an "agent's message" and all other required documents specified in the letter of transmittal.

The confirmation, letter of transmittal or agent's message and any other required documents must be received at the exchange agent's address listed below under "—Exchange Agent" on or before 5:00 p.m., New York time, on the expiration date of the exchange offer or, if the guaranteed delivery procedures described below are complied with, within the time period provided under those procedures.

As indicated above, delivery of documents to any of DTC, Euroclear or Clearstream, Luxembourg in accordance with its procedures does not constitute delivery to the exchange agent.

The term "agent's message" means a message, transmitted by DTC and received by the exchange agent and forming part of the confirmation of a book-entry transfer, which states that DTC has received an express acknowledgment from a participant in DTC tendering original notes stating:

- the aggregate principal amount of original notes that have been tendered by the participant;
- that such participant has received an appropriate letter of transmittal and agrees to be bound by the terms of the letter of transmittal and the terms of the exchange offer; and
- that we may enforce such agreement against the participant.

Delivery of an agent's message will also constitute an acknowledgment from the tendering DTC participant that the representations contained in the letter of transmittal are true and correct.

### **Guaranteed Delivery Procedures**

If you wish to tender your original notes and the original notes are not immediately available, or time will not permit your original notes or other required documents to reach the exchange agent before the expiration date, or the procedure for book-entry transfer cannot be completed on a timely basis, a tender may be effected if:

- the tender is made through an eligible institution;
- before the expiration date, the exchange agent has received from such eligible institution a properly completed and duly executed letter of transmittal, or a facsimile thereof, and notice of guaranteed delivery substantially in the form provided by us, by facsimile transmission, mail or hand delivery. The notice of guaranteed delivery shall state your name and address and the amount of the original notes tendered, shall state that the tender is being made thereby and shall guarantee that, within three New York Stock Exchange trading days after the date of execution of the notice of guaranteed delivery, the certificates for all physically tendered original notes, in proper form for transfer, or a confirmation from DTC of book-entry transfer, the letter of transmittal, or a manually executed facsimile thereof, properly completed and duly executed, and any other documents required by the applicable letter of transmittal will be deposited by the eligible institution with the exchange agent; and
- the certificates for all physically tendered original notes, in proper form for transfer, or a confirmation from DTC of book-entry transfer, the properly completed and duly executed letter of transmittal, or a manually executed facsimile thereof, and all other documents required by the applicable letter of transmittal are received by the exchange agent within three New York Stock Exchange trading days after the date of execution of the notice of guaranteed delivery.

### **Withdrawal Rights**

You may withdraw your tender of original notes at any time prior to 5:00 p.m., New York City time, on the expiration date.

For a withdrawal of tendered notes to be effective, a written, or for a DTC participant, electronic, notice of withdrawal must be received by the exchange agent, at its address set forth under "—Exchange Agent," prior to 5:00 p.m., New York City time, on the expiration date.

Any such notice of withdrawal must:

- specify your name;
- identify the original notes to be withdrawn, including, if applicable, the certificate number or numbers and aggregate principal amount of such original notes;
- be signed by you in the same manner as the original signature on the letter of transmittal by which your original notes were tendered, including any required signature guarantees, or be accompanied by documents of transfer sufficient for the trustee of your original notes to register the transfer of those notes into the name of the person withdrawing the tender; and
- specify the name in which you want the withdrawn original notes to be registered, if different from your name.

All questions as to the validity, form and eligibility, including time of receipt, of such notices will be determined by us, and our determination shall be final and binding on all parties. Any original notes withdrawn will be considered not to have been validly tendered for exchange for the purposes of the exchange offer. Any original notes that have been tendered for exchange but that are not exchanged for any reason will be returned to you without cost as soon as practicable after withdrawal, rejection of tender or termination of the exchange offer relating to such original notes. Properly withdrawn original notes may be retendered by following one of the procedures described above in "—Procedures for Tendering Your Original Notes" at any time prior to the expiration date.

### **Exchange Agent**

All executed letters of transmittal should be directed to the exchange agent. We have appointed Citibank, N.A. as the exchange agent for the exchange offer. Questions, requests for assistance and requests for additional copies of the prospectus or letter of transmittal should be directed to the exchange agent at its offices at 111 Wall Street, 15th Floor, New York, New York 10005. The exchange agent's telephone number is (212) 657-7524 and facsimile number is (212) 657-1020.

### **Fees and Expenses**

We have agreed to pay the exchange agent reasonable and customary fees for its services and will reimburse it for its reasonable out-of-pocket expenses in connection with the exchange offer. We will not make any payments to brokers, dealers or others soliciting acceptances of the exchange offer, other than to the exchange agent. The principal solicitation is being made by mail. However, additional solicitations may be made in person or by telephone by our officers and employees.

### **Transfer Taxes**

If you tender original notes for exchange, you will not be obligated to pay any transfer taxes unless you instruct us to register your new notes in a different name or if a transfer tax is imposed for a reason other than the exchange of notes pursuant to this exchange offer. If you request that your original notes not tendered or not accepted in the exchange offer be returned to a different person, you will be responsible for the payment of any applicable transfer tax.

### **Consequences of Failure to Properly Tender Original Notes in the Exchange Offer**

We will issue new notes in exchange for original notes under the exchange offer only after timely receipt by the exchange agent of the original notes, a properly completed and duly executed letter of

transmittal or agent's message and all other required documents. Therefore, holders of the original notes desiring to tender original notes in exchange for new notes should allow sufficient time to ensure timely delivery. We are under no duty to give notification of defects or irregularities of tenders of original notes for exchange. Upon completion of the exchange offer, specified rights under the registration rights agreement, including registration rights and any right to additional interest, will be either limited or eliminated.

Participation in the exchange offer is voluntary. In the event the exchange offer is completed, we will not be required to register the remaining original notes, except in limited circumstances including those described under "—Purpose and Effect of Exchange Offer; Registration Rights." Original notes that are not tendered or that are tendered but not accepted by us will, following completion of the exchange offer, continue to be subject to the following restrictions on transfer:

- holders may resell original notes only if an exemption from registration under the Securities Act is available; and
- the remaining original notes will bear a legend restricting transfer in the absence of registration or an exemption from registration.

To the extent that original notes are tendered and accepted in connection with the exchange offer, any trading market for remaining original notes could be adversely affected.

## DESCRIPTION OF NOTES

You can find the definitions of certain terms used in this description under "—Certain Definitions." In this description, the words "company," "we," "us" and "our" refer only to Brinker International, Inc. and not to any of its subsidiaries. When we use the term "Securities," we are referring to any securities issued under the indenture, including original notes, new notes and any additional notes issued thereunder.

We will issue the notes under an indenture dated as of May 14, 2004, between the company and Citibank, N.A., as trustee. We urge you to read the indenture because it, and not this description, defines your rights as a holder of these notes. A copy of the indenture is available upon request to the company at the address indicated under "Where You Can Find More Information."

We will issue notes only in fully registered form without coupons, in denominations of \$1,000 and integral multiples of \$1,000.

### Principal, Maturity and Interest

The notes will mature on June 1, 2014. The indenture does not limit the aggregate amount of debt securities that we may issue thereunder. We may from time to time, without giving notice to or seeking the consent of the holders of the notes, issue additional notes having the same ranking and the same interest rate, maturity and other terms as the notes issued in the exchange offer; *provided* that such additional notes will be fungible for tax purposes with the notes issued in this offering. Any additional notes having such similar terms, together with any Outstanding original notes and new notes, will constitute a single series of notes under the indenture.

Interest on the notes will accrue at a rate of 5.75% per annum and will be payable semi-annually in arrears on each June 1 and December 1, commencing on December 1, 2004. We will pay interest to those persons who were holders of record on the May 15 or November 15 immediately preceding each interest payment date. We will pay interest on overdue principal at 1% per annum in excess of the above rate and will pay interest on overdue installments of interest at that higher rate to the extent lawful.

Interest on the notes will accrue from the date of original issuance or, if interest has already been paid, from the date it was most recently paid. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

### Ranking

The notes will be:

- general unsecured obligations of the company;
- equal in ranking ("*pari passu*") with all our existing and future obligations that are unsecured and unsubordinated; and
- senior in right of payment to all our existing and future obligations that are subordinated.

As of March 24, 2004, after giving effect to the offering of the original notes in May 2004, the total outstanding debt of the company, excluding unused commitments made by lenders, would have been \$597.5 million. As of that date, and taking the same factors into account, none of the company's debt would have been subordinated to the notes.

We only have a stockholder's claim on the assets of our subsidiaries. This stockholder's claim is junior to the claims that creditors of our subsidiaries have against those subsidiaries. Holders of the notes will only be creditors of the company, and not of our subsidiaries. The notes will not be guaranteed by any of our subsidiaries. Accordingly, the notes effectively will be subordinated to all



existing and future indebtedness and other liabilities of our subsidiaries, including liabilities to trade creditors and any guarantees of our credit facilities (which are currently undrawn). As of March 24, 2004, our subsidiaries had total indebtedness of approximately \$75.7 million. Our subsidiaries have other liabilities, including contingent liabilities, that may be significant.

The notes are obligations exclusively of the company. All of our operations are conducted through subsidiaries. Therefore, our ability to service our debt, including the notes, is dependent upon the earnings of our subsidiaries and their ability to distribute those earnings as dividends, loans or other payments to us. See "Risk Factors—We operate primarily through our subsidiaries and, as a result, the notes effectively will be subordinated to the liabilities of our subsidiaries" and "—We may be unable to repay the notes if our subsidiaries are unable to pay dividends to us."

### **Optional Redemption**

The company may choose to redeem the notes at any time. If it does so, it may redeem all or any portion of the notes, at once or over time, after giving the required notice under the indenture. To redeem the notes, the company must pay a redemption price equal to the greater of:

- (a) 100% of the principal amount of the notes to be redeemed, and
- (b) the sum of the present values of the remaining scheduled payments of principal and interest thereon (exclusive of interest accrued to the date of redemption) discounted to the redemption date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate plus 20 basis points,

plus, in either case, accrued and unpaid interest, if any, to the redemption date.

Notice of any redemption will be mailed at least 30 days but not more than 60 days before the redemption date to each holder of the notes to be redeemed. Any notice to holders of notes of such a redemption needs to include the appropriate calculation of the redemption price, but does not need to include the redemption price itself. The actual redemption price, calculated as described above, must be set forth in an Officers' Certificate delivered to the trustee no later than two business days prior to the redemption date.

If less than all of the notes are to be redeemed, the notes to be redeemed shall be selected by the trustee by a method the trustee deems to be fair and appropriate.

### **Sinking Fund**

There will be no sinking fund payments for the notes.

### **Certain Covenants**

The indenture contains certain covenants, including those summarized below.

*Limitation on Liens.* The company shall not, and shall not permit any Subsidiary to, directly or indirectly, incur or suffer to exist, any Lien (the "Initial Lien"), other than Permitted Liens, upon any of its Property (including Capital Stock of a Subsidiary), whether owned at the Issue Date or thereafter acquired, or any interest therein or any income or profits therefrom, securing any Debt, unless it has made or will make effective provision whereby the notes will be secured by such Lien equally and ratably with (or prior to) all other Debt of the company or any Subsidiary secured by such Lien. Any Lien created for the benefit of the holders of the notes pursuant to the preceding sentence shall provide by its terms that such Lien will be automatically and unconditionally released and discharged upon release and discharge of the Initial Lien.

*Limitation on Sale and Leaseback Transactions.* The company shall not, and shall not permit any Subsidiary to, enter into any Sale and Leaseback Transaction with respect to any Property unless:

- (a) the company or such Subsidiary would otherwise be entitled to issue, assume or Guarantee Debt secured by a Lien on such Property without equally and ratably securing the Outstanding Securities; or
- (b) the company applies, within 180 days after the effective date of the Sale and Leaseback Transaction, an amount equal to the net proceeds received by the company or any Subsidiary in connection with such sale to:
  - (i) the acquisition of Property owned by the company or such Subsidiary;
  - (ii) the retirement of Outstanding Securities; or
  - (iii) the repayment of Debt other than subordinated Debt; or
- (c) after giving effect thereto, the aggregate amount of secured Debt Incurred after the date of the indenture (not including secured Debt permitted under the specific exceptions listed above) and the aggregate Attributable Debt with respect to the Sale and Leaseback Transactions entered into after the date of the indenture (other than those permitted under the specific exceptions listed below) does not exceed 15% of the Consolidated Net Tangible Assets, as determined based on the consolidated balance sheet of the company as of the end of the most recent fiscal quarter ending at least 45 days prior to the date of any such Sale and Leaseback Transaction.

The foregoing restrictions will not apply to Sale and Leaseback Transactions:

- (a) providing for a lease for a term, including any renewals, of not more than three years, by the end of which term it is intended that the use of such Property by the lessee will be discontinued;
- (b) between the company and a Subsidiary or between Subsidiaries;
- (c) between the company and a Subsidiary and a joint venture in which the company has an interest; or
- (d) primarily for the purpose of financing the acquisition, development or construction of restaurants by the company's franchisees.

#### **Merger, Consolidation and Sale of Property**

The indenture provides that the company shall not merge, consolidate or amalgamate with or into any other Person (other than a merger of a Wholly Owned Subsidiary into the company) or sell, transfer, assign, lease, convey or otherwise dispose of all or substantially all the Property of the company and the Subsidiaries in any one transaction or series of transactions unless:

- (a) the company shall be the surviving Person (the "Surviving Person") or the Surviving Person (if other than the company) formed by such merger, consolidation or amalgamation or to which such sale, transfer, assignment, lease, conveyance or disposition is made shall be a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia;
- (b) the Surviving Person (if other than the company) expressly assumes, by supplemental indenture in form satisfactory to the trustee, executed and delivered to the trustee by such Surviving Person, the due and punctual payment of the principal of, and premium, if any, and interest on, all the Outstanding Securities, according to their tenor, and the due and punctual

performance and observance of all the covenants and conditions of the indenture to be performed by the company;

- (c) in the case of a sale, transfer, assignment, lease, conveyance or other disposition of all or substantially all the Property of the company, such Property shall have been transferred as an entirety or virtually as an entirety to one Person;
- (d) immediately before and after giving effect to such transaction or series of transactions on a pro forma basis (and treating, for purposes of this clause (d), any Debt that becomes, or is anticipated to become, an obligation of the Surviving Person or any Subsidiary as a result of such transaction or series of transactions as having been Incurred by the Surviving Person or such Subsidiary at the time of such transaction or series of transactions), no Default or Event of Default shall have occurred and be continuing;
- (e) the company shall deliver, or cause to be delivered, to the trustee, in form and substance reasonably satisfactory to the trustee, an Officers' Certificate and an Opinion of Counsel, each stating that such transaction and the supplemental indenture, if any, in respect thereto comply with this covenant and that all conditions precedent provided for in the indenture relating to such transaction have been satisfied; and
- (f) the company shall have delivered to the trustee an Opinion of Counsel to the effect that the holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such transaction or series of transactions and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such transaction or series of transactions had not occurred.

The Surviving Person shall succeed to, and be substituted for, and may exercise every right and power of the company under the indenture, but the predecessor company in the case of:

- (a) a sale, transfer, assignment, conveyance or other disposition (unless such sale, transfer, assignment, conveyance or other disposition is of all the assets of the company and the Subsidiaries as an entirety or virtually as an entirety), or
- (b) a lease,

shall not be released from any obligation to pay the principal of, premium, if any, and interest on, the Outstanding Securities.

#### **SEC Reports**

Notwithstanding that the company may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the company will file with the SEC, and, in certain circumstances, furnish to the trustee and holders of notes such annual reports and such information, documents and other reports as are specified in Sections 13 and 15(d) of the Exchange Act and applicable to a U.S. corporation subject to such Sections, such information, documents and reports to be so filed and furnished at the times specified for the filing of such information, documents and reports under such Sections; *provided, however*, that the company will not be so obligated to file such information, documents and reports with the SEC if the SEC does not permit such filings.

#### **Events of Default**

Events of Default in respect of the notes will include:

- (1) failure to make the payment of any interest on the notes when the same becomes due and payable, and such failure continues for a period of 30 days;

- (2) failure to make the payment of any principal of, or premium, if any, on, any of the notes when the same becomes due and payable at its Stated Maturity, upon acceleration, redemption, optional redemption or otherwise;
- (3) failure to comply with the covenant described under "—Merger, Consolidation and Sale of Property";
- (4) failure to comply with any other covenant or agreement in the notes or in the indenture (other than a failure that is the subject of the foregoing clause (1), (2) or (3)) and such failure continues for 30 days after written notice is given to the company as provided below;
- (5) a default under any Debt by the company or any Subsidiary that results in acceleration of the maturity of such Debt, or failure to pay any such Debt at maturity, in an aggregate amount greater than \$40.0 million or its foreign currency equivalent at the time (the "*cross acceleration provisions*");
- (6) any judgment or judgments for the payment of money in an aggregate amount in excess of \$40.0 million (or its foreign currency equivalent at the time) that shall be rendered against the company or any Subsidiary and that shall not be waived, satisfied or discharged for any period of 30 consecutive days during which a stay of enforcement shall not be in effect (the "*judgment default provisions*"); and
- (7) certain events involving bankruptcy, insolvency or reorganization of the company or any Significant Subsidiary (the "*bankruptcy provisions*").

A Default under clause (4) is not an Event of Default until the trustee or the holders of not less than 25% in aggregate principal amount of the Outstanding Securities notify the company of the Default and the company does not cure such Default within the time specified after receipt of such notice. Such notice must specify the Default, demand that it be remedied and state that such notice is a "Notice of Default."

The company shall deliver to the trustee, within 30 days after the occurrence thereof, written notice in the form of an Officers' Certificate of any Event of Default under clauses (5) and (6) and any event that with the giving of notice or the lapse of time or both would become an Event of Default under clause (4), its status and what action the company is taking or proposes to take with respect thereto.

If an Event of Default with respect to the notes (other than an Event of Default under the bankruptcy provisions) shall have occurred and be continuing, the trustee or the holders of not less than 25% in aggregate principal amount of the Outstanding Securities may declare to be immediately due and payable the principal amount of all the Outstanding Securities and any accrued and unpaid interest thereon. If an Event of Default under the bankruptcy provisions shall occur, such amount with respect to all the Outstanding Securities shall be due and payable immediately without any declaration or other act on the part of the trustee or the holders of the Outstanding Securities. After any such acceleration, but before a judgment or decree based on acceleration is obtained by the trustee, the holders of a majority in aggregate principal amount of the Outstanding Securities may, under certain circumstances, rescind and annul such acceleration if all Events of Default, other than the nonpayment of accelerated principal, premium or interest, have been cured or waived as provided in the indenture.

Subject to the provisions of the indenture relating to the duties of the trustee, in case an Event of Default shall occur and be continuing, the trustee will be under no obligation to exercise any of its rights or powers under the indenture at the request or direction of any of the holders of the Outstanding Securities, unless such holders shall have offered to the trustee indemnity or security satisfactory to the trustee in its sole discretion against all losses and expenses. Subject to such provisions for the indemnification of the trustee and certain other limitations described in the

indenture, the holders of a majority in aggregate principal amount of the Outstanding Securities will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee or exercising any trust or power conferred on the trustee with respect to the notes.

No holder of Outstanding Securities will have any right to institute any proceeding with respect to the indenture, or for the appointment of a receiver or trustee, or for any remedy thereunder, unless:

- (a) such holder has previously given to the trustee written notice of a continuing Event of Default,
- (b) the holders of at least 25% in aggregate principal amount of the Outstanding Securities have made a written request to the trustee and offered to the trustee security or indemnity satisfactory to the trustee to institute such proceeding as trustee, and
- (c) the trustee shall not have received from the holders of a majority in aggregate principal amount of the Outstanding Securities a direction inconsistent with such request and shall have failed to institute such proceeding within 60 days.

However, such limitations do not apply to a suit instituted by a holder of any note for enforcement of payment of the principal of, and premium, if any, or interest on, such note on or after the respective due dates expressed in such note.

#### **Amendments and Waivers**

Subject to certain exceptions, the indenture may be amended by the company and the trustee with the consent of the holders of a majority in aggregate principal amount of any Outstanding Securities (including consents obtained in connection with a tender offer or exchange offer for the notes) and any past default or compliance with any provisions may also be waived (except a default in the payment of principal, premium or interest and certain covenants and provisions of the indenture that cannot be amended without the consent of each holder of Outstanding Securities) with the consent of the holders of at least a majority in aggregate principal amount of the Outstanding Securities. However, without the consent of each holder of Outstanding Securities, no amendment may, among other things,

- (1) reduce the amount of Outstanding Securities whose holders must consent to an amendment or waiver,
- (2) reduce the rate of or extend the time for payment of interest on any Outstanding Securities,
- (3) reduce the principal of or extend the Stated Maturity of any Outstanding Securities,
- (4) make any note payable in money other than that stated in the Outstanding Securities,
- (5) impair the right of any holder of the Outstanding Securities to receive payment of principal of and interest on such holder's notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such holder's notes,
- (6) subordinate the Outstanding Securities to any other obligation of the company,
- (7) release any security interest that may have been granted in favor of the holders of the Outstanding Securities other than pursuant to the terms of such security interest, or
- (8) reduce the premium payable upon the redemption of any Outstanding Securities nor change the time at which any Outstanding Securities may be redeemed, as described under "—Optional Redemption."

The consent of the holders of Outstanding Securities is not necessary to approve the particular form of any proposed amendment. It is sufficient if such consent approves the substance of the proposed amendment.

Without the consent of any holder of Outstanding Securities, the company and the trustee may amend the indenture to:

- cure any ambiguity, omission, defect or inconsistency,
- provide for the assumption by a successor corporation of the obligations of the company under the indenture,
- provide for uncertificated notes in addition to or in place of certificated notes (provided that the uncertificated notes are issued in registered form for purposes of Section 163(f) of the Code, or in a manner such that the uncertificated notes are described in Section 163(f)(2)(B) of the Code),
- add Guarantees with respect to the Outstanding Securities,
- secure the Outstanding Securities,
- add to the covenants of the company for the benefit of the holders of Outstanding Securities or to surrender any right or power conferred upon the company,
- make any change that does not adversely affect the rights of any holder of Outstanding Securities,
- make any change to comply with any requirement of the SEC in connection with the qualification of the indenture under the Trust Indenture Act, or
- provide for the issuance of additional notes in accordance with the indenture.

After any amendment becomes effective, whether with or without the consent of the holders, the company is required to mail to each holder of Outstanding Securities at such holder's address appearing in the security register a notice briefly describing such amendment. However, the failure to give such notice to all holders of Outstanding Securities, or any defect therein, will not impair or affect the validity of the amendment.

#### **Defeasance**

The company at any time may terminate all its obligations under the Outstanding Securities and the indenture ("*legal defeasance*"), except for certain obligations, including those respecting the defeasance trust and obligations to register the transfer or exchange of the Outstanding Securities, to replace mutilated, destroyed, lost or stolen Outstanding Securities and to maintain a registrar and paying agent in respect of the Outstanding Securities. The company at any time may terminate:

- (1) its obligations under the covenants described under "—Certain Covenants" and "—SEC Reports," and
- (2) the operation of the Event of Default in clause (4), the cross acceleration provisions, the judgment default provisions and, with respect to Significant Subsidiaries, the bankruptcy provisions, each as described under "—Events of Default" above ("*covenant defeasance*").

The company may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option.

If the company exercises its legal defeasance option, payment of the Outstanding Securities may not be accelerated because of an Event of Default with respect thereto. If the company exercises its covenant defeasance option, payment of the Outstanding Securities may not be accelerated because of

an Event of Default specified in clause (4), the cross acceleration provisions, the judgment default provisions or, with respect only to Significant Subsidiaries, the bankruptcy provisions, all as described under "—Events of Default" above.

The legal defeasance option or the covenant defeasance option may be exercised only if:

- (a) the company irrevocably deposits in trust with the trustee money or U.S. Government Obligations or a combination thereof for the payment of principal of and interest on the Outstanding Securities to maturity or redemption, as the case may be;
- (b) the company delivers to the trustee a certificate from a nationally recognized firm of independent certified public accountants expressing their opinion that the payments of principal and interest when due and without reinvestment on the deposited U.S. Government Obligations plus any deposited money without investment will provide cash at such times and in such amounts as will be sufficient to pay principal and interest when due on all the Outstanding Securities to maturity or redemption, as the case may be;
- (c) 123 days pass after the deposit is made and during the 123-day period no Default under the bankruptcy provisions occurs that is continuing at the end of the period;
- (d) no Default or Event of Default has occurred and is continuing on the date of such deposit and after giving effect thereto;
- (e) such deposit does not constitute a default under any other agreement or instrument binding on the company;
- (f) the company delivers to the trustee an Opinion of Counsel to the effect that the trust resulting from the deposit does not constitute, or is qualified as, a regulated investment company under the Investment Company Act of 1940;
- (g) in the case of the legal defeasance option, the company delivers to the trustee an Opinion of Counsel stating that:
  - (1) the company has received from, or there has been published by, the Internal Revenue Service a ruling, or
  - (2) since the date of the indenture there has been a change in the applicable U.S. federal income tax law,to the effect, in either case, that, and based thereon such Opinion of Counsel shall confirm that, the holders of the Outstanding Securities will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same time as would have been the case if such defeasance had not occurred;
- (h) in the case of the covenant defeasance option, the company delivers to the trustee an Opinion of Counsel to the effect that the holders of the Outstanding Securities will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such covenant defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred;
- (i) the holders have a perfected security interest under applicable law in the cash or U.S. Government Obligations deposited;
- (j) the company delivers to the trustee an Opinion of Counsel, in form and substance reasonably satisfactory to the trustee, to the effect that, after the passage of 123 days following the

deposit, the trust funds will not be subject to any applicable bankruptcy, insolvency, reorganization or similar law affecting creditors' rights generally;

- (k) such defeasance does not cause the trustee to have a conflicting interest with respect to any securities of the company; and
- (l) the company delivers to the trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the notes have been complied with as required by the indenture.

### **Governing Law**

The indenture and the notes are governed by the internal laws of the State of New York without reference to principles of conflicts of law.

### **The Trustee**

Citibank, N.A. is the trustee under the indenture.

Except during the continuance of an Event of Default, the trustee will perform only such duties as are specifically set forth in the indenture. During the existence of an Event of Default, the trustee will exercise such of the rights and powers vested in it under the indenture and use the same degree of care and skill in its exercise as a prudent person would exercise under the circumstances in the conduct of such person's own affairs.

Citibank, N.A. is also acting as the exchange agent for the exchange offer. In addition, an affiliate of Citibank, N.A. is a lender and administrative agent under the company's bank credit facility and an affiliate of Citibank, N.A. was an initial purchaser in connection with the sale of the original notes in May 2004. Citibank, N.A. and its affiliates may provide additional commercial banking and other services to us in the future.

### **Certain Definitions**

Set forth below is a summary of certain of the defined terms used in the indenture. Reference is made to the indenture for the full definition of all such terms as well as any other capitalized terms used herein for which no definition is provided. Unless the context otherwise requires, an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP.

"*Attributable Debt*" in respect of a Sale and Leaseback Transaction means, at any date of determination,

- (a) if such Sale and Leaseback Transaction is a Capital Lease Obligation, the amount of Debt represented thereby according to the definition of "Capital Lease Obligation," and
- (b) in all other instances, the present value (discounted at the interest rate borne by the Outstanding Securities, compounded annually) of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale and Leaseback Transaction (including any period for which such lease has been extended).

"*Board of Directors*" means the board of directors of the company or any committee thereof, duly authorized to act on behalf of such board.

"*Board Resolution*" means a copy of a resolution certified by the Secretary or Assistant Secretary of the company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification.



"*Capital Lease Obligations*" means any obligation under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP; and the amount of Debt represented by such obligation shall be the capitalized amount of such obligations determined in accordance with GAAP; and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty. For purposes of "—Certain Covenants—Limitation on Liens," a Capital Lease Obligation shall be deemed secured by a Lien on the Property being leased.

"*Capital Stock*" means, with respect to any Person, any shares or other equivalents (however designated) of any class of corporate stock or partnership interests or any other participations, rights, warrants, options or other interests in the nature of an equity interest in such Person, including Preferred Stock, but excluding any debt security convertible or exchangeable into such equity interest.

"*Code*" means the Internal Revenue Code of 1986, as amended.

"*Commodity Price Protection Agreement*" means, in respect of a Person, any forward contract, commodity swap agreement, commodity option agreement or other similar agreement or arrangement designed to protect such Person against fluctuations in commodity prices.

"*Comparable Treasury Issue*" means the United States Treasury security selected by an Independent Investment Banker as having a maturity comparable to the remaining term of the Outstanding Securities that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of such Securities.

"*Comparable Treasury Price*" means, with respect to any redemption date:

- (a) the average of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) on the third business day preceding such redemption date, as set forth in the most recently published statistical release designated "H.15(519)" (or any successor release) published by the Board of Governors of the Federal Reserve System and which establishes yields on actively traded United States treasury securities adjusted to constant maturity under the caption "Treasury Constant Maturities" or
- (b) if such release (or any successor release) is not published or does not contain such prices on such business day, the average of the Reference Treasury Dealer Quotations for such redemption date.

"*Consolidated Current Liabilities*" means, as of any date of determination, the aggregate amount of liabilities of the company and its consolidated Subsidiaries which may properly be classified as current liabilities (including taxes accrued as estimated), after eliminating:

- (a) all intercompany items between the company and any Subsidiary or between Subsidiaries, and
- (b) all current maturities of long-term Debt.

"*Consolidated Net Tangible Assets*" means, as of any date of determination, the sum of the amounts that would appear on a consolidated balance sheet of the company and its consolidated Subsidiaries as the total assets (less accumulated depreciation and amortization, allowances for doubtful receivables, other applicable reserves and other properly deductible items) of the company and its Subsidiaries, after deducting therefrom Consolidated Current Liabilities and, to the extent otherwise included, the amounts of (without duplication):

- (a) the excess of cost over fair market value of assets or businesses acquired;

- (b) any downward revaluation or other write-up in book value of assets subsequent to the last day of the fiscal quarter of the company immediately preceding the Issue Date as a result of a change in the method of valuation in accordance with GAAP;
- (c) unamortized debt discount and expenses and other unamortized deferred charges, goodwill, patents, trademarks, service marks, trade names, copyrights, licenses, organization or developmental expenses and other intangible items;
- (d) minority interests in consolidated Subsidiaries held by Persons other than the company or any Subsidiary;
- (e) treasury stock; and
- (f) cash or securities set aside and held in a sinking or other analogous fund established for the purpose of redemption or other retirement of Capital Stock to the extent such obligation is not reflected in Consolidated Current Liabilities.

"*Currency Exchange Protection Agreement*" means, in respect of a Person, any foreign exchange contract, currency swap agreement, currency option or other similar agreement or arrangement designed to protect such Person against fluctuations in currency exchange rates.

"*Debt*" means, with respect to any Person on any date of determination (without duplication):

- (a) the principal of and premium (if any) in respect of:
  - (1) debt of such Person for money borrowed, and
  - (2) debt evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable;
- (b) all Capital Lease Obligations of such Person and all Attributable Debt in respect of Sale and Leaseback Transactions entered into by such Person;
- (c) all obligations of such Person issued or assumed as the deferred purchase price of Property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business);
- (d) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction (other than obligations with respect to letters of credit securing obligations (other than obligations described in (a) through (c) above) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the third business day following receipt by such Person of a demand for reimbursement following payment on the letter of credit);
- (e) all obligations of the type referred to in clauses (a) through (d) of other Persons and all dividends of other Persons for the payment of which, in either case, such Person is responsible or liable, directly or indirectly, as obligor, guarantor or otherwise, including by means of any Guarantee;
- (f) all obligations of the type referred to in clauses (a) through (e) of other Persons secured by any Lien on any Property of such Person (whether or not such obligation is assumed by such Person), the amount of such obligation being deemed to be the lesser of the value of such Property or the amount of the obligation so secured; and
- (g) to the extent not otherwise included in this definition, the notional amount of Hedging Obligations of such Person.

Notwithstanding the foregoing, in connection with the purchase by the company or any Subsidiary of any business, the term "Debt" will exclude post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing; *provided, however*, that, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid within 30 days thereafter.

The amount of Debt of any Person at any date shall be the outstanding balance at such date of all unconditional obligations as described above and the maximum liability, upon the occurrence of the contingency giving rise to the obligation, of any contingent obligations at such date; *provided, however*, that in the case of Debt sold at a discount, the amount of such Debt at any time will be the accreted value thereof at such time.

"*Default*" means any event which is, or after notice or passage of time or both would be, an Event of Default.

"*Event of Default*" has the meaning set forth under "—Events of Default."

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended.

"*Fair Market Value*" means, with respect to any Property, the price that could be negotiated in an arm's-length free market transaction, for cash, between a willing seller and a willing buyer, neither of whom is under undue pressure or compulsion to complete the transaction. Fair Market Value shall be determined, except as otherwise provided,

- (a) if such Property has a Fair Market Value equal to or less than \$5.0 million, by any Officer of the company, or
- (b) if such Property has a Fair Market Value in excess of \$5.0 million, by a majority of the Board of Directors and evidenced by a Board Resolution, dated within 30 days of the relevant transaction, delivered to the trustee.

"*GAAP*" means United States generally accepted accounting principles as in effect on the Issue Date, including those set forth:

- (a) in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants,
- (b) in the statements and pronouncements of the Financial Accounting Standards Board,
- (c) in such other statements by such other entity as approved by a significant segment of the accounting profession, and
- (d) the rules and regulations of the SEC governing the inclusion of financial statements (including pro forma financial statements) in periodic reports required to be filed pursuant to Section 13 of the Exchange Act, including opinions and pronouncements in staff accounting bulletins and similar written statements from the accounting staff of the SEC.

"*Guarantee*" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Debt of any other Person and any obligation, direct or indirect, contingent or otherwise, of such Person:

- (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt of such other Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay or to maintain financial statement conditions or otherwise), or

- (b) entered into for the purpose of assuring in any other manner the obligee of such Debt of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part);

*provided, however*, that the term "Guarantee" shall not include:

- (1) endorsements for collection or deposit in the ordinary course of business, or
- (2) a contractual commitment by one Person to invest in another Person for so long as such Investment is reasonably expected to constitute an Investment by the company or a Subsidiary in any Person if as a result of such Investment such Person is merged or consolidated with or into, or transfers or conveys all or substantially all its Property to, the company or a Subsidiary, *provided* that such Person's primary business is a Related Business.

The term "Guarantee" used as a verb has a corresponding meaning. The term "Guarantor" shall mean any Person Guaranteeing any obligation.

"*Hedging Obligation*" of any Person means any obligation of such Person pursuant to any Interest Rate Agreement, Currency Exchange Protection Agreement, Commodity Price Protection Agreement or any other similar agreement or arrangement.

"*Incur*" means, with respect to any Debt or other obligation of any Person, to create, issue, incur (by merger, conversion, exchange or otherwise), extend, assume, Guarantee or become liable in respect of such Debt or other obligation or the recording, as required pursuant to GAAP or otherwise, of any such Debt or obligation on the balance sheet of such Person (and "Incurrence" and "Incurred" shall have meanings correlative to the foregoing); *provided, however*, that any Debt or other obligations of a Person existing at the time such Person becomes a Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Subsidiary at the time it becomes a Subsidiary.

"*Independent Investment Banker*" means one of the Reference Treasury Dealers appointed by the company after consultation with the trustee.

"*Interest Rate Agreement*" means, for any Person, any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or other similar agreement designed to protect against fluctuations in interest rates.

"*Investment*" by any Person means any direct or indirect loan (other than advances to customers in the ordinary course of business that are recorded as accounts receivable on the balance sheet of such Person), advance or other extension of credit or capital contribution (by means of transfers of cash or other Property to others or payments for Property or services for the account or use of others, or otherwise) to, or Incurrence of a Guarantee of any obligation of, or purchase or acquisition of Capital Stock, bonds, notes, debentures or other securities or evidence of Debt issued by, any other Person. In determining the amount of any Investment made by transfer of any Property other than cash, such Property shall be valued at its Fair Market Value at the time of such Investment.

"*Issue Date*" means May 14, 2004.

"*Lien*" means, with respect to any Property of any Person, any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, security interest, lien, charge, easement (other than any easement not materially impairing usefulness or marketability), encumbrance, preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever on or with respect to such Property (including any Capital Lease Obligation, conditional sale or other title retention agreement having substantially the same economic effect as any of the foregoing or any Sale and Leaseback Transaction).

"Officer" means the Chief Executive Officer, the President, the Chief Financial Officer, the Chief Operating Officer or any Executive Vice President of the company.

"Officers' Certificate" means a certificate signed by two Officers of the company, at least one of whom shall be the principal executive officer or principal financial officer of the company, and delivered to the trustee.

"Opinion of Counsel" means a written opinion from legal counsel who is acceptable to the trustee. The counsel may be an employee of or counsel to the company.

"Outstanding" means, subject to certain exceptions, all securities issued under the indenture, except those theretofore canceled by the trustee or delivered to it for cancellation, defeased in accordance with the indenture, paid in full, or in respect of which substitute notes have been authenticated and delivered by the trustee.

"Permitted Liens" means:

- (a) Liens to secure Debt in respect of Purchase Money Debt, *provided* that the aggregate principal amount of such Debt does not exceed the Fair Market Value (on the date of the Incurrence thereof) of the Property acquired, constructed or leased; *provided further* that any such Lien may not extend to any Property of the company or any Subsidiary, other than the Property acquired, constructed or leased with the proceeds of such Debt and any improvements or accessions to such Property;
- (b) Liens for taxes, assessments or governmental charges or levies on the Property of the company or any Subsidiary if the same shall not at the time be delinquent or thereafter can be paid without penalty, or are being contested in good faith and by appropriate proceedings promptly instituted and diligently concluded, *provided* that any reserve or other appropriate provision that shall be required in conformity with GAAP shall have been made therefor;
- (c) Liens imposed by law, such as carriers', warehousemen's and mechanics' Liens and other similar Liens, on the Property of the company or any Subsidiary arising in the ordinary course of business and securing payment of obligations that are not more than 60 days past due or are being contested in good faith and by appropriate proceedings;
- (d) Liens on the Property of the company or any Subsidiary Incurred in the ordinary course of business to secure performance of obligations with respect to statutory or regulatory requirements, performance or return-of-money bonds, surety bonds or other obligations of a like nature and Incurred in a manner consistent with industry practice, in each case which are not Incurred in connection with the borrowing of money, the obtaining of advances or credit or the payment of the deferred purchase price of Property and which do not in the aggregate impair in any material respect the use of Property in the operation of the business of the company and the Subsidiaries taken as a whole;
- (e) Liens on Property at the time the company or any Subsidiary acquired such Property, including any acquisition by means of a merger or consolidation with or into the company or any Subsidiary; *provided, however*, that any such Lien may not extend to any other Property of the company or any Subsidiary; *provided further, however*, that such Liens shall not have been Incurred in anticipation of or in connection with the transaction or series of transactions pursuant to which such Property was acquired by the company or any Subsidiary;
- (f) Liens on the Property of a Person at the time such Person becomes a Subsidiary; *provided, however*, that any such Lien may not extend to any other Property of the company or any other Subsidiary that is not a direct Subsidiary of such Person; *provided further, however*, that any such Lien was not Incurred in anticipation of or in connection with the transaction or series of transactions pursuant to which such Person became a Subsidiary;

- (g) pledges or deposits by the company or any Subsidiary under workmen's compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Debt) or leases to which the company or any Subsidiary is party, or deposits to secure public or statutory obligations of the company or any Subsidiary, or deposits for the payment of rent, in each case Incurred in the ordinary course of business;
- (h) utility easements, building restrictions and such other encumbrances or charges against real Property as are of a nature generally existing with respect to properties of a similar character;
- (i) Liens existing on the Issue Date not otherwise described in clauses (a) through (h) above;
- (j) Liens on the Property of the company or any Subsidiary to secure any Refinancing, in whole or in part, of any Debt secured by Liens referred to in clause (a), (e), (f) or (i) above; *provided, however*, that any such Lien shall be limited to all or part of the same Property that secured the original Lien (together with improvements and accessions to such Property) and the aggregate principal amount of Debt that is secured by such Lien shall not be increased to an amount greater than the sum of:
  - (1) the outstanding principal amount, or, if greater, the committed amount, of the Debt secured by Liens described under clause (a), (e), (f) or (i) above, as the case may be, at the time the original Lien became a Permitted Lien under the indenture, and
  - (2) an amount necessary to pay any fees and expenses, including premiums and defeasance costs, incurred by the company or such Subsidiary in connection with such Refinancing; and
- (k) Liens not otherwise permitted by clauses (a) through (j) above encumbering assets having an aggregate Fair Market Value not in excess of 15% of Consolidated Net Tangible Assets, as determined based on the consolidated balance sheet of the company as of the end of the most recent fiscal quarter ending at least 45 days prior to the date any such Lien shall be Incurred.

For purposes of this definition, the term "Debt" shall be deemed to include interest on such Debt.

"Person" means any individual, corporation, company (including any limited liability company), association, partnership, joint venture, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

"Preferred Stock" means any Capital Stock of a Person, however designated, that entitles the holder thereof to a preference with respect to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of any other class of Capital Stock issued by such Person.

"pro forma" means, with respect to any calculation made or required to be made pursuant to the terms hereof, a calculation performed in accordance with Article 11 of Regulation S-X promulgated under the Securities Act, as interpreted in good faith by the Board of Directors after consultation with the independent certified public accountants of the company, or otherwise a calculation made in good faith by the Board of Directors after consultation with the independent certified public accountants of the company, as the case may be.

"Property" means, with respect to any Person, any interest of such Person in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, including Capital Stock in, and other securities of, any other Person. For purposes of any calculation required pursuant to the indenture, the value of any Property shall be its Fair Market Value.

"Purchase Money Debt" means Debt:

- (a) consisting of the deferred purchase price of property, conditional sale obligations, obligations under any title retention arrangement, other purchase money obligations and obligations in respect of industrial revenue bonds, in each case where the maturity of such Debt does not exceed the anticipated useful life of the Property being financed, and
- (b) Incurred to finance the acquisition, construction or lease by the company or a Subsidiary of such Property, including additions and improvements thereto;

provided, however, that such Debt is Incurred within 180 days after the acquisition, construction or lease of such Property by the company or such Subsidiary.

"Reference Treasury Dealer" means Citigroup Global Markets Inc., J.P. Morgan Securities Inc. and their respective successors; provided, however, that if any of the foregoing shall cease to be a primary U.S. Government securities dealer in New York City (a "Primary Treasury Dealer"), the company shall substitute therefor another Primary Treasury Dealer.

"Reference Treasury Dealer Quotations" means, with respect to each Reference Treasury Dealer and any redemption date, the average, as determined by the Independent Investment Banker, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Independent Investment Banker by such Reference Treasury Dealer at 5:00 p.m. on the third business day preceding such redemption date.

"Refinance" means, in respect of any Debt, to refinance, extend, renew, refund, repay, prepay, repurchase, redeem, defease or retire, or to issue other Debt, in exchange or replacement for, such Debt. "Refinanced" and "Refinancing" shall have correlative meanings.

"Related Business" means any business that is related, ancillary or complementary to the businesses of the company and the Subsidiaries on the Issue Date.

"Sale and Leaseback Transaction" means any direct or indirect arrangement relating to Property now owned or hereafter acquired whereby the company or a Subsidiary transfers such Property to another Person and the company or a Subsidiary leases it from such Person.

"Securities Act" means the Securities Act of 1933, as amended.

"Significant Subsidiary" means any Subsidiary that would be a "Significant Subsidiary" of the company within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC.

"Stated Maturity" means, with respect to any security, the date specified in such security as the fixed date on which the payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security at the option of the holder thereof upon the happening of any contingency beyond the control of the issuer unless such contingency has occurred).

"Subsidiary" means, in respect of any Person, any corporation, company (including any limited liability company), association, partnership, joint venture or other business entity of which a majority of the total voting power of the Voting Stock is at the time owned or controlled, directly or indirectly, by:

- (a) such Person,
- (b) such Person and one or more Subsidiaries of such Person, or
- (c) one or more Subsidiaries of such Person.

"Treasury Rate" means, with respect to any redemption date, the rate per annum equal to the yield to maturity of the Comparable Treasury Issue, compounded semi-annually, assuming a price for such

Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such redemption date.

"*U.S. Government Obligations*" means direct obligations (or certificates representing an ownership interest in such obligations) of the United States of America (including any agency or instrumentality thereof) for the payment of which the full faith and credit of the United States of America is pledged and which are not callable or redeemable at the issuer's option.

"*Voting Stock*" of any Person means all classes of Capital Stock or other interests (including partnership interests) of such Person then outstanding and normally entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof.

"*Wholly Owned Subsidiary*" means, at any time, a Subsidiary all the Voting Stock of which (except directors' qualifying shares) is at such time owned, directly or indirectly, by the company and its other Wholly Owned Subsidiaries.

### **Book-Entry, Delivery and Form**

The notes will be issued in book-entry form. This means that all of the notes will be represented, at least initially, by one or more global notes (the "Global Notes"). The Global Notes will be deposited upon issuance with the trustee as custodian for The Depository Trust Company ("DTC"), in New York, New York, and registered in the name of DTC or its nominee, in each case for credit to an account of a direct or indirect participant in DTC as described below.

Except as set forth below, the Global Notes may be transferred, in whole and not in part, only to another nominee of DTC or to a successor of DTC or its nominee. Beneficial interests in the Global Notes may not be exchanged for notes in certificated form except in the limited circumstances described below. See "—Exchange of Global Notes for Certificated Notes."

*Depository Procedures.* The following description of the operations and procedures of DTC, Euroclear and Clearstream are provided solely as a matter of convenience. These operations and procedures are solely within the control of the respective settlement systems and are subject to changes by them. The company takes no responsibility for these operations and procedures and urges investors to contact the systems or their participants directly to discuss these matters.

DTC has advised the company that DTC is a limited-purpose trust company organized under the laws of the State of New York, a member of the Federal Reserve System, a "banking organization" within the meaning of the New York Banking Law, a "clearing corporation" within the meaning of the New York Uniform Commercial Code and a "clearing agency" registered under the Exchange Act. DTC was created to hold the securities of its participating organizations ("participants") and to facilitate the clearance and settlement of securities transactions among its participants in such securities through electronic book-entry changes in accounts of the participants, thereby eliminating the need for physical movement of securities certificates. DTC's participants include securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations some of whom (or their representatives) have ownership interests in DTC. Access to DTC's book-entry system is also available to others, such as banks, brokers, dealers and trust companies ("indirect participants"), that clear through or maintain a custodial relationship with a participant, either directly or indirectly. Persons who are not participants may beneficially own notes held by or on behalf of DTC only through the participants or the indirect participants. The ownership interests in, and transfers of ownership interests in, each note held by or on behalf of DTC are recorded on the records of the participants and indirect participants.

Investors in a Global Note who are participants in DTC's system may hold their interests therein directly through DTC. Investors in a Global Note who are not participants may hold their interests therein indirectly through the organizations (including Euroclear and Clearstream) that are participants



in such system. Euroclear and Clearstream will hold interests in a Global Note on behalf of their participants through customers' securities accounts in their respective names on the books of their respective depositories, which are Euroclear Bank S.A./N.V., as operator of Euroclear, and Citibank, N.A., as operator of Clearstream. All interests in a Global Note, including those held through Euroclear or Clearstream, may be subject to the procedures and requirements of DTC. Those interests held through Euroclear or Clearstream also may be subject to the procedures and requirements of such systems. Ownership of beneficial interests in a Global Note will be shown on, and the transfer of that ownership interest will be effected only through, records maintained by DTC (with respect to participants' interests) or by the participants and the indirect participants (with respect to the owners of beneficial interests in a Global Note other than participants).

The laws of some jurisdictions require that certain purchasers of securities take physical delivery of such securities in definitive form. Such limits and such laws may impair the ability to transfer beneficial interests in a Global Note. Because DTC, Euroclear and Clearstream can act only on behalf of their respective participants, which in turn act on behalf of indirect participants and certain banks, the ability of a person having beneficial interests in a Global Note to pledge such interests to persons or entities that do not participate in the DTC, Euroclear or Clearstream system, as applicable, or otherwise take actions in respect of such interests, may be affected by the lack of a physical certificate evidencing such interests.

Payment of principal of and interest on notes represented by a Global Note will be made in immediately available funds to DTC or its nominee, as the case may be, as the sole registered owner and the sole holder of the notes represented thereby for all purposes under the indenture. Under the terms of the indenture, the company and the trustee will treat the Persons in whose names the notes, including the Global Notes, are registered as the owners of the notes for the purpose of receiving payments and for all other purposes. Consequently, neither the company, the trustee nor any agent of the company or the trustee has or will have any responsibility or liability for:

- (1) any aspect of DTC's records or any participant's or indirect participant's records relating to or payments made on account of beneficial ownership interest in the Global Notes or for maintaining, supervising or reviewing any of DTC's records or any participant's or indirect participant's records relating to the beneficial ownership interests in the Global Notes; or
- (2) any other matter relating to the actions and practices of DTC or any of its participants or indirect participants.

The company has been advised by DTC that upon receipt of any payment of principal of or interest on any Global Note, DTC will immediately credit, on its book-entry registration and transfer system, the accounts of participants with payments in amounts proportionate to their respective beneficial interests in the principal or face amount of such Global Note as shown on the records of DTC. The company expects that payments by participants or indirect participants to owners of beneficial interests in a Global Note held through such participants or indirect participants will be governed by standing instructions and customary practices as is now the case with securities held for customer accounts registered in "street name" and will be the sole responsibility of such participants and indirect participants.

Neither the company nor the trustee will be liable for any delay by DTC or any of its participants in identifying the beneficial owners of the notes, and the company and the trustee may conclusively rely on and will be protected in relying on instructions from DTC or its nominee for all purposes.

Transfers between participants in DTC will be effected in accordance with DTC's procedures, and will be settled in same-day funds, and transfers between participants in Euroclear and Clearstream will be effected in accordance with their respective rules and operating procedures.

Cross-market transfers between the participants in DTC, on the one hand, and Euroclear or Clearstream participants, on the other hand, will be effected through DTC in accordance with DTC's rules on behalf of Euroclear or Clearstream, as the case may be, by its respective depository; however, such cross-market transactions will require delivery of instructions to Euroclear or Clearstream, as the case may be, by the counterparty in such system in accordance with the rules and procedures and within the established deadlines (Brussels time) of such system. Euroclear or Clearstream, as the case may be, will, if the transaction meets its settlement requirements, deliver instructions to its respective depository to take action to effect final settlement on its behalf of delivering or receiving interests in the relevant Global Note in DTC, and making or receiving payment in accordance with normal procedures for same-day funds settlement applicable to DTC. Euroclear participants and Clearstream participants may not deliver instructions directly to the depositories for Euroclear or Clearstream.

DTC has advised the company that it will take any action permitted to be taken by a holder of notes only at the direction of one or more participants to whose account DTC has credited the interests in the Global Notes and only in respect of such portion of the aggregate principal amount of the notes as to which such participant or participants has or have given such direction. However, if there is an Event of Default under the notes, DTC reserves the right to exchange the Global Notes for notes in certificated form, and to distribute such notes to its participants.

So long as DTC or any successor depository for a Global Note, or any nominee, is the registered owner of such Global Note, DTC or such successor depository or nominee, as the case may be, will be considered the sole owner or holder of the notes represented by such Global Note for all purposes under the indenture and the notes. Except as set forth above, owners of beneficial interests in a Global Note will not be entitled to have the notes represented by such Global Note registered in their names, will not receive or be entitled to receive physical delivery of certificated notes in definitive form and will not be considered to be the owners or holders of any notes under such Global Note. Accordingly, each Person owning a beneficial interest in a Global Note must rely on the procedures of DTC or any successor depository, and, if such Person is not a participant, on the procedures of the participant through which such Person owns its interest, to exercise any rights of a holder under the indenture. The company understands that under existing industry practices, in the event that the company requests any action of holders or that an owner of a beneficial interest in a Global Note desires to give or take any action which a holder is entitled to give or take under the indenture, DTC or any successor depository would authorize the participants holding the relevant beneficial interest to give or take such action and such participants would authorize beneficial owners owning through such participants to give or take such action or would otherwise act upon the instructions of beneficial owners owning through them.

Although DTC, Euroclear and Clearstream have agreed to the foregoing procedures in order to facilitate transfers of interests in Global Notes among participants of DTC, Euroclear and Clearstream, they are under no obligation to perform or continue to perform such procedures, and such procedures may be discontinued at any time. Neither the company nor the trustee will have any responsibility for the performance by DTC, Euroclear or Clearstream or their respective participants or indirect participants of their respective obligations under the rules and procedures governing their operations.

*Exchange of Global Notes for Certificated Notes.* A Global Note is exchangeable for certificated notes only if:

- (a) DTC notifies the company that it is unwilling or unable to continue as a depository for such Global Note or if at any time DTC ceases to be a clearing agency registered under the Exchange Act and, in either case, the company fails to timely appoint a successor depository;
- (b) the company in its discretion at any time determines not to have all the notes represented by such Global Note; or

- (c) there shall have occurred and be continuing a Default or an Event of Default with respect to the notes represented by such Global Note.

Any Global Note that is exchangeable for certificated notes pursuant to the preceding sentence will be exchanged for certificated notes in authorized denominations and registered in such names as DTC or any successor depository holding such Global Note may direct. Subject to the foregoing, a Global Note is not exchangeable, except for a Global Note of like denomination to be registered in the name of DTC or any successor depository or its nominee. In the event that a Global Note becomes exchangeable for certificated notes,

- (a) certificated notes will be issued only in fully registered form in denominations of \$1,000 or integral multiples thereof;
- (b) payment of principal of, and premium, if any, and interest on, the certificated notes will be payable, and the transfer of the certificated notes will be registerable, at the office or agency of the company maintained for such purposes; and
- (c) no service charge will be made for any registration of transfer or exchange of the certificated notes, although the company may require payment of a sum sufficient to cover any tax or governmental charge imposed in connection therewith.

## UNITED STATES TAXATION

The exchange of original notes for new notes will not be treated as a taxable transaction for U.S. federal income tax purposes. Your basis and holding period in the new notes will equal your basis and holding period in the original notes exchanged for them.

YOU SHOULD CONSULT YOUR OWN TAX ADVISORS CONCERNING THE TAX CONSEQUENCES ARISING UNDER STATE, LOCAL OR FOREIGN LAWS.

## PLAN OF DISTRIBUTION

Each broker-dealer that receives new notes for its own account pursuant to the exchange offer must acknowledge that it will deliver a prospectus in connection with any resale of such new notes. This prospectus, as it may be amended or supplemented from time to time, may be used by a broker-dealer in connection with resales of new notes received in exchange for original notes where such original notes were acquired as a result of market-making activities or other trading activities. We have agreed that, starting on the expiration date of the exchange offer and ending on the close of business one year after the expiration date, we will make this prospectus, as amended or supplemented, available to any broker-dealer for use in connection with any such resale.

We will not receive any proceeds from any sale of new notes by broker-dealers. New notes received by broker-dealers for their own account pursuant to the exchange offer may be sold from time to time in one or more transactions in the over-the-counter market, in negotiated transactions, through the writing of options on the new notes or a combination of such methods of resale, at market prices prevailing at the time of resale, at prices related to such prevailing market prices or negotiated prices. Any such resale may be made directly to purchasers or to or through brokers or dealers who may receive compensation in the form of commissions or concessions from any such broker-dealer and/or the purchasers of any such new notes. Any broker-dealer that resells new notes that were received by it for its own account pursuant to the exchange offer and any broker or dealer that participates in a distribution of such new notes may be deemed to be an "underwriter" within the meaning of the Act and any profit of any such resale of new notes and any commissions or concessions received by any such persons may be deemed to be underwriting compensation under the Securities Act. The letter of transmittal states that by acknowledging that it will deliver and by delivering a prospectus, a broker-dealer will not be deemed to admit that it is an "underwriter" within the meaning of the Securities Act.

For a period of one year after the expiration date, we will promptly send additional copies of this prospectus and any amendment or supplement to this prospectus to any broker-dealer that requests such documents in the letter of transmittal. We have agreed to pay all expenses incident to the exchange offer other than commissions or concessions of any brokers or dealers and will indemnify the holders of the original notes (including any broker-dealers) against certain liabilities, including liabilities under the Securities Act.

## VALIDITY OF THE NOTES

The validity of the new notes will be passed upon for us by Sullivan & Cromwell LLP, New York, New York.

## EXPERTS

Our consolidated financial statements as of June 25, 2003 and June 26, 2002 and for each of the years in the three-year period ended June 25, 2003 included in our Annual Report on Form 10-K for the fiscal year ended June 25, 2003 have been audited by KPMG LLP, independent registered public accounting firm, as stated in their report appearing therein and incorporated herein by reference. Such consolidated financial statements are incorporated herein by reference in reliance upon such report and upon the authority of such firm as experts in accounting and auditing.



**BRINKER**  
INTERNATIONAL®

**\$300,000,000**

**Brinker International, Inc.**

Offer to Exchange

Registered 5.75% Notes due 2014

For Any and All

Outstanding Unregistered 5.75% Notes due 2014

**Prospectus**

**June , 2004**

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## PART II: INFORMATION NOT REQUIRED IN PROSPECTUS

### Item 20. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law permits indemnification against expenses, fines, judgments and settlements incurred by any director, officer or employee of a company in the event of pending or threatened civil, criminal, administrative or investigative proceedings, if such person was, or was threatened to be made, a party by reason of the fact that he is or was a director, officer or employee of the company. Section 145 also provides that the indemnification provided for therein shall not be deemed exclusive of any other rights to which those seeking indemnification may otherwise be entitled.

The Ninth Article of Brinker International's Certificate of Incorporation provides that no director shall be liable to the company or its stockholders for monetary damages for breach of fiduciary duty, provided that the liability of a director is not eliminated or limited (i) for any breach of the director's duty of loyalty to the company or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law or (iv) for any transaction from which such director derived an improper personal benefit.

Article VI, Section 2 of Brinker International's by-laws provides, in general, that the company shall indemnify its directors and officers under the circumstances defined in Section 145 of the Delaware General Corporation Law. The company has obtained an insurance policy insuring the directors and officers of the company against certain liabilities, if any, that arise in connection with the performance of their duties on behalf of the company and its subsidiaries. The company has entered into agreements with its directors and officers indemnifying such directors and officers against certain liabilities arising out of their service as directors and officers of the company.

### Item 21. Exhibits and Financial Statement Schedules.

See Exhibit Index on page II-5.

### Item 22. Undertakings.

(a) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(b) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

(c) The undersigned registrant hereby undertakes to respond to requests for information that is incorporated by reference into the prospectus pursuant to Items 4, 10(b), 11, or 13 of this Form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

(d) The undersigned registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.



## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, Brinker International, Inc. has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Dallas, State of Texas, on June 25, 2004.

BRINKER INTERNATIONAL, INC.

By: \_\_\_\_\_ /s/ CHARLES M. SONSTEBY

Charles M. Sonstebey  
*Executive Vice President and  
Chief Financial Officer*

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Douglas H. Brooks, Charles M. Sonstebey, Roger F. Thomson and David R. Doyle and each of them, their attorneys-in-fact, each with full power of substitution for him in any and all capacities, to sign any amendments to this registration statement, including any and all pre-effective and post-effective amendments and to file such registration statements and any and all amendments thereto, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact, or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Capacity	Date
<hr/> /s/ DOUGLAS H. BROOKS <hr/> Douglas H. Brooks	President, Chief Executive Officer and Director (Principal Executive Officer)	June 25, 2004
<hr/> /s/ CHARLES M. SONSTEBY <hr/> Charles M. Sonstebey	Executive Vice President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	June 25, 2004
<hr/> Ronald A. McDougall	Chairman of the Board	June , 2004
<hr/> Dan W. Cook, III	Director	June , 2004
<hr/> Robert M. Gates	Director	June , 2004

/s/ MARVIN J. GIROUARD

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Marvin J. Girouard

Director

June 25, 2004

/s/ RONALD KIRK

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Ronald Kirk

Director

June 25, 2004

/s/ GEORGE R. MRKONIC

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George R. Mrkonic

Director

June 25, 2004

Director

June , 2004

Erle Nye

Director

June , 2004

James E. Oesterreicher

/s/ CECE SMITH

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Cece Smith

Director

June 25, 2004

/s/ ROGER T. STAUBACH

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Roger T. Staubach

Director

June 25, 2004

## EXHIBIT INDEX

Exhibit No.	Description of Exhibit
3.1	Certificate of Incorporation of Brinker International, Inc.*
3.2	By-laws of Brinker International, Inc.
4.1	Indenture, dated May 14, 2004, between Brinker International, Inc. and Citibank, N.A., as Trustee.
4.2	Registration Rights Agreement, dated May 14, 2004, among Brinker International, Inc. and Citigroup Global Markets Inc. and J.P. Morgan Securities Inc., as representatives of the initial purchasers named therein.
5	Opinion of Sullivan & Cromwell LLP as to the validity of the notes being registered**
12	Statement regarding computation of ratio of earnings to fixed charges
23.1	Consent of KPMG LLP
23.2	Consent of Sullivan & Cromwell LLP**
24	Power of Attorney (included on page II-3 of this registration statement)
25	Statement on Form T-1 of Eligibility of Trustee
99.1	Form of Letter of Transmittal
99.2	Form of Letter to Registered Holders
99.3	Form of Letter to Clients
99.4	Form of Instruction to Registered Holder from Beneficial Owner
99.5	Form of Notice of Guaranteed Delivery
99.6	Form of Exchange Agent Agreement

\* Incorporated by reference to the company's Annual Report on Form 10-K for the fiscal year ended June 28, 1995.

\*\* To be filed by amendment.



**BYLAWS**  
**OF**  
**BRINKER INTERNATIONAL, INC.**  
**(A DELAWARE CORPORATION)**

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## ARTICLE IX

### AMENDMENTS

ARTICLE I

OFFICES

*Section 1. Registered Office.* The registered office of the Corporation shall be in the City of Wilmington, County of New Castle, State of Delaware.

*Section 2. Other Offices.* The Corporation may also have offices at such other place or places, both within and without the State of Delaware, as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II

MEETING OF SHAREHOLDERS

*Section 1. Place of Meetings.* All meetings of the shareholders for the election of directors shall be held in the City of Dallas, State of Texas, at such place within such city as may be fixed from time to time by the Board of Directors, or at such other place either within or without the State of Delaware as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting. Meetings of shareholders for any other purpose may be held at such time and place, within or without the State of Delaware, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

*Section 2. Annual Meetings.* Annual meetings of shareholders, shall be held on such date and at such time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting, including the first week of November of each fiscal year, at which meeting the shareholders shall elect by a plurality vote the Board of Directors and transact such other business as may be properly brought before the meeting.

*Section 3. Notice of Annual Meetings.* Written notice of the annual meeting, stating the place, date and hour of the meeting, shall be given to each shareholder of record entitled to vote at such meeting not less than ten or more than 60 days before the date of the meeting.

*Section 4. Special Meetings.* Special meetings of the shareholders for any purpose or purposes, unless otherwise prescribed by statute or by the Certificate of Incorporation, may be called at any time by order of the Board of Directors and shall be called by the Chairman of the Board, the President or the Secretary at the request in writing of a majority of the Board of Directors. Such requests shall state the purpose or purposes of the proposed special meeting. Business transacted at any special meeting of shareholders shall be limited to the purposes stated in the notice.

*Section 5. Notice of Special Meetings.* Written notice of a special meeting, stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called, shall be given to each shareholder of record entitled to vote at such meeting not less than ten nor more than 60 days before the date of the meeting.

*Section 6. Quorum.* Except as otherwise provided by statute or the Certificate of Incorporation, the holders of stock having a majority of the voting power of the stock entitled to be voted thereat, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the shareholders. If, however, such quorum shall not be present or represented at any meeting of the shareholders, the shareholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time without notice (other than announcement at the meeting at which the adjournment is taken of the time and place of the adjourned meeting) until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. If the adjournment is for more than 30 days, or if



after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record entitled to vote at the meeting.

*Section 7. Order of Business.* The Chairman of the Board, or such other officer of the Corporation designated by a majority of the Board of Directors, will call meetings of the shareholders to order and will act as presiding officer thereof. Unless otherwise determined by the Board of Directors prior to the meeting, the presiding officer of the meeting of the shareholders will also determine the order of business and have the authority in his or her sole discretion to regulate the conduct of any such meeting, including without limitation by (i) imposing restrictions on the persons (other than shareholders of the Corporation or their duly appointed proxies) who may attend any such shareholders' meeting, (ii) ascertaining whether any shareholder or his proxy may be excluded from any meeting of the shareholders based upon any determination by the presiding officer, in his or her sole discretion, that any such person has unduly disrupted or is likely to disrupt the proceedings thereat, and (iii) determining the circumstances in which any person may make a statement or ask questions at any meeting of the shareholders.

At an annual meeting of the shareholders, only such business will be conducted or considered as is properly brought before the meeting. To be properly brought before an annual meeting, business must be (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (ii) otherwise properly brought before the meeting by the presiding officer or by or at the direction of a majority of the Board of Directors, or (iii) otherwise properly requested to be brought before the meeting by a shareholder of the Corporation in accordance with the immediately succeeding sentence. For business to be properly requested by a shareholder to be brought before an annual meeting, the shareholder must (i) be a shareholder of record at the time of the giving of the notice of such annual meeting by or at the direction of the Board of Directors, (ii) be entitled to vote at such meeting, and (iii) have given timely written notice thereof to the Secretary in accordance with Article II, Section 7A of these Bylaws.

Nominations of persons for election as Directors of the Corporation may be made at an annual meeting of shareholders only by or at the direction of the Board of Directors. Any shareholder, (A) who is a shareholder of record at the time of the giving of the notice of an annual meeting of the shareholders by or at the direction of the Board of Directors, (B) who is entitled to vote for the election of directors at such meeting and (C) who has given timely written notice thereof to the Secretary in accordance with Article II, Section 7A of these Bylaws, may recommend one or more persons to be considered as a potential nominee or nominees for election as a Director or Directors of the Corporation at an annual meeting of the shareholders. Only persons who are nominated in accordance with this Article II, Section 7 will be eligible for election at a meeting of shareholders as Directors of the Corporation.

At a special meeting of shareholders, only such business may be conducted or considered as is properly brought before the meeting. To be properly brought before a special meeting, business must be (i) specified in the notice of the meeting (or any supplement thereto) given by or at the direction of the Chairman of the Board, the President, a Vice President or the Secretary or (ii) otherwise properly brought before the meeting by the presiding officer or by or at the direction of a majority of the Board of Directors.

The determination of whether any business sought to be brought before any annual or special meeting of the shareholders is properly brought before such meeting in accordance with this Article II, Section 7, and whether any nomination of a person for election as a Director of the Corporation at any annual meeting of the shareholders was properly made in accordance with this Article II, Section 7, will be made by the presiding officer of such meeting. If the presiding officer determines that any business is not properly brought before such meeting, or any nomination was not properly made, he or she will

so declare to the meeting and any such business will not be conducted or considered and any such nomination will be disregarded.

*Section 7A. Advance Notice of Shareholder Proposals and Director Nominations.*

To be timely for purposes of Article II, Section 7 of these Bylaws, a shareholder's notice must be addressed to the Secretary and delivered or mailed to and received at the principal executive offices of the Corporation not less than one hundred twenty (120) calendar days prior to the anniversary date of the date (as specified in the Corporation's proxy materials for its immediately preceding annual meeting of shareholders) on which the Corporation first mailed its proxy materials for its immediately preceding annual meeting of shareholders; provided, however, that in the event the annual meeting is called for a date that is not within thirty (30) calendar days of the anniversary date of the date on which the immediately preceding annual meeting of shareholders was called, to be timely, notice by the shareholder must be so received not later than the close of business on the tenth (10th) calendar day following the day on which public announcement of the date of the annual meeting is first made. In no event will the public announcement of an adjournment of an annual meeting of shareholders commence a new time period for the giving of a shareholder's notice as provided above.

In the case of a request by a shareholder for business to be brought before any annual meeting of shareholders, a shareholder's notice to the Secretary must set forth as to each matter the shareholder proposes to bring before the annual meeting (i) a description in reasonable detail of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and address, as they appear on the Corporation's books, of the shareholder proposing such business and the beneficial owner, if any, on whose behalf the proposal is made, (iii) the class and number of shares of the Corporation that are owned beneficially and of record by the shareholder proposing such business and by the beneficial owner, if any, on whose behalf the proposal is made, and (iv) any material interest of such shareholder proposing such business and the beneficial owner, if any, on whose behalf the proposal is made in such business.

In the case of a recommendation by a shareholder of a person to be considered as a potential nominee for election as a director of the Corporation at any annual meeting of shareholders, a shareholder notice to the Secretary must set forth (i) the shareholder's intent to nominate one or more persons to be a potential nominee or nominees for election as a director of the Corporation, the name of each such nominee proposed by the shareholder giving the notice, and the reason for making such nomination at the annual meeting, (ii) the name and address, as they appear on the Corporation's books, of the shareholder proposing such nomination and the beneficial owner, if any, on whose behalf the nomination is proposed, (iii) the class and number of shares of the Corporation that are owned beneficially and of record by the shareholder proposing such nomination and by the beneficial owner, if any, on whose behalf the nomination is proposed, and (iv) any material interest of such shareholder proposing such nomination and the beneficial owner, if any, on whose behalf the proposal is made, (v) a description of all arrangements or understandings between or among any of (A) the shareholder giving the notice, (B) each nominee, and (C) any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the shareholder giving the notice, (vi) such other information regarding each nominee proposed by the shareholder giving the notice as would be required to be included in a proxy statement filed in accordance with the proxy rules of the Securities and Exchange Commission had the nominee been nominated, or intended to be nominated, by the Board, and (vii) the signed consent of each nominee proposed by the shareholder giving the notice to serve as a director of the Company if so elected. All recommendations will be presented to the Board of Directors, or the appropriate committee of the Board of Directors, for consideration.

Notwithstanding the provisions of Sections 7 and 7A of this Article II, a shareholder must also comply with all applicable requirements of the Securities Exchange Act of 1934, as amended, and the

rules and regulations thereunder with respect to the matters set forth in Sections 7 and 7A of this Article II. Nothing in Sections 7 and 7A of this Article II will be deemed to affect any rights of shareholders to request inclusion of proposals in the Corporation's proxy statement in accordance with the provisions of Rule 14a-8 under the Securities Exchange Act of 1934, as amended.

For purposes of this Article II, Section 7A, "public announcement" means disclosure in a press release reported by the Dow Jones News Service, Associated Press, or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Securities Exchange Act of 1934, as amended, or furnished to shareholders.

*Section 8. Voting.* Except as otherwise provided in the Certificate of Incorporation, each shareholder shall, at each meeting of the shareholders, be entitled to one vote in person or by proxy for each share of stock of the Corporation held by him and registered in his name on the books of the Corporation on the date fixed pursuant to the provisions of Section 5 of Article VII of these Bylaws as the record date for the determination of shareholders who shall be entitled to notice of and to vote at such meeting. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held directly or indirectly by the Corporation, shall not be entitled to vote. Any vote by stock of the Corporation may be given at any meeting of the shareholders by the shareholder entitled thereto, in person or by his proxy appointed by an instrument in writing subscribed by such shareholder or by his attorney thereunto duly authorized and delivered to the Secretary of the Corporation or to the secretary of the meeting; provided, however, that no proxy shall be voted or acted upon after three years from its date, unless said proxy shall provide for a longer period. Each proxy shall be revocable unless expressly provided therein to be irrevocable and unless otherwise made irrevocable by law. At all meetings of the shareholders all matters, except where other provision is made by law, the Certificate of Incorporation or these Bylaws, shall be decided by the vote of a majority of the votes cast by the shareholders present in person or by proxy and entitled to vote thereat, a quorum being present. Unless demanded by a shareholder of the Corporation present in person or by proxy at any meeting of the shareholders and entitled to vote thereat, or so directed by the chairman of the meeting, the vote thereat on any question other than the election or removal of directors need not be by written ballot. Upon a demand of any such shareholder for a vote by written ballot on any question or at the direction of such chairman that a vote by written ballot be taken on any question, such vote shall be taken by written ballot. On a vote by written ballot, each ballot shall be signed by the shareholder voting, or by his proxy, if there be such a proxy, and shall state the number of shares voted.

*Section 9. List of Shareholders.* It shall be the duty of the Secretary or other officer of the Corporation who shall have charge of its stock ledger, either directly or through another officer of the Corporation designated by him or through a transfer agent appointed by the Board of Directors, to prepare and make, at least ten days before every meeting of the shareholders, a complete list of the shareholders entitled to vote thereat, arranged in alphabetical order, and showing the address of each shareholder and the number of shares registered in the name of each shareholder. Such list shall be open to the examination of any shareholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to said meeting, either at a place within the city where said meeting is to be held, which place shall be specified in the notice of said meeting, or, if not so specified, at the place where said meeting is to be held. The list shall also be produced and kept at the time and place of said meeting during the whole time thereof, and may be inspected by any shareholder of record who shall be present thereat. The stock ledger shall be the only evidence as to who are the shareholders entitled to examine the stock ledger, such list or the books of the Corporation, or to vote in person or by proxy at any meeting of shareholders.

*Section 10. Inspectors of Votes.* At each meeting of the shareholders, the chairman of such meeting may appoint up to two Inspectors of Votes to act thereat, unless the Board of Directors shall have

theretofore made such appointments. Each Inspector of Votes so appointed shall first subscribe an oath or affirmation faithfully to execute the duties of an Inspector of Votes at such meeting with strict impartiality and according to the best of his ability. Such Inspectors of Votes, if any, shall take charge of the ballots, if any, at such meeting and after the balloting thereat on any question shall count the ballots cast thereon and shall make a report in writing to the secretary of such meeting of the results thereof. An Inspector of Votes need not be a shareholder of the Corporation, and any officer of the Corporation may be an Inspector of Votes on any question other than a vote for or against his election to any position with the Corporation or on any other question in which he may be directly interested.

*Section 11. Action Without a Meeting.* Any action required to be taken at any annual or special meeting of shareholders of the Corporation, or any action which may be taken at any annual or special meeting of shareholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes (determined as of the record date of such consent) that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereat were present and voted. The record date of a written consent shall be determined by the Board of Directors and shall be not later than 10 days after the date on which a shareholder gives notice to the Board of Directors of (i) the proposed action to be taken by consent and (ii) the date on which the first written consent to take such action has been executed. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those shareholders owning shares as of the record date who have not consented in writing.

### ARTICLE III

#### BOARD OF DIRECTORS

*Section 1. Powers.* The business and affairs of the Corporation shall be managed by its Board of Directors, which shall have and may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute, the Certificate of Incorporation or these Bylaws directed or required to be exercised or done by the shareholders.

*Section 2. Number, Qualification and Term of Office.* The number of directors which shall constitute the whole Board of Directors shall not be less than one nor more than fifteen. The number of directors which shall constitute the whole Board of Directors shall be determined by resolution of the Board of Directors or by the shareholders at any annual or special meeting or otherwise pursuant to action of the shareholders. Directors need not be shareholders. The directors shall be elected at the annual meeting of the shareholders, except as provided in Sections 4 and 5 of this Article III, and each director elected shall hold office until the annual meeting next after his election and until his successor is elected and qualified, or until his death or retirement or until he shall resign or shall be removed in the manner hereinafter provided.

*Section 3. Resignation.* Any director may resign at any time by giving written notice of his resignation to the Corporation. Any such resignation shall take effect at the time specified therein, or, if the time when it shall become effective shall not be specified therein, then it shall take effect immediately upon its receipt by the Secretary. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

*Section 4. Removal of Directors.* Any director may be removed, either with or without cause, at any time, by the affirmative vote of a majority in voting interest of the shareholders of record of the Corporation entitled to vote, given at any annual or special meeting of the shareholders called for that purpose. The vacancy in the Board of Directors caused by any such removal may be filled by the shareholders at such meeting or, if not so filled, by the Board of Directors as provided in Section 5 of this Article III.

*Section 5. Vacancies.* Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the annual meeting next after their election and until their successors are elected and qualified, unless sooner displaced. If there are no directors in office, then an election of directors may be held in the manner provided by statute.

#### MEETINGS OF THE BOARD OF DIRECTORS

*Section 6. Place of Meetings.* The Board of Directors of the Corporation may hold meetings, both regular and special, either within or without the State of Delaware.

*Section 7. Annual Meetings.* The first meeting of each newly elected Board of Directors shall be held immediately following the annual meeting of shareholders and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, provided a quorum shall be present. In the event such meeting is not held immediately following the annual meeting of shareholders, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the Board of Directors, or as shall be specified in a written waiver signed by all of the directors.

*Section 8. Regular Meetings.* Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by the Board of Directors.

*Section 9. Special Meetings; Notice.* Special meetings of the Board of Directors may be called by the Chairman of the Board, President or Secretary on 24 hours notice to each director, either personally or by telephone or by mail, telegraph, telex, cable, wireless or other form of recorded communication; special meetings shall be called by the Chairman of the Board, President or Secretary in like manner and on like notice on the written request of two directors. Notice of any such meeting need not be given to any director, however, if waived by him in writing or by telegraph, telex, cable, wireless or other form of recorded communication, or if he shall be present at such meeting.

*Section 10. Quorum and Manner of Acting.* At all meetings of the Board of Directors, a majority of the directors at the time in office shall constitute a quorum for the transaction of business, and the act of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or by the Certificate of Incorporation. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

*Section 11. Remuneration.* Unless otherwise expressly provided by resolution adopted by the Board of Directors, none of the directors shall, as such, receive my stated remuneration for his services; but the Board of Directors may at any time and from time to time by resolution provide that a specified sum shall be paid to any director of the Corporation, either as his annual remuneration as such director or member of any committee of the Board of Directors or as remuneration for his attendance at each meeting of the Board of Directors or any such committee. The Board of Directors may also likewise provide that the Corporation shall reimburse each director for any expenses paid by him on account of his attendance at any meeting. Nothing in this Section 11 shall be construed to preclude any director from serving the Corporation in any other capacity and receiving remuneration thereof.

#### COMMITTEES OF DIRECTORS

*Section 12. Executive Committee; How Constituted and Powers.* The Board of Directors may, in its discretion, by resolution passed by a majority of the whole Board of Directors, designate an Executive Committee consisting of one or more of the directors of the Corporation. Subject to the provisions of

Section 141 of the General Corporation Law of the State of Delaware, the Certificate of Incorporation, and these Bylaws, the Executive Committee shall have and may exercise, when the Board of Directors is not in session, all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and shall have the power to authorize the seal of the Corporation to be affixed to all papers which may require it; but the Executive Committee shall not have the power to amend the Certificate of Incorporation (except that the Executive Committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the Board of Directors as provided in the Delaware General Corporation Law, fix the designations and any of the preferences or rights of such shares relating to dividends, redemptions, dissolution, any distribution of assets of the Corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the Corporation or fix the number of shares of any series of stock or authorize the increase or decrease of the shares or any series), to fill vacancies in the Board of Directors or the Executive Committee, to adopt an agreement of merger or consolidation under Section 251 or 252 of the Delaware General Corporation Law, to recommend to the shareholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, to recommend to the shareholders a dissolution of the Corporation or a revocation of a dissolution, or to amend the Bylaws of the Corporation. Except as otherwise provided herein or in the Corporation's Certificate of Incorporation, the Executive Committee shall have the power and authority to authorize the issuance of common stock and grant and authorize options and other rights with respect to such issuance, to declare a dividend, to adopt a certificate of ownership and merger pursuant to Section 253 of the Delaware General Corporation Law, and to fill vacancies in any other committee of directors elected or approved by officers of the Corporation. The Board of Directors shall have the power at any time, by resolution passed by a majority of the whole Board of Directors, to change the membership of the Executive Committee, to fill all vacancies in it, or to dissolve it, with or without cause.

*Section 13. Organization.* The Chairman of the Executive Committee, to be selected by the Board of Directors, shall act as chairman at all meetings of the Executive Committee and the Secretary shall act as secretary thereof. In case of the absence from any meeting of the Executive Committee of the Chairman of the Executive Committee or the Secretary, the Executive Committee may appoint a chairman or secretary, as the case may be, of the meeting.

*Section 14. Meetings.* Regular meetings of the Executive Committee, of which no notice shall be necessary, may be held on such days and at such places, within or without the State of Delaware, as shall be fixed by resolution adopted by a majority of the Executive Committee and communicated in writing to all its members. Special meetings of the Executive Committee shall be held whenever called by the Chairman of the Executive Committee or a majority of the members of the Executive Committee then in office. Notice of each special meeting of the Executive Committee shall be given by mail, telegraph, telex, cable, wireless or other form of recorded communication or be delivered personally or by telephone to each member of the Executive Committee not later than the day before the day on which such meeting is to be held. Notice of any such meeting need not be given to any member of the Executive Committee, however, if waived by him in writing or by telegraph, telex, cable, wireless or other form of recorded communication, or if he shall be present at such meeting; and any meeting of the Executive Committee shall be a legal meeting without any notice thereof having been given, if all the members of the Executive Committee shall be present thereat. Subject to the provisions of this Article III, the Executive Committee, by resolution adopted by a majority of the whole Committee, shall fix its own rules of procedure.

*Section 15. Quorum and Manner of Acting.* A majority of the Executive Committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at a meeting thereof at which a quorum is present shall be the act of the Committee.

*Section 16. Other Committees.* The Board of Directors may, by resolution or resolutions passed by a majority of the whole Board of Directors, designate one or more other committees consisting of one or more directors of the Corporation, which, to the extent provided in said resolution or resolutions, shall have and may exercise, subject to the provisions of Section 141 of the General Corporation Law of the State of Delaware, the Certificate of Incorporation and these Bylaws, the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and shall have the power to authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power to fill vacancies in the Board of Directors, the Executive Committee or any other committee or in their respective membership, appoint or remove officers of the Corporation, or authorize the issuance of shares of the capital stock of the corporation except that such a committee may, to the extent provided in said resolutions, grant and authorize options and other rights with respect to the common stock of the Corporation pursuant to and in accordance with any plan approved by the Board of Directors. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. A majority of all the members of any such committee may determine its action and fix the time and place of its meetings and specify what notice thereof, if any, shall be given, unless the Board of Directors shall otherwise provide. The Board of Directors shall have power to change the members of any such committee at any time to fill vacancies, and to discharge any such committee, either with or without cause, at any time.

*Section 17. Alternate Members of Committees.* The Board of Directors may designate one or more directors as alternate members of the Executive Committee or any other committee, who may replace any absent or disqualified member at any meeting of the committee, or if none be so appointed, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

*Section 18. Minutes of Committees.* Each committee shall keep regular minutes of its meetings and proceedings and report the same to the Board of Directors at the next meeting thereof.

#### GENERAL

*Section 19. Actions Without a Meeting.* Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or the committee.

*Section 20. Presence at Meetings by Means or Communications Equipment.* Members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors or such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 20 shall constitute presence in person at such meeting.

#### ARTICLE IV

##### NOTICES

*Section 1. Type of Notice.* Whenever, under the provisions of the statutes, the Certificate of Incorporation or these Bylaws, notice is required to be given to any director or shareholder, it shall not be construed to mean personal notice, but such notice may be given in writing, in person or by mail, addressed to such director or shareholder, at his address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time

when the same shall be deposited in the United States mail. Notice to directors may also be given in any manner permitted by Article III hereof and shall be deemed to be given at the time when first transmitted by the method of communication so permitted.

*Section 2. Waiver of Notice.* Whenever any notice is required to be given under the provisions of the statutes, the Certificate of Incorporation or these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto, and transmission of a waiver of notice by a director or shareholder by mail, telegraph, telex, cable, wireless or other form of recorded communication may constitute such a waiver.

## ARTICLE V

### OFFICERS

*Section 1. Elected and Appointed Officers.* The elected officers of the Corporation shall be a Chief Executive Officer, a President, one or more Executive Vice Presidents, Senior Vice Presidents and Vice Presidents, with or without such descriptive titles as the Board of Directors shall deem appropriate, a Secretary and a Treasurer and, if the Board of Directors so elects, a Chairman of the Board (who shall be a director). The Board of Directors or the Executive Committee of the Board of Directors by resolution also may appoint one or more Assistant Vice Presidents, Assistant Treasurers, Assistant Secretaries, and such other officers and agents as from time to time may appear to be necessary or advisable in the conduct of the affairs of the Corporation.

*Section 2. Time of Election or Appointment.* The Board of Directors at its annual meeting shall elect or appoint, as the case may be, the officers to fill the positions designated in or pursuant to Section 1 of this Article V. Officers of the Corporation may also be elected or appointed, as the case may be, at any other time.

*Section 3. Salaries of Elected Officers.* The salaries of all elected officers of the Corporation shall be fixed by the Board of Directors.

*Section 4. Term.* Each officer of the Corporation shall hold his office until his successor is elected or appointed and qualified or until his earlier resignation or removal. Any officer may resign at any time upon written notice to the Corporation. Any officer elected or appointed by the Board of Directors or the Executive Committee may be removed at any time by the affirmative vote of a majority of the whole Board of Directors. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise may be filled by the Board of Directors or the appropriate committee thereof.

*Section 5. Chairman of the Board.* The Chairman of the Board shall preside, if present, at all meetings of the Board of Directors and the shareholders and shall perform such other reasonable duties as may be prescribed from time to time by the Board of Directors or by the Bylaws.

*Section 6. Chief Executive Officer.* The Chief Executive Officer shall have general supervision of the affairs of the Corporation and shall have general and active control of all its business. He shall preside, in the absence of the Chairman of the Board, at all meetings of shareholders. He shall see that all orders and resolutions of the Board of Directors and the shareholders are carried into effect. He shall have general authority to execute bonds, deeds, and contracts in the name of the Corporation and affix the corporation seal thereto; to sign stock certificates; to cause the employment or appointment of such officers, employees, and agents of the Corporation as the proper conduct of operations may require, and to fix their compensation, subject to the provisions of these Bylaws; to remove or suspend any employee or agent who was employed or appointed under his authority or under authority of an officer subordinate to him; to suspend for cause, pending final action by the authority that elected or appointed him, any officer subordinate to him; in coordination with the other officers and directors of the Corporation, to develop the Corporation's basic strategic and long-range plans, including marketing



programs, expansion plans and financial structure; and, in general, to exercise all of the powers of authority usually appertaining to the chief executive officer of a corporation, except as otherwise provided in these Bylaws.

*Section 7. President.* The President shall be the Chief Operating Officer of the Corporation and, as such, shall have, subject to review and approval of the Chief Executive Officer, the responsibility for the day-to-day operations of the Corporation.

*Section 8. Executive Vice Presidents.* In the absence of the President or in the event of his inability or refusal to act, the Executive Vice President (or, if there be more than one, the Executive Vice Presidents in the order designated or, in the absence of any designation, in the order of their election) shall perform the duties of the President and, when so acting, shall have all of the powers of and be subject to all of the restrictions upon the President. The Executive Vice Presidents shall perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer may from time to time prescribe. The officer in charge of finance, if one is so elected, shall also perform the duties and assume the responsibilities described in Section 14 of this Article for the Treasurer.

*Section 9. Senior Vice Presidents.* In the absence of the Executive Vice President or in the event of his inability or refusal to act, the Senior Vice President (or, if there be more than one, the Senior Vice Presidents in the order designated or, in the absence of any designation, in the order of their election) shall perform the duties of the Executive Vice President and, when so acting, shall have all of the powers of and be subject to all of the restrictions upon the Executive Vice President. The Senior Vice Presidents shall perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer, or the Chief Operating Officer may from time to time prescribe. The officer in charge of finance, if one is so elected, shall also perform the duties and assume the responsibilities described in Section 14 of this Article for the Treasurer.

*Section 10. Vice Presidents.* In the absence of the Senior Vice President or in the event of his inability or refusal to act, the Vice President (or, if there be more than one, the Vice Presidents in the order designated or, in the absence of any designation, in the order of their election) shall perform the duties of the Senior Vice President and, when so acting, shall have all of the powers of and be subject to all of the restrictions upon the Senior Vice President. The Vice Presidents shall perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer, or the Chief Operating Officer may from time to time prescribe. The officer in charge of finance, if one is so elected, shall also perform the duties and assume the responsibilities described in Section 14 of this Article for the Treasurer.

*Section 11. Assistant Vice Presidents.* In the absence of a Vice President or in the event of his inability or refusal to act, the Assistant Vice President (or, if there be more than one, the Assistant Vice Presidents in the order designated or of their election or in such other manner as the Board of Directors shall determine) shall perform the duties and exercise the powers of that Vice President and shall perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer, the Chief Operating Officer, or the Vice President under whose supervision he is appointed may from time to time prescribe.

*Section 12. Secretary.* The Secretary shall attend all meetings of the Board of Directors and all meetings of the shareholders and record all proceedings of such meetings in a book to be kept for that purpose and shall perform like duties for the Executive Committee or other standing committees when required. He shall give, or cause to be given, notice of all meetings of the shareholders and special meetings of the Board of Directors and shall perform such other duties as may be prescribed by the Board of Directors or the Chief Executive Officer, under whose supervision he shall be. He shall have custody of the corporate seal of the Corporation and he, or an Assistant Secretary, shall have authority to affix the same to any instrument requiring it, and when so affixed, it may be attested by his signature or by the signature of such Assistant Secretary. The Board of Directors may give general authority to

any other officer to affix the seal of the Corporation and to attest the affixing by his signature. The Secretary shall keep and account for all books, documents, papers, and records of the Corporation except those for which some other officer or agent is properly accountable. He shall have authority to sign stock certificates and shall generally perform all of the duties usually appertaining to the office of the secretary of a corporation.

*Section 13. Assistant Secretaries.* In the absence of the Secretary or in the event of his inability or refusal to act, the Assistant Secretary (or, if there be more than one, the Assistant Secretaries in the order determined by the Board of Directors or, if there be no such determination, in the order of their appointment) shall perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer, or the Secretary may from time to time prescribe.

*Section 14. Treasurer.* The Treasurer (or the Vice President in charge of finance, if one is so elected) shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all monies and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the Corporation as ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the Chairman of the Board and the Board of Directors, at its regular meetings or when the Board of Directors so requires, an account of all of his transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, he shall give the Corporation a bond (which shall be reviewed every six years) in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the Corporation, in case of his death, resignation, retirement, or removal from office, of all books, papers, vouchers, money, and other property or whatever kind in his possession or under his control belonging to the Corporation. The Treasurer shall perform such other duties as may be prescribed by the Board of Directors, the Chief Executive Officer, or any such officer in charge of finance.

*Section 15. Assistant Treasurers.* The Assistant Treasurer or Assistant Treasurers shall assist the Treasurer and, in the absence of the Treasurer or in the event of his inability or refusal to act, the Assistant Treasurer (or if there be more than one, the Assistant Treasurers in the order determined by the Board of Directors or, if there is no such determination, in the order of their appointment), shall perform the duties and exercise the powers of the Treasurer, and shall perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer, or the Treasurer may from time to time prescribe.

## ARTICLE VI

### INDEMNIFICATION

*Section 1. Actions Other Than by or in the Right of the Corporation.* The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or contemplated action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Corporation), by reason of the fact that he is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise (all of such persons being hereafter referred to in this Article as a "Corporate Functionary"), against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order,

settlement, or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation or, with respect to any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.

*Section 2. Actions by or in the Right of the Corporation.* The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or contemplated action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a Corporate Functionary against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable to the Corporation, unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

*Section 3. Determination of Right to Indemnification.* Any indemnification under Sections 1 or 2 of this Article VI (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Sections 1 or 2 of this Article VI. Such determination shall be made (i) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or, even if obtainable if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (iii) by the shareholders.

*Section 4. Right to Indemnification.* Notwithstanding the other provisions of this Article VI, to the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 1 or 2 of this Article VI, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith.

*Section 5. Prepaid Expenses.* Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case, upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined he is entitled to be indemnified by the Corporation as authorized in this Article VI.

*Section 6. Other Rights and Remedies.* The indemnification provided by this Article VI shall not be deemed exclusive of any other rights to which any person seeking indemnification may be entitled under any by-law, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

*Section 7. Insurance.* Upon resolution passed by the Board of Directors, the Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article VI.

*Section 8. Mergers.* For purposes of this Article VI, references to "the Corporation" shall include, in addition to the resulting or surviving corporation, constituent corporations (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise shall stand in the same position under the provisions of this Article VI with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

## ARTICLE VII

### CERTIFICATES OF STOCK

*Section 1. Right to Certificate.* Every holder of stock in the Corporation shall be entitled to have a certificate, signed by, or in the name of the Corporation by, the Chairman of the Board, the President or a Vice President, and the Secretary or an Assistant Secretary of the Corporation certifying the number of shares owned by him in the Corporation. If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in Section 202 of the General Corporation Law of the State of Delaware, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, a statement that the Corporation will furnish without charge to each shareholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

*Section 2. Facsimile Signatures.* Any of or all the signatures on the certificate may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

*Section 3. New Certificates.* The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation and alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed or the issuance of such new certificate.

*Section 4. Transfers.* Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the Corporation, subject to any proper restrictions on transfer, to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

*Section 5. Record Date.* In order that the Corporation may determine the shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be less than ten nor more than 60 days before the date of such meeting, nor more than 60 days prior to any other action. A determination of shareholders of record entitled to notice of or to vote at a meeting of shareholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

*Section 6. Registered Shareholders.* The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not provided by the laws of the State of Delaware.

## ARTICLE VIII

### GENERAL PROVISIONS

*Section 1. Dividends.* Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors (but not any committee thereof) at any regular meeting, pursuant to law. Dividends may be paid in cash, in property or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

*Section 2. Reserves.* Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, thinks proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the Board of Directors shall think conducive to the interest of the Corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

*Section 3. Annual Statement.* The Board of Directors shall present at each annual meeting, and at any special meeting of the shareholders when called for by vote of the shareholders, a full and clear statement of the business and condition of the Corporation.

*Section 4. Checks.* All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time prescribe.

*Section 5. Fiscal Year.* The fiscal year of the Corporation shall be determined by the Board of Directors.

*Section 6. Corporate Seal.* The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the word "Delaware". The seal may be used by causing it or a facsimile thereof to be impressed, affixed, reproduced or otherwise.

## ARTICLE IX

### AMENDMENTS

These Bylaws may be altered, amended or repealed or new Bylaws may be adopted by the shareholders or by the Board of Directors at any regular meeting of the shareholders or the Board of Directors or at any special meeting of the shareholders or the Board of Directors if notice of such alteration, amendment, repeal or adoption of new Bylaws be contained in the notice of such special meeting.

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BRINKER INTERNATIONAL, INC.

Issuer

5.75% Notes due 2014

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INDENTURE

Dated as of May 14, 2004

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CITIBANK, N.A.,

Trustee

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**CROSS-REFERENCE TABLE**

TIA Section	Indenture Section
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(a)(2)	7.10
(a)(3)	N.A.
(a)(4)	N.A.
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N.A. means Not Applicable.

Note: This Cross-Reference Table shall not, for any purpose, be deemed to be part of the Indenture.



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Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders of the Company's 5.75% Notes due 2014.

## ARTICLE I

### *Definitions and Incorporation by Reference*

#### SECTION 1.01. *Definitions.*

"Additional Securities" means 5.75% Notes due 2014 issued from time to time after the Issue Date under the terms of this Indenture (other than pursuant to Section 2.06, 2.07, 2.09 or 3.06 of this Indenture and other than Exchange Securities or Private Exchange Securities issued pursuant to an exchange offer for other Securities Outstanding under this Indenture).

"Affiliate" means, as applied to any Person, (i) any other Person, directly or indirectly, Controlling or Controlled by or under direct or indirect common Control with such specified Person or (ii) any Person who is a director or officer (A) of such Person, (B) of any Subsidiary of such Person or (C) of any Person described in clause (i) above.

"Attributable Debt" in respect of a Sale and Leaseback Transaction means, at any date of determination,

(a) if such Sale and Leaseback Transaction is a Capital Lease Obligation, the amount of Debt represented thereby according to the definition of "Capital Lease Obligation", and

(b) in all other instances, the present value (discounted at the interest rate borne by the Securities, compounded annually) of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale and Leaseback Transaction (including any period for which such lease has been extended).

"Board of Directors" means the board of directors of the Company or any committee thereof, duly authorized to act on behalf of such Board of Directors.

"Board Resolution" means a copy of a resolution certified by the Secretary or Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification.

"Business Day" means a day other than a Legal Holiday.

"Capital Lease Obligation" means any obligation under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP; and the amount of Debt represented by such obligation shall be the capitalized amount of such obligations determined in accordance with GAAP; and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty.

"Capital Stock" means, with respect to any Person, any shares or other equivalents (however designated) of any class of corporate stock or partnership interests or any other participations, rights, warrants, options or other interests in the nature of an equity interest in such Person, including Preferred Stock, but excluding any debt security convertible or exchangeable into such equity interest.

"Code" means the Internal Revenue Code of 1986, as amended.

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"Commodity Price Protection Agreement" means, in respect of a Person, any forward contract, commodity swap agreement, commodity option agreement or other similar agreement or arrangement designed to protect such Person against fluctuations in commodity prices.

"Company" means Brinker International, Inc., a Delaware corporation, until a successor replaces it and thereafter means the successor and, for purposes of any provision contained herein and required by the TIA, each other obligor on the Securities.

"Comparable Treasury Issue" means the United States Treasury security selected by an Independent Investment Banker as having a maturity comparable to the remaining term of the Securities that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of such Securities.

"Comparable Treasury Price" means, with respect to any redemption date:

(a) the average of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) on the third business day preceding such redemption date, as set forth in the most recently published statistical release designated "H.15(519)" (or any successor release) published by the Board of Governors of the Federal Reserve System and which establishes yields on actively traded United States treasury securities adjusted to constant maturity under the caption "Treasury Constant Maturities" or

(b) if such release (or any successor release) is not published or does not contain such prices on such business day, the average of the Reference Treasury Dealer Quotations for such redemption date.

"Consolidated Current Liabilities" means, as of any date of determination, the aggregate amount of liabilities of the Company and its consolidated Subsidiaries which may properly be classified as current liabilities (including taxes accrued as estimated), after eliminating:

(a) all intercompany items between the Company and any Subsidiary or between Subsidiaries, and

(b) all current maturities of long-term Debt.

"Consolidated Net Tangible Assets" means, as of any date of determination, the sum of the amounts that would appear on a consolidated balance sheet of the Company and its consolidated Subsidiaries as the total assets (less accumulated depreciation and amortization, allowances for doubtful receivables, other applicable reserves and other properly deductible items) of the Company and its Subsidiaries, after deducting therefrom Consolidated Current Liabilities and, to the extent otherwise included, the amounts of (without duplication):

(a) the excess of cost over fair market value of assets or businesses acquired;

(b) any downward revaluation or other write-up in book value of assets subsequent to the last day of the fiscal quarter of the Company immediately preceding the Issue Date as a result of a change in the method of valuation in accordance with GAAP;

(c) unamortized debt discount and expenses and other unamortized deferred charges, goodwill, patents, trademarks, service marks, trade names, copyrights, licenses, organization or developmental expenses and other intangible items;

(d) minority interests in consolidated Subsidiaries held by Persons other than the Company or any Subsidiary;

(e) treasury stock; and

(f) cash or securities set aside and held in a sinking or other analogous fund established for the purpose of redemption or other retirement of Capital Stock to the extent such obligation is not reflected in Consolidated Current Liabilities.

"Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract or otherwise, and the terms "Controlled" and "Controlling" shall have the meanings correlative thereto.

"Currency Exchange Protection Agreement" means, in respect of a Person, any foreign exchange contract, currency swap agreement, currency option or other similar agreement or arrangement designed to protect such Person against fluctuations in currency exchange rates.

"Debt" means, with respect to any Person on any date of determination (without duplication):

(a) the principal of and premium (if any) in respect of:

(1) debt of such Person for money borrowed, and

(2) debt evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable;

(b) all Capital Lease Obligations of such Person and all Attributable Debt in respect of Sale and Leaseback Transactions entered into by such Person;

(c) all obligations of such Person issued or assumed as the deferred purchase price of Property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business);

(d) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction (other than obligations with respect to letters of credit securing obligations (other than obligations described in (a) through (c) above) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the third Business Day following receipt by such Person of a demand for reimbursement following payment on the letter of credit);

(e) all obligations of the type referred to in clauses (a) through (d) of other Persons and all dividends of other Persons for the payment of which, in either case, such Person is responsible or liable, directly or indirectly, as obligor, guarantor or otherwise, including by means of any Guarantee;

(f) all obligations of the type referred to in clauses (a) through (e) of other Persons secured by any Lien on any Property of such Person (whether or not such obligation is assumed by such Person), the amount of such obligation being deemed to be the lesser of the value of such Property or the amount of the obligation so secured; and

(g) to the extent not otherwise included in this definition, the notional amount of Hedging Obligations of such Person.

Notwithstanding the foregoing, in connection with the purchase by the Company or any Subsidiary of any business, the term "Debt" will exclude post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing; *provided, however*, that, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid within 30 days thereafter.

"Default" means any event which is, or after notice or passage of time or both would be, an Event of Default.

"Depository" means The Depository Trust Company, its nominees and their respective successors.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Fair Market Value" means, with respect to any Property, the price that could be negotiated in an arm's-length free market transaction, for cash, between a willing seller and a willing buyer, neither of whom is under undue pressure or compulsion to complete the transaction. Fair Market Value shall be determined, except as otherwise provided,

(a) if such Property has a Fair Market Value equal to or less than \$5.0 million, by any Officer of the Company, or

(b) if such Property has a Fair Market Value in excess of \$5.0 million, by a majority of the Board of Directors and evidenced by a Board Resolution, dated within 30 days of the relevant transaction, delivered to the Trustee.

"GAAP" means United States generally accepted accounting principles as in effect on the Issue Date, including those set forth:

(a) in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants,

(b) in the statements and pronouncements of the Financial Accounting Standards Board,

(c) in such other statements by such other entity as approved by a significant segment of the accounting profession, and

(d) the rules and regulations of the SEC governing the inclusion of financial statements (including pro forma financial statements) in periodic reports required to be filed pursuant to Section 13 of the Exchange Act, including opinions and pronouncements in staff accounting bulletins and similar written statements from the accounting staff of the SEC.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof or any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Guarantee" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Debt of any other Person and any obligation, direct or indirect, contingent or otherwise, of such Person:

(a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt of such other Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay or to maintain financial statement conditions or otherwise), or

(b) entered into for the purpose of assuring in any other manner the obligee of such Debt of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part);

*provided, however*, that the term "Guarantee" shall not include:

(1) endorsements for collection or deposit in the ordinary course of business, or

(2) a contractual commitment by one Person to invest in another Person for so long as such Investment is reasonably expected to constitute an Investment by the Company or a Subsidiary in any Person if as a result of such Investment such Person is merged or

consolidated with or into, or transfers or conveys all or substantially all its Property to, the Company or a Subsidiary, *provided* that such Person's primary business is a Related Business.

The term "Guarantee" used as a verb has a corresponding meaning. The term "Guarantor" shall mean any Person Guaranteeing any obligation.

"Hedging Obligation" of any Person means any obligation of such Person pursuant to any Interest Rate Agreement, Currency Exchange Protection Agreement, Commodity Price Protection Agreement or any other similar agreement or arrangement.

"Holder" or "Securityholder" means a Person in whose name a Security is registered on the Registrar's books.

"Incur" means, with respect to any Debt or other obligation of any Person, to create, issue, incur (by merger, conversion, exchange or otherwise), extend, assume, Guarantee or become liable in respect of such Debt or other obligation or the recording, as required pursuant to GAAP or otherwise, of any such Debt or obligation on the balance sheet of such Person (and "Incurrence" and "Incurred" shall have meanings correlative to the foregoing); *provided, however*, that any Debt or other obligations of a Person existing at the time such Person becomes a Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Subsidiary at the time it becomes a Subsidiary.

"Independent Investment Banker" means one of the Reference Treasury Dealers appointed by the Company after consultation with the Trustee.

"Indenture" means this Indenture as amended or supplemented from time to time.

"Interest Rate Agreement" means, for any Person, any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or other similar agreement designed to protect against fluctuations in interest rates.

"Investment" by any Person means any direct or indirect loan (other than advances to customers in the ordinary course of business that are recorded as accounts receivable on the balance sheet of such Person), advance or other extension of credit or capital contribution (by means of transfers of cash or other Property to others or payments for Property or services for the account or use of others, or otherwise) to, or Incurrence of a Guarantee of any obligation of, or purchase or acquisition of Capital Stock, bonds, notes, debentures or other securities or evidence of Debt issued by, any other Person. In determining the amount of any Investment made by transfer of any Property other than cash, such Property shall be valued at its Fair Market Value at the time of such Investment.

"Issue Date" means May 14, 2004.

"Lien" means, with respect to any Property of any Person, any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, security interest, lien, charge, easement (other than any easement not materially impairing usefulness or marketability), encumbrance, preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever on or with respect to such Property (including any Capital Lease Obligation, conditional sale or other title retention agreement having substantially the same economic effect as any of the foregoing or any Sale and Leaseback Transaction).

"Officer" means the Chief Executive Officer, the President, the Chief Financial Officer, the Chief Operating Officer or any Executive Vice President of the Company.

"Officers' Certificate" means a certificate signed by two Officers, at least one of whom shall be the principal executive officer or principal financial officer of the Company, that complies with Sections 10.04 and 10.05 of this Indenture and is delivered to the Trustee.



"Opinion of Counsel" means a written opinion from legal counsel who is acceptable to the Trustee and that complies with Sections 10.04 and 10.05 of this Indenture and is delivered to the Trustee. The counsel may be an employee of or counsel to the Company.

"Outstanding" means, subject to certain exceptions, all Securities issued under the Indenture, except those theretofore canceled by the Trustee or delivered to it for cancellation, defeased in accordance with the Indenture, paid in full, or in respect of which substitute Securities have been authenticated and delivered by the Trustee.

"Permitted Liens" means:

(a) Liens to secure Debt in respect of Purchase Money Debt, *provided* that the aggregate principal amount of such Debt does not exceed the Fair Market Value (on the date of the Incurrence thereof) of the Property acquired, constructed or leased; *provided further* that any such Lien may not extend to any Property of the Company or any Subsidiary, other than the Property acquired, constructed or leased with the proceeds of such Debt and any improvements or accessions to such Property;

(b) Liens for taxes, assessments or governmental charges or levies on the Property of the Company or any Subsidiary if the same shall not at the time be delinquent or thereafter can be paid without penalty, or are being contested in good faith and by appropriate proceedings promptly instituted and diligently concluded, *provided* that any reserve or other appropriate provision that shall be required in conformity with GAAP shall have been made therefor;

(c) Liens imposed by law, such as carriers', warehousemen's and mechanics' Liens and other similar Liens, on the Property of the Company or any Subsidiary arising in the ordinary course of business and securing payment of obligations that are not more than 60 days past due or are being contested in good faith and by appropriate proceedings;

(d) Liens on the Property of the Company or any Subsidiary Incurred in the ordinary course of business to secure performance of obligations with respect to statutory or regulatory requirements, performance or return-of-money bonds, surety bonds or other obligations of a like nature and Incurred in a manner consistent with industry practice, in each case which are not Incurred in connection with the borrowing of money, the obtaining of advances or credit or the payment of the deferred purchase price of Property and which do not in the aggregate impair in any material respect the use of Property in the operation of the business of the Company and the Subsidiaries taken as a whole;

(e) Liens on Property at the time the Company or any Subsidiary acquired such Property, including any acquisition by means of a merger or consolidation with or into the Company or any Subsidiary; *provided, however*, that any such Lien may not extend to any other Property of the Company or any Subsidiary; *provided further, however*, that such Liens shall not have been Incurred in anticipation of or in connection with the transaction or series of transactions pursuant to which such Property was acquired by the Company or any Subsidiary;

(f) Liens on the Property of a Person at the time such Person becomes a Subsidiary; *provided, however*, that any such Lien may not extend to any other Property of the Company or any other Subsidiary that is not a direct Subsidiary of such Person; *provided further, however*, that any such Lien was not Incurred in anticipation of or in connection with the transaction or series of transactions pursuant to which such Person became a Subsidiary;

(g) pledges or deposits by the Company or any Subsidiary under workmen's compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Debt) or leases to which the Company or any Subsidiary is party, or deposits to secure public or statutory obligations of the Company or any

Subsidiary, or deposits for the payment of rent, in each case Incurred in the ordinary course of business;

(h) utility easements, building restrictions and such other encumbrances or charges against real Property as are of a nature generally existing with respect to properties of a similar character;

(i) Liens existing on the Issue Date not otherwise described in clauses (a) through (h) above;

(j) Liens on the Property of the Company or any Subsidiary to secure any Refinancing, in whole or in part, of any Debt secured by Liens referred to in clause (a), (e), (f) or (i) above; *provided, however*, that any such Lien shall be limited to all or part of the same Property that secured the original Lien (together with improvements and accessions to such Property) and the aggregate principal amount of Debt that is secured by such Lien shall not be increased to an amount greater than the sum of:

(1) the outstanding principal amount, or, if greater, the committed amount, of the Debt secured by Liens described under clause (a), (e), (f) or (i) above, as the case may be, at the time the original Lien became a Permitted Lien under the Indenture, and

(2) an amount necessary to pay any fees and expenses, including premiums and defeasance costs, incurred by the Company or such Subsidiary in connection with such Refinancing; and

(k) Liens not otherwise permitted by clauses (a) through (j) above encumbering assets having an aggregate Fair Market Value not in excess of 15% of Consolidated Net Tangible Assets, as determined based on the consolidated balance sheet of the Company as of the end of the most recent fiscal quarter ending at least 45 days prior to the date any such Lien shall be Incurred.

For purposes of this definition, the term "Debt" shall be deemed to include interest on such Debt.

"Person" means any individual, corporation, company (including any limited liability company), association, partnership, joint venture, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

"Preferred Stock" means any Capital Stock of a Person, however designated, that entitles the holder thereof to a preference with respect to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of any other class of Capital Stock issued by such Person.

"pro forma" means, with respect to any calculation made or required to be made pursuant to the terms hereof, a calculation performed in accordance with Article 11 of Regulation S-X promulgated under the Securities Act, as interpreted in good faith by the Board of Directors after consultation with the independent certified public accountants of the Company, or otherwise a calculation made in good faith by the Board of Directors after consultation with the independent certified public accountants of the Company, as the case may be.

"principal" of a Security means the principal of the Security plus the premium, if any, payable on the Security which is due or overdue or is to become due at the relevant time.

"Property" means, with respect to any Person, any interest of such Person in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, including Capital Stock in, and other securities of, any other Person. For purposes of any calculation required pursuant to the Indenture, the value of any Property shall be its Fair Market Value.

"Purchase Money Debt" means Debt:

(a) consisting of the deferred purchase price of property, conditional sale obligations, obligations under any title retention arrangement, other purchase money obligations and

obligations in respect of industrial revenue bonds, in each case where the maturity of such Debt does not exceed the anticipated useful life of the Property being financed, and

(b) Incurred to finance the acquisition, construction or lease by the Company or a Subsidiary of such Property, including additions and improvements thereto;

*provided, however*, that such Debt is Incurred within 180 days after the acquisition, construction or lease of such Property by the Company or such Subsidiary.

"Reference Treasury Dealer" means Citigroup Global Markets Inc., J.P. Morgan Securities Inc. and their respective successors; *provided, however*, that if any of the foregoing shall cease to be a primary U.S. Government securities dealer in New York City (a "*Primary Treasury Dealer*"), the Company shall substitute therefor another Primary Treasury Dealer.

"Reference Treasury Dealer Quotations" means, with respect to each Reference Treasury Dealer and any redemption date, the average, as determined by the Independent Investment Banker, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Independent Investment Banker by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third Business Day preceding such redemption date.

"Refinance" means, in respect of any Debt, to refinance, extend, renew, refund, repay, prepay, repurchase, redeem, defease or retire, or to issue other Debt, in exchange or replacement for, such Debt. "*Refinanced*" and "*Refinancing*" shall have correlative meanings.

"Related Business" means any business that is related, ancillary or complementary to the businesses of the Company and the Subsidiaries on the Issue Date.

"Sale and Leaseback Transaction" means any direct or indirect arrangement relating to Property now owned or hereafter acquired whereby the Company or a Subsidiary transfers such Property to another Person and the Company or a Subsidiary leases it from such Person.

"SEC" means the Securities and Exchange Commission.

"Securities" means the Initial Securities, the Exchange Securities, the Private Exchange Securities and Additional Securities issued under this Indenture.

"Securities Act" means the Securities Act of 1933, as amended.

"Significant Subsidiary" means any Subsidiary that would be a "Significant Subsidiary" of the Company within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC.

"Stated Maturity" means, with respect to any security, the date specified in such security as the fixed date on which the payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security at the option of the holder thereof upon the happening of any contingency beyond the control of the issuer unless such contingency has occurred).

"Subsidiary" means, in respect of any Person, any corporation, company (including any limited liability company), association, partnership, joint venture or other business entity of which a majority of the total voting power of the Voting Stock is at the time owned or Controlled, directly or indirectly, by:

- (a) such Person,
- (b) such Person and one or more Subsidiaries of such Person, or
- (c) one or more Subsidiaries of such Person.

"TIA" means the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbb) as in effect on the date of this Indenture, except as provided in Section 9.03 hereof.

"Treasury Rate" means, with respect to any redemption date, the rate per annum equal to the yield to maturity of the Comparable Treasury Issue, compounded semi-annually, assuming a price for such Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such redemption date.

"Trustee" means the party named as such in this Indenture until a successor replaces it and, thereafter, means the successor.

"Trust Officer" means any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

"Uniform Commercial Code" means the New York Uniform Commercial Code as in effect from time to time.

"U.S. Government Obligations" means direct obligations (or certificates representing an ownership interest in such obligations) of the United States of America (including any agency or instrumentality thereof) for the payment of which the full faith and credit of the United States of America is pledged and which are not callable or redeemable at the issuer's option.

"Voting Stock" of any Person means all classes of Capital Stock or other interests (including partnership interests) of such Person then outstanding and normally entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof.

"Wholly Owned Subsidiary" means, at any time, a Subsidiary all the Voting Stock of which (except directors' qualifying shares) is at such time owned, directly or indirectly, by the Company and its other Wholly Owned Subsidiaries.

SECTION 1.02. *Other Definitions.*

<b>Term</b>	<b>Defined in Section</b>
"Agent Member"	Appendix
"Authenticating Agent"	2.02
"Bankruptcy Law"	6.01
"covenant defeasance option"	8.01(b)
"cross acceleration provision"	6.01
"Custodian"	6.01
"Event of Default"	6.01
"Global Security"	Appendix
"Initial Lien"	4.06
"Initial Securities"	Appendix
"judgment default provision"	6.01
"legal defeasance option"	8.01(b)
"Legal Holiday"	10.08
"Paying Agent"	2.03
"Private Exchange Securities"	Appendix
"Registrar"	2.03
"Surviving Person"	5.01
"Transfer Restricted Securities"	Appendix

SECTION 1.03. *Incorporation by Reference of Trust Indenture Act.* This Indenture is subject to the mandatory provisions of the TIA which are incorporated by reference in and made a part of this Indenture. The following TIA terms have the following meanings:

"Commission" means the SEC.

"indenture securities" means the Securities.

"indenture securityholder" means a Securityholder.

"indenture to be qualified" means this Indenture.

"indenture trustee" or "institutional trustee" means the Trustee.

"obligor" on the indenture securities means the Company and any other obligor on the indenture securities.

All other TIA terms used in this Indenture that are defined by the TIA, defined by the TIA by reference to another statute or defined by an SEC rule have the meanings assigned to them by such definitions.

SECTION 1.04. *Rules of Construction.* Unless the context otherwise requires:

- (i) a term has the meaning assigned to it;
- (ii) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (iii) "including" means including without limitation;
- (iv) "or" is not exclusive;
- (v) words in the singular include the plural and words in the plural include the singular;
- (vi) the principal amount of any noninterest bearing or other discount security at any date shall be the principal amount thereof that would be shown on a balance sheet of the issuer dated such date prepared in accordance with GAAP; and
- (vii) all references to the date the Securities were originally issued shall refer to the Issue Date.

## ARTICLE II

### *The Securities*

SECTION 2.01. *Form and Dating.* Provisions relating to the Initial Securities, the Private Exchange Securities and the Exchange Securities are set forth in the Rule 144A/Regulation S Appendix attached hereto (the "Appendix") the terms and provisions of which are hereby incorporated in and expressly made part of this Indenture. The Initial Securities and the Trustee's certificate of authentication shall be substantially in the form of Exhibit 1 to the Appendix, the terms and provisions of which are hereby incorporated in and expressly made part of this Indenture. The Exchange Securities, the Private Exchange Securities and the Trustee's certificate of authentication shall be substantially in the form of Exhibit A attached hereto, the terms and provisions of which are hereby incorporated in and expressly made part of this Indenture. The Securities may have notations, legends or endorsements required by law, stock exchange rule, agreements to which the Company is subject, if any, or usage (provided that any such notation, legend or endorsement is in a form acceptable to the Company). Each Security shall be dated the date of its authentication. The terms of the Securities set forth in the Appendix and Exhibit A are part of the terms of this Indenture.

SECTION 2.02. *Execution and Authentication.* Two Officers shall sign the Securities for the Company by manual or facsimile signature.

If an Officer whose signature is on a Security no longer holds that office at the time the Trustee authenticates the Security, the Security shall be valid nevertheless.

A Security shall not be valid until an authorized signatory of the Trustee manually authenticates the Security. The signature of the Trustee on a Security shall be conclusive evidence that such Security has been duly and validly authenticated and issued under this Indenture.

The Trustee shall authenticate and make available for delivery the Securities as set forth in the Appendix.

The Trustee may appoint an agent (the "Authenticating Agent") reasonably acceptable to the Company to authenticate the Securities. Unless limited by the terms of such appointment, any such Authenticating Agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An Authenticating Agent has the same rights as any Registrar, Paying Agent or agent for service of notices and demands.

SECTION 2.03. *Registrar and Paying Agent.* The Company shall maintain an office or agency where Securities may be presented for registration of transfer or for exchange (the "Registrar") and an office or agency where Securities may be presented for payment (the "Paying Agent"). The Registrar shall keep a register of the Securities and of their transfer and exchange. The Company may have one or more Co-Registrars and one or more additional Paying Agents. The term "Paying Agent" includes any additional Paying Agent.

The Company shall enter into an appropriate agency agreement with any Registrar, Paying Agent or co-registrar not a party to this Indenture, which shall incorporate the terms of the TIA. The agreement shall implement the provisions of this Indenture that relate to such agent. The Company shall notify the Trustee in writing of the name and address of each such agent. If the Company fails to maintain a Registrar or Paying Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.07. The Company or any Wholly Owned Subsidiary incorporated or organized within the United States of America may act as Paying Agent, Registrar, co-registrar or transfer agent. The Company may remove any Registrar or Paying Agent upon written notice to such Registrar or Paying Agent and to the Trustee; *provided, however*, that no such removal shall become effective until (i) acceptance of an appointment by a successor as evidenced by an appropriate agreement entered into by the Company and such successor Registrar or Paying Agent, as the case may be, and delivered to the Trustee or (ii) notification to the Trustee that the Trustee shall serve as Registrar or Paying Agent until the appointment of a successor in accordance with clause (i) above. The Paying Agent or the Registrar may resign as such upon 30 days' prior written notice to the Company and the Trustee; upon resignation of any Paying Agent or Registrar, the Company shall appoint a successor Paying Agent or Registrar, as the case may be, no later than 30 days thereafter and shall provide notice in writing to the Trustee of such successor Paying Agent or Registrar.

The Company initially appoints the Trustee as Registrar and Paying Agent for the Securities.

SECTION 2.04. *Paying Agent To Hold Money in Trust.* Prior to each day on which any principal of or interest on any Security is due and payable, the Company shall deposit with the Paying Agent a sum sufficient to pay such principal or interest when due. The Company shall require each Paying Agent (other than the Trustee) to agree in writing that such Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by such Paying Agent for the payment of principal of or interest on the Securities and shall notify the Trustee of any default by the Company in making any such payment. If the Company or a Subsidiary acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it as a separate trust fund. The Company at any time may require a

Paying Agent (other than the Trustee) to pay all money held by it to the Trustee and to account for any funds disbursed by such Paying Agent. Upon complying with this Section 2.04, the Paying Agent (if other than the Company or a Subsidiary) shall have no further liability for the money delivered to the Trustee. Upon any bankruptcy, reorganization or similar proceeding with respect to the Company, the Trustee shall serve as Paying Agent for the Securities.

SECTION 2.05. *Securityholder Lists.* The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Securityholders. If the Trustee is not the Registrar, the Company shall furnish to the Trustee, in writing at least seven Business Days before each interest payment date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Securityholders.

SECTION 2.06. *Transfer and Exchange.* The Securities shall be issued in registered form and shall be transferable only upon the surrender of a Security for registration of transfer and in compliance with the Appendix. When a Security is presented to the Registrar or a co-registrar with a request to register a transfer, the Registrar shall register the transfer as requested if the requirements for this Indenture are met. When Securities are presented to the Registrar or a co-registrar with a request to exchange them for an equal principal amount of Securities of other denominations, the Registrar shall make the exchange as requested if the same requirements are met.

SECTION 2.07. *Replacement Securities.* If a mutilated Security is surrendered to the Registrar or if the Holder of a Security claims that the Security has been lost, destroyed or wrongfully taken, the Company shall issue and the Trustee shall authenticate a replacement Security if the Holder satisfies any reasonable requirements of the Trustee. If required by the Trustee or the Company, such Holder shall furnish an indemnity bond sufficient in the judgment of the Company and the Trustee to protect the Company, the Trustee, the Paying Agent, the Registrar and any co-registrar from any loss which any of them may suffer if a Security is replaced. The Company and the Trustee may charge the Holder for their expenses in replacing a Security.

Every replacement Security is an additional obligation of the Company under this Indenture.

The provisions of this Section 2.07 are exclusive and shall exclude (to the extent lawful) all other rights and remedies with respect to replacement or repayment of mutilated, lost, destroyed or wrongfully taken Securities.

SECTION 2.08. *Outstanding Securities.* Securities outstanding at any time are all Securities authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation and those described in this Section 2.08 as not outstanding. Subject to the provisions of Section 10.06, a Security does not cease to be outstanding because the Company or an Affiliate of the Company holds the Security.

If a Security is replaced pursuant to Section 2.07, it ceases to be outstanding unless the Trustee and the Company receive proof satisfactory to them that the replaced Security is held by a protected purchaser (as such term is defined in Section 8-303 of the Uniform Commercial Code).

If the Paying Agent segregates and holds in trust, in accordance with this Indenture, on a redemption date or at Stated Maturity money sufficient to pay all principal and interest payable on that date with respect to the Securities (or portions thereof) to be redeemed or maturing, as the case may be, then on and after that date such Securities (or portions thereof) cease to be outstanding and interest on them ceases to accrue.

SECTION 2.09. *Temporary Securities.* Until definitive Securities are ready for delivery, the Company may prepare and the Trustee shall authenticate temporary Securities. Temporary Securities shall be substantially in the form of definitive Securities but may have variations that the Company considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and the Trustee shall authenticate definitive Securities, in the name of the Holder, and deliver them to the Holder in exchange for temporary Securities representing an equal principal amount in authorized denominations. Until so exchanged, the Holder of a temporary Security shall be in all respects entitled to the same benefits as a Holder of definitive Securities.

SECTION 2.10. *Cancellation.* The Company at any time may deliver Securities to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee any Securities surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else shall cancel and dispose of in accordance with customary procedures (subject to the record retention requirements of the Exchange Act) all Securities surrendered for registration of transfer, exchange, payment or cancellation and deliver a certificate of such disposal to the Company unless the Company directs the Trustee in writing to deliver canceled Securities to the Company. The Company may not issue new Securities to replace Securities it has redeemed, paid or delivered to the Trustee for cancellation. The Trustee shall not authenticate Securities in place of canceled Securities other than pursuant to the terms of this Indenture.

SECTION 2.11. *Defaulted Interest.* If the Company defaults in a payment of interest on the Securities, the Company shall pay defaulted interest (plus interest on such defaulted interest to the extent lawful) in any lawful manner. The Company may pay the defaulted interest to the Persons who are Securityholders on a subsequent special record date. The Company shall fix or cause to be fixed (or upon the Company's failure to do so the Trustee shall fix pursuant to a written instruction of Holders of at least a majority in principal amount of the Securities) any such special record date and payment date to the reasonable satisfaction of the Trustee, which specified record date shall not be less than 10 days prior to the payment date for such defaulted interest, and shall promptly mail or cause to be mailed to each Securityholder a notice that states the special record date, the payment date and the amount of defaulted interest to be paid.

SECTION 2.12. *CUSIP Numbers.* The Company in issuing the Securities may use "CUSIP" numbers (if then generally in use) and, if so, the Trustee shall use "CUSIP" numbers in notices as a convenience to Holders; *provided, however,* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice and that reliance may be placed only on the other identification numbers printed on the Securities, and no redemption shall be affected by any defect in or omission of such numbers.

SECTION 2.13. *Issuance of Additional Securities.* The Company shall be entitled to issue Additional Securities under this Indenture which shall have identical terms as the Initial Securities issued on the Issue Date, other than with respect to the date of issuance and, if appropriate, the issue price. The Initial Securities issued on the Issue Date, any Additional Securities and all Exchange Securities or Private Exchange Securities issued in exchange therefor shall be treated as a single class for all purposes under this Indenture.

With respect to any Additional Securities, the Company shall set forth in a resolution of the Board of Directors and an Officers' Certificate, a copy of each which shall be delivered to the Trustee, the following information:

- (i) the aggregate principal amount of such Additional Securities to be authenticated and delivered pursuant to this Indenture;



(ii) the issue price, the issue date and the CUSIP number of such Additional Securities; *provided, however*, that no Additional Securities may be issued unless such Additional Securities are fungible in all respects for U.S. Federal income tax purposes with the Securities then outstanding;

(iii) whether such Additional Securities shall be Transfer Restricted Securities and issued in the form of Initial Securities as set forth in the Appendix to this Indenture or shall be issued in the form of Exchange Securities as set forth in Exhibit A; and

(iv) that the Company has complied with this Section 2.13.

### ARTICLE III

#### *Redemption*

SECTION 3.01. *Notices to Trustee.* If the Company elects to redeem Securities pursuant to paragraph 5 of the Securities as set forth in Exhibit 1 to the Appendix, it shall notify the Trustee in writing of the redemption date, the principal amount of Securities to be redeemed and the paragraph of the Securities pursuant to which the redemption will occur.

The Company shall give each notice to the Trustee provided for in this Section at least 40 days before the redemption date unless the Trustee consents to a shorter period. Such notice shall be accompanied by an Officers' Certificate and an Opinion of Counsel to the effect that such redemption will comply with the conditions herein.

SECTION 3.02. *Selection of Securities to be Redeemed.* If less than all of the Securities are to be redeemed, the Trustee shall select the Securities to be redeemed by a method that complies with applicable legal and securities exchange requirements, if any, and that the Trustee in its sole discretion shall deem to be fair and appropriate and in accordance with methods generally used at the time of selection by fiduciaries in similar circumstances. The Trustee shall make the selection from Outstanding Securities not previously called for redemption. Securities and portions of them that the Trustee selects shall be in principal amounts of \$1,000 or a whole multiple of \$1,000. The Trustee may select for redemption portions of the principal of Securities that have denominations larger than \$1,000. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption. The Trustee shall notify the Company promptly of the Securities or portions of Securities to be redeemed.

SECTION 3.03. *Notice of Redemption.* At least 30 days but not more than 60 days before a date for redemption of Securities, the Company shall mail a notice of redemption by first-class mail to each Holder of Securities to be redeemed at such Holder's registered address.

The notice shall identify the Securities to be redeemed and shall state:

- (i) the redemption date;
- (ii) a description of how the redemption price will be calculated;
- (iii) the name and address of the Paying Agent;
- (iv) that Securities called for redemption must be surrendered to the Paying Agent to collect the redemption price;
- (v) if fewer than all the outstanding Securities are to be redeemed, the identification and principal amounts of the particular Securities to be redeemed;
- (vi) that, unless the Company defaults in making such redemption payment, interest on Securities (or portion thereof) called for redemption ceases to accrue on and after the redemption date; and

(vii) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Securities.

At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at the Company's expense. In such event, the Company shall provide the Trustee with the information required by this Section.

**SECTION 3.04. *Effect of Notice of Redemption.*** Once notice of redemption is mailed, Securities called for redemption become due and payable on the redemption date and at the redemption price calculated as stated in the notice. The actual redemption price must be set forth in an Officers' Certificate delivered to the Trustee no later than two Business Days prior to the redemption date. Upon surrender to the Paying Agent, such Securities shall be paid at the price stated in the Officers' Certificate, plus accrued interest to the redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the related interest payment date). Failure to give notice or any defect in the notice to any Holder shall not affect the validity of the notice to any other Holder.

**SECTION 3.05. *Deposit of Redemption Price.*** Prior to the redemption date, the Company shall deposit with the Paying Agent (or, if the Company or a Subsidiary is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the redemption price of and accrued interest on all Securities to be redeemed on such date other than Securities or portions of Securities called for redemption which have been delivered by the Company to the Trustee for cancelation. On or after the redemption date, interest shall cease to accrue on Securities or portions thereof called for redemption so long as the Company has deposited with the Paying Agent funds sufficient to pay the principal of, plus accrued but unpaid interest, if any, on the Securities to be redeemed.

**SECTION 3.06. *Securities Redeemed in Part.*** Upon surrender of a Security that is redeemed in part, the Company shall execute and the Trustee shall authenticate for the Holder (at the Company's expense) a new Security equal in principal amount to the unredeemed portion of the Security surrendered.

## **ARTICLE IV**

### ***Covenants***

**SECTION 4.01. *Payment of Securities.*** The Company shall promptly pay the principal of and interest on the Securities on the dates and in the manner provided in the Securities and in this Indenture. Principal and interest shall be considered paid on the date due if on such date the Trustee or the Paying Agent holds in accordance with this Indenture money sufficient to pay all principal and interest then due.

Notwithstanding anything to the contrary contained in this Indenture, the Company may, to the extent it is required to do so by law, deduct or withhold income or other similar taxes imposed by applicable law from principal or interest payments hereunder.

The Company shall pay interest on overdue principal at the rate specified therefor in the Securities, and subject to Section 2.11, it shall pay interest on overdue installments of interest at the same rate to the extent lawful.

**SECTION 4.02. *Maintenance of Office or Agency For Registration of Transfer, Exchange and Payment of Securities.*** So long as any of the Securities shall remain outstanding, the Company shall maintain an office or agency in the Borough of Manhattan, The City of New York, State of New York, where the Securities may be surrendered for exchange or registration of transfer as in this Indenture provided, and where notices and demands to or upon the Company in respect to the Securities may be served, and where the Securities may be presented or surrendered for payment. The Company may also

from time to time designate one or more other offices or agencies where Securities may be presented or surrendered for any and all such purposes and may from time to time rescind such designations; *provided, however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan, The City of New York, State of New York for such purposes. The Company shall give to the Trustee prompt written notice of the location of any such office or agency and of any change of location thereof. The Company initially appoints the Trustee, 111 Wall St., 15<sup>th</sup> Floor, New York, NY 10005, Attention: Agency & Trust Services for each of said purposes. In case the Company shall fail to maintain any such office or agency or shall fail to give such notice of the location or of any change in the location thereof, such surrenders, presentations and demands may be made and notices may be served at the principal office of the Trustee, and the Company hereby appoints the Trustee its agent to receive at the aforesaid office all such surrenders, presentations, notices and demands. The Trustee shall give the Company prompt notice of any change in location of the Trustee's principal office.

SECTION 4.03. *Appointment to Fill a Vacancy in the Office of Trustee.* The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, shall appoint, in the manner provided in Section 7.08, a Trustee, so that there shall at all times be a Trustee hereunder.

SECTION 4.04. *Provision as to Paying Agent.* (a) If the Company shall appoint a Paying Agent other than the Trustee, it shall cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall undertake, subject to the provisions of this Section 4.04,

(i) that it shall hold all sums held by it as such agent for the payment of the principal of or interest on the Securities such sums which have been paid to it by the Company (or by any other obligor on the Securities) in trust for the benefit of the Holders of the Securities and shall notify the Trustee of the receipt of sums to be so held,

(ii) that it shall give the Trustee notice of any failure by the Company (or by any other obligor on the Securities) to make any payment of the principal of or interest on the Securities when the same shall be due and payable,

(iii) that it shall at any time during the continuance of any Event of Default specified in Section 6.01(1) or 6.01(2), upon the written request of the Trustee, deliver to the Trustee all sums so held in trust by it, and

(iv) acknowledge, accept and agree to comply in all aspects with the provisions of this Indenture relating to the duties, rights and liabilities of such Paying Agent.

(b) If the Company shall not act as its own Paying Agent, it shall, by the opening of business (New York City time) on each due date of the principal and interest on any Security, deposit with such Paying Agent a sum in same day funds sufficient to pay the principal of or interest so becoming due, such sum to be held in trust for the benefit of the holders of Securities entitled to such principal of or interest, and (unless such Paying Agent is the Trustee) the Company shall promptly notify the Trustee of its failure so to act.

(c) If the Company shall act as its own Paying Agent, it shall, by the opening of business (New York City time) on each due date of the principal and interest on any Security, set aside, segregate and hold in trust for the benefit of the persons entitled thereto, a sum sufficient to pay such principal or interest so becoming due and shall notify the Trustee of any failure to take such action.

(d) Anything in this Section 4.04 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust by it, or any Paying Agent hereunder, as required by this Section 4.04, such sums to be held by the Trustee upon the trusts herein contained.

(e) Anything in this Section 4.04 to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section 4.04 is subject to the provisions of Sections 8.04 and 8.06.

SECTION 4.05. *Maintenance of Corporate Existence.* So long as any of the Securities shall remain outstanding, the Company shall at all times (except as otherwise provided or permitted elsewhere in this Indenture) do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and franchises.

SECTION 4.06. *Limitation on Liens.* The Company shall not, and shall not permit any Subsidiary to, directly or indirectly, incur or suffer to exist, any Lien (the "Initial Lien"), other than Permitted Liens, upon any of its Property (including Capital Stock of a Subsidiary), whether owned at the Issue Date or thereafter acquired, or any interest therein or any income or profits therefrom, securing any Debt, unless it has made or will make effective provision whereby the Securities will be secured by such Lien equally and ratably with (or prior to) all other Debt of the Company or any Subsidiary secured by such Lien. Any Lien created for the benefit of the holders of the Securities pursuant to the preceding sentence shall provide by its terms that such Lien will be automatically and unconditionally released and discharged upon release and discharge of the Initial Lien.

SECTION 4.07. *Limitation on Sale and Leaseback Transactions.* The Company shall not, and shall not permit any Subsidiary to, enter into any Sale and Leaseback Transaction with respect to any Property unless:

(a) the Company or such Subsidiary would otherwise be entitled to issue, assume or Guarantee Debt secured by a Lien on such Property without equally and ratably securing the Securities; or

(b) the Company applies, within 180 days after the effective date of the Sale and Leaseback Transaction, an amount equal to the net proceeds received by the Company or any Subsidiary in connection with such sale to:

(i) the acquisition of Property owned by the Company or such Subsidiary; or

(ii) the retirement of outstanding Securities; or

(iii) the repayment of Debt other than subordinated Debt; or

(c) after giving effect thereto, the aggregate amount of secured Debt Incurred after the Issue Date (not including secured Debt permitted under the specific exceptions listed above) and the aggregate Attributable Debt with respect to the Sale and Leaseback Transactions entered into after the Issue Date (other than those permitted under the specific exceptions listed below) does not exceed 15% of the Consolidated Net Tangible Assets, as determined based on the consolidated balance sheet of the Company as of the end of the most recent fiscal quarter ending at least 45 days prior to the date of any such Sale and Leaseback Transaction.

The foregoing restrictions will not apply to Sale and Leaseback Transactions:

(a) providing for a lease for a term, including any renewals, of not more than three years, by the end of which term it is intended that the use of such Property by the lessee will be discontinued;

(b) between the Company and a Subsidiary or between Subsidiaries;

(c) between the Company and a Subsidiary and a joint venture in which the Company has an interest; or

(d) primarily for the purpose of financing the acquisition, development or construction of restaurants by the Company's franchisees.

SECTION 4.08. *Compliance Certificate.* The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company an Officers' Certificate stating that in the course of the performance by the signatories of their duties as Officers of the Company they would normally have knowledge of any Default or Event of Default and whether or not the signers know of any Default or Event of Default that occurred during such period. If they do, the certificate shall describe the Default or Event of Default, its status and what action the Company is taking or proposes to take with respect thereto. The Company also shall comply with TIA § 314(a)(4).

SECTION 4.09. *Further Instruments and Acts.* Upon request of the Trustee, the Company shall execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

SECTION 4.10. *SEC Reports.* Notwithstanding that the Company may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Company shall file with the SEC (so long as permitted by the SEC) and furnish to the Trustee and Securityholders (unless publicly available via the SEC's EDGAR system, in which case the Company shall have no such obligation to the Trustee and Securityholders) such annual reports and such information, documents and other reports as are specified in Sections 13 and 15(d) of the Exchange Act and applicable to a U.S. corporation subject to such Sections, such information, documents and other reports to be so filed and furnished at the times specified for the filing of such information, documents and reports under such Sections. In addition, at any time that the Company is neither subject to Section 13 or 15(d) of the Exchange Act, nor exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act, the Company shall furnish to the Holders of the Initial Securities and to prospective investors in such Initial Securities, upon the requests of such Holders, any information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act so long as such Securities are not freely transferable under the Securities Act. The Company also shall comply with the other provisions of TIA § 314(a).

## ARTICLE V

### *Successor Company*

SECTION 5.01. *When Company May Merge or Transfer Assets.* The Company shall not merge, consolidate or amalgamate with or into any other Person (other than a merger of a Wholly Owned Subsidiary into the Company) or sell, transfer, assign, lease, convey or otherwise dispose of all or substantially all the Property of the Company and the Subsidiaries in any one transaction or series of transactions unless:

- (a) the Company shall be the surviving Person (the "Surviving Person") or the Surviving Person (if other than the Company) formed by such merger, consolidation or amalgamation or to which such sale, transfer, assignment, lease, conveyance or disposition is made shall be a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia;
- (b) the Surviving Person (if other than the Company) expressly assumes, by supplemental indenture in form satisfactory to the Trustee, executed and delivered to the Trustee by such Surviving Person, the due and punctual payment of the principal of, and premium, if any, and interest on, all the Securities, according to their tenor, and the due and punctual performance and observance of all the covenants and conditions of the Indenture to be performed by the Company;
- (c) in the case of a sale, transfer, assignment, lease, conveyance or other disposition of all or substantially all the Property of the Company, such Property shall have been transferred as an entirety or virtually as an entirety to one Person;
- (d) immediately before and after giving effect to such transaction or series of transactions on a pro forma basis (and treating, for purposes of this clause (d), any Debt that becomes, or is

anticipated to become, an obligation of the Surviving Person or any Subsidiary as a result of such transaction or series of transactions as having been Incurred by the Surviving Person or such Subsidiary at the time of such transaction or series of transactions), no Default or Event of Default shall have occurred and be continuing;

(e) the Company shall deliver, or cause to be delivered, to the Trustee, in form and substance reasonably satisfactory to the Trustee, an Officers' Certificate and an Opinion of Counsel, each stating that such transaction and the supplemental indenture, if any, in respect thereto comply with this covenant and that all conditions precedent provided for in the Indenture relating to such transaction have been satisfied; and

(f) the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders will not recognize income, gain or loss for U.S. Federal income tax purposes as a result of such transaction or series of transactions and will be subject to U.S. Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such transaction or series of transactions had not occurred.

The Surviving Person shall succeed to, and be substituted for, and may exercise every right and power of the Company under the Indenture, but the predecessor company in the case of:

(a) a sale, transfer, assignment, conveyance or other disposition (unless such sale, transfer, assignment, conveyance or other disposition is of all the assets of the Company and the Subsidiaries as an entirety or virtually as an entirety), or

(b) a lease,

shall not be released from any obligation to pay the principal of and interest on the Securities.

## ARTICLE VI

### *Defaults and Remedies*

SECTION 6.01. *Events of Default.* An "Event of Default" occurs if:

(1) the Company defaults in any payment of interest on any Security when the same becomes due and payable and such default continues for a period of 30 days;

(2) the Company defaults in the payment of the principal of any Security when the same becomes due and payable at its Stated Maturity, upon acceleration, redemption, optional redemption or otherwise;

(3) the Company fails to comply with Section 5.01;

(4) the Company fails to comply with any other of its agreements in the Securities or this Indenture (other than those referred to in clauses (1), (2) or (3) above) and such failure continues for 30 days after written notice is given to the Company as specified below;

(5) any default under any Debt by the Company or any of its Subsidiaries that results in acceleration of the maturity of such Debt, or failure to pay any such Debt at maturity, in an aggregate amount greater than \$40.0 million or its foreign currency equivalent at the time (the "cross acceleration provision");

(6) any judgment or judgments for the payment of money in an aggregate amount in excess of \$40.0 million (or its foreign currency equivalent at the time) that shall be rendered against the Company or any of its Subsidiaries and that shall not be waived, satisfied or discharged for any period of 30 consecutive days during which a stay of enforcement shall not be in effect (the "judgment default provision"); and

(7) the Company or any Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:

- (A) commences a voluntary case;
- (B) consents to the entry of an order for relief against it in an involuntary case;
- (C) consents to the appointment of a Custodian of it or for any substantial part of its Property; or
- (D) makes a general assignment for the benefit of its creditors;

or takes any comparable action under any foreign laws relating to insolvency; or

(8) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

- (A) is for relief against the Company or any Significant Subsidiary in an involuntary case;
- (B) appoints a Custodian of the Company or any Significant Subsidiary or for any substantial part of the Property of the Company or any Significant Subsidiary; or
- (C) orders the winding up or liquidation of the Company or any Significant Subsidiary;

or any similar relief is granted under any foreign laws and the order, decree or relief remains unstayed and in effect for 60 days.

The foregoing shall constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

The term "Bankruptcy Law" means Title 11, *United States Code*, or any similar Federal or state law for the relief of debtors. The term "Custodian" means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

Notwithstanding the foregoing, a Default under Section 6.01(4) shall not constitute an Event of Default until the Trustee or the Holders of at least 25% in aggregate principal amount of the Outstanding Securities notify the Company of the Default and the Company does not cure such Default within the time specified in Section 6.01(4) after receipt of such notice. Such notice must specify the Default, demand that it be remedied and state that such notice is a "Notice of Default."

The Company shall deliver to the Trustee, within 30 days after the occurrence thereof, written notice in the form of an Officers' Certificate of any Event of Default under clause (5) or (6) and any event which with the giving of notice or the lapse of time or both would become an Event of Default under clause (4), its status and what action the Company is taking or proposes to take with respect thereto.

**SECTION 6.02. Acceleration.** If an Event of Default (other than an Event of Default specified in Section 6.01(7) or (8)) occurs and is continuing, the Trustee by notice to the Company, or the Holders of at least 25% in aggregate principal amount of the Securities then Outstanding by notice to the Company and the Trustee, may declare the principal of and accrued and unpaid interest on all the Securities then Outstanding to be due and payable. Upon such a declaration, such principal and interest shall be due and payable immediately. If an Event of Default specified in Section 6.01(7) or (8) occurs, the principal of and accrued and unpaid interest on all the Securities shall ipso facto become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holders. The Holders of a majority in aggregate principal amount of the Securities then Outstanding by notice to the Trustee may rescind an acceleration and its consequences if the rescission

would not conflict with any judgment or decree and if all existing Events of Default have been cured or waived except nonpayment of accelerated principal or interest that has become due solely because of acceleration. No such rescission shall affect any subsequent Default or Event of Default or impair any right consequent thereto.

SECTION 6.03. *Other Remedies.* If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal of or interest on the Securities or to enforce the performance of any provision of the Securities or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

SECTION 6.04. *Waiver of Past Defaults.* The Holders of a majority in aggregate principal amount of the Securities then Outstanding by notice to the Trustee may waive an existing Default and its consequences except (i) a Default in the payment of the principal of or interest on a Security or (ii) a Default in respect of a provision that under Section 9.02 cannot be amended without the consent of each Holder affected. When a Default is waived, it is deemed cured, but no such waiver shall extend to any subsequent or other Default or impair any consequent right.

SECTION 6.05. *Control by Majority.* The Holders of a majority in aggregate principal amount of the Securities then Outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or, subject to Section 7.01, that the Trustee reasonably determines is unduly prejudicial to the rights of other Holders or would involve the Trustee in personal liability; *provided, however*, that the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. Prior to taking any action hereunder, the Trustee shall be entitled to indemnification satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking such action.

SECTION 6.06. *Limitation on Suits.* Except to enforce the right to receive payment of principal or interest when due, no Holder may pursue any remedy with respect to this Indenture or the Securities unless:

- (1) the Holder gives to the Trustee written notice stating that an Event of Default is continuing;
- (2) the Holders of at least 25% in aggregate principal amount of the Securities then Outstanding make a written request to the Trustee to pursue the remedy;
- (3) such Holder or Holders offer to the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense;
- (4) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of security or indemnity; and
- (5) the Holders of a majority in aggregate principal amount of the Securities then Outstanding do not give the Trustee a direction inconsistent with the request during such 60-day period.

A Holder may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder.

SECTION 6.07. *Rights of Holders to Receive Payment.* Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal of and interest on the Securities



held by such Holder, on or after the respective due dates expressed in the Securities, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

SECTION 6.08. *Collection Suit by Trustee.* If an Event of Default specified in Section 6.01(1) or (2) occurs and is continuing, the Trustee may recover judgment in its own name and as Trustee of an express trust against the Company for the whole amount then due and owing (together with interest on any unpaid interest to the extent lawful) and the amounts provided for in Section 7.07.

SECTION 6.09. *Trustee May File Proofs of Claim.* The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Holders allowed in any judicial proceedings relative to the Company, its Subsidiaries or their respective creditors or properties and, unless prohibited by law or applicable regulations, may vote on behalf of the Holders in any election of a trustee in bankruptcy or other Person performing similar functions, and any Custodian in any such judicial proceeding is hereby authorized by each Holder to make payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the compensation, expenses, disbursements and advances of the Trustee, its agents and its counsel, and any other amounts due the Trustee under Section 7.07.

SECTION 6.10. *Priorities.* If the Trustee collects any money or property pursuant to this Article VI, it shall pay out the money or property in the following order:

FIRST: to the Trustee for amounts due under Section 7.07;

SECOND: to Holders for amounts due and unpaid on the Securities for principal and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities for principal and interest, respectively; and

THIRD: to the Company.

The Company may fix a record date and payment date for any payment to Holders pursuant to this Section 6.10. At least 15 days before such record date, the Company shall mail to each Holder and the Trustee a notice that states the record date, the payment date and amount to be paid.

SECTION 6.11. *Undertaking for Costs.* In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 or a suit by Holders of more than 10% in aggregate principal amount of the Securities then Outstanding.

SECTION 6.12. *Waiver of Stay or Extension Laws.* The Company (to the extent it may lawfully do so) shall not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and shall not hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law had been enacted.

## ARTICLE VII

### *Trustee*

SECTION 7.01. *Duties of Trustee.* (a) If an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default:

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own wilful misconduct, except that:

(i) this paragraph does not limit the effect of Section 7.01(b);

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05.

(d) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company.

(e) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(f) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if it shall have reasonable grounds to believe that adequate indemnity against such risk or liability is not reasonably assured to it.

(g) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 7.01 and to the provisions of the TIA.

SECTION 7.02. *Rights of Trustee.* (a) The Trustee may rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on the Officers' Certificate or Opinion of Counsel.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any attorney or agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers; *provided, however*, that the Trustee's conduct does not constitute wilful misconduct or negligence.

(e) The Trustee may consult with counsel of its selection, and the advice or opinion of counsel with respect to legal matters relating to this Indenture and the Securities shall be full and complete authorization and protection from liability in respect to any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(f) The Trustee shall not be deemed to have notice of any Event of Default unless a Trust Officer has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by a Trust Officer and such notice references the Securities and this Indenture.

(g) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian or other Person employed to act hereunder.

(h) The Trustee may request that the Issuer deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.

SECTION 7.03. *Individual Rights of Trustee.* The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee. Any Paying Agent, Registrar, co-registrar or co-paying agent may do the same with like rights. However, the Trustee must comply with Sections 7.10 and 7.11.

SECTION 7.04. *Trustee's Disclaimer.* The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Securities, it shall not be accountable for the Company's use of the proceeds from the Securities, it shall not be responsible for the use or application of any money received by any Paying Agent (other than itself as Paying Agent), and it shall not be responsible for any statement of the Company in this Indenture or in any document issued in connection with the sale of the Securities or in the Securities other than the Trustee's certificate of authentication.

SECTION 7.05. *Notice of Defaults.* If a Default or Event of Default occurs and is continuing and it is known to the Trustee, the Trustee shall mail to each Holder notice of the Default or Event of Default within 60 days after it occurs. Except in the case of a Default or Event of Default in payment of principal of, or interest on, any Security, the Trustee may withhold the notice if and so long as a committee of its Trust Officers in good faith determines that withholding the notice is in the interests of Holders.

SECTION 7.06. *Reports by Trustee to Holders.* As promptly as practicable after each May 1 beginning with the May 1 following the date of this Indenture, and in any event prior to July 1 in each year, if required by TIA § 313, the Trustee shall mail to each Holder a brief report dated as of such May 1 that complies with TIA § 313(a). The Trustee also shall comply with TIA § 313(b). The Trustee shall also transmit by mail all reports required by TIA § 313(c).

A copy of each report at the time of its mailing to Holders shall be filed by the Company with the SEC and each stock exchange (if any) on which the Securities are listed. The Company agrees to notify promptly the Trustee whenever the Securities become listed on any stock exchange and of any delisting thereof.

SECTION 7.07. *Compensation and Indemnity.* The Company shall pay to the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation for its services. The Trustee's compensation shall not be limited by any law on compensation of a Trustee of an express trust. The Company shall reimburse the Trustee upon request for all reasonable out-of-pocket expenses incurred or made by it, including costs of collection, costs of preparing and reviewing reports, certificates and other documents, costs of preparation and mailing of notices to Holders and reasonable costs of counsel retained by the Trustee in addition to the compensation for its services. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the Trustee's agents, counsel, accountants and experts. The Company shall indemnify and hold harmless the Trustee against any and all loss, liability or expense (including reasonable attorneys' fees) incurred by it in connection with the administration of this trust and the performance of its duties hereunder, including the costs and expenses of enforcing this Indenture (including this Section 7.07) and of defending itself against any claims (whether asserted by any Holder, the Company or otherwise). The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company shall not relieve the Company of its obligations hereunder. The Company shall defend the claim and the Trustee may have separate counsel and the Company shall pay the fees and expenses of such counsel. The Company need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee through the Trustee's own wilful misconduct, negligence or bad faith.

To secure the Company's payment obligations in this Section 7.07, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee other than money or property held in trust to pay principal of and interest on particular Securities. The Trustee's right to receive payment of any amounts due under this Section 7.07 shall not be subordinate to any other liability or debt of the Company.

The Company's payment obligations pursuant to this Section 7.07 shall survive the discharge of this Indenture and the resignation or removal of the Trustee. When the Trustee incurs expenses after the occurrence of a Default specified in Section 6.01(7) or (8) with respect to the Company or a Significant Subsidiary, the expenses are intended to constitute expenses of administration under any Bankruptcy Law.

SECTION 7.08. *Replacement of Trustee.* The Trustee may resign at any time by so notifying the Company. The Holders of a majority in aggregate principal amount of the Securities then Outstanding may remove the Trustee by so notifying the Trustee and may appoint a successor Trustee. The Company shall remove the Trustee if:

- (i) the Trustee fails to comply with Section 7.10;
- (ii) the Trustee is adjudged bankrupt or insolvent;
- (iii) a receiver or other public officer takes charge of the Trustee or its property; or
- (iv) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns, is removed by the Company or by the Holders of a majority in outstanding principal amount of the Securities and such Holders do not reasonably promptly appoint a successor Trustee, or if a vacancy exists in the office of Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Company shall promptly appoint a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to the Securityholders. The

retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.07.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee or the Holders of 10% in aggregate principal amount of the Securities then Outstanding may petition any court of competent jurisdiction at the expense of the Company for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 7.10, any Securityholder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

Notwithstanding the replacement of the Trustee pursuant to this Section 7.08, the Company's obligations under Section 7.07 shall continue for the benefit of the retiring Trustee.

**SECTION 7.09. *Successor Trustee by Merger.*** If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation or banking association without any further act shall be the successor Trustee.

If at the time such successor or successors by merger, conversion or consolidation to the Trustee shall succeed to the trusts created by this Indenture, any of the Securities shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor Trustee, and deliver such Securities so authenticated; and if at that time any of the Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Securities or in this Indenture provided that the certificate of the Trustee shall have.

**SECTION 7.10. *Eligibility; Disqualification.*** The Trustee shall at all times satisfy the requirements of TIA § 310(a). The Trustee shall have a combined capital and surplus of at least \$50,000,000 as set forth in its most recent published annual report of condition. The Trustee shall comply with TIA § 310(b); provided, however, that there shall be excluded from the operation of TIA § 310(b)(1) any indenture or indentures under which other securities or certificates of interest or participation in other securities of the Company are outstanding if the requirements for such exclusion set forth in TIA § 310(b)(1) are met.

**SECTION 7.11. *Preferential Collection of Claims Against Company.*** The Trustee shall comply with TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated.

## **ARTICLE VIII**

### ***Discharge of Indenture; Defeasance***

**SECTION 8.01. *Discharge of Liability on Securities; Defeasance.*** (a) When (1) the Company delivers to the Trustee all Outstanding Securities (other than Securities replaced pursuant to Section 2.07) for cancellation or (2) all Outstanding Securities have become due and payable, whether at Stated Maturity or on a redemption date as a result of the mailing of a notice of redemption pursuant to Article III hereof and the Company irrevocably deposits with the Trustee funds sufficient to pay at Stated Maturity or upon redemption all Outstanding Securities, including interest thereon to Stated Maturity or such redemption date (other than Securities replaced pursuant to Section 2.07), and if in either case the Company pays all other sums payable hereunder by the Company, then this Indenture shall, subject to Section 8.01(c), cease to be of further effect. The Trustee shall acknowledge satisfaction and discharge of this Indenture on demand of the Company (accompanied by an Officers' Certificate and an Opinion of Counsel stating that all conditions precedent specified herein relating to the satisfaction and discharge of this Indenture have been complied with and at the cost and expense of the Company).

(b) Subject to Sections 8.01(c) and 8.02, the Company at any time may terminate (1) all its obligations under the Securities and this Indenture ("legal defeasance option") or (2) its obligations under Sections 4.02, 4.03, 4.04, 4.05, 4.06, 4.07 and 4.10, and the operation of Sections 6.01(4), 6.01(5), 6.01(6) and, with respect to any Significant Subsidiary of the Company, 6.01(7) and 6.01(8) ("covenant defeasance option"); *provided, however*, no deposit under this Article VIII shall be effective to terminate the obligations of the Company under the Securities or this Indenture prior to 123 days following any such deposit. The Company may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option.

If the Company exercises its legal defeasance option, payment of the Securities may not be accelerated because of an Event of Default. If the Company exercises its covenant defeasance option, payment of the Securities may not be accelerated because of an Event of Default specified in Sections 6.01(4), 6.01(5), 6.01(6) or, with respect to any Significant Subsidiary of the Company, 6.01(7) and 6.01(8).

Upon satisfaction of the conditions set forth herein and upon request of the Company, the Trustee shall acknowledge in writing the discharge of those obligations that the Company terminates.

(c) Notwithstanding the provisions of Sections 7.01(a) and (b), the Company's obligations in Sections 2.03, 2.04, 2.05, 2.06, 2.07, 2.08, 7.07 and 7.08 and this Article VIII shall survive until the Securities have been paid in full. Thereafter, the Company's obligations in Sections 7.07, 8.04 and 8.05 shall survive.

SECTION 8.02. *Conditions to Defeasance.* The Company may exercise its legal defeasance option or its covenant defeasance option only if:

(i) the Company irrevocably deposits in trust with the Trustee money or U.S. Government Obligations or a combination thereof for the payment of principal of and interest on the Securities to Stated Maturity or redemption, as the case may be;

(ii) the Company delivers to the Trustee a certificate from a nationally recognized firm of independent certified public accountants expressing their opinion that the payments of principal and interest when due and without reinvestment on the deposited U.S. Government Obligations plus any deposited money without investment will provide cash at such times and in such amounts as will be sufficient to pay principal and interest when due on all the Securities to Stated Maturity or redemption, as the case may be;

(iii) 123 days pass after the deposit is made and during the 123-day period no Default specified in Sections 6.01(7) or (8) occurs that is continuing at the end of the period;

(iv) no Default or Event of Default has occurred and is continuing on the date of such deposit and after giving effect thereto;

(v) the deposit does not constitute a default under any other agreement or instrument binding on the Company;

(vi) the Company delivers to the Trustee an Opinion of Counsel to the effect that the trust resulting from the deposit does not constitute, or is qualified as, a regulated investment company under the Investment Company Act of 1940;

(vii) in the case of the legal defeasance option, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (B) since the date of this Indenture there has been a change in the applicable U.S. Federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Securityholders will not recognize income, gain or loss for U.S. Federal income tax purposes as a result of such defeasance

and will be subject to U.S. Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such legal defeasance had not occurred;

(viii) in the case of the covenant defeasance option, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Securityholders shall not recognize income, gain or loss for U.S. Federal income tax purposes as a result of such covenant defeasance and shall be subject to U.S. Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred;

(ix) the Securityholders shall have a perfected security interest under applicable law in the cash or U.S. Government Obligations deposited pursuant to Section 8.02(i) above;

(x) the Company shall have delivered to the Trustee an Opinion of Counsel, in form and substance reasonably satisfactory to the Trustee, to the effect that, after the passage of 123 days following the deposit, the trust funds shall not be subject to any applicable bankruptcy, insolvency, reorganization or similar law affecting creditors' rights generally;

(xi) such defeasance shall not cause the Trustee to have a conflicting interest with respect to any securities of the Company; and

(xii) the Company delivers to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the Securities and this Indenture as contemplated by this Article VIII have been complied with.

Before or after a deposit, the Company may make arrangements satisfactory to the Trustee for the redemption of Securities at a future date in accordance with Article III.

**SECTION 8.03. *Application of Trust Money.*** The Trustee shall hold in trust money or U.S. Government Obligations deposited with it pursuant to this Article VIII. It shall apply the deposited money and the money from U.S. Government Obligations through the Paying Agent and in accordance with this Indenture to the payment of principal of and interest on the Securities.

**SECTION 8.04. *Repayment to Company.*** The Trustee and the Paying Agent shall promptly turn over to the Company upon request any excess money or securities held by them upon payment of all the obligations under this Indenture.

Subject to any applicable abandoned property law, the Trustee and the Paying Agent shall pay to the Company upon request any money held by them for the payment of principal of or interest on the Securities that remains unclaimed for two years, and, thereafter, Securityholders entitled to the money must look to the Company for payment as general creditors.

**SECTION 8.05. *Indemnity for U.S. Government Obligations.*** The Company shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. Government Obligations or the principal and interest received on such U.S. Government Obligations.

**SECTION 8.06. *Reinstatement.*** If the Trustee or Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with this Article VIII by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the obligations of the Company under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to this Article VIII until such time as the Trustee or Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with this Article VIII; provided, however, that, if the Company has made any payment of interest on or principal of any Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such

Securities to receive such payment from the money or U.S. Government Obligations held by the Trustee or Paying Agent.

## ARTICLE IX

### *Amendments*

SECTION 9.01. *Without Consent of Holders.* The Company and the Trustee may amend this Indenture or the Securities without notice to or consent of any Holder:

- (1) to cure any ambiguity, omission, defect or inconsistency;
- (2) to comply with Article V;
- (3) to provide for uncertificated Securities in addition to or in place of certificated Securities; *provided, however*, that the uncertificated Securities are issued in registered form for purposes of Section 163(f) of the Code or in a manner such that the uncertificated Securities are described in Section 163(f)(2)(B) of the Code;
- (4) to add Guarantees with respect to the Securities, or to secure the Securities;
- (5) to add to the covenants of the Company for the benefit of the Holders or to surrender any right or power herein conferred upon the Company;
- (6) to make any change that does not adversely affect the rights of any Holder;
- (7) to comply with any requirement of the SEC in connection with qualifying this Indenture under the TIA; or
- (8) to provide for the issuance of Additional Securities.

After an amendment under this Section 9.01 becomes effective, the Company shall mail to each Securityholder a notice briefly describing such amendment. The failure to give such notice to all Securityholders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 9.01.

SECTION 9.02. *With Consent of Holders.* The Company and the Trustee may amend this Indenture or the Securities without notice to any Securityholder but with the written consent of the Holders of at least a majority in aggregate principal amount of the Securities then Outstanding (including consents obtained in connection with a tender offer or exchange offer for the Securities). However, without the consent of each Securityholder affected thereby, an amendment may not:

- (i) reduce the amount of Securities whose Holders must consent to an amendment or waiver;
- (ii) reduce the rate of or extend the time for payment of interest on any Security;
- (iii) reduce the principal of, or extend the Stated Maturity of, any Security;
- (iv) make any Security payable in money other than that stated in such Security;
- (v) reduce the amount payable upon redemption of any Security or change the time at which any Security may be redeemed in accordance with Article III;
- (vi) modify or affect in any manner adverse to the Holders the right of any Holder of the Securities to receive payment of principal of and interest on such Holder's Securities on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Securities;
- (vii) make any change in Section 6.04 or 6.07 or the second sentence of this Section 9.02;



(viii) make any change in the ranking or priority of any Security that would adversely affect the Holders; or

(ix) release any security interest that may have been granted in favor of the Holders other than pursuant to the terms of such security interest.

It shall not be necessary for the consent of the Holders under this Section to approve the particular form of any proposed amendment, but it shall be sufficient if such consent approves the substance thereof.

After an amendment under this Section 9.02 becomes effective, the Company shall mail to Securityholders a notice briefly describing such amendment. The failure to give such notice to all Securityholders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 9.02.

SECTION 9.03. *Compliance with Trust Indenture Act.* Every amendment to this Indenture or the Securities shall comply with the TIA as then in effect.

SECTION 9.04. *Revocation and Effect of Consents and Waivers.* A consent to an amendment or a waiver by a Holder of a Security shall bind the Holder and every subsequent Holder of that Security or portion of the Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent or waiver is not made on the Security. However, any such Holder or subsequent Holder may revoke the consent or waiver as to such Holder's Security or portion of the Security if the Trustee receives the notice of revocation before the date the amendment or waiver becomes effective. After an amendment or waiver becomes effective, it shall bind every Holder. An amendment or waiver becomes effective upon the execution of such amendment or waiver by the Trustee and the Company.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Holders after such record date.

SECTION 9.05. *Notation on or Exchange of Securities.* If an amendment changes the terms of a Security, the Trustee may require the Holder of the Security to deliver it to the Trustee. The Trustee may, but shall not be required to, place an appropriate notation on the Security regarding the changed terms and return it to the Holder. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms. Failure to make the appropriate notation or to issue a new Security shall not affect the validity of such amendment.

SECTION 9.06. *Trustee To Sign Amendments.* The Trustee shall sign any amendment authorized pursuant to this Article IX if the amendment does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may but need not sign it. In signing any amendment the Trustee shall be entitled to receive indemnity or other security satisfactory to it and to receive, and (subject to Section 7.01) shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel stating that such amendment is authorized or permitted by this Indenture.

SECTION 9.07. *Payment for Consent.* Neither the Company nor any Affiliate of the Company shall, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Securities unless such consideration is offered to be paid to

all Holders that so consent, waive or agree to amend in the time frame set forth in solicitation documents relating to such consent, waiver or agreement.

## ARTICLE X

### *Miscellaneous*

SECTION 10.01. *Trust Indenture Act Controls.* If any provision of this Indenture limits, qualifies or conflicts with another provision which is required to be included in this Indenture by the TIA, the provision required by the TIA shall control.

SECTION 10.02. *Notices.* Any notice or communication shall be in writing and delivered in person or mailed by first-class mail addressed as follows or transmitted by facsimile transmission (confirmed by guaranteed overnight courier) to the following facsimile numbers:

if to the Company:

Brinker International, Inc.  
6820 LBJ Freeway  
Dallas, TX 75240-6509  
Attention: General Counsel  
Facsimile No: 972-770-1256

if to the Trustee:

Citibank, N.A.  
111 Wall Street  
14<sup>th</sup> Floor  
New York, NY 10005  
Facsimile No.: 212-657-3862  
Attention: Agency & Trust Services

The Company or the Trustee by notice to the others may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a Holder shall be mailed to the Holder at the Holder's address as it appears on the registration books of the Registrar and shall be sufficiently given if so mailed within the time prescribed.

Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it; *provided* that notices to the Trustee shall be deemed effective upon actual receipt thereof.

SECTION 10.03. *Communication by Holders with other Holders.* Holders may communicate pursuant to TIA § 312(b) with other Holders with respect to their rights under this Indenture or the Securities. The Company, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

SECTION 10.04. *Certificate and Opinion as to Conditions Precedent.* Upon any request or application by the Company to the Trustee to take or refrain from taking any action under this Indenture, the Company shall furnish to the Trustee

(i) an Officers' Certificate in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of the signatories, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(ii) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

SECTION 10.05. *Statements Required in Certificate or Opinion.* Each certificate or opinion with respect to compliance with a covenant or condition provided for in this Indenture shall include:

- (i) a statement that the individual making such certificate or opinion has read such covenant or condition;
- (ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (iii) a statement that, in the opinion of such individual, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (iv) a statement as to whether or not, in the opinion of such individual, such covenant or condition has been complied with.

SECTION 10.06. *When Securities Disregarded.* In determining whether the Holders of the required principal amount of Securities have concurred in any direction, waiver or consent, Securities owned by the Company or by any Person, directly or indirectly, Controlling or Controlled by or under direct or indirect common Control with the Company shall be disregarded and deemed not to be Outstanding, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Securities which the Trustee knows are so owned shall be so disregarded. Also, subject to the foregoing, only Securities Outstanding at the time shall be considered in any such determination.

SECTION 10.07. *Rules by Trustee, Paying Agent and Registrar.* The Trustee may make reasonable rules for action by or a meeting of Holders. The Registrar and the Paying Agent may make reasonable rules for their functions.

SECTION 10.08. *Legal Holidays.* A "Legal Holiday" is a Saturday, a Sunday or a day on which commercial banking institutions are not required to be open in the State of New York. If a payment date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period. If a regular record date is a Legal Holiday, the record date shall not be affected.

SECTION 10.09. *Governing Law.* This Indenture and the Securities shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York but without giving effect to applicable principles of conflicts of law to the extent that the application of the laws of another jurisdiction would be required thereby.

SECTION 10.10. *No Recourse Against Others.* A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Holder shall waive and release all such liability. The waiver and release shall be part of the consideration for the issue of the Securities.

SECTION 10.11. *Successors.* All agreements of the Company in this Indenture and the Securities shall bind their respective successors. All agreements of the Trustee in this Indenture shall bind its successors.

SECTION 10.12. *Multiple Originals.* The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture.

SECTION 10.13. *Table Of Contents; Headings.* The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

IN WITNESS WHEREOF, the parties have caused this Indenture to be duly executed as of the date first written above.

BRINKER INTERNATIONAL, INC.,

By: /s/ DOUGLAS H. BROOKS

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Name: Douglas H. Brooks  
Title: President and Chief Executive Officer

CITIBANK, N.A., as Trustee

By: /s/ LOUIS PISCITELLI

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Name: Louis Piscitelli  
Title: Vice President

**PROVISIONS RELATING TO INITIAL SECURITIES,  
PRIVATE EXCHANGE SECURITIES  
AND EXCHANGE SECURITIES**

1. Definitions.

1.1 *Definitions.*

For the purposes of this Appendix the following terms shall have the meanings indicated below:

"Depository" means The Depository Trust Company, its nominees and their respective successors.

"Exchange Securities" means the (1) 5.75% Notes due 2014 to be issued pursuant to the Indenture in connection with the Registered Exchange Offer pursuant to the Registration Rights Agreement or (2) Additional Securities, if any, issued pursuant to a registration statement filed with the SEC under the Securities Act.

"Initial Purchasers" means (1) with respect to the Initial Securities issued on the Issue Date, Citigroup Global Markets Inc., J.P. Morgan Securities Inc. and the Persons listed on Schedule I to the Purchase Agreement and (2) with respect to each issuance of Additional Securities, the Persons purchasing such Additional Securities under the related Purchase Agreement.

"Initial Securities" means (1) \$300,000,000 aggregate principal amount of 5.75% Notes due 2014 issued on the Issue Date and (2) Additional Securities, if any, issued in a transaction exempt from the registration requirements of the Securities Act.

"Private Exchange" means the offer by the Company, pursuant to the Registration Rights Agreement, to the Initial Purchasers to issue and deliver to each Initial Purchaser, in exchange for the Initial Securities held by the Initial Purchaser as part of its initial distribution, a like aggregate principal amount of Private Exchange Securities.

"Private Exchange Securities" means any 5.75% Notes due 2014 issued in connection with a Private Exchange.

"Purchase Agreement" means (1) with respect to the Initial Securities issued on the Issue Date, the Purchase Agreement dated May 11, 2004, among the Company and the Initial Purchasers, and (2) with respect to each issuance of Additional Securities, the purchase agreement or underwriting agreement among the Company and the Persons purchasing such Additional Securities.

"QIB" means a "qualified institutional buyer" as defined in Rule 144A.

"Registered Exchange Offer" means the offer by the Company, pursuant to the Registration Rights Agreement, to certain Holders of Initial Securities, to issue and deliver to such Holders, in exchange for the Initial Securities, a like aggregate principal amount of Exchange Securities registered under the Securities Act.

"Registration Rights Agreement" means (1) with respect to the Initial Securities issued on the Issue Date, the Registration Rights Agreement dated May 14, 2004, among the Company and the Initial Purchasers, and (2) with respect to each issuance of Additional Securities issued in a transaction exempt from the registration requirements of the Securities Act, the registration rights agreement, if any, among the Company and the Persons purchasing such Additional Securities under the related Purchase Agreement.

"Securities Act" means the Securities Act of 1933, as amended.

"Securities Custodian" means the custodian with respect to a Global Security (as appointed by the Depositary), or any successor Person thereto and shall initially be the Trustee.

"Shelf Registration Statement" means a registration statement filed by the Company with the SEC in connection with the resale of Initial Securities or Private Exchange Securities pursuant to the Registration Rights Agreement.

"Transfer Restricted Securities" means Securities that bear or are required to bear the legend set forth in Section 2.3(b) hereto.

## 1.2 Other Definitions

<u>Term</u>	<u>Defined in Section</u>
"Agent Members"	2.1(b)
"Global Security"	2.1(a)
"Regulation S"	2.1(a)
"Restricted Global Security"	2.1(a)
"Rule 144A"	2.1(a)

Capitalized terms used but not otherwise defined in this Appendix shall have the meanings ascribed to such terms in the Indenture.

## 2. The Securities.

2.1 (a) *Form and Dating.* Initial Securities offered and sold to a QIB in reliance on Rule 144A under the Securities Act ("Rule 144A") or in reliance on Regulation S under the Securities Act ("Regulation S"), in each case as provided in the Purchase Agreement, and Private Exchange Securities, as provided in the Registration Rights Agreement, shall be issued initially in the form of one or more permanent global Securities in definitive, fully registered form without interest coupons with the global securities legend and restricted securities legend set forth in Exhibit 1 hereto (each, a "Restricted Global Security"), which shall be deposited on behalf of the purchasers of the Initial Securities represented thereby with the Trustee, at its designated corporate trust office, as custodian for the Depositary (or with such other custodian as the Depositary may direct), and registered in the name of the Depositary or a nominee of the Depositary, duly executed by the Company and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depositary or its nominee as hereinafter provided. Exchange Securities shall be issued in global form (with the global securities legend set forth in Exhibit 1 hereto). Exchange Securities issued in global form and Restricted Global Securities are sometimes referred to in this Appendix as "Global Securities."

(b) *Book-Entry Provisions.* This Section 2.1(b) shall apply only to a Global Security deposited with or on behalf of the Depositary.

The Company shall execute and the Trustee shall, in accordance with this Section 2.1(b), authenticate and deliver initially one or more Global Securities that (a) shall be registered in the name of the Depositary for such Global Security or Global Securities or the nominee of such Depositary and (b) shall be delivered by the Trustee to such Depositary or pursuant to such Depositary's instructions or held by the Trustee as custodian for the Depositary.

Members of, or participants in, the Depositary ("Agent Members") shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depositary or by the Trustee as the custodian of the Depositary or under such Global Security, and the Company, the Trustee and any agent of the Company or the Trustee shall be entitled to treat the Depositary as the absolute owner of such Global Security for all purposes whatsoever. Notwithstanding the

foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and its Agent Members, the operation of customary practices of such Depositary governing the exercise of the rights of a holder of a beneficial interest in any Global Security.

(c) *Certificated Securities.* Except as provided in this Section 2.1 or Section 2.3 or 2.4, owners of beneficial interests in Restricted Global Securities shall not be entitled to receive physical delivery of certificated Securities.

2.2 *Authentication.* The Trustee shall authenticate and deliver: (1) on the Issue Date, an aggregate principal amount of \$300,000,000 million 5.75% Notes due 2014, (2) any Additional Securities for an original issue in an aggregate principal amount specified in the written order of the Company and (3) Exchange Securities or Private Exchange Securities for issue only in a Registered Exchange Offer or a Private Exchange, respectively, pursuant to a Registration Rights Agreement, for a like principal amount of Initial Securities, in each case upon a written order of the Company signed by two Officers or by an Officer and either an Assistant Treasurer or an Assistant Secretary of the Company. Such order shall specify the amount of the Securities to be authenticated and the date on which the original issue of Securities is to be authenticated.

### 2.3 *Transfer and Exchange.*

#### (a) *Transfer and Exchange of Global Securities.*

(1) The transfer and exchange of Global Securities or beneficial interests therein shall be effected through the Depositary, in accordance with this Indenture (including applicable restrictions on transfer set forth herein, if any) and the procedures of the Depositary therefor. A transferor of a beneficial interest in a Global Security shall deliver to the Registrar a written order given in accordance with the Depositary's procedures containing information regarding the participant account of the Depositary to be credited with a beneficial interest in the Global Security. The Registrar shall in accordance with such instructions instruct the Depositary to credit to the account of the Person specified in such instructions a beneficial interest in the Global Security and to debit the account of the Person making the transfer the beneficial interest in the Global Security being transferred.

(2) Notwithstanding any other provisions of this Appendix (other than the provisions set forth in Section 2.4), a Global Security may not be transferred as a whole except by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary.

(3) In the event that a Restricted Global Security is exchanged for Securities in certificated registered form pursuant to Section 2.4 of this Appendix, prior to the consummation of a Registered Exchange Offer or the effectiveness of a Shelf Registration Statement with respect to such Securities, such Securities may be exchanged only in accordance with such procedures as are substantially consistent with the provisions of this Section 2.3 (including the certification requirements set forth on the Assignment Form attached to the Initial Securities and Private Exchange Securities intended to ensure that such transfers comply with Rule 144A or Regulation S, as the case may be) and such other procedures as may from time to time be adopted by the Company.

(b) *Legend.*

(1) Except as permitted by the following paragraphs (2), (3) and (4), each Security certificate evidencing the Restricted Global Securities (and all Securities issued in exchange therefor or in substitution thereof) shall bear a legend in substantially the following form:

"THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, AGREES FOR THE BENEFIT OF BRINKER INTERNATIONAL, INC. (THE "COMPANY") THAT THIS SECURITY MAY NOT BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED (X) PRIOR TO THE SECOND ANNIVERSARY OF THE ISSUANCE HEREOF (OR ANY PREDECESSOR SECURITY HERETO) OR (Y) BY ANY HOLDER THAT WAS AN "AFFILIATE" (WITHIN THE MEANING OF RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY AT ANY TIME DURING THE THREE MONTHS PRECEDING THE DATE OF SUCH TRANSFER, IN EITHER CASE OTHER THAN (1) TO THE COMPANY, (2) SO LONG AS THIS SECURITY IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT ("RULE 144A"), TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A, PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE RESALE, PLEDGE OR OTHER TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A (AS INDICATED BY THE BOX CHECKED BY THE TRANSFEROR ON THE CERTIFICATE OF TRANSFER ON THE REVERSE OF THIS SECURITY), (3) IN AN OFFSHORE TRANSACTION (AS DEFINED UNDER REGULATIONS UNDER THE SECURITIES ACT) IN ACCORDANCE WITH REGULATIONS UNDER THE SECURITIES ACT (AS INDICATED BY THE BOX CHECKED BY THE TRANSFEROR ON THE CERTIFICATE OF TRANSFER ON THE REVERSE OF THIS SECURITY), (4) TO AN INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT (AS INDICATED BY THE BOX CHECKED BY THE TRANSFEROR ON THE CERTIFICATE OF TRANSFER ON THE REVERSE OF THIS SECURITY) THAT IS ACQUIRING THIS SECURITY FOR INVESTMENT PURPOSES AND NOT FOR DISTRIBUTION, AND A CERTIFICATE WHICH MAY BE OBTAINED FROM THE COMPANY OR THE TRUSTEE IS DELIVERED BY THE TRANSFEREE TO THE COMPANY AND TRUSTEE, (5) PURSUANT TO ANY EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 (IF APPLICABLE) UNDER THE SECURITIES ACT, OR (6) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. AN INSTITUTIONAL ACCREDITED INVESTOR HOLDING THIS SECURITY AGREES THAT IT WILL FURNISH TO THE COMPANY AND THE TRUSTEE SUCH CERTIFICATES AND OTHER INFORMATION AS THEY MAY REASONABLY REQUIRE TO CONFIRM THAT TRANSFER BY IT OF THIS SECURITY COMPLIES WITH THE FOREGOING RESTRICTIONS. THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, REPRESENTS AND AGREES FOR THE BENEFIT OF THE COMPANY THAT IT IS (1) A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A OR (2) PURCHASING FROM A PERSON NOT PARTICIPATING IN THE INITIAL DISTRIBUTION OF THIS SECURITY (OR ANY PREDECESSOR SECURITY),



THAT IT IS AN INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT AND THAT IT IS HOLDING THIS SECURITY FOR INVESTMENT PURPOSES AND NOT FOR DISTRIBUTION OR (3) A NON-U.S. PERSON OUTSIDE THE UNITED STATES WITHIN THE MEANING OF (OR AN ACCOUNT SATISFYING THE REQUIREMENTS OF PARAGRAPH (k)(2)(i) OF RULE 902 UNDER) REGULATION S UNDER THE SECURITIES ACT."

(2) Upon any sale or transfer of a Transfer Restricted Security (including any Transfer Restricted Security represented by a Restricted Global Security) pursuant to Rule 144 under the Securities Act, the Registrar shall permit the transferee thereof to exchange such Transfer Restricted Security for a certificated Security that does not bear the legend set forth above and rescind any restriction on the transfer of such Transfer Restricted Security, if the transferor thereof certifies in writing to the Registrar that such sale or transfer was made in reliance on Rule 144 (such certification to be in the form set forth on the reverse of the Security).

(3) After a transfer of any Initial Securities or Private Exchange Securities pursuant to and during the period of the effectiveness of a Shelf Registration Statement with respect to such Initial Securities or Private Exchange Securities, as the case may be, all requirements pertaining to legends on such Initial Security or such Private Exchange Security will cease to apply, the requirements requiring any such Initial Security or such Private Exchange Security issued to certain Holders to be issued in global form will cease to apply, and a certificated Initial Security or Private Exchange Security or an Initial Security or Private Exchange Security in global form, in each case without restrictive transfer legends, will be available to the transferee of the Holder of such Initial Securities or Private Exchange Securities upon exchange of such transferring Holder's certificated Initial Security or Private Exchange Security or directions to transfer such Holder's interest in the Global Security, as applicable.

(4) Upon the consummation of a Registered Exchange Offer with respect to the Initial Securities, all requirements pertaining to such Initial Securities that Initial Securities issued to certain Holders be issued in global form will still apply with respect to Holders of such Initial Securities that do not exchange their Initial Securities, and Exchange Securities in global form will be available to Holders that exchange such Initial Securities in such Registered Exchange Offer.

(5) Upon the consummation of a Private Exchange with respect to the Initial Securities, all requirements pertaining to such Initial Securities that Initial Securities issued to certain Holders be issued in global form will still apply with respect to Holders of such Initial Securities that do not exchange their Initial Securities, and Private Exchange Securities in global form with the global securities legend and the Restricted Securities Legend set forth in Exhibit 1 hereto will be available to Holders that exchange such Initial Securities in such Private Exchange.

(c) *Cancellation or Adjustment of Global Security.* At such time as all beneficial interests in a Global Security have either been exchanged for certificated Securities, redeemed, purchased or canceled, such Global Security shall be returned to the Depository for cancellation or retained and canceled by the Trustee. At any time prior to such cancellation, if any beneficial interest in a Global Security is exchanged for certificated Securities, redeemed, purchased or canceled, the principal amount of Securities represented by such Global Security shall be reduced and an adjustment shall be made on the books and records of the Trustee (if it is then the Securities Custodian for such Global Security) with respect to such Global Security, by the Trustee or the Securities Custodian, to reflect such reduction.

(d) *Obligations with Respect to Transfers and Exchanges of Securities.*

(1) To permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate certificated Securities and Global Securities at the Registrar's or co-registrar's request.

(2) No service charge shall be made for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any transfer tax, assessments, or similar governmental charge payable in connection therewith (other than any such transfer taxes, assessments or similar governmental charge payable upon exchange or transfer pursuant to 8.05 of the Indenture).

(3) The Registrar or co-registrar shall not be required to register the transfer of or exchange of any Security for a period beginning 15 Business Days before the mailing of a notice of an offer to repurchase or redeem Securities or 15 Business Days before an interest payment date.

(4) Prior to the due presentation for registration of transfer of any Security, the Company, the Trustee, the Paying Agent, the Registrar or any co-registrar may deem and treat the Person in whose name a Security is registered as the absolute owner of such Security for the purpose of receiving payment of principal of and interest on such Security and for all other purposes whatsoever, whether or not such Security is overdue, and none of the Company, the Trustee, the Paying Agent, the Registrar or any co-registrar shall be affected by notice to the contrary.

(5) All Securities issued upon any transfer or exchange pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Securities surrendered upon such transfer or exchange.

(e) *No Obligation of the Trustee.* The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Security, a member of, or a participant in the Depositary or other Person with respect to the accuracy of the records of the Depositary or its nominee or of any participant or member thereof, with respect to any ownership interest in the Securities or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Depositary) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Securities. All notices and communications to be given to the Holders and all payments to be made to Holders under the Securities shall be given or made only to or upon the order of the registered Holders (which shall be the Depositary or its nominee in the case of a Global Security). The rights of beneficial owners in any Global Security shall be exercised only through the Depositary subject to the applicable rules and procedures of the Depositary. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depositary with respect to its members, participants and any beneficial owners.

2.4 *Certificated Securities.*

(a) A Global Security deposited with the Depositary or with the Trustee as custodian for the Depositary pursuant to Section 2.1 shall be transferred to the beneficial owners thereof in the form of certificated Securities in an aggregate principal amount equal to the principal amount of such Global Security, in exchange for such Global Security, only if such transfer complies with Section 2.3 and (i) the Depositary notifies the Company that it is unwilling or unable to continue as Depositary for such Global Security or if at any time such Depositary ceases to be a "clearing agency" registered under the Exchange Act and a successor depositary is not appointed by the Company within 90 days of such notice, or (ii) an Event of Default has occurred and is continuing or (iii) the Company, in its sole discretion, notifies the Trustee in writing that it elects to cause the issuance of certificated Securities under this Indenture.

(b) Any Global Security that is transferable to the beneficial owners thereof pursuant to this Section shall be surrendered by the Depositary to the Trustee located at its designated corporate trust office in the Borough of Manhattan, The City of New York, to be so transferred, in whole or from time to time in part, without charge, and the Trustee shall authenticate and deliver, upon such transfer of each portion of such Global Security, an equal aggregate principal amount of certificated Securities of authorized denominations. Any portion of a Global Security transferred pursuant to this Section shall be executed, authenticated and delivered only in denominations of \$1,000 principal amount and any integral multiple thereof and registered in such names as the Depositary shall direct. Any certificated Security delivered in exchange for an interest in the Restricted Global Security shall, except as otherwise provided by Section 2.3(b), bear the restricted securities legend set forth in Exhibit 1 hereto.

(c) Subject to the provisions of Section 2.4(b), the registered Holder of a Global Security shall be entitled to grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Securities.

(d) In the event of the occurrence of either of the events specified in Section 2.4(a), the Company shall promptly make available to the Trustee a reasonable supply of certificated Securities in definitive, fully registered form without interest coupons.

[FORM OF FACE OF INITIAL SECURITY]

[Global Securities Legend]

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC) ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.

[Restricted Securities Legend]

"THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, AGREES FOR THE BENEFIT OF BRINKER INTERNATIONAL, INC. (THE "COMPANY") THAT THIS SECURITY MAY NOT BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED (X) PRIOR TO THE SECOND ANNIVERSARY OF THE ISSUANCE HEREOF (OR ANY PREDECESSOR SECURITY HERETO) OR (Y) BY ANY HOLDER THAT WAS AN "AFFILIATE" (WITHIN THE MEANING OF RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY AT ANY TIME DURING THE THREE MONTHS PRECEDING THE DATE OF SUCH TRANSFER, IN EITHER CASE OTHER THAN (1) TO THE COMPANY, (2) SO LONG AS THIS SECURITY IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT ("RULE 144A"), TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A, PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE RESALE, PLEDGE OR OTHER TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A (AS INDICATED BY THE BOX CHECKED BY THE TRANSFEROR ON THE CERTIFICATE OF TRANSFER ON THE REVERSE OF THIS SECURITY), (3) IN AN OFFSHORE TRANSACTION (AS DEFINED UNDER REGULATION S UNDER THE SECURITIES ACT) IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT (AS INDICATED BY THE BOX CHECKED BY THE TRANSFEROR ON THE CERTIFICATE OF TRANSFER ON THE REVERSE OF THIS SECURITY), (4) TO AN INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT (AS INDICATED BY THE BOX CHECKED BY THE TRANSFEROR ON THE CERTIFICATE OF TRANSFER ON THE REVERSE OF THIS SECURITY) THAT IS ACQUIRING THIS SECURITY FOR INVESTMENT PURPOSES AND NOT FOR DISTRIBUTION, AND A CERTIFICATE WHICH MAY BE OBTAINED FROM THE COMPANY OR THE TRUSTEE IS DELIVERED BY THE

TRANSFEE TO THE COMPANY AND TRUSTEE, (5) PURSUANT TO ANY EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 (IF APPLICABLE) UNDER THE SECURITIES ACT, OR (6) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. AN INSTITUTIONAL ACCREDITED INVESTOR HOLDING THIS SECURITY AGREES THAT IT WILL FURNISH TO THE COMPANY AND THE TRUSTEE SUCH CERTIFICATES AND OTHER INFORMATION AS THEY MAY REASONABLY REQUIRE TO CONFIRM THAT TRANSFER BY IT OF THIS SECURITY COMPLIES WITH THE FOREGOING RESTRICTIONS. THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, REPRESENTS AND AGREES FOR THE BENEFIT OF THE COMPANY THAT IT IS (1) A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A OR (2) PURCHASING FROM A PERSON NOT PARTICIPATING IN THE INITIAL DISTRIBUTION OF THIS SECURITY (OR ANY PREDECESSOR SECURITY), THAT IT IS AN INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT AND THAT IT IS HOLDING THIS SECURITY FOR INVESTMENT PURPOSES AND NOT FOR DISTRIBUTION OR (3) A NON-U.S. PERSON OUTSIDE THE UNITED STATES WITHIN THE MEANING OF (OR AN ACCOUNT SATISFYING THE REQUIREMENTS OF PARAGRAPH (k)(2)(i) OF RULE 902 UNDER) REGULATION S UNDER THE SECURITIES ACT."

No. R- \_\_\_\_\_

CUSIP No. \_\_\_\_\_

ISIN No. \_\_\_\_\_

\$ \_\_\_\_\_

5.75% Notes due 2014

Brinker International, Inc., a Delaware corporation, promises to pay to CEDE & CO., or registered assigns, the principal sum of \$[ ] on June 1, 2014.

Interest Payment Dates: June 1 and December 1, commencing December 1, 2004.

Record Dates: May 15 and November 15.

Additional provisions of this Security are set forth on the other side of this Security.

Dated:

BRINKER INTERNATIONAL, INC.

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

Name:  
Title:

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

Name:  
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

Citibank, N.A.  
as Trustee, certifies  
that this is one of  
the Securities referred  
to in the Indenture.

By: \_\_\_\_\_  
Authorized Signatory

1. Interest

Brinker International, Inc., a Delaware corporation (such corporation, and its successors and assigns under the Indenture hereinafter referred to, being herein called the "Company"), promises to pay interest on the principal amount of this Security at the rate per annum shown above; provided, however, that if a Registration Default (as defined in the Registration Rights Agreement) occurs, additional interest will accrue on this Security at a rate of 0.25% per annum (increasing to 0.50% per annum after the first consecutive 90-day period that occurs after the date on which such Registration Default occurs) from and including the date on which any such Registration Default shall occur to but excluding the date on which all Registration Defaults have been cured. The Company will pay interest semiannually on June 1 and December 1 of each year, commencing December 1, 2004. Interest on the Securities will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from May 14, 2004. Interest will be computed on the basis of a 360-day year of twelve 30-day months. The Company will pay interest on overdue principal at the rate borne by the Securities plus 1% per annum, and it will pay interest on overdue installments of interest at the same rate to the extent lawful.

2. Method of Payment

The Company will pay interest on the Securities (except defaulted interest) to the Persons who are registered holders of Securities at the close of business on the May 15 or November 15 next preceding the interest payment date even if Securities are canceled after the record date and on or before the interest payment date. Holders must surrender Securities to a Paying Agent to collect principal payments. The Company will pay principal and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. Payments in respect of the Securities represented by a Global Security (including principal, premium and interest) will be made by wire transfer of immediately available funds to the accounts specified by The Depository Trust Company. The Company will make all payments in respect of a certificated Security (including principal, premium and interest) by mailing a check to the registered address of each Holder thereof; *provided, however*, that payments on a certificated Security will be made by wire transfer to a U.S. dollar account maintained by the payee with a bank in the United States if such Holder elects payment by wire transfer by giving written notice to the Trustee or the Paying Agent to such effect designating such account no later than 30 days immediately preceding the relevant due date for payment (or such other date as the Trustee may accept in its discretion).

3. Paying Agent and Registrar

Citibank, N.A., a banking association (the "Trustee"), has been appointed as Paying Agent and Registrar. The Company may remove any Paying Agent or Registrar upon written notice to such Paying Agent or Registrar and the Trustee. The Company or any of its domestically incorporated Wholly Owned Subsidiaries may act as Paying Agent, Registrar, co-registrar or transfer agent.

4. Indenture

The Company issued the Securities under an Indenture dated as of May 14, 2004 ("Indenture"), between the Company and the Trustee. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 U.S.C. 77aaa-77bbb) as in effect on the date of the Indenture (the "Act"). Terms defined in the Indenture and not defined herein have the meanings ascribed thereto in the Indenture. The Securities are subject to all such terms, and Securityholders are referred to the Indenture and the Act for a statement of those terms.



The Securities are general unsecured obligations of the Company. The Company shall be entitled to issue Additional Securities pursuant to Section 2.13 of the Indenture. The Initial Securities issued on the Issue Date, any Additional Securities and all Exchange Securities or Private Exchange Securities issued in exchange therefor will be treated as a single class for all purposes under the Indenture. The Indenture contains covenants that limit the ability of the Company and its Subsidiaries to create liens on assets and engage in sale and leaseback transactions. These covenants are subject to important exceptions and qualifications.

## 5. Optional Redemption

The Securities are subject to redemption, in whole or in part, at the option of the Company, at any time at a redemption price equal to the greater of (1) 100% of the principal amount of the Securities being redeemed plus accrued and unpaid interest, if any, to the redemption date and (2) the Make-Whole Amount for the Securities being redeemed.

"Comparable Treasury Issue" means the United States Treasury security selected by an Independent Investment Banker as having a maturity comparable to the remaining term of the Securities that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of the Securities.

"Comparable Treasury Price" means, with respect to any redemption date (a) the average of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) on the third business day preceding such redemption date, as set forth in the most recently published statistical release designated "H.15(519)" (or any successor release) published by the Board of Governors of the Federal Reserve System and which establishes yields on actively traded United States treasury securities adjusted to constant maturity under the caption "Treasury Constant Maturities," or (b) if such release (or any successor release) is not published or does not contain such prices on such business day, the average of the Reference Treasury Dealer Quotations for such redemption date.

"Independent Investment Banker" means one of the Reference Treasury Dealers appointed by the Company after consultation with the Trustee.

"Make Whole Amount" means the sum of the present values of the remaining scheduled payments of principal and interest thereon (exclusive of interest accrued to the redemption date) discounted to the redemption date on a semi-annual basis, assuming a 360-day year consisting of twelve 30-day months, at the Treasury Rate plus 20 basis points, plus accrued and unpaid interest, if any, on the principal amount of the Securities being redeemed to the redemption date.

"Reference Treasury Dealer" means Citigroup Global Markets Inc., J.P. Morgan Securities Inc. and their respective successors; *provided, however*, that if any of the foregoing shall cease to be a primary U.S. Government securities dealer in New York City (a "Primary Treasury Dealer"), the Company shall substitute therefor another Primary Treasury Dealer.

"Reference Treasury Dealer Quotations" means, with respect to each Reference Treasury Dealer and any redemption date, the average, as determined by the Independent Investment Banker, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Independent Investment Banker by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third Business Day preceding such redemption date.

"Treasury Rate" means, with respect to any redemption date, the rate per annum equal to the yield to maturity of the Comparable Treasury Issue, compounded semi-annually, assuming a price for such Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such redemption date.

6. Notice of Redemption

Notice of redemption will be mailed at least 30 days but not more than 60 days before the redemption date to each Holder of Securities to be redeemed at such Holder's registered address. Securities in denominations larger than \$1,000 principal amount may be redeemed in part but only in whole multiples of \$1,000. If money sufficient to pay the redemption price of and accrued interest on all Securities (or portions thereof) to be redeemed on the redemption date is deposited with the Paying Agent on or before the redemption date and certain other conditions are satisfied, on and after such date interest shall cease to accrue on such Securities (or such portions thereof) called for redemption.

7. Denominations; Transfer; Exchange

The Securities are in registered form without coupons in denominations of \$1,000 principal amount and whole multiples of \$1,000. A Holder may transfer or exchange Securities in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not register the transfer of or exchange any Securities selected for redemption (except, in the case of a Security to be redeemed in part, the portion of the Security not to be redeemed) or any Securities for a period of 15 Business Days before a selection of Securities to be redeemed or 15 Business Days before an interest payment date.

8. Persons Deemed Owners

The registered Holder of this Security may be treated as the owner of it for all purposes.

9. Unclaimed Money

If money for the payment of principal or interest remains unclaimed for two years, the Trustee or Paying Agent shall pay the money back to the Company at its request unless an applicable abandoned property law designates another Person. After any such payment, Holders entitled to the money must look only to the Company for payment as general creditors, and not to the Trustee.

10. Discharge and Defeasance

Subject to certain conditions, the Company at any time shall be entitled to terminate some or all of its obligations under the Securities and the Indenture if the Company deposits with the Trustee money or U.S. Government Obligations or a combination thereof for the payment of principal and interest on the Securities to redemption or maturity, as the case may be.

11. Amendment, Waiver

Subject to certain exceptions set forth in the Indenture, (i) the Indenture and the Securities may be amended with the written consent of the Holders of at least a majority in aggregate principal amount of the Securities then Outstanding and (ii) any default or noncompliance with any provision may be waived with the written consent of the Holders of at least a majority in principal amount of the Securities then Outstanding. Subject to certain exceptions set forth in the Indenture, without the consent of any Securityholder, the Company and the Trustee shall be entitled to amend the Indenture or the Securities to cure any ambiguity, omission, defect or inconsistency, or to comply with Article 5 of the Indenture, or to provide for uncertificated Securities in addition to or in place of certificated Securities, or to add guarantees with respect to the Securities or to secure the Securities, or to add additional covenants of the Company or surrender rights and powers conferred on the Company, or to comply with any requirement of the SEC in connection with qualifying the Indenture under the Act, or to provide for the issuance of Additional Securities in accordance with the Indenture, or to make any change that does not adversely affect the rights of any Securityholder.

## 12. Defaults and Remedies

Under the Indenture, Events of Default include (i) default for 30 days in payment of interest on the Securities; (ii) default in payment of principal on the Securities, upon redemption pursuant to paragraph 5 of the Securities, upon acceleration or otherwise; (iii) failure by the Company to comply with other agreements in the Indenture or the Securities, in certain cases subject to notice and lapse of time; (iv) certain accelerations of other Debt of the Company or any Subsidiary if the amount accelerated exceeds \$40.0 million; (v) failure by the Company or any Subsidiary to pay at maturity at least \$40.0 million of other Debt; and (vi) certain events of bankruptcy or insolvency with respect to the Company and its Significant Subsidiaries.

Securityholders may not enforce the Indenture or the Securities except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Securities unless it receives indemnity or security satisfactory to it. Subject to certain limitations, Holders of a majority in aggregate principal amount of the Securities then Outstanding may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Securityholders notice of any continuing Default (except a Default in payment of principal or interest) if it determines that withholding notice is in the interest of the Holders.

## 13. Trustee Dealings with the Company

Subject to certain limitations imposed by the Act, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee.

## 14. No Recourse Against Others

A director, officer, employee or stockholder, as such, of the Company or the Trustee shall not have any liability for any obligations of the Company under the Securities or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Securityholder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Securities.

## 15. Authentication

This Security shall not be valid until an authorized signatory of the Trustee (or an Authenticating Agent) manually signs the certificate of authentication on the other side of this Security.

## 16. Abbreviations

Customary abbreviations may be used in the name of a Securityholder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entireties), JT TEN (=joint tenants with rights of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gifts to Minors Act).

## 17. CUSIP Numbers

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP numbers to be printed on the Securities and has directed the Trustee to use CUSIP numbers in notices of redemption as a convenience to Securityholders. No representation is made as to the accuracy of such numbers either as printed on the Securities or as contained in any notice and reliance may be placed only on the other identification numbers placed thereon.

## 18. Holders' Compliance with Registration Rights Agreement

Each Holder of a Security, by acceptance hereof, acknowledges and agrees to the provisions of the Registration Rights Agreement, including the obligations of the Holders with respect to a registration and the indemnification of the Company to the extent provided therein.

19. Governing Law

THIS SECURITY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK BUT WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

The Company will furnish to any Securityholder upon written request and without charge to the Securityholder a copy of the Indenture which has in it the text of this Security in larger type. Requests may be made to:

Brinker International, Inc.  
6820 LBJ Freeway  
Dallas, TX 75240-6509

Attention: General Counsel

CERTIFICATE OF TRANSFER

To assign this Security, fill in the form below:

I or we assign and transfer this Security to

(Print or type assignee's name, address and zip code)

(Insert assignee's soc. sec. or tax I.D. No.)

and irrevocably appoint \_\_\_\_\_ agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

Date: \_\_\_\_\_

Your Signature: \_\_\_\_\_

Sign exactly as your name appears on the other side of this Security.

In connection with any transfer of any of the Securities evidenced by this certificate (i) occurring prior to the second anniversary of the date of original issuance of such Securities or (ii) by any person who was an "affiliate" (within the meaning of Rule 144 under the Securities Act of 1933, as amended (the "Securities Act")) of the Company at any time during the three months preceding such transfer, the undersigned confirms that such Securities are being transferred in accordance with its terms:

CHECK ONE BOX BELOW

1.  to the Company; or
2.  to a person whom the undersigned reasonably believes is a qualified institutional buyer within the meaning of Rule 144A under the Securities Act, purchasing for its own account or for the account of a qualified institutional buyer to whom notice is given that the resale, pledge or other transfer is being made in reliance on Rule 144A under the Securities Act; or
3.  in an offshore transaction (as defined in Regulation S under the Securities Act) in accordance with Regulation S under the Securities Act; or
4.  to an institution that is an "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act that is acquiring this Security for investment purposes and not for distribution; or
5.  pursuant to any exemption from registration under the Securities Act provided by Rule 144 (if applicable) under the Securities Act; or
6.  pursuant to an effective registration statement under the Securities Act,

in each case in accordance with any applicable securities laws of any state of the United States.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Securities evidenced by this certificate in the name of any person other than the registered holder thereof; *provided, however*, that if box (2), (3), (4) or (5) is checked, the Trustee shall be entitled to require, prior to registering any such transfer of the Securities, such legal opinions, certifications and other information as the Company has reasonably requested to confirm that such transfer is being made

pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act, such as the exemption provided by Rule 144 under such Act.

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Signature

Signature Guarantee:

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Signature must be guaranteed

Signature

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

The undersigned represents and warrants that it is purchasing this Security for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Dated: \_\_\_\_\_

NOTICE:

To be executed by an executive officer

SCHEDULE OF INCREASES OR DECREASES IN GLOBAL SECURITY

The following increases or decreases in this Global Security have been made:

<b>Date of Exchange</b>	<b>Amount of decrease in Principal amount of this Global Security</b>	<b>Amount of increase in Principal amount of this Global Security</b>	<b>Principal amount of this Global Security following such decrease or increase</b>	<b>Signature of authorized officer of Trustee or Securities Custodian</b>
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FORM OF FACE OF EXCHANGE SECURITY  
OR PRIVATE EXCHANGE SECURITY\*\*

CUSIP No.

\_\_\_\_\_  
\_\_\_\_\_

No.

\_\_\_\_\_

\$

5.75% Notes due 2014

Brinker International, Inc., a Delaware corporation, promises to pay to CEDE & CO., or registered assigns, the principal sum of \$[ ] on June 1, 2014.

Interest Payment Dates: June 1 and December, commencing December 1, 2004.

Record Dates: May 15 and November 15.

Additional provisions of this Security are set forth on the other side of this Security.

\_\_\_\_\_

\* [If the Security is to be issued in global form add the Global Securities Legend from Exhibit 1 to Appendix A and the attachment from such Exhibit 1 captioned "[TO BE ATTACHED TO GLOBAL SECURITIES]—SCHEDULE OF INCREASES OR DECREASES IN GLOBAL SECURITY".]

[If the Security is a Private Exchange Security issued in a Private Exchange to an Initial Purchaser holding an unsold portion of its initial allotment, add the Restricted Securities Legend from Exhibit 1 to Appendix A and replace the Assignment Form included in this Exhibit A with the Assignment Form included in such Exhibit 1.]

\_\_\_\_\_

Dated:

BRINKER INTERNATIONAL, INC.

By:

\_\_\_\_\_

Name:

Title:

By:

\_\_\_\_\_

Name:

Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

Citibank, N.A.

as Trustee, certifies that this is one of the Securities referred to in the Indenture.

By:

\_\_\_\_\_

Authorized Signatory

\_\_\_\_\_

5.75% Notes due 2014

## 1. Interest

Brinker International, Inc., a Delaware corporation (such corporation, and its successors and assigns under the Indenture hereinafter referred to, being herein called the "Company"), promises to pay interest on the principal amount of this Security at the rate per annum shown above; **[provided, however, that if a Registration Default (as defined in the Registration Rights Agreement) occurs, additional interest will accrue on this Security at a rate of 0.25% per annum (increasing to 0.50% per annum after the first 90-day period that occurs after the date on which such Registration Default occurs) from and including the date on which any such Registration Default shall occur to but excluding the date on which all Registration Defaults have been cured.]**(1) The Company will pay interest semiannually on June 1 and December 1 of each year, commencing December 1, 2004. Interest on the Securities will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from May 14, 2004. Interest will be computed on the basis of a 360-day year of twelve 30-day months. The Company will pay interest on overdue principal at the rate borne by the Securities plus 1% per annum, and it will pay interest on overdue installments of interest at the same rate to the extent lawful.

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- (1) Insert if at the date of issuance of the Exchange Security or Private Exchange Security, as the case may be, any Registration Default has occurred with respect to the related Initial Securities during the interest period in which such date of issuance occurs.

## 2. Method of Payment

The Company will pay interest on the Securities (except defaulted interest) to the Persons who are registered holders of Securities at the close of business on the May 15 or November 15 next preceding the interest payment date even if Securities are canceled after the record date and on or before the interest payment date. Holders must surrender Securities to a Paying Agent to collect principal payments. The Company will pay principal and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. Payments in respect of the Securities represented by a Global Security (including principal, premium and interest) will be made by wire transfer of immediately available funds to the accounts specified by The Depositary Trust Company. The Company will make all payments in respect of a certificated Security (including principal, premium and interest) by mailing a check to the registered address of each Holder thereof; *provided, however*, that payments on a certificated Security will be made by wire transfer to a U.S. dollar account maintained by the payee with a bank in the United States if such Holder elects payment by wire transfer by giving written notice to the Trustee or the Paying Agent to such effect designating such account no later than 30 days immediately preceding the relevant due date for payment (or such other date as the Trustee may accept in its discretion).

## 3. Paying Agent and Registrar

Citibank, N.A., a banking association (the "Trustee"), has been appointed as Paying Agent and Registrar. The Company may remove any Paying Agent or Registrar upon written notice to such Paying Agent or Registrar and the Trustee. The Company or any of its domestically incorporated Wholly Owned Subsidiaries may act as Paying Agent, Registrar, co-registrar or transfer agent.

## 4. Indenture

The Company issued the Securities under an Indenture dated as of May 14, 2004 ("Indenture"), between the Company and the Trustee. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 U.S.C. 77aaa-77bbb) as in effect on the date of the Indenture (the "Act"). Terms defined in the Indenture and not defined herein have the meanings ascribed thereto in the Indenture. The Securities

are subject to all such terms, and Securityholders are referred to the Indenture and the Act for a statement of those terms.

The Securities are general unsecured obligations of the Company. The Company shall be entitled to issue Additional Securities pursuant to Section 2.13 of the Indenture. The Initial Securities issued on the Issue Date, any Additional Securities and all Exchange Securities or Private Exchange Securities issued in exchange therefor will be treated as a single class for all purposes under the Indenture. The Indenture contains covenants that limit the ability of the Company and its Subsidiaries to create liens on assets and engage in sale and leaseback transactions. These covenants are subject to important exceptions and qualifications.

## 5. Optional Redemption

The Securities are subject to redemption, in whole or in part, at the option of the Company, at any time at a redemption price equal to the greater of (1) 100% of the principal amount of the Securities being redeemed plus accrued and unpaid interest, if any, to the redemption date and (2) the Make-Whole Amount for the Securities being redeemed.

"Comparable Treasury Issue" means the United States Treasury security selected by an Independent Investment Banker as having a maturity comparable to the remaining term of the Securities that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of the Securities.

"Comparable Treasury Price" means, with respect to any redemption date (a) the average of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) on the third business day preceding such redemption date, as set forth in the most recently published statistical release designated "H.15(519)" (or any successor release) published by the Board of Governors of the Federal Reserve System and which establishes yields on actively traded United States treasury securities adjusted to constant maturity under the caption "Treasury Constant Maturities," or (b) if such release (or any successor release) is not published or does not contain such prices on such business day, the average of the Reference Treasury Dealer Quotations for such redemption date.

"Independent Investment Banker" means one of the Reference Treasury Dealers appointed by the Company after consultation with the Trustee.

"Make Whole Amount" means the sum of the present values of the remaining scheduled payments of principal and interest thereon (exclusive of interest accrued to the redemption date) discounted to the redemption date on a semi-annual basis, assuming a 360-day year consisting of twelve 30-day months, at the Treasury Rate plus 20 basis points, plus accrued and unpaid interest, if any, on the principal amount of the Securities being redeemed to the redemption date.

"Reference Treasury Dealer" means Citigroup Global Markets Inc., J.P. Morgan Securities Inc. and their respective successors; *provided, however*, that if any of the foregoing shall cease to be a primary U.S. Government securities dealer in New York City (a "Primary Treasury Dealer"), the Company shall substitute therefor another Primary Treasury Dealer.

"Reference Treasury Dealer Quotations" means, with respect to each Reference Treasury Dealer and any redemption date, the average, as determined by the Independent Investment Banker, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Independent Investment Banker by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third Business Day preceding such redemption date.

"Treasury Rate" means, with respect to any redemption date, the rate per annum equal to the yield to maturity of the Comparable Treasury Issue, compounded semi-annually, assuming a price for

such Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such redemption date.

#### 6. Notice of Redemption

Notice of redemption will be mailed at least 30 days but not more than 60 days before the redemption date to each Holder of Securities to be redeemed at such Holder's registered address. Securities in denominations larger than \$1,000 principal amount may be redeemed in part but only in whole multiples of \$1,000. If money sufficient to pay the redemption price of and accrued interest on all Securities (or portions thereof) to be redeemed on the redemption date is deposited with the Paying Agent on or before the redemption date and certain other conditions are satisfied, on and after such date interest shall cease to accrue on such Securities (or such portions thereof) called for redemption.

#### 7. Denominations; Transfer; Exchange

The Securities are in registered form without coupons in denominations of \$1,000 principal amount and whole multiples of \$1,000. A Holder may transfer or exchange Securities in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not register the transfer of or exchange any Securities selected for redemption (except, in the case of a Security to be redeemed in part, the portion of the Security not to be redeemed) or any Securities for a period of 15 Business Days before a selection of Securities to be redeemed or 15 Business Days before an interest payment date.

#### 8. Persons Deemed Owners

The registered Holder of this Security may be treated as the owner of it for all purposes.

#### 9. Unclaimed Money

If money for the payment of principal or interest remains unclaimed for two years, the Trustee or Paying Agent shall pay the money back to the Company at its request unless an applicable abandoned property law designates another Person. After any such payment, Holders entitled to the money must look only to the Company for payment as general creditors, and not to the Trustee.

#### 10. Discharge and Defeasance

Subject to certain conditions, the Company at any time shall be entitled to terminate some or all of its obligations under the Securities and the Indenture if the Company deposits with the Trustee money or U.S. Government Obligations or a combination thereof for the payment of principal and interest on the Securities to redemption or maturity, as the case may be.

#### 11. Amendment, Waiver

Subject to certain exceptions set forth in the Indenture, (i) the Indenture and the Securities may be amended with the written consent of the Holders of at least a majority in aggregate principal amount of the Securities then Outstanding and (ii) any default or noncompliance with any provision may be waived with the written consent of the Holders of at least a majority in principal amount of the Securities then Outstanding. Subject to certain exceptions set forth in the Indenture, without the consent of any Securityholder, the Company and the Trustee shall be entitled to amend the Indenture or the Securities to cure any ambiguity, omission, defect or inconsistency, or to comply with Article 5 of the Indenture, or to provide for uncertificated Securities in addition to or in place of certificated Securities, or to add guarantees with respect to the Securities or to secure the Securities, or to add additional covenants of the Company or surrender rights and powers conferred on the Company, or to comply with any requirement of the SEC in connection with qualifying the Indenture under the Act, or to provide for the issuance of Additional Securities in accordance with the Indenture, or to make any change that does not adversely affect the rights of any Securityholder.

## 12. Defaults and Remedies

Under the Indenture, Events of Default include (i) default for 30 days in payment of interest on the Securities; (ii) default in payment of principal on the Securities, upon redemption pursuant to paragraph 5 of the Securities, upon acceleration or otherwise; (iii) failure by the Company to comply with other agreements in the Indenture or the Securities, in certain cases subject to notice and lapse of time; (iv) certain accelerations of other Debt of the Company or any Subsidiary if the amount accelerated is at least \$40.0 million; (v) failure by the Company or any Subsidiary to pay at maturity at least \$40.0 million of other Debt; and (vi) certain events of bankruptcy or insolvency with respect to the Company and its Significant Subsidiaries.

Securityholders may not enforce the Indenture or the Securities except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Securities unless it receives indemnity or security satisfactory to it. Subject to certain limitations, Holders of a majority in aggregate principal amount of the Securities then Outstanding may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Securityholders notice of any continuing Default (except a Default in payment of principal or interest) if it determines that withholding notice is in the interest of the Holders.

## 13. Trustee Dealings with the Company

Subject to certain limitations imposed by the Act, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee.

## 14. No Recourse Against Others

A director, officer, employee or stockholder, as such, of the Company or the Trustee shall not have any liability for any obligations of the Company under the Securities or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Securityholder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Securities.

## 15. Authentication

This Security shall not be valid until an authorized signatory of the Trustee (or an Authenticating Agent) manually signs the certificate of authentication on the other side of this Security.

## 16. Abbreviations

Customary abbreviations may be used in the name of a Securityholder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entireties), JT TEN (=joint tenants with rights of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gifts to Minors Act).

## 17. CUSIP Numbers

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP numbers to be printed on the Securities and has directed the Trustee to use CUSIP numbers in notices of redemption as a convenience to Securityholders. No representation is made as to the accuracy of such numbers either as printed on the Securities or as contained in any notice and reliance may be placed only on the other identification numbers placed thereon.

**[18. Holders' Compliance with Registration Rights Agreement**

Each Holder of a Security, by acceptance hereof, acknowledges and agrees to the provisions of the Registration Rights Agreement, including the obligations of the Holders with respect to a registration and the indemnification of the Company to the extent provided therein.](2)

19. Governing Law

THIS SECURITY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK BUT WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

The Company will furnish to any Securityholder upon written request and without charge to the Securityholder a copy of the Indenture which has in it the text of this Security in larger type. Requests may be made to:

Brinker International, Inc.  
6820 LBJ Freeway  
Dallas, TX 75240-6509

Attention: General Counsel

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(2) Delete if this Security is not being issued in exchange for an Initial Security.

ASSIGNMENT FORM

To assign this Security, fill in the form below:

I or we assign and transfer this Security to

(Print or type assignee's name, address and zip code)

(Insert assignee's soc. sec. or tax I.D. No.)

and irrevocably appoint \_\_\_\_\_ agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

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Date: \_\_\_\_\_

Your Signature: \_\_\_\_\_

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Sign exactly as your name appears on the other side of this Security.



SCHEDULE OF INCREASES OR DECREASES IN GLOBAL SECURITY

The following increases or decreases in this Global Security have been made:

Date of Exchange	Amount of decrease in Principal amount of this Global Security	Amount of increase in Principal amount of this Global Security	Principal amount of this Global Security following such decrease or increase	Signature of authorized officer of Trustee or Securities Custodian
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## QuickLinks

[Exhibit 4.1](#)

BRINKER INTERNATIONAL, INC.

5.75% Notes due 2014

REGISTRATION RIGHTS AGREEMENT

May 14, 2004

Citigroup Global Markets Inc.  
J.P. Morgan Securities Inc.  
As Representatives of the Initial Purchasers  
c/o Citigroup Global Markets Inc.  
388 Greenwich Street  
New York, New York 10013

Ladies and Gentlemen:

Brinker International, Inc., a corporation organized under the laws of the State of Delaware (the "Company"), proposes to issue and sell to certain purchasers (the "Initial Purchasers"), for whom you (the "Representatives") are acting as representatives, its 5.75% Notes due 2014 (the "Securities"), upon the terms set forth in the Purchase Agreement between the Company and the Representatives dated May 11, 2004 (the "Purchase Agreement") relating to the initial placement of the Securities (the "Initial Placement"). To induce the Initial Purchasers to enter into the Purchase Agreement and to satisfy a condition to your obligations thereunder, the Company agrees with you for your benefit and the benefit of the holders from time to time of the Securities (including the Initial Purchasers) (each a "Holder" and, collectively, the "Holders"), as follows:

1. *Definitions.* Capitalized terms used herein without definition shall have their respective meanings set forth in the Purchase Agreement. As used in this Agreement, the following capitalized defined terms shall have the following meanings:

"Act" shall mean the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"Affiliate" shall have the meaning specified in Rule 405 under the Act and the terms "controlling" and "controlled" shall have meanings correlative thereto.

"Broker-Dealer" shall mean any broker or dealer registered as such under the Exchange Act.

"Business Day" shall mean any day other than a Saturday, a Sunday or a legal holiday or a day on which banking institutions or trust companies are authorized or obligated by law to close in New York City.

"Closing Date" shall mean the date of the first issuance of the Securities.

"Commission" shall mean the Securities and Exchange Commission.

"Deferral Period" shall have the meaning indicated in Section 4(k)(ii) hereof.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

"Exchange Offer Registration Period" shall mean the one-year period following the consummation of the Registered Exchange Offer, exclusive of any period during which any stop order shall be in effect suspending the effectiveness of the Exchange Offer Registration Statement.

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"Exchange Offer Registration Statement" shall mean a registration statement of the Company on an appropriate form under the Act with respect to the Registered Exchange Offer, all amendments and supplements to such registration statement, including post-effective amendments thereto, in each case including the Prospectus contained therein, all exhibits thereto and all material incorporated by reference therein.

"Exchanging Dealer" shall mean any Holder (which may include any Initial Purchaser) that is a Broker-Dealer and elects to exchange for New Securities any Securities that it acquired for its own account as a result of market-making activities or other trading activities (but not directly from the Company or any Affiliate of the Company) for New Securities.

"Final Memorandum" shall mean the offering memorandum, dated May 11, 2004, relating to the Securities, including any and all exhibits thereto and any information incorporated by reference therein as of such date.

"Holder" shall have the meaning set forth in the preamble hereto.

"Indenture" shall mean the Indenture relating to the Securities, dated as of May 14, 2004, between the Company and Citibank, N.A., as trustee, as the same may be amended from time to time in accordance with the terms thereof.

"Initial Placement" shall have the meaning set forth in the preamble hereto.

"Initial Purchaser" shall have the meaning set forth in the preamble hereto.

"Losses" shall have the meaning set forth in Section 6(d) hereof.

"Majority Holders" shall mean, on any date, Holders of a majority of the aggregate principal amount of Securities registered under a Registration Statement.

"Managing Underwriters" shall mean the investment banker or investment bankers and manager or managers that administer an underwritten offering, if any, under a Registration Statement.

"NASD Rules" shall mean the Conduct Rules and the By-Laws of the National Association of Securities Dealers, Inc.

"New Securities" shall mean debt securities of the Company identical in all material respects to the Securities (except that the transfer restrictions shall be modified or eliminated, as appropriate) to be issued under the New Securities Indenture.

"New Securities Indenture" shall mean an indenture between the Company and the New Securities Trustee, identical in all material respects to the Indenture (except that the transfer restrictions shall be modified or eliminated, as appropriate), which may be the Indenture if in the terms thereof appropriate provision is made for the New Securities.

"New Securities Trustee" shall mean a bank or trust company reasonably satisfactory to the Initial Purchasers, as trustee with respect to the New Securities under the New Securities Indenture.

"Prospectus" shall mean the prospectus included in any Registration Statement (including, without limitation, a prospectus that discloses information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A under the Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Securities or the New Securities covered by such Registration Statement, and all amendments and supplements thereto, including any and all exhibits thereto and any information incorporated by reference therein.

"Purchase Agreement" shall have the meaning set forth in the preamble hereto.

"Registered Exchange Offer" shall mean the proposed offer of the Company to issue and deliver to the Holders of the Securities that are not prohibited by any law or policy of the Commission from participating in such offer, in exchange for the Securities, a like aggregate principal amount of the New Securities.

"Registrable Securities" shall mean (i) Securities other than those that have been (A) registered under a Registration Statement and disposed of in accordance therewith or (B) distributed to the public pursuant to Rule 144 under the Act or any successor rule or regulation thereto that may be adopted by the Commission and (ii) any New Securities resale of which by the Holder thereof requires compliance with the prospectus delivery requirements of the Act.

"Registration Default Damages" shall have the meaning set forth in Section 8 hereof.

"Registration Statement" shall mean any Exchange Offer Registration Statement or Shelf Registration Statement that covers any of the Securities or the New Securities pursuant to the provisions of this Agreement, any amendments and supplements to such registration statement, including post-effective amendments (in each case including the Prospectus contained therein), all exhibits thereto and all material incorporated by reference therein.

"Securities" shall have the meaning set forth in the preamble hereto.

"Shelf Registration" shall mean a registration effected pursuant to Section 3 hereof.

"Shelf Registration Period" has the meaning set forth in Section 3(b) hereof.

"Shelf Registration Statement" shall mean a "shelf" registration statement of the Company pursuant to the provisions of Section 3 hereof which covers some or all of the Securities or New Securities, as applicable, on an appropriate form under Rule 415 under the Act, or any similar rule that may be adopted by the Commission, amendments and supplements to such registration statement, including post effective amendments, in each case including the Prospectus contained therein, all exhibits thereto and all material incorporated by reference therein.

"Trustee" shall mean the trustee with respect to the Securities under the Indenture.

"Trust Indenture Act" shall mean the Trust Indenture Act of 1939, as amended, and the rules and regulations of the Commission promulgated thereunder.

"underwriter" shall mean any underwriter of Securities in connection with an offering thereof under a Shelf Registration Statement.

2. *Registered Exchange Offer.* (a) The Company shall prepare and, not later than 90 days following the Closing Date, shall file with the Commission the Exchange Offer Registration Statement with respect to the Registered Exchange Offer. The Company shall use its reasonable efforts to cause the Exchange Offer Registration Statement to become effective under the Act within 195 days of the Closing Date.

(b) Upon the effectiveness of the Exchange Offer Registration Statement, the Company shall promptly commence the Registered Exchange Offer, it being the objective of such Registered Exchange Offer to enable each Holder electing to exchange Securities for New Securities (assuming that such Holder is not an Affiliate of the Company, acquires the New Securities in the ordinary course of such Holder's business, has no arrangements with any person to participate in the distribution of the New Securities and is not prohibited by any law or policy of the Commission from participating in the Registered Exchange Offer) to trade such New Securities

from and after their receipt without any limitations or restrictions under the Act and without material restrictions under the securities laws of a substantial proportion of the several states of the United States.

(c) In connection with the Registered Exchange Offer, the Company shall:

(i) mail to each Holder a copy of the Prospectus forming part of the Exchange Offer Registration Statement, together with an appropriate letter of transmittal and related documents;

(ii) keep the Registered Exchange Offer open for not less than 20 Business Days and not more than 30 Business Days after the date notice thereof is mailed to the Holders (or, in each case, longer if required by applicable law);

(iii) use its reasonable efforts to keep the Exchange Offer Registration Statement continuously effective under the Act, supplemented and amended as required under the Act, to ensure that it is available for sales of New Securities by Exchanging Dealers during the Exchange Offer Registration Period;

(iv) utilize the services of a depository for the Registered Exchange Offer with an address in the Borough of Manhattan in New York City, which may be the Trustee, the New Securities Trustee or an Affiliate of either of them;

(v) permit Holders to withdraw tendered Securities at any time prior to the close of business, New York time, on the last Business Day on which the Registered Exchange Offer is open;

(vi) prior to effectiveness of the Exchange Offer Registration Statement, provide a supplemental letter to the Commission (A) stating that the Company is conducting the Registered Exchange Offer in reliance on the position of the Commission in *Exxon Capital Holdings Corporation* (pub. avail. May 13, 1988) and *Morgan Stanley and Co., Inc.* (pub. avail. June 5, 1991); and (B) including a representation that the Company has not entered into any arrangement or understanding with any person to distribute the New Securities to be received in the Registered Exchange Offer and that, to the best of the Company's information and belief, each Holder participating in the Registered Exchange Offer is acquiring the New Securities in the ordinary course of business and has no arrangement or understanding with any person to participate in the distribution of the New Securities; and

(vii) comply in all respects with all applicable laws.

(d) As soon as practicable after the close of the Registered Exchange Offer, the Company shall:

(i) accept for exchange all Securities tendered and not validly withdrawn pursuant to the Registered Exchange Offer;

(ii) deliver, or cause to be delivered, to the Trustee for cancellation in accordance with Section 4(s) all Securities so accepted for exchange; and

(iii) cause the New Securities Trustee promptly to authenticate and deliver to each Holder of Securities a principal amount of New Securities equal to the principal amount of the Securities of such Holder so accepted for exchange.

(e) Each Holder hereby acknowledges and agrees that any Broker-Dealer and any such Holder using the Registered Exchange Offer to participate in a distribution of the New Securities (x) could not under Commission policy as in effect on the date of this Agreement rely on the position of the Commission in *Exxon Capital Holdings Corporation* (pub. avail. May 13, 1988) and

*Morgan Stanley and Co., Inc.* (pub. avail. June 5, 1991), as interpreted in the Commission's letter to Shearman & Sterling dated July 2, 1993 and similar no-action letters; and (y) must comply with the registration and prospectus delivery requirements of the Act in connection with any secondary resale transaction, which must be covered by an effective registration statement containing the selling security holder information required by Item 507 or 508, as applicable, of Regulation S-K under the Act if the resales are of New Securities obtained by such Holder in exchange for Securities acquired by such Holder directly from the Company or one of its Affiliates. Accordingly, each Holder participating in the Registered Exchange Offer shall be required to represent to the Company that, at the time of the consummation of the Registered Exchange Offer:

(i) any New Securities received by such Holder will be acquired in the ordinary course of business;

(ii) such Holder will have no arrangement or understanding with any person to participate in the distribution of the Securities or the New Securities within the meaning of the Act; and

(iii) such Holder is not an Affiliate of the Company.

(f) If any Initial Purchaser determines that it is not eligible to participate in the Registered Exchange Offer with respect to the exchange of Securities constituting any portion of an unsold allotment, at the request of such Initial Purchaser, the Company shall issue and deliver to such Initial Purchaser or the person purchasing New Securities registered under a Shelf Registration Statement as contemplated by Section 3 hereof from such Initial Purchaser, in exchange for such Securities, a like principal amount of New Securities. The Company shall use its reasonable efforts to cause the CUSIP Service Bureau to issue the same CUSIP number for such New Securities as for New Securities issued pursuant to the Registered Exchange Offer.

3. *Shelf Registration.* (a) If (i) due to any change in law or applicable interpretations thereof by the Commission's staff, the Company determines upon advice of its outside counsel that it is not permitted to effect the Registered Exchange Offer as contemplated by Section 2 hereof; or (ii) for any other reason the Registered Exchange Offer is not consummated within 225 days of the date hereof; (iii) any Initial Purchaser so requests with respect to Securities that are not eligible to be exchanged for New Securities in the Registered Exchange Offer and that are held by it following consummation of the Registered Exchange Offer; (iv) any Holder (other than an Initial Purchaser) is not eligible to participate in the Registered Exchange Offer; or (v) in the case of any Initial Purchaser that participates in the Registered Exchange Offer or acquires New Securities pursuant to Section 2(f) hereof, such Initial Purchaser does not receive freely tradeable New Securities in exchange for Securities constituting any portion of an unsold allotment (it being understood that (x) the requirement that an Initial Purchaser deliver a Prospectus containing the information required by Item 507 or 508 of Regulation S-K under the Act in connection with sales of New Securities acquired in exchange for such Securities shall not result in such New Securities being not "freely tradeable"; and (y) the requirement that an Exchanging Dealer deliver a Prospectus in connection with sales of New Securities acquired in the Registered Exchange Offer in exchange for Securities acquired as a result of market-making activities or other trading activities shall not result in such New Securities being not "freely tradeable"), the Company shall effect a Shelf Registration Statement in accordance with subsection (b) below.

(b) (i) The Company shall as promptly as practicable file with the Commission and shall use its reasonable efforts to cause to be declared effective under the Act a Shelf Registration Statement relating to the offer and sale of the Securities or the New Securities, as applicable, by the Holders thereof from time to time in accordance with the methods of distribution elected by such Holders and set forth in such Shelf Registration Statement; provided, however, that no Holder (other than an Initial Purchaser) shall be entitled to have the Securities held by it covered

by such Shelf Registration Statement unless such Holder agrees in writing to be bound by all of the provisions of this Agreement applicable to such Holder; and provided further, that with respect to New Securities received by an Initial Purchaser in exchange for Securities constituting any portion of an unsold allotment, the Company may, if permitted by current interpretations by the Commission's staff, file a post-effective amendment to the Exchange Offer Registration Statement containing the information required by Item 507 or 508 of Regulation S-K, as applicable, in satisfaction of its obligations under this subsection with respect thereto, and any such Exchange Offer Registration Statement, as so amended, shall be referred to herein as, and governed by the provisions herein applicable to, a Shelf Registration Statement.

(ii) The Company shall use its reasonable efforts to keep the Shelf Registration Statement continuously effective, supplemented and amended as required by the Act, in order to permit the Prospectus forming part thereof to be usable by Holders for a period (the "Shelf Registration Period") from the date the Shelf Registration Statement is declared effective by the Commission until (A) the second anniversary thereof or (B) the date upon which all the Securities or New Securities, as applicable, covered by the Shelf Registration Statement have been sold pursuant to the Shelf Registration Statement. The Company shall be deemed not to have used its reasonable efforts to keep the Shelf Registration Statement effective during the Shelf Registration Period if it voluntarily takes any action that would result in Holders of Securities covered thereby not being able to offer and sell such Securities at any time during the Shelf Registration Period, unless such action is (x) required by applicable law or otherwise undertaken by the Company in good faith and for valid business reasons (not including avoidance of the Company's obligations hereunder), including the acquisition or divestiture of assets, and (y) permitted pursuant to Section 4(k)(ii) hereof.

(iii) The Company shall cause the Shelf Registration Statement and the related Prospectus and any amendment or supplement thereto, as of the effective date of the Shelf Registration Statement or such amendment or supplement, (A) to comply in all material respects with the applicable requirements of the Act; and (B) not to contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein (in the case of the Prospectus, in the light of the circumstances under which they were made) not misleading.

4. *Additional Registration Procedures.* In connection with any Shelf Registration Statement and, to the extent applicable, any Exchange Offer Registration Statement, the following provisions shall apply.

(a) The Company shall:

(i) furnish to each of the Representatives and to counsel for the Holders, not less than five Business Days prior to the filing thereof with the Commission, a copy of any Exchange Offer Registration Statement and any Shelf Registration Statement, and each amendment thereof and each amendment or supplement, if any, to the Prospectus included therein (including all documents incorporated by reference therein after the initial filing) and shall use its reasonable efforts to reflect in each such document, when so filed with the Commission, such comments as the Representatives reasonably propose;

(ii) include the information set forth in Annex A hereto on the facing page of the Exchange Offer Registration Statement, in Annex B hereto in the forepart of the Exchange Offer Registration Statement in a section setting forth details of the Exchange Offer, in Annex C hereto in the underwriting or plan of distribution section of the Prospectus contained in the Exchange Offer Registration Statement, and in Annex D hereto in the letter of transmittal delivered pursuant to the Registered Exchange Offer;



(iii) if requested by an Initial Purchaser, include the information required by Item 507 or 508 of Regulation S-K, as applicable, in the Prospectus contained in the Exchange Offer Registration Statement; and

(iv) in the case of a Shelf Registration Statement, include the names of the Holders that propose to sell Securities pursuant to the Shelf Registration Statement as selling security holders.

(b) The Company shall ensure that:

(i) any Registration Statement and any amendment thereto and any Prospectus forming part thereof and any amendment or supplement thereto complies in all material respects with the Act; and

(ii) any Registration Statement and any amendment thereto does not, when it becomes effective, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

(c) The Company shall advise the Representatives, the Holders of Securities covered by any Shelf Registration Statement and any Exchanging Dealer under any Exchange Offer Registration Statement that has provided in writing to the Company a telephone or facsimile number and address for notices, and, if requested by any Representative or any such Holder or Exchanging Dealer, shall confirm such advice in writing (which notice pursuant to clauses (ii)-(v) hereof shall be accompanied by an instruction to suspend the use of the Prospectus until the Company shall have remedied the basis for such suspension):

(i) when a Registration Statement and any amendment thereto has been filed with the Commission and when the Registration Statement or any post effective amendment thereto has become effective;

(ii) of any request by the Commission for any amendment or supplement to the Registration Statement or the Prospectus or for additional information;

(iii) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the institution or threatening of any proceeding for that purpose;

(iv) of the receipt by the Company of any notification with respect to the suspension of the qualification of the securities included therein for sale in any jurisdiction or the institution or threatening of any proceeding for such purpose; and

(v) of the happening of any event that requires any change in the Registration Statement or the Prospectus so that, as of such date, they (A) do not contain any untrue statement of a material fact and (B) do not omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of the Prospectus, in the light of the circumstances under which they were made) not misleading.

(d) The Company shall use its reasonable efforts to prevent the issuance of any order suspending the effectiveness of any Registration Statement or the qualification of the securities therein for sale in any jurisdiction and, if issued, to obtain as soon as possible the withdrawal thereof.

(e) The Company shall furnish to each Holder of Securities covered by any Shelf Registration Statement, without charge, at least one copy of such Shelf Registration Statement and any post-effective amendment thereto, including all material incorporated therein by reference, and, if the Holder so requests in writing, all exhibits thereto (including exhibits incorporated by reference therein).

(f) The Company shall, during the Shelf Registration Period, deliver to each Holder of Securities covered by any Shelf Registration Statement, without charge, as many copies of the Prospectus (including the Preliminary Prospectus) included in such Shelf Registration Statement and any amendment or supplement thereto as such Holder may reasonably request. The Company consents to the use of the Prospectus or any amendment or supplement thereto by each of the selling Holders of Securities in connection with the offering and sale of the Securities covered by the Prospectus, or any amendment or supplement thereto, included in the Shelf Registration Statement.

(g) The Company shall furnish to each Exchanging Dealer which so requests, without charge, at least one copy of the Exchange Offer Registration Statement and any post-effective amendment thereto, including all material incorporated by reference therein, and, if the Exchanging Dealer so requests in writing, all exhibits thereto (including exhibits incorporated by reference therein).

(h) The Company shall promptly deliver to each Initial Purchaser, each Exchanging Dealer and each other person required to deliver a Prospectus during the Exchange Offer Registration Period, without charge, as many copies of the Prospectus included in such Exchange Offer Registration Statement and any amendment or supplement thereto as any such person may reasonably request. The Company consents to the use of the Prospectus or any amendment or supplement thereto by any Initial Purchaser, any Exchanging Dealer and any such other person that may be required to deliver a Prospectus following the Registered Exchange Offer in connection with the offering and sale of the New Securities covered by the Prospectus, or any amendment or supplement thereto, included in the Exchange Offer Registration Statement.

(i) Prior to the Registered Exchange Offer or any other offering of Securities pursuant to any Registration Statement, the Company shall arrange, if necessary, for the qualification of the Securities or the New Securities for sale under the laws of such jurisdictions as any Holder shall reasonably request and shall maintain such qualification in effect so long as required; provided that in no event shall the Company be obligated to qualify to do business in any jurisdiction where it is not then so qualified or to take any action that would subject it to service of process in suits, other than those arising out of the Initial Placement, the Registered Exchange Offer or any offering pursuant to a Shelf Registration Statement, in any such jurisdiction where it is not then so subject.

(j) The Company shall cooperate with the Holders of Securities to facilitate the timely preparation and delivery of certificates representing New Securities or Securities to be issued or sold pursuant to any Registration Statement free of any restrictive legends and in such denominations and registered in such names as Holders may request.

(k) (i) Upon the occurrence of any event contemplated by subsections (c)(ii) through (v) above, the Company shall promptly (or within the time period provided for by clause (ii) hereof, if applicable) prepare a post-effective amendment to the applicable Registration Statement or an amendment or supplement to the related Prospectus or file any other required document so that, as thereafter delivered to Initial Purchasers of the securities included therein, the Prospectus will not include an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. In such circumstances, the period of effectiveness of the Exchange Offer Registration Statement provided for in Section 2 shall be extended by the number of days from and including the date of the giving of a notice of suspension pursuant to Section 4(c) to and including the date when the Initial Purchasers, the Holders of the Securities and any known Exchanging Dealer shall have received such amended or supplemented Prospectus pursuant to this Section.

(ii) Upon the occurrence or existence of any pending corporate development or any other material event that, in the reasonable judgment of the Company, makes it appropriate

to suspend the availability of a Shelf Registration Statement and the related Prospectus, the Company shall give notice (without notice of the nature or details of such events) to the Holders that the availability of the Shelf Registration is suspended and, upon actual receipt of any such notice, each Holder agrees not to sell any Registrable Securities pursuant to the Shelf Registration until such Holder's receipt of copies of the supplemented or amended Prospectus provided for in Section 4(k)(i) hereof, or until it is advised in writing by the Company that the Prospectus may be used, and has received copies of any additional or supplemental filings that are incorporated or deemed incorporated by reference in such Prospectus. The period during which the availability of the Shelf Registration and any Prospectus is suspended (the "Deferral Period") shall not exceed 45 days in any three-month period or 90 days in any twelve-month period.

(l) Not later than the effective date of any Registration Statement, the Company shall provide a CUSIP number for the Securities or the New Securities, as the case may be, registered under such Registration Statement and provide the Trustee with printed certificates for such Securities or New Securities, in a form eligible for deposit with The Depository Trust Company.

(m) The Company shall comply with all applicable rules and regulations of the Commission and shall make generally available to its security holders an earnings statement satisfying the provisions of Section 11(a) of the Act as soon as practicable after the effective date of the applicable Registration Statement and in any event no later than 45 days after the end of a 12-month period (or 90 days, if such period is a fiscal year) beginning with the first month of the Company's first fiscal quarter commencing after the effective date of the applicable Registration Statement.

(n) The Company shall cause the New Securities Indenture to be qualified under the Trust Indenture Act in a timely manner.

(o) The Company may require each Holder of Securities to be sold pursuant to any Shelf Registration Statement to furnish to the Company such information regarding the Holder and the distribution of such securities as the Company may from time to time reasonably require for inclusion in such Registration Statement. The Company may exclude from such Shelf Registration Statement the Securities of any Holder that unreasonably fails to furnish such information within a reasonable time after receiving such request.

(p) In the case of any Shelf Registration Statement, the Company shall enter into customary agreements (including, if requested, an underwriting agreement in customary form) and take all other appropriate actions in order to expedite or facilitate the registration or the disposition of the Securities, and in connection therewith, if an underwriting agreement is entered into, cause the same to contain indemnification provisions and procedures no less favorable than those set forth in Section 6 hereof.

(q) In the case of any Shelf Registration Statement, the Company shall:

(i) make reasonably available for inspection by the Holders of Securities to be registered thereunder, any underwriter participating in any disposition pursuant to such Registration Statement, and any attorney, accountant or other agent retained by the Holders or any such underwriter all relevant financial and other records and pertinent corporate documents of the Company and its subsidiaries;

(ii) cause the Company's officers, directors, employees, accountants and auditors to supply all relevant information reasonably requested by the Holders or any such underwriter, attorney, accountant or agent in connection with any such Registration Statement as is customary for similar due diligence examinations;

(iii) make such representations and warranties to the Holders of Securities registered thereunder and the underwriters, if any, in form, substance and scope as are customarily made by issuers to underwriters in primary underwritten offerings and covering matters including, but not limited to, those set forth in the Purchase Agreement;

(iv) obtain opinions of counsel to the Company and updates thereof (which counsel and opinions (in form, scope and substance) shall be reasonably satisfactory to the Managing Underwriters, if any) addressed to each selling Holder and the underwriters, if any, covering such matters as are customarily covered in opinions requested in underwritten offerings and such other matters as may be reasonably requested by such Holders and underwriters;

(v) obtain "comfort" letters and updates thereof from the independent certified public accountants of the Company (and, if necessary, any other independent certified public accountants of any subsidiary of the Company or of any business acquired by the Company for which financial statements and financial data are, or are required to be, included in the Registration Statement), addressed to each selling Holder of Securities registered thereunder and the underwriters, if any, in customary form and covering matters of the type customarily covered in "comfort" letters in connection with primary underwritten offerings; and

(vi) deliver such documents and certificates as may be reasonably requested by the Majority Holders or the Managing Underwriters, if any, including those to evidence compliance with Section 4(k) and with any customary conditions contained in the underwriting agreement or other agreement entered into by the Company.

The actions set forth in clauses (iii), (iv), (v) and (vi) of this paragraph (q) shall be performed at (A) the effectiveness of such Registration Statement and each post-effective amendment thereto; and (B) each closing under any underwriting or similar agreement as and to the extent required thereunder.

(r) In the case of any Exchange Offer Registration Statement, the Company shall, if requested by an Initial Purchaser, or by a Broker-Dealer that holds Securities that were acquired as a result of market-making or other trading activities:

(i) make reasonably available for inspection by the requesting party, and any attorney, accountant or other agent retained by the requesting party, all relevant financial and other records, pertinent corporate documents and properties of the Company and its subsidiaries;

(ii) cause the Company's officers, directors, employees, accountants and auditors to supply all relevant information reasonably requested by the requesting party or any such attorney, accountant or agent in connection with any such Registration Statement as is customary for similar due diligence examinations;

(iii) make such representations and warranties to the requesting party, in form, substance and scope as are customarily made by issuers to underwriters in primary underwritten offerings and covering matters including, but not limited to, those set forth in the Purchase Agreement;

(iv) obtain opinions of counsel to the Company and updates thereof (which counsel and opinions (in form, scope and substance) shall be reasonably satisfactory to the requesting party and its counsel, addressed to the requesting party, covering such matters as are customarily

covered in opinions requested in underwritten offerings and such other matters as may be reasonably requested by the requesting party or its counsel;

(v) obtain "comfort" letters and updates thereof from the independent certified public accountants of the Company (and, if necessary, any other independent certified public accountants of any subsidiary of the Company or of any business acquired by the Company for which financial statements and financial data are, or are required to be, included in the Registration Statement), addressed to the requesting party, in customary form and covering matters of the type customarily covered in "comfort" letters in connection with primary underwritten offerings, or if requested by the requesting party or its counsel in lieu of a "comfort" letter, an agreed-upon procedures letter under Statement on Auditing Standards No. 35, covering matters requested by the requesting party or its counsel; and

(vi) deliver such documents and certificates as may be reasonably requested by the requesting party or its counsel, including those to evidence compliance with Section 4(k) and with conditions customarily contained in underwriting agreements.

The foregoing actions set forth in clauses (iii), (iv), (v), and (vi) of this Section shall be performed at the close of the Registered Exchange Offer and the effective date of any post-effective amendment to the Exchange Offer Registration Statement.

(s) If a Registered Exchange Offer is to be consummated, upon delivery of the Securities by Holders to the Company (or to such other person as directed by the Company) in exchange for the New Securities, the Company shall mark, or caused to be marked, on the Securities so exchanged that such Securities are being cancelled in exchange for the New Securities. In no event shall the Securities be marked as paid or otherwise satisfied.

(t) The Company shall use its reasonable efforts if the Securities have been rated prior to the initial sale of such Securities, to confirm such ratings will apply to the Securities or the New Securities, as the case may be, covered by a Registration Statement.

(u) In the event that any Broker-Dealer shall underwrite any Securities or participate as a member of an underwriting syndicate or selling group or "assist in the distribution" (within the meaning of the NASD Rules) thereof, whether as a Holder of such Securities or as an underwriter, a placement or sales agent or a broker or dealer in respect thereof, or otherwise, the Company shall assist such Broker-Dealer in complying with the NASD Rules.

(v) The Company shall use its reasonable efforts to take all other steps necessary to effect the registration of the Securities or the New Securities, as the case may be, covered by a Registration Statement.

5. *Registration Expenses.* The Company shall bear all expenses incurred in connection with the performance of its obligations under Sections 2, 3 and 4 hereof and, in the event of any Shelf Registration Statement, will reimburse the Holders for the reasonable fees and disbursements of one firm or counsel (which shall initially be Cravath, Swaine & Moore LLP, but which may be another nationally recognized law firm experienced in securities matters designated by the Majority Holders) to act as counsel for the Holders in connection therewith, and, in the case of any Exchange Offer Registration Statement, will reimburse the Initial Purchasers for the reasonable fees and disbursements of counsel acting in connection therewith.

6. *Indemnification and Contribution.* (a) The Company agrees to indemnify and hold harmless each Holder of Securities or New Securities, as the case may be, covered by any Registration Statement, each Initial Purchaser and, with respect to any Prospectus delivery as contemplated in Section 4(h) hereof, each Exchanging Dealer, the directors, officers, employees, Affiliates and agents of each such Holder, Initial Purchaser or Exchanging Dealer and each person

who controls any such Holder, Initial Purchaser or Exchanging Dealer within the meaning of either the Act or the Exchange Act against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject under the Act, the Exchange Act or other federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement as originally filed or in any amendment thereof, or in any preliminary Prospectus or the Prospectus, or in any amendment thereof or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of any preliminary Prospectus or the Prospectus, in the light of the circumstances under which they were made) not misleading, and agrees to reimburse each such indemnified party, as incurred, for any legal or other expenses reasonably incurred by it in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to the Company by or on behalf of the party claiming indemnification specifically for inclusion therein. This indemnity agreement shall be in addition to any liability that the Company may otherwise have.

The Company also agrees to indemnify as provided in this Section 6(a) or contribute as provided in Section 6(d) hereof to Losses of each underwriter, if any, of Securities or New Securities, as the case may be, registered under a Shelf Registration Statement, their directors, officers, employees, Affiliates or agents and each person who controls such underwriter on substantially the same basis as that of the indemnification of the Initial Purchasers and the selling Holders provided in this Section 6(a) and shall, if requested by any Holder, enter into an underwriting agreement reflecting such agreement, as provided in Section 4(p) hereof.

(b) Each Holder of securities covered by a Registration Statement (including each Initial Purchaser that is a Holder, in such capacity) severally and not jointly agrees to indemnify and hold harmless the Company, each of its directors, each of its officers who signs such Registration Statement and each person who controls the Company within the meaning of either the Act or the Exchange Act, to the same extent as the foregoing indemnity from the Company to each such Holder, but only with reference to written information relating to such Holder furnished to the Company by or on behalf of such Holder specifically for inclusion in the documents referred to in the foregoing indemnity. This indemnity agreement will be in addition to any liability that any such Holder may otherwise have.

(c) Promptly after receipt by an indemnified party under this Section 6 or notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section, notify the indemnifying party in writing of the commencement thereof; but the failure so to notify the indemnifying party (i) will not relieve it from liability under paragraph (a) or (b) above unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the indemnifying party of substantial rights and defenses; and (ii) will not, in any event, relieve the indemnifying party from any obligations to any indemnified party other than the indemnification obligation provided in paragraph (a) or (b) above. The indemnifying party shall be entitled to appoint counsel (including local counsel) of the indemnifying party's choice at the indemnifying party's expense to represent the indemnified party in any action for which indemnification is sought (in which case the indemnifying party shall not thereafter be responsible for the fees and expenses of any separate counsel, other than local counsel if not appointed by the indemnifying party, retained by the indemnified party or parties except as set forth below); provided, however, that such counsel shall

be satisfactory to the indemnified party. Notwithstanding the indemnifying party's election to appoint counsel (including local counsel) to represent the indemnified party in an action, the indemnified party shall have the right to employ separate counsel (including local counsel), and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest; (ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties that are different from or additional to those available to the indemnifying party; (iii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action; or (iv) the indemnifying party shall authorize the indemnified party to employ separate counsel at the expense of the indemnifying party. An indemnifying party will not, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding.

(d) In the event that the indemnity provided in paragraph (a) or (b) of this Section is unavailable to or insufficient to hold harmless an indemnified party for any reason, then each applicable indemnifying party shall have a joint and several obligation to contribute to the aggregate losses, claims, damages and liabilities (including legal or other expenses reasonably incurred in connection with investigating or defending any loss, claim, liability, damage or action) (collectively "Losses") to which such indemnified party may be subject in such proportion as is appropriate to reflect the relative benefits received by such indemnifying party, on the one hand, and such indemnified party, on the other hand, from the Initial Placement and the Registration Statement which resulted in such Losses; *provided, however*, that in no case shall any Initial Purchaser be responsible, in the aggregate, for any amount in excess of the purchase discount or commission applicable to such Security, or in the case of a New Security, applicable to the Security that was exchangeable into such New Security, as set forth in the Final Memorandum, nor shall any underwriter be responsible for any amount in excess of the underwriting discount or commission applicable to the securities purchased by such underwriter under the Registration Statement which resulted in such Losses. If the allocation provided by the immediately preceding sentence is unavailable for any reason, the indemnifying party and the indemnified party shall contribute in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of such indemnifying party, on the one hand, and such indemnified party, on the other hand, in connection with the statements or omissions which resulted in such Losses as well as any other relevant equitable considerations. Benefits received by the Company shall be deemed to be equal to the total net proceeds from the Initial Placement (before deducting expenses) as set forth in the Final Memorandum. Benefits received by the Initial Purchasers shall be deemed to be equal to the total purchase discounts and commissions as set forth on the cover page of the Final Memorandum, and benefits received by any other Holders shall be deemed to be equal to the value of receiving Securities or New Securities, as applicable, registered under the Act. Benefits received by any underwriter shall be deemed to be equal to the total underwriting discounts and commissions, as set forth on the cover page of the Prospectus forming a part of the Registration Statement which resulted in such Losses. Relative fault shall be determined by reference to, among other things, whether any untrue or any alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information provided by the indemnifying party, on the one hand, or by the indemnified party, on the other hand, the intent of the parties and

their relative knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The parties agree that it would not be just and equitable if contribution were determined by pro rata allocation (even if the Holders were treated as one entity for such purpose) or any other method of allocation which does not take account of the equitable considerations referred to above. Notwithstanding the provisions of this paragraph (d), no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section, each person who controls a Holder within the meaning of either the Act or the Exchange Act and each director, officer, employee and agent of such Holder shall have the same rights to contribution as such Holder, and each person who controls the Company within the meaning of either the Act or the Exchange Act, each officer of the Company who shall have signed the Registration Statement and each director of the Company shall have the same rights to contribution as the Company, subject in each case to the applicable terms and conditions of this paragraph (d).

(e) The provisions of this Section will remain in full force and effect, regardless of any investigation made by or on behalf of any Holder or the Company or any of the indemnified persons referred to in this Section 6, and will survive the sale by a Holder of securities covered by a Registration Statement.

7. *Underwritten Registrations.* (a) If any of the Securities or New Securities, as the case may be, covered by any Shelf Registration Statement are to be sold in an underwritten offering, the Managing Underwriters shall be selected by the Majority Holders.

(b) No person may participate in any underwritten offering pursuant to any Shelf Registration Statement, unless such person (i) agrees to sell such person's Securities or New Securities, as the case may be, on the basis reasonably provided in any underwriting arrangements approved by the persons entitled hereunder to approve such arrangements; and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements.

8. *Registration Defaults.* If any of the following events shall occur, then the Company shall pay liquidated damages (the "Registration Default Damages") to the Holders of Securities in respect of the Securities as follows:

(a) if any Registration Statement required by this Agreement is not filed with the Commission on or prior to the 90th day following the date of original issuance of the Securities, then Registration Default Damages shall accrue on the Registrable Securities at a rate of 0.25% per annum for the first 90 days from and including such specified date and 0.50% per annum thereafter;

(b) if any Registration Statement required by this Agreement is not declared effective by the Commission on or prior to the 195th day following the date of original issuance of the Securities, then commencing on the day after such specified date, Registration Default Damages shall accrue on the Registrable Securities at a rate of 0.25% per annum for the first 90 days from and including such specified date and 0.50% per annum thereafter;

(c) if neither the Registered Exchange Offer has been consummated nor the Shelf Registration Statement has been declared effective on or prior to the 225th day following the date of original issuance of the Securities, Registration Default Damages shall accrue on the Registrable Securities at a rate of 0.25% per annum for the first 90 days from and including such specified date and 0.50% per annum thereafter; or

(d) if any Registration Statement required by this Agreement has been declared effective but ceases to be effective at any time at which it is required to be effective under this



Agreement, then commencing on the day the Registration Statement ceases to be effective, Registration Default Damages shall accrue on the Registrable Securities at a rate of 0.25% per annum for the first 90 days from and including such date on which the Registration Statement ceases to be effective and 0.50% per annum thereafter;

*provided, however*, that (1) upon the filing of the Registration Statement (in the case of paragraph (a) above), (2) upon the effectiveness of the Registration Statement (in the case of paragraph (b) above), (3) upon the consummation of the Registered Exchange Offer or the effectiveness of the Shelf Registration Statement (in the case of paragraph (c) above), or (4) upon the effectiveness of the Registration Statement which had ceased to remain effective (in the case of paragraph (d) above), Registration Default Damages shall cease to accrue. At no time will the aggregate of any such Registration Default Damages accrue at a rate greater than 0.50% per annum.

9. *No Inconsistent Agreements.* The Company has not entered into, and agrees not to enter into, any agreement with respect to its securities that is inconsistent with the rights granted to the Holders herein or that otherwise conflicts with the provisions hereof.

10. *Amendments and Waivers.* The provisions of this Agreement may not be amended, qualified, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the Company has obtained the written consent of the Holders of a majority of the aggregate principal amount of the Registrable Securities outstanding; *provided* that, with respect to any matter that directly or indirectly affects the rights of any Initial Purchaser hereunder, the Company shall obtain the written consent of each such Initial Purchaser against which such amendment, qualification, supplement, waiver or consent is to be effective; *provided further* that no amendment, qualification, supplement, waiver or consent with respect to Section 8 hereof shall be effective as against any Holder of Registered Securities unless consented to in writing by such Holder; and *provided, further*, that the provisions of this Article 10 may not be amended, qualified, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the Company has obtained the written consent of the Initial Purchasers and each Holder. Notwithstanding the foregoing (except the foregoing provisos), a waiver or consent to departure from the provisions hereof with respect to a matter that relates exclusively to the rights of Holders whose Securities or New Securities, as the case may be, are being sold pursuant to a Registration Statement and that does not directly or indirectly affect the rights of other Holders may be given by the Majority Holders, determined on the basis of Securities or New Securities, as the case may be, being sold rather than registered under such Registration Statement.

11. *Notices.* All notices and other communications provided for or permitted hereunder shall be made in writing by hand-delivery, first-class mail, telex, telecopier or air courier guaranteeing overnight delivery:

- (a) if to a Holder, at the most current address given by such holder to the Company in accordance with the provisions of this Section 11, which address initially is, with respect to each Holder, the address of such Holder maintained by the Registrar under the Indenture;
- (b) if to the Representatives, initially at the address or addresses set forth in the Purchase Agreement; and
- (c) if to the Company, initially at its address set forth in the Purchase Agreement.

All such notices and communications shall be deemed to have been duly given when received.

The Initial Purchasers or the Company by notice to the other parties may designate additional or different addresses for subsequent notices or communications.

12. *Remedies.* Each Holder, in addition to being entitled to exercise all rights provided to it herein, in the Indenture or in the Purchase Agreement or granted by law, including recovery of liquidated or other damages, will be entitled to specific performance of its rights under this Agreement. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Agreement and hereby agrees to waive in any action for specific performance the defense that a remedy at law would be adequate.

13. *Successors.* This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns, including, without the need for an express assignment or any consent by the Company thereto, subsequent Holders of Securities and the New Securities, and the indemnified persons referred to in Section 6 hereof. The Company hereby agrees to extend the benefits of this Agreement to any Holder of Securities and the New Securities, and any such Holder may specifically enforce the provisions of this Agreement as if an original party hereto.

14. *Counterparts.* This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

15. *Headings.* The section headings used herein are for convenience only and shall not affect the construction hereof.

16. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed in the State of New York. The parties hereto each hereby waive any right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

17. *Severability.* In the event that any one or more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired or affected thereby, it being intended that all of the rights and privileges of the parties shall be enforceable to the fullest extent permitted by law.

18. *Securities Held by the Company, etc.* Whenever the consent or approval of Holders of a specified percentage of principal amount of Securities or New Securities is required hereunder, Securities or New Securities, as applicable, held by the Company or its Affiliates (other than subsequent Holders of Securities or New Securities if such subsequent Holders are deemed to be Affiliates solely by reason of their holdings of such Securities or New Securities) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to us the enclosed duplicate hereof, whereupon this letter and your acceptance shall represent a binding agreement between the Company and the several Initial Purchasers.

Very truly yours,

Brinker International, Inc.

By: /s/ DOUGLAS H. BROOKS

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Name: Douglas H. Brooks  
Title: President and Chief Executive Officer

The foregoing Agreement is hereby confirmed and accepted as of the date first above written.

Citigroup Global Markets Inc.  
J.P. Morgan Securities Inc.

By: Citigroup Global Markets Inc.

By: /s/ MICHAEL A. ECK

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Name: Michael A. Eck  
Title: Managing Director

By: J.P. Morgan Securities Inc.

By: /s/ MARIA SRAMEK

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Name: Maria Sramek  
Title: Vice President

For themselves and the other several Initial Purchasers named in Schedule I to the Purchase Agreement.

## ANNEX A

Each broker-dealer that receives new securities for its own account pursuant to the Exchange Offer must acknowledge that it will deliver a prospectus in connection with any resale of such new securities. The Letter of Transmittal states that by so acknowledging and by delivering a prospectus, a broker-dealer will not be deemed to admit that it is an "underwriter" within the meaning of the Act. This prospectus, as it may be amended or supplemented from time to time, may be used by a broker-dealer in connection with resales of new securities received in exchange for securities where such securities were acquired by such broker-dealer as a result of market-making activities or other trading activities. The company has agreed that, starting on the expiration date and ending on the close of business one year after the expiration date, it will make this prospectus available to any broker-dealer for use in connection with any such resale. See "Plan of Distribution".

## ANNEX B

Each broker-dealer that receives new securities for its own account in exchange for securities, where such securities were acquired by such broker-dealer as a result of market-making activities or other trading activities, must acknowledge that it will deliver a prospectus in connection with any resale of such new securities. See "Plan of Distribution".

## PLAN OF DISTRIBUTION

Each broker-dealer that receives new securities for its own account pursuant to the Exchange Offer must acknowledge that it will deliver a prospectus in connection with any resale of such new securities. This prospectus, as it may be amended or supplemented from time to time, may be used by a broker-dealer in connection with resales of new securities received in exchange for securities where such securities were acquired as a result of market-making activities or other trading activities. The company has agreed that, starting on the expiration date and ending on the close of business one year after the expiration date, it will make this prospectus, as amended or supplemented, available to any broker-dealer for use in connection with any such resale. In addition, until [ ], 200[ ] all dealers effecting transactions in the new securities may be required to deliver a prospectus.

The company will not receive any proceeds from any sale of new securities by brokers-dealers. New securities received by broker-dealers for their own account pursuant to the Exchange Offer may be sold from time to time in one or more transactions in the over-the-counter market, in negotiated transactions, through the writing of options on the new securities or a combination of such methods of resale, at market prices prevailing at the time of resale, at prices related to such prevailing market prices or negotiated prices. Any such resale may be made directly to purchasers or to or through brokers or dealers who may receive compensation in the form of commissions or concessions from any such broker-dealer and/or the purchasers of any such new securities. Any broker-dealer that resells new securities that were received by it for its own account pursuant to the Exchange Offer and any broker or dealer that participates in a distribution of such new securities may be deemed to be an "underwriter" within the meaning of the Act and any profit of any such resale of new securities and any commissions or concessions received by any such persons may be deemed to be underwriting compensation under the Act. The Letter of Transmittal states that by acknowledging that it will deliver and by delivering a prospectus, a broker-dealer will not be deemed to admit that it is an "underwriter" within the meaning of the Act.

For a period of one year after the expiration date, the company will promptly send additional copies of this prospectus and any amendment or supplement to this prospectus to any broker-dealer that requests such documents in the Letter of Transmittal. The company has agreed to pay all expenses incident to the Exchange Offer (including the expenses of one counsel for the holder of the securities) other than commissions or concessions of any brokers or dealers and will indemnify the holders of the securities (including any broker-dealers) against certain liabilities, including liabilities under the Act.

[If applicable, add information required by Regulation S-K Items 507 and/or 508.]

*Rider A*

PLEASE FILL IN YOUR NAME AND ADDRESS BELOW IF YOU ARE A BROKER-DEALER AND WISH TO RECEIVE 10 ADDITIONAL COPIES OF THE PROSPECTUS AND 10 COPIES OF ANY AMENDMENTS OR SUPPLEMENTS THERETO.

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

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

\_\_\_\_\_

*Rider B*

If the undersigned is not a Broker-Dealer, the undersigned represents that it acquired the New Securities in the ordinary course of its business, it is not engaged in, and does not intend to engage in, a distribution of New Securities and it has no arrangements or understandings with any person to participate in a distribution of the New Securities. If the undersigned is a Broker-Dealer that will receive New Securities for its own account in exchange for Securities, it represents that the Securities to be exchanged for New Securities were acquired by it as a result of market-making activities or other trading activities and acknowledges that it will deliver a prospectus in connection with any resale of such New Securities; however, by so acknowledging and by delivering a prospectus, the undersigned will not be deemed to admit that it is an "underwriter" within the meaning of the Act.

## QuickLinks

[Exhibit 4.2](#)



**Computation of Ratio of Earnings to Fixed Charges**  
(in thousands, except ratios)

	Thirty-Nine Week Period Ended	Fiscal Years				
	March 24, 2004	2003	2002	2001	2000	1999
<b>Earnings:</b>						
Pre-tax income	\$ 143,883	\$ 253,587	\$ 231,849	\$ 221,927	\$ 181,542	\$ 130,539
Equity investee losses	1,051	2,771	1,661	838	2,519	11,341
Fixed charges	39,658	52,662	51,690	41,739	41,787	37,501
Amortization of capitalized interest	1,560	1,804	1,580	1,442	1,280	1,081
Capitalized interest	(2,566)	(5,566)	(4,508)	(2,770)	(3,234)	(3,969)
<b>Total earnings</b>	<b>\$ 183,586</b>	<b>\$ 305,258</b>	<b>\$ 282,272</b>	<b>\$ 263,175</b>	<b>\$ 223,894</b>	<b>\$ 176,493</b>
<b>Fixed Charges:</b>						
Interest expense	\$ 8,973	\$ 12,449	\$ 13,327	\$ 8,608	\$ 10,746	\$ 9,241
Capitalized interest	2,566	5,566	4,508	2,770	3,234	3,969
Gross interest	11,539	18,015	17,835	11,378	13,980	13,210
Estimate of interest in rent	28,119	34,647	33,855	30,361	27,807	24,291
<b>Total fixed charges</b>	<b>\$ 39,658</b>	<b>\$ 52,662</b>	<b>\$ 51,690</b>	<b>\$ 41,739</b>	<b>\$ 41,787</b>	<b>\$ 37,501</b>
<b>Ratio of Earnings to Fixed Charges:</b>	<b>4.63</b>	<b>5.80</b>	<b>5.46</b>	<b>6.31</b>	<b>5.36</b>	<b>4.71</b>

QuickLinks

[Exhibit 12](#)

**Consent of Independent Registered Public Accounting Firm**

The Board of Directors  
Brinker International:

We consent to the use of our report dated July 31, 2003, except for note 14, as to which the date is August 15, 2003, relating to the consolidated balance sheets of Brinker International, Inc. and subsidiaries as of June 25, 2003 and June 26, 2002 and the related consolidated statements of income, shareholders' equity and cash flows for each of the years in the three-year period ended June 25, 2003, which report is incorporated herein by reference and to the reference to our firm under the heading "Experts" in the prospectus.

/s/ KPMG LLP

Dallas, Texas  
June 24, 2004

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## QuickLinks

[Exhibit 23.1](#)

[Consent of Independent Registered Public Accounting Firm](#)

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# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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## FORM T-1

### STATEMENT OF ELIGIBILITY UNDER THE TRUST INDENTURE ACT OF 1939 OF A CORPORATION DESIGNATED TO ACT AS TRUSTEE

Check if an application to determine eligibility of a Trustee  
pursuant to Section 305 (b)(2)

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### **CITIBANK, N.A.**

(Exact name of trustee as specified in its charter)

**13-5266470**  
(I.R.S. employer  
identification no.)

**399 Park Avenue, New York, New York**  
(Address of principal executive office)

**10043**  
(Zip Code)

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### **Brinker International, Inc.**

(Exact name of obligor 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**  
(Address of principal executive offices)

**75240**  
(Zip Code)

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**5.75% Notes due 2014**  
(Title of the indenture securities)

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**Item 1. General Information.**

Furnish the following information as to the trustee:

- (a) Name and address of each examining or supervising authority to which it is subject.

<u>Name</u>	<u>Address</u>
Comptroller of the Currency	Washington, D.C.
Federal Reserve Bank of New York 33 Liberty Street New York, NY	New York, NY
Federal Deposit Insurance Corporation	Washington, D.C.

- (b) Whether it is authorized to exercise corporate trust powers.

Yes.

**Item 2. Affiliations with Obligor.**

If the obligor is an affiliate of the trustee, describe each such affiliation.

None.

**Item 16. List of Exhibits.**

List below all exhibits filed as a part of this Statement of Eligibility.

Exhibits identified in parentheses below, on file with the Commission, are incorporated herein by reference as exhibits hereto.

Exhibit 1—Copy of Articles of Association of the Trustee, as now in effect. (Exhibit 1 to T-1 to Registration Statement No. 2-79983)

Exhibit 2—Copy of certificate of authority of the Trustee to commence business. (Exhibit 2 to T-1 to Registration Statement No. 2-29577).

Exhibit 3—Copy of authorization of the Trustee to exercise corporate trust powers. (Exhibit 3 to T-1 to Registration Statement No. 2-55519)

Exhibit 4—Copy of existing By-Laws of the Trustee. (Exhibit 4 to T-1 to Registration Statement No. 33-34988)

Exhibit 5—Not applicable.

Exhibit 6—The consent of the Trustee required by Section 321(b) of the Trust Indenture Act of 1939. (Exhibit 6 to T-1 to Registration Statement No. 33-19227.)

Exhibit 7—Copy of the latest Report of Condition of Citibank, N.A. (as of March 31, 2004—attached)

Exhibit 8—Not applicable.

Exhibit 9—Not applicable.

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**SIGNATURE**

Pursuant to the requirements of the Trust Indenture Act of 1939, the Trustee, Citibank, N.A., a national banking association organized and existing under the laws of the United States of America, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in The City of New York and State of New York, on the 15th day of June, 2004

CITIBANK, N.A.

By

/s/ LOUIS PISCITELLI

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Louis Piscitelli  
Vice President

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REPORT OF CONDITION  
CONSOLIDATING  
DOMESTIC AND FOREIGN  
SUBSIDIARIES OF

Citibank, N.A. of New York in the State of New York, at the close of business on March 31, 2004, published in response to call made by Comptroller of the Currency, under Title 12, United States Code, Section 161. Charter Number 1461 Comptroller of the Currency Northeastern District.

	Thousands of dollars
<b>ASSETS</b>	
Cash and balances due from depository institutions:	
Noninterest-bearing balances and currency and coin	\$ 14,687,000
Interest-bearing balances	22,107,000
Held-to-maturity securities	47,000
Available-for-sale securities	98,971,000
Federal funds sold in domestic Offices	3,643,000
Federal funds sold and securities purchased under agreements to resell	15,254,000
Loans and leases held for sale	3,360,000
Loans and lease financing receivables:	
Loans and Leases, net of unearned income	326,755,000
LESS: Allowance for loan and lease losses	8,439,000
Loans and leases, net of unearned income, allowance, and reserve	318,316,000
Trading assets	76,538,000
Premises and fixed assets (including capitalized leases)	3,911,000
Other real estate owned	88,000
Investments in unconsolidated subsidiaries and associated companies	914,000
Customers' liability to this bank on acceptances outstanding	1,255,000
Intangible assets: Goodwill	6,622,000
Intangible assets: Other intangible assets	9,039,000
Other assets	31,439,000
<b>TOTAL ASSETS</b>	<b>\$ 606,191,000</b>



<b>LIABILITIES</b>	
Deposits: In domestic offices	\$ 115,656,000
Noninterest-bearing	21,523,000
Interest-bearing	94,133,000
In foreign offices, Edge and Agreement subsidiaries, and IBFs	285,125,000
Noninterest-bearing	21,773,000
Interest-bearing	263,352,000
Federal funds purchased in domestic Offices	9,870,000
Federal funds purchased and securities sold under agreements to repurchase	9,222,000
Demand notes issued to the US Treasury	0
Trading liabilities	49,560,000
Other borrowed money (includes mortgage indebtedness and obligations under capitalized leases): ss	47,638,000
Bank's liability on acceptances executed and outstanding	1,255,000
Subordinated notes and debentures	12,330,000
Other liabilities	26,562,000
	<hr/>
<b>TOTAL LIABILITIES</b>	<b>\$ 557,218,000</b>
	<hr/>
<b>Minority interest in consolidated Subsidiaries</b>	<b>424,000</b>
<b>EQUITY CAPITAL</b>	
Perpetual preferred stock and related surplus	1,950,000
Common stock	751,000
Surplus	24,972,000
Retained Earnings	21,777,000
Accumulated net gains (losses) on cash flow hedges	-901,000
Other equity capital components	0
	<hr/>
<b>TOTAL EQUITY CAPITAL</b>	<b>\$ 48,549,000</b>
	<hr/>
<b>TOTAL LIABILITIES AND EQUITY CAPITAL</b>	<b>\$ 606,191,000</b>
	<hr/>

I, Grace B. Vogel, Vice President of the above-named bank do hereby declare that this Report of Condition is true and correct to the best of my knowledge and belief.

GRACE B. VOGEL, VICE PRESIDENT

We, the undersigned directors, attest to the correctness of this Report of Condition. We declare that it has been examined by us, and to the best of our knowledge and belief has been prepared in conformance with the instructions and is true and correct.

ALAN S. MACDONALD  
WILLIAM R. RHODES  
ROBERT B. WILLUMSTAD  
DIRECTORS

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## QuickLinks

[Exhibit 25](#)

**LETTER OF TRANSMITTAL**

**OFFER FOR ALL OUTSTANDING  
\$300,000,000 5.75% NOTES DUE 2014  
IN EXCHANGE FOR  
REGISTERED  
\$300,000,000 5.75% NOTES DUE 2014  
OF**

**BRINKER INTERNATIONAL, INC.**

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Pursuant to the Prospectus dated June , 2004

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**THE EXCHANGE OFFER AND WITHDRAWAL RIGHTS WILL EXPIRE AT 5:00 P.M., NEW YORK CITY TIME, ON , 2004 (THE "EXPIRATION DATE") UNLESS THE EXCHANGE OFFER IS EXTENDED, IN WHICH CASE THE TERM "EXPIRATION DATE" SHALL MEAN THE LATEST TIME AND DATE TO WHICH THE EXCHANGE OFFER IS EXTENDED. TENDERS OF OUTSTANDING NOTES MAY BE WITHDRAWN AT ANY TIME PRIOR TO THE EXPIRATION DATE.**

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The Exchange Agent is:

**Citibank, N.A.**

*By Mail, Hand Delivery or Overnight Courier:*

Citibank, N.A.  
111 Wall Street, 15th Floor  
New York, New York 10005

*By Facsimile Transmission:*

(212) 657-1020  
Attention: Agency and Trust Services

*Confirm by Telephone*  
(212) 657-7524

**For Information Call: 1-800-422-2066 or (212) 657-7524**

***Delivery of this instrument to an address other than as set forth above or transmission of instructions to a facsimile number other than the one listed above will not constitute a valid delivery. The instructions set forth in this Letter of Transmittal should be read carefully before this Letter of Transmittal is completed.***

The undersigned acknowledges receipt of the Prospectus dated June , 2004 (the "Prospectus") of Brinker International, Inc. (the "Company") and this Letter of Transmittal (this "Letter of Transmittal"), which, together with the Prospectus, constitutes the Company's offer (the "Exchange Offer") to exchange up to \$300,000,000 aggregate principal amount of its 5.75% Notes due 2014 (the "New Notes"), which have been registered under the Securities Act of 1933, as amended (the "Securities Act"), for up to \$300,000,000 aggregate principal amount of its outstanding 5.75% Notes due 2014 (the "Outstanding Notes"). Recipients of the Prospectus should read the requirements described in such Prospectus with respect to eligibility to participate in the Exchange Offer. Capitalized terms used but not defined herein have the meaning given to them in the Prospectus.

The undersigned hereby tenders the Outstanding Notes described in the box on page 3 entitled "Description of Outstanding Notes" pursuant to the terms and conditions described in the Prospectus and this Letter of Transmittal. The undersigned is the registered owner of all the Outstanding Notes so described and the undersigned represents that it has received from each beneficial owner of

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Outstanding Notes ("Beneficial Owners") a duly completed and executed form of "Instruction to Registered Holder from Beneficial Owner" accompanying this Letter of Transmittal, instructing the undersigned to take the action described in this Letter of Transmittal.

This Letter of Transmittal is to be used only by a holder of Outstanding Notes (i) if certificates representing Outstanding Notes are to be forwarded herewith or (ii) if delivery of Outstanding Notes is to be made by book-entry transfer to the Exchange Agent's account at The Depository Trust Company (the "Depository"), pursuant to the procedures set forth in the section of the Prospectus entitled "The Exchange Offer—Procedures for Tendering Your Original Notes." If delivery of the Outstanding Notes is to be made by book-entry transfer to the account maintained by the Exchange Agent at the Depository, tenders of Outstanding Notes must be effected in accordance with the procedures mandated by the Depository's Automated Tender Offer Program and the procedures set forth in the Prospectus under the caption "The Exchange Offer—Book-Entry Transfer."

The undersigned hereby represents and warrants that the information set forth in the box on page 7 entitled "Beneficial Owner(s)" is true and correct.

Any Beneficial Owner whose Outstanding Notes are registered in the name of a broker, dealer, commercial bank, trust company or other nominee and who wishes to tender should contact such registered holder of Outstanding Notes promptly and instruct such registered holder of Outstanding Notes to tender on behalf of the Beneficial Owner. If such Beneficial Owner wishes to tender on its own behalf, such Beneficial Owner must, prior to completing and executing this Letter of Transmittal and delivering its Outstanding Notes, either make appropriate arrangements to register ownership of Outstanding Notes in such Beneficial Owner's name or obtain a properly completed bond power from the registered holder of Outstanding Notes. The transfer of record ownership may take considerable time.

In order to properly complete this Letter of Transmittal, a holder of Outstanding Notes must (i) complete the box entitled "Description of Outstanding Notes," (ii) if appropriate, check and complete the boxes relating to Book-Entry Transfer, Guaranteed Delivery, Special Issuance Instructions, Special Delivery Instructions and Beneficial Owner(s) and (iii) sign this Letter of Transmittal by completing the box entitled "Sign Here." Each holder of Outstanding Notes should carefully read the detailed instructions below prior to completing this Letter of Transmittal.

Holders of Outstanding Notes who desire to tender their Outstanding Notes for exchange and (i) whose Outstanding Notes are not immediately available, (ii) who cannot deliver their Outstanding Notes and all other documents required hereby to the Exchange Agent on or prior to the Expiration Date or (iii) who are unable to complete the procedure for book-entry transfer on a timely basis, must tender Outstanding Notes pursuant to the guaranteed delivery procedures set forth in the section of the Prospectus entitled "The Exchange Offer—Guaranteed Delivery Procedures." See Instruction 2 beginning on page 11 hereof.

Holders of Outstanding Notes who wish to tender Outstanding Notes for exchange must, at a minimum, complete, for each applicable row, columns (1), (2), if applicable (see footnote 1 to the box on page 3), and (3) in the box on page 3 entitled "Description of Outstanding Notes" and sign the box on page 10 under the words "Sign Here." If only those columns are completed, such holder of Outstanding Notes will have tendered for exchange all Outstanding Notes listed in column (3) of the box on page 3. If the holder of Outstanding Notes wishes to tender for exchange less than all of such Outstanding Notes, for each applicable row, column (4) must be completed in full. In such case, such holder of Outstanding Notes should refer to Instruction 5 on page 12.



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**CHECK HERE IF TENDERED OUTSTANDING NOTES ARE BEING DELIVERED PURSUANT TO A NOTICE OF GUARANTEED DELIVERY ENCLOSED HERewith AND COMPLETE THE FOLLOWING (FOR USE BY ELIGIBLE INSTITUTIONS ONLY):**

Name of Registered Holder of Outstanding Note(s):

\_\_\_\_\_

Date of Execution of Notice of Guaranteed Delivery:

\_\_\_\_\_

Window Ticket Number (if available):

\_\_\_\_\_

Name of Institution which Guaranteed Delivery:

\_\_\_\_\_

Account Number (if delivered by book-entry transfer):

\_\_\_\_\_

**ATTENTION BROKER-DEALERS: IMPORTANT NOTICE  
CONCERNING YOUR ABILITY TO RESELL THE NEW NOTES**

The Securities and Exchange Commission (the "SEC") considers broker-dealers that acquired Outstanding Notes directly from the Company, but not as a result of market-making activities or other trading activities, to be making a distribution of the New Notes if they participate in the Exchange Offer. Consequently, these broker-dealers cannot use the Prospectus for the Exchange Offer in connection with resales of the New Notes and, absent an exemption, must comply with the registration and prospectus delivery requirements of the Securities Act in connection with resales of the New Notes. Such broker-dealers cannot rely on the position of the SEC's staff set forth in the Exxon Capital Holdings Corporation no-action letter (available May 13, 1988) or similar no-action letters.

A broker-dealer that has bought Outstanding Notes for market-making or other trading activities must deliver a Prospectus in order to resell any New Notes it receives for its own account in the Exchange Offer. The SEC has taken the position that these broker-dealers may fulfill their prospectus delivery requirements with respect to the New Notes by delivering the Prospectus for the Exchange Offer. Such Prospectus may be used by a broker-dealer to resell any of its New Notes. We will send a Prospectus to any broker-dealer that requests copies in this questionnaire for a period of up to one year after the expiration date of the Exchange Offer.

**CHECK HERE IF YOU ARE A BROKER-DEALER AND WISH TO RECEIVE ADDITIONAL COPIES OF THE PROSPECTUS AND COPIES OF ANY AMENDMENTS OR SUPPLEMENTS THERETO FOR USE IN CONNECTION WITH REALES OF NEW NOTES:**

Name:

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Address:

---

Telephone No.:

---

Number of Additional Copies Requested:

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If you requested additional copies of the Prospectus, YOU MUST MAIL OR SEND A PHOTOCOPY OF THIS PAGE to:

*By Mail, Hand Delivery or Overnight Courier:*

Citibank, N.A.  
111 Wall Street, 15th Floor  
New York, New York 10005

*By Facsimile Transmission:*

(212) 657-1020  
Attention: Agency and Trust Services

*Confirm by Telephone*  
(212) 657-7524

**SPECIAL ISSUANCE INSTRUCTIONS**  
**(SEE INSTRUCTIONS 1, 6, 7 AND 8)**

To be completed ONLY (i) if the New Notes issued in exchange for Outstanding Notes (or if certificates for Outstanding Notes not tendered for exchange for New Notes) are to be issued in the name of someone other than the undersigned or (ii) if Outstanding Notes tendered by book-entry transfer which are not exchanged are to be returned by credit to an account maintained at the Depository.

Issue to:

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Name:

---

(Please Print)

Address:

---

---

(Include Zip Code)

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(Tax Identification or Social Security Number)

Credit Outstanding Notes not exchanged and delivered by book-entry transfer to the Depository account set forth below:

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(Account Number)

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**SPECIAL DELIVERY INSTRUCTIONS**  
**(SEE INSTRUCTIONS 1, 6, 7 AND 8)**

To be completed ONLY if the New Notes issued in exchange for Outstanding Notes (or if certificates for Outstanding Notes not tendered for exchange for New Notes) are to be mailed or delivered (i) to someone other than the undersigned, or (ii) to the undersigned at an address other than the address shown below the undersigned's signature.

Mail or deliver to:

---

Name:

---

(Please Print)

Address:

---

---

(Include Zip Code)

---

(Tax Identification or Social Security Number)



**BENEFICIAL OWNER(S)**

**State of Principal Residence of Each Beneficial Owner of Outstanding Notes**

**Principal Amount of Outstanding Notes Held for Account of Beneficial Owner(s)**

If delivery of Outstanding Notes is to be made by book-entry transfer to the account maintained by the Exchange Agent at the Depositary, then tenders of Outstanding Notes must be effected in accordance with the procedures mandated by the Depositary's Automated Tender Offer Program and the procedures set forth in the Prospectus under the caption "The Exchange Offer—Book-Entry Transfer."

**SIGNATURES MUST BE PROVIDED BELOW**  
**PLEASE READ THE ACCOMPANYING INSTRUCTIONS CAREFULLY**

**Ladies and Gentlemen:**

Pursuant to the offer by Brinker International, Inc. (the "Company") upon the terms and subject to the conditions set forth in the Prospectus dated June 1, 2004 (the "Prospectus") and this Letter of Transmittal (this "Letter of Transmittal"), which, together with the Prospectus, constitutes the Company's offer (the "Exchange Offer") to exchange up to \$300,000,000 aggregate principal amount of its 5.75% Notes due 2014 (the "New Notes"), which have been registered under the Securities Act of 1933, as amended (the "Securities Act"), for up to \$300,000,000 aggregate principal amount of its outstanding 5.75% Notes due 2014 (the "Outstanding Notes"), the undersigned hereby tenders to the Company for exchange the Outstanding Notes indicated above.

By executing this Letter of Transmittal and subject to and effective upon acceptance for exchange of the Outstanding Notes tendered for exchange herewith, the undersigned (i) acknowledges and agrees that the Company shall have fully performed all of its obligations under that certain Registration Rights Agreement, dated as of May 14, 2004, among the Company and Citigroup Global Markets Inc. and J.P. Morgan Securities Inc., as representatives of the initial purchasers of the Outstanding Notes, (ii) will have irrevocably sold, assigned and transferred to the Company all right, title and interest in, to and under all of the Outstanding Notes tendered for exchange hereby and (iii) hereby appoints Citibank, N.A. (the "Exchange Agent") as the true and lawful agent and attorney-in-fact (with full knowledge that the Exchange Agent also acts as agent of the Company) of such holder of Outstanding Notes with respect to such Outstanding Notes, with full power of substitution, to (x) deliver certificates representing such Outstanding Notes, or transfer ownership of such Outstanding Notes on the account books maintained by The Depository Trust Company (the "Depository") (together, in any such case, with all accompanying evidences of transfer and authenticity), to the Company, (y) present and deliver such Outstanding Notes for transfer on the books of the Company, and (z) receive all benefits and otherwise exercise all rights and incidents of ownership with respect to such Outstanding Notes, all in accordance with the terms of the Exchange Offer. The power of attorney granted in this paragraph shall be deemed to be irrevocable and coupled with an interest.

The undersigned hereby represents and warrants that (i) the undersigned has full power and authority to tender, exchange, assign and transfer the Outstanding Notes, and (ii) when such Outstanding Notes are accepted for exchange by the Company, the Company will acquire good and marketable title thereto, free and clear of all liens, restrictions, charges and encumbrances and not subject to any adverse claims. The undersigned will, upon receipt, execute and deliver any additional documents deemed by the Exchange Agent or the Company to be necessary or desirable to complete the exchange, assignment and transfer of the Outstanding Notes tendered for exchange hereby.

The undersigned hereby further represents to the Company that (i) the New Notes to be acquired pursuant to the Exchange Offer will be acquired in the ordinary course of business of the person acquiring the New Notes, whether or not such person is the undersigned, (ii) neither the undersigned nor any person receiving any New Notes directly or indirectly from the undersigned pursuant to the Exchange Offer (if not a broker-dealer referred to in the last sentence of this paragraph) is engaging or intends to engage in the distribution of the New Notes and none of them have any arrangement or understanding with any person to participate in the distribution of the New Notes, (iii) the undersigned and each person receiving any New Notes directly or indirectly from the undersigned pursuant to the Exchange Offer acknowledge and agree that any person participating in the Exchange Offer for the purpose of distributing the New Notes (x) must comply with the registration and prospectus delivery requirements of the Securities Act in connection with a secondary resale transaction of the New Notes acquired by such person and (y) cannot rely on the position of the staff of the Securities and Exchange Commission (the "Commission") set forth in the Brown & Wood LLP no-action letter (available February 7, 1997), the Shearman & Sterling no-action letter (available July 2, 1993), the K-III

Communications Corporation no-action letter (available May 14, 1993), the Morgan Stanley & Co. Incorporated no-action letter (available June 5, 1991) or the Exxon Capital Holdings Corporation no-action letter (available May 13, 1988) or similar letters, (iv) the undersigned and each person receiving any New Notes directly or indirectly from the undersigned pursuant to the Exchange Offer understand that a secondary resale transaction described in clause (iii) above should be covered by an effective registration statement containing the selling security holder information required by Item 507 of Regulation S-K of the Commission and (v) neither the undersigned nor any person receiving any New Notes directly or indirectly from the undersigned pursuant to the Exchange Offer is an "affiliate" of the Company, as defined under Rule 405 under the Securities Act. If the undersigned is a broker-dealer that will receive New Notes for its own account in exchange for Outstanding Notes that were acquired as a result of market-making activities or other trading activities, it acknowledges that it will deliver a prospectus meeting the requirements of the Securities Act in connection with any resale of such New Notes received in respect of such Outstanding Notes pursuant to the Exchange Offer; however, by so acknowledging and by delivering a prospectus, the undersigned will not be deemed to admit that it is an "underwriter" within the meaning of the Securities Act.

The undersigned acknowledges that, (i) for purposes of the Exchange Offer, the Company will be deemed to have accepted for exchange, and to have exchanged, validly tendered Outstanding Notes, if, as and when the Company gives oral or written notice thereof to the Exchange Agent. Tenders of Outstanding Notes for exchange may be withdrawn at any time prior to the Expiration Date, and (ii) any Outstanding Notes tendered by the undersigned and not accepted for exchange will be returned to the undersigned at the address set forth above unless otherwise indicated in the box above entitled "Special Delivery Instructions."

The undersigned acknowledges that the Company's acceptance of Outstanding Notes validly tendered for exchange pursuant to any one of the procedures described in the section of the Prospectus entitled "The Exchange Offer" and in the instructions hereto will constitute a binding agreement among the undersigned and the Company upon the terms and subject to the conditions of the Exchange Offer set forth in the Prospectus under the caption "The Exchange Offer—Conditions to the Exchange Offer." The undersigned recognizes that as a result of these conditions (which may be waived, in whole or in part, by the Company) as more particularly set forth in the Prospectus, the Company may not be required to exchange any of the Outstanding Notes tendered hereby and, in such event, the Outstanding Notes not exchanged will be returned to the undersigned at the address set forth above unless otherwise indicated in the box above entitled "Special Delivery Instructions."

Unless otherwise indicated in the box entitled "Special Issuance Instructions," please return any Outstanding Notes not tendered for exchange in the name(s) of the undersigned. Similarly, unless otherwise indicated in the box entitled "Special Delivery Instructions," please mail any certificates for Outstanding Notes not tendered or exchanged (and accompanying documents, as appropriate) to the undersigned at the address shown below the undersigned's signature(s). In the event that either "Special Issuance Instructions" or "Special Delivery Instructions" are completed, please issue the certificates representing the New Notes issued in exchange for the Outstanding Notes accepted for exchange in the name(s) of, and return any Outstanding Notes not tendered for exchange or not exchanged to, the person(s) so indicated. The undersigned recognizes that the Company has no obligation pursuant to the "Special Issuance Instructions" and "Special Delivery Instructions" to transfer any Outstanding Notes from the name of the holder of Outstanding Notes thereof if the Company does not accept for exchange any of the Outstanding Notes so tendered for exchange or if such transfer would not be in compliance with any transfer restrictions applicable to such Outstanding Notes.

In order to validly tender Outstanding Notes for exchange, holders of Outstanding Notes must complete, execute and deliver this Letter of Transmittal.

Except as stated in the Prospectus, all authority herein conferred or agreed to be conferred shall survive the death or incapacity of the undersigned, and any obligation of the undersigned hereunder shall be binding upon the heirs, personal representatives, successors and assigns of the undersigned. Except as otherwise stated in the Prospectus, this tender for exchange of Outstanding Notes is irrevocable.

**SIGN HERE**

X

Date:

\_\_\_\_\_  
Signature of Owner

**MUST BE SIGNED BY THE REGISTERED HOLDER(S) OF OUTSTANDING NOTES EXACTLY AS NAME(S) APPEAR(S) ON CERTIFICATE(S) REPRESENTING THE OUTSTANDING NOTES OR ON A SECURITY POSITION LISTING OR BY PERSON(S) AUTHORIZED TO BECOME REGISTERED OUTSTANDING NOTE HOLDER(S) BY CERTIFICATES AND DOCUMENTS TRANSMITTED HEREWITH. IF SIGNATURE IS BY TRUSTEES, EXECUTORS, ADMINISTRATORS, GUARDIANS, ATTORNEYS-IN-FACT, OFFICERS OF CORPORATIONS OR OTHERS ACTING IN A FIDUCIARY OR REPRESENTATIVE CAPACITY, PLEASE PROVIDE THE FOLLOWING INFORMATION. (SEE INSTRUCTION 6).**

\_\_\_\_\_  
Name(s)

\_\_\_\_\_  
Capacity (Full Title)

\_\_\_\_\_  
Address (including zip code)

\_\_\_\_\_  
Area Code and Telephone Number

\_\_\_\_\_  
Tax Identification or Social Security Number

**GUARANTEE OF SIGNATURE(S)  
(SIGNATURE(S) MUST BE GUARANTEED IF REQUIRED BY INSTRUCTION 1)**

X

Date:

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name and Title

## INSTRUCTIONS

### FORMING PART OF THE TERMS AND CONDITIONS OF THE EXCHANGE OFFER

#### 1. GUARANTEE OF SIGNATURES.

Except as otherwise provided below, all signatures on this Letter of Transmittal must be guaranteed by an institution that is an "Eligible Guarantor Institution" within the meaning of Rule 17Ad-15 under the Securities Exchange Act of 1934, as amended, and is a member of one of the following recognized Signature Guarantee Programs (each, an "Eligible Institution"):

- (a) The Securities Transfer Agents Medallion Program (STAMP)
- (b) The New York Stock Exchange Medallion Signature Program (MSP)
- (c) The Stock Exchange Medallion Program (SEMP)

Signatures on this Letter of Transmittal need not be guaranteed (i) if this Letter of Transmittal is signed by the registered holder(s) of the Outstanding Notes tendered herewith and such registered holder(s) have not completed the box entitled "Special Issuance Instructions" or the box entitled "Special Delivery Instructions" on this Letter of Transmittal or (ii) if such Outstanding Notes are tendered for the account of an Eligible Institution. **IN ALL OTHER CASES, ALL SIGNATURES MUST BE GUARANTEED BY AN ELIGIBLE INSTITUTION.**

#### 2. DELIVERY OF THIS LETTER OF TRANSMITTAL AND OUTSTANDING NOTES; GUARANTEED DELIVERY PROCEDURES.

This Letter of Transmittal is to be completed by holders of Outstanding Notes (i) if certificates representing Outstanding Notes are to be forwarded herewith or (ii) if delivery of Outstanding Notes is to be made by book-entry transfer to the Exchange Agent's account at the Depository, pursuant to the procedures set forth in the section of the Prospectus entitled "The Exchange Offer—Procedures for Tendering Your Original Notes." Certificates for all physically tendered Outstanding Notes or any confirmation of a book-entry transfer (a "Book-Entry Confirmation"), as well as a properly completed and duly executed copy of this Letter of Transmittal or facsimile hereof, and any other documents required by this Letter of Transmittal, must be received by the Exchange Agent at its address set forth on the cover of this Letter of Transmittal prior to the Expiration Date. Holders of Outstanding Notes who elect to tender Outstanding Notes and (i) whose Outstanding Notes are not immediately available, (ii) who cannot deliver the Letter of Transmittal, Outstanding Notes or other required documents to the Exchange Agent prior to the Expiration Date or (iii) who are unable to complete the procedure for book-entry transfer on a timely basis, may have such tender effected if: (a) such tender is made by or through an Eligible Institution, (b) prior to the Expiration Date, the Exchange Agent has received from such Eligible Institution a properly completed and duly executed Letter of Transmittal (or a facsimile thereof) and Notice of Guaranteed Delivery substantially in the form provided by the Company (by facsimile transmission, mail or hand delivery) setting forth the name and address of the holder of such Outstanding Notes, the certificate number(s) of such Outstanding Notes and the principal amount of Outstanding Notes tendered for exchange, stating that tender is being made thereby and guaranteeing that, within three New York Stock Exchange trading days after the date of execution of the Notice of Guaranteed Delivery, this Letter of Transmittal (or a manually executed facsimile thereof), properly completed and duly executed, the certificates representing such Outstanding Notes (or a Book-Entry Confirmation), in proper form for transfer, and any other documents required by this Letter of Transmittal, will be deposited by such Eligible Institution with the Exchange Agent, and (c) a properly completed and duly executed Letter of Transmittal (or a manually executed facsimile thereof) with certificates for all tendered Outstanding Notes, or a Book-Entry Confirmation, and any other documents required by this Letter of Transmittal are received by the Exchange Agent within three New York Stock Exchange trading days after the date of execution of the Notice of Guaranteed Delivery.

**THE METHOD OF DELIVERY OF OUTSTANDING NOTES, THIS LETTER OF TRANSMITTAL AND ALL OTHER REQUIRED DOCUMENTS IS AT THE ELECTION AND RISK OF THE TENDERING HOLDER OF OUTSTANDING NOTES. EXCEPT AS OTHERWISE PROVIDED BELOW, THE DELIVERY WILL BE DEEMED MADE ONLY WHEN ACTUALLY RECEIVED OR CONFIRMED BY THE EXCHANGE AGENT. IF DELIVERY IS BY MAIL, REGISTERED MAIL WITH RETURN RECEIPT REQUESTED, PROPERLY INSURED, IS RECOMMENDED. NEITHER THIS LETTER OF TRANSMITTAL NOR ANY OUTSTANDING NOTES SHOULD BE SENT TO THE COMPANY.**

No alternative, conditional or contingent tenders will be accepted. All tendering holders of Outstanding Notes, by execution of this Letter of Transmittal (or facsimile hereof, if applicable), waive any right to receive notice of the acceptance of their Outstanding Notes for exchange.

**3. INADEQUATE SPACE.**

If the space provided in the box entitled "Description of Outstanding Notes" on page 3 is inadequate, the certificate numbers, if applicable, and principal amounts of the Outstanding Notes being tendered should be listed on a separate signed schedule affixed hereto.

**4. WITHDRAWALS.**

A tender of Outstanding Notes may be withdrawn at any time prior to 5:00 p.m. New York City time on the Expiration Date by delivery of a written or an Automated Tender Offer Program electronic transmission notice of withdrawal to the Exchange Agent at the address set forth on the cover of this Letter of Transmittal. To be effective, a notice of withdrawal of Outstanding Notes must (i) specify the name of the person who tendered the Outstanding Notes to be withdrawn (the "Depositor"), (ii) identify the Outstanding Notes to be withdrawn (including the certificate number or numbers and aggregate principal amount of such Outstanding Notes), (iii) be signed by the holder of Outstanding Notes in the same manner as the original signature on the Letter of Transmittal by which such Outstanding Notes were tendered (including any required signature guarantees) or be accompanied by documents of transfer sufficient to have the Trustee under the Indenture register the transfer of such Outstanding Notes into the name of the person withdrawing the tender, (iv) specify the name in which any such Outstanding Notes are to be registered, if different from that of the Depositor, and (v) be received by the Exchange Agent prior to 5:00 p.m. New York City time on the Expiration Date. Withdrawals of tenders of Outstanding Notes may not be rescinded, and any Outstanding Notes withdrawn will thereafter be deemed not validly tendered for purposes of the Exchange Offer, and no New Notes will be issued with respect thereto unless the Outstanding Notes so withdrawn are validly retendered. Properly withdrawn Outstanding Notes may be retendered by following one of the procedures described in the section of the Prospectus entitled "The Exchange Offer—Procedures for Tendering Your Original Notes" at any time prior to the Expiration Date.

**5. PARTIAL TENDERS.**

(Not applicable to holders of Outstanding Notes who tender Outstanding Notes by book-entry transfer). Tenders of Outstanding Notes will be accepted only in integral multiples of \$1,000 principal amount. If a tender for exchange is to be made with respect to less than the entire principal amount of any Outstanding Notes, fill in the principal amount of Outstanding Notes which are tendered for exchange in column (4) of the box entitled "Description of Outstanding Notes" on page 3, as more fully described in the footnotes thereto. In case of a partial tender for exchange, new certificate(s), in fully registered form, for the remainder of the principal amount of the Outstanding Notes, will be sent to the holders of Outstanding Notes unless otherwise indicated in the appropriate box on this Letter of Transmittal as promptly as practicable after the expiration or termination of the Exchange Offer.

## **6. SIGNATURES ON THIS LETTER OF TRANSMITTAL, POWERS OF ATTORNEY AND ENDORSEMENTS.**

(a) The signature(s) of the holder of Outstanding Notes on this Letter of Transmittal must correspond with the name(s) as written on the face of the Outstanding Notes without alteration, enlargement or any change whatsoever.

(b) If tendered Outstanding Notes are owned of record by two or more joint owners, all such owners must sign this Letter of Transmittal.

(c) If any tendered Outstanding Notes are registered in different names on several certificates, it will be necessary to complete, sign and submit as many separate copies of this Letter of Transmittal and any necessary or required documents as there are different registrations.

(d) When this Letter of Transmittal is signed by the holder of the Outstanding Notes listed and transmitted hereby, no endorsements of Outstanding Notes or separate powers of attorney are required. If, however, Outstanding Notes not tendered or not accepted are to be issued or returned in the name of a person other than the holder of Outstanding Notes, then the Outstanding Notes transmitted hereby must be endorsed or accompanied by appropriate powers of attorney in a form satisfactory to the Company, in either case signed exactly as the name(s) of the holder of Outstanding Notes appear(s) on the Outstanding Notes. Signatures on such Outstanding Notes or powers of attorney must be guaranteed by an Eligible Institution (unless signed by an Eligible Institution).

(e) If this Letter of Transmittal or Outstanding Notes or powers of attorney are signed by trustees, executors, administrators, guardians, attorneys-in-fact, officers of corporations or others acting in a fiduciary or representative capacity, such persons should so indicate when signing, and proper evidence satisfactory to the Company of their authority so to act must be submitted.

(f) If this Letter of Transmittal is signed by a person other than the registered holder of Outstanding Notes listed, the Outstanding Notes must be endorsed or accompanied by appropriate powers of attorney, in either case signed exactly as the name(s) of the registered holder of Outstanding Notes appear(s) on the certificates. Signatures on such Outstanding Notes or powers of attorney must be guaranteed by an Eligible Institution (unless signed by an Eligible Institution).

## **7. TRANSFER TAXES.**

Except as set forth in this Instruction 7, the Company will pay all transfer taxes, if any, applicable to the transfer and exchange of Outstanding Notes pursuant to the Exchange Offer. If issuance of New Notes is to be made to, or Outstanding Notes not tendered for exchange are to be issued or returned in the name of, any person other than the registered holder of the Outstanding Notes tendered, or if a transfer tax is imposed for any reason other than the exchange of Outstanding Notes pursuant to the Exchange Offer, and satisfactory evidence of payment of such taxes or exemptions therefrom is not submitted with this Letter of Transmittal, the amount of any transfer taxes payable on account of any such transfer will be imposed on and payable by the tendering holder of Outstanding Notes prior to the issuance of the New Notes.

## **8. SPECIAL ISSUANCE AND DELIVERY INSTRUCTIONS.**

If the New Notes, or if any Outstanding Notes not tendered for exchange, are to be issued or returned to someone other than the holder of Outstanding Notes or to an address other than that shown above, the appropriate boxes on this Letter of Transmittal should be completed. Holders of Outstanding Notes tendering Outstanding Notes by book-entry transfer may request that Outstanding Notes not accepted be credited to such account maintained at the Depository as such holder of Outstanding Notes may designate.

## **9. IRREGULARITIES.**

All questions as to the form of documents and the validity, eligibility (including time of receipt), acceptance and withdrawal of Outstanding Notes will be determined by the Company, in its sole discretion, whose determination shall be final and binding. The Company reserves the absolute right to reject any or all tenders for exchange of any particular Outstanding Notes that are not in proper form, or the acceptance of which would, in the opinion of the Company (or its counsel), be unlawful. The Company reserves the absolute right to waive any defect, irregularity or condition of tender for exchange with regard to any particular Outstanding Notes. The Company's interpretation of the terms of, and conditions to, the Exchange Offer (including the instructions herein) will be final and binding. Unless waived, any defects or irregularities in connection with the Exchange Offer must be cured within such time as the Company shall determine. Neither the Company nor the Exchange Agent nor any other person shall be under any duty to give notice of any defects or irregularities in Outstanding Notes tendered for exchange, nor shall any of them incur any liability for failure to give such notice. A tender of Outstanding Notes will not be deemed to have been made until all defects and irregularities with respect to such tender have been cured or waived. Any Outstanding Notes received by the Exchange Agent that are not properly tendered and as to which the defects or irregularities have not been cured or waived will be returned by the Exchange Agent to the tendering holders, unless otherwise provided in this Letter of Transmittal, as soon as practicable following the Expiration Date.

## **10. WAIVER OF CONDITIONS.**

The Company reserves the absolute right to waive, amend or modify any of the specified conditions described under "The Exchange Offer—Conditions to the Exchange Offer" in the Prospectus in the case of any Outstanding Notes tendered (except as otherwise provided in the Prospectus).

## **11. MUTILATED, LOST, STOLEN OR DESTROYED OUTSTANDING NOTES.**

If a holder of Outstanding Notes desires to tender Outstanding Notes pursuant to the Exchange Offer, but any of such Outstanding Notes has been mutilated, lost, stolen or destroyed, such holder of Outstanding Notes should contact the Exchange Agent at the address set forth on the cover of this Letter of Transmittal for further instructions.

## **12. REQUESTS FOR INFORMATION OR ADDITIONAL COPIES.**

Requests for information about the procedure for tendering or for withdrawing tenders, or for additional copies of the Prospectus and this Letter of Transmittal, may be directed to the Exchange Agent at the address or telephone number set forth on the cover of this Letter of Transmittal.

**IMPORTANT: THIS LETTER OF TRANSMITTAL (OR A FACSIMILE THEREOF, IF APPLICABLE) TOGETHER WITH CERTIFICATES, OR CONFIRMATION OF BOOK-ENTRY OR THE NOTICE OF GUARANTEED DELIVERY, AND ALL OTHER REQUIRED DOCUMENTS MUST BE RECEIVED BY THE EXCHANGE AGENT PRIOR TO 5:00 P.M., NEW YORK CITY TIME, ON THE EXPIRATION DATE.**



The Exchange Agent for the Exchange Offer is:

**Citibank, N.A.**

*By Mail, Hand Delivery or Overnight Courier:*

Citibank, N.A.  
111 Wall Street, 15th Floor  
New York, New York 10005

*By Facsimile Transmission:*

(212) 657-1020  
Attention: Agency and Trust Services

*Confirm by Telephone:*  
(212) 657-7524

**For Information Call: 1-800-422-2066 or (212) 657-7524**

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## QuickLinks

[Exhibit 99.1](#)

## BRINKER INTERNATIONAL, INC.

**LETTER TO REGISTERED HOLDERS  
FOR  
OFFER FOR ALL OUTSTANDING  
\$300,000,000 5.75% NOTES DUE 2014  
IN EXCHANGE FOR  
REGISTERED  
\$300,000,000 5.75% NOTES DUE 2014**

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**THE EXCHANGE OFFER AND WITHDRAWAL RIGHTS WILL EXPIRE AT 5:00 P.M., NEW YORK CITY TIME, ON \_\_\_\_\_, 2004 (THE "EXPIRATION DATE") UNLESS THE EXCHANGE OFFER IS EXTENDED, IN WHICH CASE THE TERM "EXPIRATION DATE" SHALL MEAN THE LATEST TIME AND DATE TO WHICH THE EXCHANGE OFFER IS EXTENDED. TENDERS OF OUTSTANDING NOTES MAY BE WITHDRAWN AT ANY TIME PRIOR TO THE EXPIRATION DATE.**

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To Registered Holders:

We are enclosing herewith the material listed below relating to the offer (the "Exchange Offer") by Brinker International, Inc. (the "Company") to exchange up to \$300,000,000 aggregate principal amount of its 5.75% Notes due 2014 (the "New Notes"), which have been registered under the Securities Act of 1933, as amended (the "Securities Act"), for up to \$300,000,000 aggregate principal amount of its outstanding 5.75% Notes due 2014 (the "Outstanding Notes"), upon the terms and subject to the conditions set forth in the Company's Prospectus dated June \_\_\_\_\_, 2004 (the "Prospectus") and the related Letter of Transmittal.

Enclosed herewith are copies of the following documents:

1. Prospectus dated June \_\_\_\_\_, 2004;
2. Letter of Transmittal;
3. Notice of Guaranteed Delivery;
4. Instruction to Registered Holder from Beneficial Owner; and
5. Letter to Clients, which may be sent to your clients for whose account you hold Outstanding Notes in your name or in the name of your nominee, to accompany the Instruction to Registered Holder from Beneficial Owner form referred to above, for obtaining such client's instruction with regard to the Exchange Offer.

We urge you to contact your clients promptly. Please note that the Exchange Offer will expire at 5:00 p.m., New York City time, on \_\_\_\_\_, 2004, unless extended by the Company.

The Exchange Offer is not conditioned upon any minimum number of Outstanding Notes being tendered.

Pursuant to the Letter of Transmittal, each holder of Outstanding Notes (a "Holder") will represent to the Company that (i) the New Notes to be acquired pursuant to the Exchange Offer will be acquired in the ordinary course of business of the person acquiring the New Notes, whether or not such person is the Holder, (ii) neither the Holder nor any person receiving any New Notes directly or indirectly from the Holder pursuant to the Exchange Offer (if not a broker-dealer referred to in the last sentence of this paragraph) is engaging or intends to engage in the distribution of the New Notes and none of them have any arrangement or understanding with any person to participate in the

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distribution of the New Notes, (iii) the Holder and each person receiving any New Notes directly or indirectly from the Holder pursuant to the Exchange Offer acknowledge and agree that any person participating in the Exchange Offer for the purpose of distributing the New Notes (x) must comply with the registration and prospectus delivery requirements of the Securities Act in connection with a secondary resale transaction of the New Notes acquired by such person and (y) cannot rely on the position of the staff of the Securities and Exchange Commission (the "Commission") set forth in the Brown & Wood, LLP no-action letter (available February 7, 1997), the Shearman & Sterling no-action letter (available July 2, 1993), the K-III Communications Corporation no-action letter (available May 14, 1993), the Morgan Stanley & Co. Incorporated no-action letter (available June 5, 1991) or the Exxon Capital Holdings Corporation no-action letter (available May 13, 1988) or similar letters, (iv) the Holder and each person receiving any New Notes directly or indirectly from the Holder pursuant to the Exchange Offer understand that a secondary resale transaction described in clause (iii) above should be covered by an effective registration statement containing the selling security holder information required by Item 507 of Regulation S-K of the Commission and (v) neither the Holder nor any person receiving any New Notes directly or indirectly from the Holder pursuant to the Exchange Offer is an "affiliate" of the Company, as defined under Rule 405 under the Securities Act. If the Holder is a broker-dealer that will receive New Notes for its own account in exchange for Outstanding Notes that were acquired as a result of market-making activities or other trading activities, it acknowledges that it will deliver a prospectus meeting the requirements of the Securities Act in connection with any resale of such New Notes received in respect of such Outstanding Notes pursuant to the Exchange Offer; however, by so acknowledging and by delivering a prospectus, the Holder will not be deemed to admit that it is an "underwriter" within the meaning of the Securities Act.

The enclosed Instruction to Registered Holder from Beneficial Owner contains an authorization by the beneficial owner of the Outstanding Notes held by you to make the foregoing representations and warranties on behalf of such beneficial owner.

The Company will not pay any fee or commission to any broker or dealer or to any other person (other than the Exchange Agent) in connection with the solicitation of tenders of Outstanding Notes pursuant to the Exchange Offer. The Company will pay all transfer taxes, if any, applicable to the transfer and exchange of Outstanding Notes pursuant to the Exchange Offer, except as otherwise provided in Instruction 7 of the enclosed Letter of Transmittal.

Any inquiries you may have relating to the Exchange Offer and additional copies of the enclosed materials may be obtained from the Exchange Agent at:

Citibank, N.A.  
111 Wall Street, 15th Floor  
New York, New York 10005  
By Facsimile: (212) 657-1020 (Attention: Agency and Trust Services)  
By Telephone: (212) 657-7524

Very truly yours,

BRINKER INTERNATIONAL, INC.

**NOTHING CONTAINED HEREIN OR IN THE ENCLOSED DOCUMENTS SHALL CONSTITUTE YOU OR ANY PERSON AS AN AGENT OF THE COMPANY OR THE EXCHANGE AGENT, OR AUTHORIZE YOU OR ANY OTHER PERSON TO USE ANY DOCUMENT OR MAKE ANY STATEMENT ON BEHALF OF EITHER OF THEM IN CONNECTION WITH THE EXCHANGE OFFER OTHER THAN THE DOCUMENTS ENCLOSED HERewith AND THE STATEMENTS CONTAINED HEREIN.**

## QuickLinks

[Exhibit 99.2](#)

## **BRINKER INTERNATIONAL, INC.**

**OFFER FOR ALL OUTSTANDING  
\$300,000,000 5.75% NOTES DUE 2014  
IN EXCHANGE FOR  
REGISTERED  
\$300,000,000 5.75% NOTES DUE 2014**

To Our Clients:

We are enclosing herewith (i) a Prospectus dated June , 2004 of Brinker International, Inc. (the "Company"), (ii) a related Letter of Transmittal (which, together with the Prospectus, constitutes the "Exchange Offer") relating to the offer by the Company to exchange up to \$300,000,000 aggregate principal amount of its 5.75% Notes due 2014 (the "New Notes"), which have been registered under the Securities Act of 1933, as amended (the "Securities Act"), for up to \$300,000,000 aggregate principal amount of its outstanding 5.75% Notes due 2014 (the "Outstanding Notes"), upon the terms and subject to the conditions set forth in the Exchange Offer and (iii) an Instruction to Registered Holder from Beneficial Owner (the "Instruction Letter").

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**THE EXCHANGE OFFER AND WITHDRAWAL RIGHTS WILL EXPIRE AT 5:00 P.M., NEW YORK CITY TIME, ON , 2004 (THE "EXPIRATION DATE") UNLESS THE EXCHANGE OFFER IS EXTENDED, IN WHICH CASE THE TERM "EXPIRATION DATE" SHALL MEAN THE LATEST TIME AND DATE TO WHICH THE EXCHANGE OFFER IS EXTENDED. TENDERS OF OUTSTANDING NOTES MAY BE WITHDRAWN AT ANY TIME PRIOR TO THE EXPIRATION DATE.**

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We are the holder of record of Outstanding Notes for your account. A tender of such Outstanding Notes can be made only by us as the record holder pursuant to your instructions. The Letter of Transmittal is furnished to you for your information only and cannot be used by you to tender Outstanding Notes held by us for your account.

We request instructions as to whether you wish to tender any or all of the Outstanding Notes held by us for your account pursuant to the terms and conditions of the Exchange Offer. We also request that you confirm that we may make on your behalf the representations and warranties contained in the Letter of Transmittal. In this regard, please complete the enclosed Instruction Letter and return it to us as soon as practicable.

Pursuant to the Letter of Transmittal, each holder of Outstanding Notes (a "Holder") will represent to the Company that (i) the New Notes to be acquired pursuant to the Exchange Offer will be acquired in the ordinary course of business of the person acquiring the New Notes, whether or not such person is the Holder, (ii) neither the Holder nor any person receiving any New Notes directly or indirectly from the Holder pursuant to the Exchange Offer (if not a broker-dealer referred to in the last sentence of this paragraph) is engaging or intends to engage in the distribution of the New Notes and none of them have any arrangement or understanding with any person to participate in the distribution of the New Notes, (iii) the Holder and each person receiving any New Notes directly or indirectly from the Holder pursuant to the Exchange Offer acknowledge and agree that any person participating in the Exchange Offer for the purpose of distributing the New Notes (x) must comply with the registration and prospectus delivery requirements of the Securities Act in connection with a secondary resale transaction of the New Notes acquired by such person and (y) cannot rely on the position of the staff of the Securities and Exchange Commission (the "Commission") set forth in the Brown & Wood LLP no-action letter (available February 7, 1997), the Shearman & Sterling no-action letter (available July 2, 1993), the K-III Communications Corporation no-action letter (available May 14, 1993), the Morgan Stanley & Co. Incorporated no-action letter (available June 5, 1991) or the

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Exxon Capital Holdings Corporation no-action letter (available May 13, 1988) or similar letters, (iv) the Holder and each person receiving any New Notes directly or indirectly from the Holder pursuant to the Exchange Offer understand that a secondary resale transaction described in clause (iii) above should be covered by an effective registration statement containing the selling security holder information required by Item 507 of Regulation S-K of the Commission and (v) neither the Holder nor any person receiving any New Notes directly or indirectly from the Holder pursuant to the Exchange Offer is an "affiliate" of the Company, as defined under Rule 405 under the Securities Act. If the Holder is a broker-dealer that will receive New Notes for its own account in exchange for Outstanding Notes that were acquired as a result of market-making activities or other trading activities, it acknowledges that it will deliver a prospectus meeting the requirements of the Securities Act in connection with any resale of such New Notes received in respect of such Outstanding Notes pursuant to the Exchange Offer; however, by so acknowledging and by delivering a prospectus, the Holder will not be deemed to admit that it is an "underwriter" within the meaning of the Securities Act.

## QuickLinks

[Exhibit 99.3](#)



**INSTRUCTION TO REGISTERED HOLDER  
FROM BENEFICIAL OWNER  
FOR  
OFFER FOR ALL OUTSTANDING  
\$300,000,000 5.75% NOTES DUE 2014  
IN EXCHANGE FOR  
REGISTERED  
\$300,000,000 5.75% NOTES DUE 2014**

To Registered Holder:

The undersigned hereby acknowledges receipt of the Prospectus dated June , 2004 (the "Prospectus") of Brinker International, Inc. (the "Company"), and accompanying Letter of Transmittal (the "Letter of Transmittal") that together constitute the Company's offer (the "Exchange Offer") to exchange up to \$300,000,000 aggregate principal amount of its 5.75% Notes due 2014 (the "New Notes"), which have been registered under the Securities Act of 1933, as amended (the "Securities Act"), for up to \$300,000,000 aggregate principal amount of its outstanding 5.75% Notes due 2014 (the "Outstanding Notes"), upon the terms and subject to the conditions set forth in the Prospectus and the Letter of Transmittal. Capitalized terms used but not defined have the meanings ascribed to them in the Prospectus.

This will instruct you, the registered holder, as to the action to be taken by you relating to the Exchange Offer with respect to the Outstanding Notes held by you for the account of the undersigned.

The aggregate face amount of the Outstanding Notes held by you for the account of the undersigned is:

\$\_\_\_\_\_ of Outstanding Notes

With respect to the Exchange Offer, the undersigned hereby instructs you (check one of the following boxes):

- To TENDER the following Outstanding Notes held by you for the account of the undersigned (insert principal amount of Outstanding Notes to be tendered (if any)):

\$\_\_\_\_\_ of Outstanding Notes\*

\* New Notes and the untendered portion of Outstanding Notes must be in minimum denominations and integral multiples of \$1,000.

or

- NOT to TENDER any Outstanding Notes held by you for the account of the undersigned.

If the undersigned instructs you to tender Outstanding Notes held by you for the account of the undersigned, it is understood that you are authorized to make on behalf of the undersigned (and the undersigned, by its signature below, hereby makes to you), the representations and warranties contained in the Letter of Transmittal that are to be made with respect to the undersigned as a beneficial owner, including but not limited to the representations, that (i) the New Notes to be acquired pursuant to the Exchange Offer will be acquired in the ordinary course of business of the person acquiring the New Notes, whether or not such person is the undersigned, (ii) neither the undersigned nor any person receiving any New Notes directly or indirectly from the undersigned pursuant to the Exchange Offer (if not a broker-dealer referred to in the last sentence of this paragraph) is engaging or intends to engage in the distribution of the New Notes and none of them have any arrangement or understanding with any person to participate in the distribution of the New Notes, (iii) the undersigned and each person receiving any New Notes directly or indirectly from the undersigned pursuant to the Exchange Offer acknowledge and agree that any person participating in

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the Exchange Offer for the purpose of distributing the New Notes (x) must comply with the registration and prospectus delivery requirements of the Securities Act in connection with a secondary resale transaction of the New Notes acquired by such person and (y) cannot rely on the position of the staff of the Securities and Exchange Commission (the "Commission") set forth in the Brown & Wood LLP no-action letter (available February 7, 1997), the Shearman & Sterling no-action letter (available July 2, 1993), the K-III Communications Corporation no-action letter (available May 14, 1993), the Morgan Stanley & Co. Incorporated no-action letter (available June 5, 1991) or the Exxon Capital Holdings Corporation no-action letter (available May 13, 1988) or similar letters, (iv) the undersigned and each person receiving any New Notes directly or indirectly from the undersigned pursuant to the Exchange Offer understand that a secondary resale transaction described in clause (iii) above should be covered by an effective registration statement containing the selling security holder information required by Item 507 of Regulation S-K of the Commission and (v) neither the undersigned nor any person receiving any New Notes directly or indirectly from the undersigned pursuant to the Exchange Offer is an "affiliate" of the Company, as defined under Rule 405 under the Securities Act. If the undersigned is a broker-dealer that will receive New Notes for its own account in exchange for Outstanding Notes that were acquired as a result of market-making activities or other trading activities, it acknowledges that it will deliver a prospectus meeting the requirements of the Securities Act in connection with any resale of such New Notes received in respect of such Outstanding Notes pursuant to the Exchange Offer; however, by so acknowledging and by delivering a prospectus, the undersigned will not be deemed to admit that it is an "underwriter" within the meaning of the Securities Act.

**SIGN HERE**

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SIGNATURE(S) OF OWNER(S)

Date: \_\_\_\_\_

**MUST BE SIGNED BY THE REGISTERED HOLDER(S) OF OUTSTANDING NOTES EXACTLY AS NAME(S) APPEAR(S) ON CERTIFICATE(S) REPRESENTING THE OUTSTANDING NOTES OR ON A SECURITY POSITION LISTING OR BY PERSON(S) AUTHORIZED TO BECOME REGISTERED OUTSTANDING NOTE HOLDER(S) BY CERTIFICATES AND DOCUMENTS TRANSMITTED HERewith. IF SIGNATURE IS BY TRUSTEES, EXECUTORS, ADMINISTRATORS, GUARDIANS, ATTORNEYS-IN-FACT, OFFICERS OF CORPORATIONS OR OTHERS ACTING IN A FIDUCIARY OR REPRESENTATIVE CAPACITY, PLEASE PROVIDE THE FOLLOWING INFORMATION.**

Name(s):

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(PLEASE PRINT)

Capacity (Full Title):

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Address:

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(INCLUDE ZIP CODE)

Area Code and Telephone Number:

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Tax Identification or Social Security Number(s):

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## QuickLinks

[Exhibit 99.4](#)

**NOTICE OF GUARANTEED DELIVERY  
with respect to  
5.75% Notes Due 2014  
of**

**BRINKER INTERNATIONAL, INC.**

This form must be used by any holder of unregistered 5.75% Notes due 2014 (the "Outstanding Notes") of Brinker International, Inc. (the "Company"), who wishes to tender Outstanding Notes to the Exchange Agent in exchange for 5.75% Notes due 2014 that have been registered under the Securities Act of 1933, as amended (the "New Notes"), pursuant to the guaranteed delivery procedures described in the Prospectus, dated June , 2004 (the "Prospectus") under the caption "The Exchange Offer—Guaranteed Delivery Procedures," and in Instruction 2 to the related Letter of Transmittal. Any holder who wishes to tender Outstanding Notes pursuant to such guaranteed delivery procedures must ensure that the Exchange Agent receives this Notice of Guaranteed Delivery prior to the Expiration Date (as defined below) of the Exchange Offer. Capitalized terms not defined herein have the meanings ascribed to them in the Prospectus or the Letter of Transmittal.

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**THE EXCHANGE OFFER AND WITHDRAWAL RIGHTS WILL EXPIRE AT 5:00 P.M., NEW YORK CITY TIME, ON , 2004 (THE "EXPIRATION DATE") UNLESS THE EXCHANGE OFFER IS EXTENDED, IN WHICH CASE THE TERM "EXPIRATION DATE" SHALL MEAN THE LATEST TIME AND DATE TO WHICH THE EXCHANGE OFFER IS EXTENDED. TENDERS OF OUTSTANDING NOTES MAY BE WITHDRAWN AT ANY TIME PRIOR TO THE EXPIRATION DATE.**

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*The Exchange Agent is:*

**CITIBANK, N.A.**

*By Mail, Hand Delivery or Overnight Courier:*

Citibank, N.A.  
111 Wall Street, 15th Floor  
New York, New York 10005

*By Facsimile Transmission:*

(212) 657-1020  
Attention: Agency and Trust Services

*Confirm by Telephone:*

(212) 657-7524

**For Information Call: 1-800-422-2066 or (212) 657-7524**

*Delivery of this Notice of Guaranteed Delivery to an address other than the one set forth above or transmission of instructions to a facsimile number other than the one listed above will not constitute a valid delivery. The instructions set forth in this Notice of Guaranteed Delivery and in the Letter of Transmittal should be read carefully before this Notice of Guaranteed Delivery and the Letter of Transmittal are completed.*

**THIS FORM IS NOT TO BE USED TO GUARANTEE SIGNATURES. IF A SIGNATURE ON THE LETTER OF TRANSMITTAL IS REQUIRED TO BE GUARANTEED BY AN "ELIGIBLE INSTITUTION" UNDER THE INSTRUCTIONS THERETO, SUCH SIGNATURE GUARANTEE MUST APPEAR IN THE APPLICABLE SPACE PROVIDED IN THE SIGNATURE BOX ON THE LETTER OF TRANSMITTAL.**

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Ladies and Gentlemen:

The undersigned hereby tender(s) to the Company, upon the terms and subject to the conditions set forth in the Prospectus and the related Letter of Transmittal, receipt of which is hereby acknowledged, the aggregate principal amount of Outstanding Notes specified below pursuant to the guaranteed delivery procedures set forth in the Prospectus under the caption "The Exchange Offer—Guaranteed Delivery Procedures," and in Instruction 2 of the Letter of Transmittal.

The undersigned understands that tenders of Outstanding Notes will be accepted only in authorized denominations. The undersigned understands that tenders of Outstanding Notes pursuant to the Exchange Offer may not be withdrawn after the Expiration Date. Tenders of Outstanding Notes may be withdrawn at any time prior to the Expiration Date or if the Exchange Offer is terminated or as otherwise provided in the Prospectus.

All authority herein conferred or agreed to be conferred by this Notice of Guaranteed Delivery shall survive the death or incapacity of the undersigned and every obligation of the undersigned under this Notice of Guaranteed Delivery shall be binding upon the heirs, personal representatives, executors, administrators, successors, assigns, trustees in bankruptcy and other legal representatives of the undersigned.

The undersigned hereby tenders the Outstanding Notes listed below:

<b>Certificate Number(s) of Outstanding Note(s) or, if Outstanding Note(s) will be Delivered by Book-Entry Transfer at the Depository Trust Company, DTC Account No.</b>	<b>Aggregate Principal Amount Represented</b>	<b>Aggregate Principal Amount Tendered</b>
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_____	_____	_____
_____	_____	_____
_____	_____	_____

**PLEASE SIGN AND COMPLETE**

Signature of Registered Holder(s) or Authorized Signatory: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name of Registered Holder(s): \_\_\_\_\_ Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Area Code and Telephone No.: \_\_\_\_\_

\_\_\_\_\_

This Notice of Guaranteed Delivery must be signed by the holder(s) exactly as the name(s) appear(s) on certificate(s) for Outstanding Notes or on a security position listing as the owner of Outstanding Notes, or by person(s) authorized to become holder(s) by endorsements and documents transmitted with this Notice of Guaranteed Delivery. If signature is by a trustee, executor, administrator, guardian, attorney-in-fact, officer or other person acting in a fiduciary or representative capacity, such person must provide the following information.

Please print name(s) and address(es)

Name(s):

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Capacity (Full Title):

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Address(es):

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DO NOT SEND OUTSTANDING NOTES WITH THIS NOTICE OF GUARANTEED DELIVERY. ACTUAL SURRENDER OF OUTSTANDING NOTES MUST BE MADE PURSUANT TO, AND BE ACCOMPANIED BY, AN EXECUTED LETTER OF TRANSMITTAL.

**GUARANTEE**  
**(Not to be used for signature guarantee)**

The undersigned, a firm which is a member of a recognized signature guarantee medallion program and is an "Eligible Guarantor Institution" within the meaning of Rule 17Ad-15 under the Securities Exchange Act of 1934, as amended, hereby guarantees deposit with the Exchange Agent of the Letter of Transmittal (or facsimile thereof), together with the Outstanding Notes tendered hereby in proper form for transfer (or confirmation of the book-entry transfer of such Outstanding Notes into the Exchange Agent's account at The Depository Trust Company pursuant to the procedures described in the Prospectus under the caption "The Exchange Offer—Guaranteed Delivery Procedures" and in the Letter of Transmittal) and any other required documents, all by 5:00 p.m., New York City time, on the third New York Stock Exchange trading day following the date of execution of this Notice of Guaranteed Delivery.

Name of Firm:

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Authorized Signature

Address:

---

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Name:

---

Title:

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Area Code and Telephone No.:

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Date:

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DO NOT SEND OUTSTANDING NOTES WITH THIS NOTICE OF GUARANTEED DELIVERY. ACTUAL SURRENDER OF OUTSTANDING NOTES MUST BE MADE PURSUANT TO, AND BE ACCOMPANIED BY, AN EXECUTED LETTER OF TRANSMITTAL.

## INSTRUCTIONS FOR NOTICE OF GUARANTEED DELIVERY

1. **DELIVERY OF THIS NOTICE OF GUARANTEED DELIVERY.** A properly completed and duly executed copy of this Notice of Guaranteed Delivery and any other documents required by this Notice of Guaranteed Delivery must be received by the Exchange Agent at its address set forth herein prior to the Expiration Date. The method of delivery of this Notice of Guaranteed Delivery and any other required documents to the Exchange Agent is at the election and sole risk of the holder, and the delivery will be deemed made only when actually received by the Exchange Agent. If delivery is by mail, registered mail with return receipt requested, properly insured, is recommended. As an alternative to delivery by mail, the holders may wish to consider using an overnight or hand delivery service. In all cases, sufficient time should be allowed to ensure timely delivery. For a description of the guaranteed delivery procedures, see Instruction 2 of the Letter of Transmittal.
  
2. **SIGNATURES ON THIS NOTICE OF GUARANTEED DELIVERY.** If this Notice of Guaranteed Delivery is signed by the registered holder(s) of the Outstanding Notes referred to herein, the signature must correspond with the name(s) written on the face of the Outstanding Notes without alteration, enlargement, or any change whatsoever. If this Notice of Guaranteed Delivery is signed by a participant of the Book-Entry Transfer Facility whose name appears on a security position listing as the owner of Outstanding Notes, the signature must correspond with the name shown on the security position listing as the owner of the Outstanding Notes.  
  
If this Notice of Guaranteed Delivery is signed by a person other than the registered holder(s) of any Outstanding Notes listed or a participant of the Book-Entry Transfer Facility, this Notice of Guaranteed Delivery must be accompanied by appropriate bond powers, signed as the name of the registered holder(s) appears on the Outstanding Notes or signed as the name of the participant shown on the Book-Entry Transfer Facility's security position listing.  
  
If this Notice of Guaranteed Delivery is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or other person acting in a fiduciary or representative capacity, such person should so indicate when signing and submit with the Notice of Guaranteed Delivery evidence satisfactory to the Company and the Guarantor of such person's authority to so act.
  
3. **REQUESTS FOR ASSISTANCE OR ADDITIONAL COPIES.** Questions and requests for assistance and requests for additional copies of the Prospectus may be directed to the Exchange Agent at the address specified in the Prospectus.



## QuickLinks

[Exhibit 99.5](#)

## EXCHANGE AGENT AGREEMENT

Citibank, N.A.  
111 Wall Street, 14<sup>th</sup> Floor  
New York, New York 10005  
Attention: Citibank Agency & Trust

Ladies and Gentlemen:

Brinker International Inc., a Delaware corporation (the "Company"), proposes to make an offer (the "Exchange Offer") to exchange all of its outstanding original 5.75% Notes due 2014 (the "Old Securities") for its new 5.75% Notes due 2014 (the "New Securities"). The terms and conditions of the Exchange Offer as currently contemplated are set forth in a prospectus, dated \_\_\_\_\_, 2004 (the "Prospectus"), proposed to be distributed to all record holders of the Old Securities. The Old Securities and the New Securities are collectively referred to herein as the "Securities".

The Company hereby appoints Citibank, N.A. to act as exchange agent (the "Exchange Agent") in connection with the Exchange Offer. References hereinafter to "you" shall refer to Citibank, N.A.

The Exchange Offer is expected to be commenced by the Company on or about \_\_\_\_\_, 2004. The Letter of Transmittal accompanying the Prospectus (or in the case of book-entry securities, the Automated Tender Offer Program ("ATOP") of the Book-Entry Transfer Facility (as defined below)) is to be used by the holders of the Old Securities to accept the Exchange Offer and contains instructions with respect to the delivery of certificates for Old Securities tendered in connection therewith.

The Exchange Offer shall expire at 5:00 p.m., New York City time, on \_\_\_\_\_ or on such subsequent date or time to which the Company may extend the Exchange Offer (the "Expiration Date"). Subject to the terms and conditions set forth in the Prospectus, the Company expressly reserves the right to extend the Exchange Offer from time to time and may extend the Exchange Offer by giving oral (promptly confirmed in writing) or written notice to you before 9:00 a.m., New York City time, on the business day following the previously scheduled Expiration Date.

The Company expressly reserves the right to amend or terminate the Exchange Offer, and not to accept for exchange any Old Securities not theretofore accepted for exchange, upon the occurrence of any of the conditions of the Exchange Offer specified in the Prospectus under the caption "The Exchange Offer—Conditions to the Exchange Offer." The Company will give oral (promptly confirmed in writing) or written notice of any amendment, termination or nonacceptance to you as promptly as practicable.

In carrying out your duties as Exchange Agent, you are to act in accordance with the following instructions:

1. You will perform such duties and only such duties as are specifically set forth in the section of the Prospectus captioned "The Exchange Offer" or as specifically set forth herein; *provided, however*, that in no way will your general duty to act in good faith be discharged by the foregoing.
  2. You will establish a book-entry account with respect to the Old Securities at The Depository Trust Company (the "Book-Entry Transfer Facility") for purposes of the Exchange Offer within two business days after the date of the Prospectus, and any financial institution that is a participant in the Book-Entry Transfer Facility's systems may make book-entry delivery of the Old Securities by causing the Book-Entry Transfer Facility to transfer such Old Securities into your account in accordance with the Book-Entry Transfer Facility's procedure for such transfer.
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3. You are to examine each of the Letters of Transmittal and certificates for Old Securities (or confirmation of book-entry transfer into your account at the Book-Entry Transfer Facility) and any other documents delivered or mailed to you by or for holders of the Old Securities to ascertain whether: (i) the Letters of Transmittal and any such other documents are duly executed and properly completed in accordance with instructions set forth therein; and (ii) the Old Securities have otherwise been properly tendered. In each case where the Letter of Transmittal or any other document has been improperly completed or executed or any of the certificates for Old Securities are not in proper form for transfer or some other irregularity in connection with the acceptance of the Exchange Offer exists, you will endeavor to inform the presenters of the need for fulfillment of all requirements and to take any other action as may be reasonably necessary or advisable to cause such irregularity to be corrected.

4. With the approval of the Chief Executive Officer, the Chief Financial Officer or any Executive Vice President or Senior Vice President of the Company (such approval, if given orally, to be promptly confirmed in writing) or any other party designated in writing, by such an officer, you are authorized to waive any irregularities in connection with any tender of Old Securities pursuant to the Exchange Offer.

5. Tenders of Old Securities may be made only as set forth in the Letter of Transmittal and in the section of the Prospectus captioned "The Exchange Offer—Procedures for Tendering Your Original Notes", and Old Securities shall be considered properly tendered to you only when tendered in accordance with the procedures set forth therein.

Notwithstanding the provisions of this Section 5, Old Securities which the Chief Executive Officer, Chief Financial Officer or any Executive Vice President or Senior Vice President of the Company shall approve as having been properly tendered shall be considered to be properly tendered (such approval, if given orally, shall be promptly confirmed in writing).

6. You shall advise the Company with respect to any Old Securities received subsequent to the Expiration Date and accept its instructions with respect to disposition of such Old Securities.

7. You shall accept tenders:

(a) in cases where the Old Securities are registered in two or more names only if signed by all named holders;

(b) in cases where the signing person (as indicated on the Letter of Transmittal) is acting in a fiduciary or a representative capacity only when proper evidence of his or her authority so to act is submitted; and

(c) from persons other than the registered holder of Old Securities, provided that customary transfer requirements, including payment of any applicable transfer taxes, are fulfilled.

You shall accept partial tenders of Old Securities where so indicated and as permitted in the Letter of Transmittal and deliver certificates for Old Securities to the registrar for split-up and return any untendered Old Securities to the holder (or such other person as may be designated in the Letter of Transmittal) as promptly as practicable after expiration or termination of the Exchange Offer.

8. Upon satisfaction or waiver of all of the conditions to the Exchange Offer, the Company will notify you (such notice, if given orally, to be promptly confirmed in writing) of its acceptance, promptly after the Expiration Date, of all Old Securities properly tendered and you, on behalf of the Company, will exchange such Old Securities for New Securities and cause such Old Securities to be cancelled. Delivery of New Securities will be made on behalf of the Company by you at the rate of \$1,000 principal amount of New Securities for each \$1,000 principal amount of the

corresponding series of Old Securities tendered promptly after notice (such notice if given orally, to be promptly confirmed in writing) of acceptance of said Old Securities by the Company; provided, however, that in all cases, Old Securities tendered pursuant to the Exchange Offer will be exchanged only after timely receipt by you of certificates for such Old Securities (or confirmation of book-entry transfer into your account at the Book-Entry Transfer Facility), a properly completed and duly executed Letter of Transmittal (or manually signed facsimile thereof) with any required signature guarantees and any other required documents. You shall issue New Securities only in denominations of \$1,000 or any integral multiple thereof.

9. Tenders pursuant to the Exchange Offer are irrevocable, except that, subject to the terms and upon the conditions set forth in the Prospectus and the Letter of Transmittal, Old Securities tendered pursuant to the Exchange Offer may be withdrawn at any time prior to the Expiration Date.

10. The Company shall not be required to exchange any Old Securities tendered if any of the conditions set forth in the Exchange Offer are not met. Notice of any decision by the Company not to exchange any Old Securities tendered shall be given (if given orally, to be promptly confirmed in writing) by the Company to you.

11. If, pursuant to the Exchange Offer, the Company does not accept for exchange all or part of the Old Securities tendered because of an invalid tender, the occurrence of certain other events set forth in the Prospectus under the caption "The Exchange Offer—Certain Conditions to the Exchange Offer" or otherwise, you shall as soon as practicable after the expiration or termination of the Exchange Offer return those certificates for unaccepted Old Securities (or effect appropriate book-entry transfer), together with any related required documents and the Letters of Transmittal relating thereto that are in your possession, to the persons who deposited them.

12. All certificates for reissued Old Securities, unaccepted Old Securities or for New Securities shall be forwarded by first-class mail.

13. You are not authorized to pay or offer to pay any concessions, commissions or solicitation fees to any broker, dealer, bank or other persons or to engage or utilize any person to solicit tenders.

14. As Exchange Agent hereunder you:

(a) shall not be liable for any action or omission to act unless the same constitutes your own gross negligence, willful misconduct or bad faith, and in no event shall you be liable to a securityholder, the Company or any third party for special, indirect or consequential damages, or lost profits, arising in connection with this Agreement;

(b) shall have no duties or obligations other than those specifically set forth herein or as may be subsequently agreed to in writing between you and the Company;

(c) will be regarded as making no representations and having no responsibilities as to the validity, sufficiency, value or genuineness of any of the certificates or the Old Securities represented thereby deposited with you pursuant to the Exchange Offer, and will not be required to and will make no representation as to the validity, value or genuineness of the Exchange Offer;

(d) shall not be obligated to take any legal action hereunder which might in your judgment involve any expense or liability, unless you shall have been furnished with indemnity satisfactory to you;

(e) may conclusively rely on and shall be protected in acting in reliance upon any certificate, instrument, opinion, notice, letter, telegram or other document or security

delivered to you and believed by you in good faith to be genuine and to have been signed or presented by the proper person or persons;

(f) may act upon any tender, statement, request, document, agreement, certificate or other instrument whatsoever not only as to its due execution and validity and effectiveness of its provisions, but also as to the truth and accuracy of any information contained therein, which you shall in good faith believe to be genuine or to have been signed or presented by the proper person or persons;

(g) may conclusively rely on and shall be protected in acting in good faith upon written or oral instructions from any authorized officer of the Company;

(h) may consult with counsel of your selection with respect to any questions relating to your duties and responsibilities and the advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted to be taken by you hereunder in good faith and in accordance with the advice or opinion of such counsel; and

(i) shall not advise any person tendering Old Securities pursuant to the Exchange Offer as to the wisdom of making such tender or as to the market value or decline or appreciation in market value of any Old Securities.

15. You shall take such action as may from time to time be requested by the Company (and such other action as you may deem appropriate) to furnish copies of the Prospectus, Letter of Transmittal and the Notice of Guaranteed Delivery (as defined in the Prospectus) or such other forms as may be approved from time to time by the Company, to all persons requesting such documents and to accept and comply with telephone requests for information relating to the Exchange Offer, provided that such information shall relate only to the procedures for accepting (or withdrawing from) the Exchange Offer. The Company will furnish you with copies of such documents on your request. All other requests for information relating to the Exchange Offer shall be directed to the Company at its address set forth in Section 27 hereof.

16. You shall advise by facsimile transmission to Susan Sieker, Treasurer of the Company (at the facsimile number (972) 770-8863), and such other person or persons as the Company may request, daily (and more frequently during the week immediately preceding the Expiration Date if requested) up to and including the Expiration Date, as to the number of Old Securities which have been tendered pursuant to the Exchange Offer and the items received by you pursuant to this Agreement, separately reporting and giving cumulative totals as to items properly received and items improperly received. In addition, you will also inform, and cooperate in making available to, the Company or any such other person or persons upon oral request made from time to time prior to the Expiration Date of such other information as they may reasonably request. Such cooperation shall include, without limitation, the granting by you to the Company and such person as the Company may request of access to those persons on your staff who are responsible for receiving tenders, in order to ensure that immediately prior to the Expiration Date the Company shall have received information in sufficient detail to enable it to decide whether to extend the Exchange Offer. You shall prepare a final list of all persons whose tenders were accepted, the aggregate principal amount of Old Securities tendered, the aggregate principal amount of Old Securities accepted and deliver said list to the Company.

17. Letters of Transmittal and Notices of Guaranteed Delivery shall be stamped by you as to the date and, after the expiration of the Exchange Offer, the time, of receipt thereof and shall be preserved by you for a period of time at least equal to the period of time you preserve other records pertaining to the transfer of securities. You shall dispose of unused Letters of Transmittal and other surplus materials by returning them to the Company.

18. For services rendered as Exchange Agent hereunder, you shall be entitled to such compensation as set forth on Schedule I attached hereto. The provisions of this section shall survive the termination of this Agreement.

19. You hereby acknowledge receipt of the Prospectus and the Letter of Transmittal. Any inconsistency between this Agreement, on the one hand, and the Prospectus and the Letter of Transmittal (as they may be amended from time to time), on the other hand, shall be resolved in favor of the latter two documents, except with respect to your duties, liabilities and indemnification as Exchange Agent.

20. The Company covenants and agrees to fully indemnify and hold you harmless against any and all loss, liability, cost or expense, including attorneys' fees and expenses, incurred without gross negligence, willful misconduct or bad faith on your part, arising out of or in connection with any act, omission, delay or refusal made by you in reliance upon any signature, endorsement, assignment, certificate, order, request, notice, instruction or other instrument or document believed by you to be valid, genuine and sufficient and in accepting any tender or effecting any transfer of Old Securities believed by you in good faith to be authorized, and in delaying or refusing in good faith to accept any tenders or effect any transfer of Old Securities. In each case, the Company shall be notified by you, by letter or facsimile transmission, of the written assertion of a claim against you or of any other action commenced against you, promptly after you shall have received any such written assertion or shall have been served with a summons in connection therewith. The Company shall be entitled to participate at its own expense in the defense of any such claim or other action and, if the Company so elects, the Company shall assume the defense of any suit brought to enforce any such claim. In the event that the Company shall assume the defense of any such suit, the Company shall not be liable for the fees and expenses of any additional counsel thereafter retained by you, so long as the Company shall retain counsel satisfactory to you to defend such suit, and so long as you have not determined, in your reasonable judgment, that a conflict of interest exists between you and the Company. The provisions of this section shall survive the termination of this Agreement.

21. You shall arrange to comply with all requirements under the tax laws of the United States, including those relating to missing Tax Identification Numbers, and shall file any appropriate reports with the Internal Revenue Service.

22. You shall deliver or cause to be delivered, in a timely manner to each governmental authority to which any transfer taxes are payable in respect of the exchange of Old Securities, the Company's check in the amount of all transfer taxes so payable; provided, however, that you shall reimburse the Company for amounts refunded to you in respect of your payment of any such transfer taxes, at such time as such refund is received by you.

23. This Agreement and your appointment as Exchange Agent hereunder shall be construed and enforced in accordance with the laws of the State of New York applicable to agreements made and to be performed entirely within such state, and without regard to conflicts of law principles, and shall inure to the benefit of, and the obligations created hereby shall be binding upon, the successors and assigns of each of the parties hereto.

24. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same agreement.

25. In case any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

26. This Agreement shall not be deemed or construed to be modified, amended, rescinded, cancelled or waived, in whole or in part, except by a written instrument signed by a duly authorized representative of the party to be charged. This Agreement may not be modified orally.

27. Unless otherwise provided herein, all notices, requests and other communications to any party hereunder shall be in writing (including facsimile or similar writing) and shall be given to such party, addressed to it, at its address or telecopy number set forth below:

If to the Company:

Brinker International, Inc.  
6820 LBJ Freeway  
Dallas, Texas 75240-6509

Facsimile: (972) 770-1256  
Attention: General Counsel

If to the Exchange Agent:

Citibank, N.A.  
111 Wall Street, 14<sup>th</sup> Floor  
New York, New York 10005

Facsimile: (212) 657-4024  
Attention: Citibank Agency & Trust

28. Unless terminated earlier by the parties hereto, this Agreement shall terminate 90 days following the Expiration Date. Notwithstanding the foregoing, Sections 18 and 20 shall survive the termination of this Agreement. Upon any termination of this Agreement, you shall promptly deliver to the Company any certificates for Securities, funds or property then held by you as Exchange Agent under this Agreement.

29. This Agreement shall be binding and effective as of the date hereof.

Please acknowledge receipt of this Agreement and confirm the arrangements herein provided by signing and returning the enclosed copy.

BRINKER INTERNATIONAL, INC.

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

Name:

Title:

Accepted as of the date  
first above written:

CITIBANK, N.A., as Exchange Agent

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

Name:

Title:



**SCHEDULE I**  
**COMPENSATION OF EXCHANGE AGENT:**

As set forth in the Fee Schedule, dated May 6, 2004, between Citibank, N.A. and Brinker International, Inc.

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## QuickLinks

[Exhibit 99.6](#)