

# TRADEMARK ASSIGNMENT

Electronic Version v1.1  
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SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	SECURITY INTEREST		
<b>CONVEYING PARTY DATA</b>			
Name	Formerly	Execution Date	Entity Type
AMC BURGERS, INC.		11/18/2013	CORPORATION:
<b>RECEIVING PARTY DATA</b>			
Name:	RBS Citizens		
Street Address:	28 State Street		
Internal Address:	14th Floor		
City:	Boston		
State/Country:	MASSACHUSETTS		
Postal Code:	02109		
Entity Type:	National Association: UNITED STATES		
<b>PROPERTY NUMBERS Total: 1</b>			
Property Type	Number	Word Mark	
Serial Number:	86081886	BAGGER DAVE'S FRESHLY-CRAFTED BURGER TAV	
<b>CORRESPONDENCE DATA</b>			
Fax Number:	5085993010		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	(508) 599-3018		
Email:	keb@psh.com		
Correspondent Name:	Kerri E. Burke		
Address Line 1:	1700 West Park Drive		
Address Line 2:	Suite 200		
Address Line 4:	Westborough, MASSACHUSETTS 01581		
NAME OF SUBMITTER:	Kerri E. Burke		
Signature:	/keb/		
Date:	02/06/2014		

CH \$40.00 86081886

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**TRADEMARK**  
 REEL: 005210 FRAME: 0479

**Total Attachments: 23**

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SECURITY AGREEMENT

All Assets

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RBS CITIZENS, N.A.

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FORT WAYNE NORTH BURGERS, INC.

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NOVEMBER 16, 2013

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November 16, 2013

The undersigned, Fort Wayne North Burgers, Inc. (the "Debtor") hereby grants to RBS Citizens, N.A. having its principal place of business at 28 State Street, Boston, Massachusetts 02109, as administrative agent (in such capacity, the "Administrative Agent") for the Lenders and the Swingline Lender as defined in a certain Credit Agreement dated April 15, 2013, as amended by First Amendment to Credit Agreement dated August 15, 2013, as the same may be amended, renewed, restated, extended, replaced, supplemented, or modified from time to time (the "Credit Agreement"), a security interest in the Collateral (as hereinafter defined) to secure the payment and performance of all Obligations (as hereinafter defined) of the Debtor to the Administrative Agent, the Lenders and the Swingline Lender. All capitalized terms used in this Security Agreement shall, unless otherwise defined herein, have the same meanings given to such terms in the Credit Agreement, provided, however, that the term "Lenders" used below shall refer to the Lenders (as defined in the Credit Agreement) and the Swingline Lender (as defined in the Credit Agreement).

The Debtor hereby agrees with the Administrative Agent and the Lenders as follows:

**SECTION 1. DEFINITIONS.** As used herein -

1.1 "Obligations" means (i) the payment, performance and observance of all terms, conditions, covenants, and agreements on the part of Debtor to be paid, performed or observed pursuant to that certain Credit Agreement by and among the Debtor and others, the Administrative Agent and the Lenders dated April 15, 2013 as amended by First Amendment to Credit Agreement dated August 15, 2013, as the same may be amended, renewed, restated, extended, replaced, supplemented, or modified from time to time (the "Credit Agreement"), (ii) the payment, performance and observance of all terms, conditions, covenants, and agreements on the part of the Debtor and others to be paid, performed or observed pursuant to two (2) term notes each dated as of April 15, 2013, made by the Debtor and others in favor of RBS Citizens and Wells Fargo Bank, N.A. in the original principal amounts of \$31,396,825.00 and \$14,603,175.00, respectively, and any extensions, renewals, amendments, modifications, replacements, or restatements thereof, and substitutions therefor (collectively the "Term Notes"), (iii) the payment, performance and observance of all terms, conditions, covenants, and agreements on the part of the Debtor and others to be paid, performed or observed pursuant to two (2) promissory notes each dated as of April 15, 2013, made by the Debtor and others in favor of RBS Citizens and Wells Fargo Bank, N.A. in the original principal amounts of \$10,238,095.00 and \$4,761,905.00, respectively, and any extensions, renewals, amendments, modifications, replacements, or restatements thereof, and substitutions therefor (collectively, the "Development Line of Credit Notes"), (iv) the payment, performance and observance of all terms, conditions, covenants, and

agreements on the part of the Debtor and others to be paid, performed or observed pursuant to two (2) promissory notes each dated as of April 15, 2013, made by the Debtor and others in favor of RBS Citizens and Wells Fargo Bank, N.A. in the original principal amounts of \$1,365,079.00 and \$634,921.00, respectively, and any extensions, renewals, amendments, modifications, replacements, or restatements thereof, and substitutions therefor (collectively, the "Revolving Line of Credit Notes"), (v) the payment, performance and observance of all terms, conditions, covenants, and agreements on the part of the Debtor and others to be paid, performed or observed pursuant to the \$1,000,000.00 Swingline Loan note (as such term is defined in the Credit Agreement) and any extensions, renewals, amendments, modifications, replacements, or restatements thereof, and substitutions therefor (the "Swingline Note", and together with the Term Notes, the Development Line of Credit Notes, and the Revolving Line of Credit Notes, hereinafter collectively the "Notes"), (vi) the payment, performance and observance of all other liabilities and obligations of the Debtor and others to any of the Administrative Agent and the Lenders of every kind and description, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising and relating to the Loans and the Credit Agreement, including without limitation, all obligations and liabilities of the Debtor and others to the Administrative Agent and the Lenders under any swap/hedging transaction or other interest rate protection transaction (including without limitation all obligations, debts, liabilities, covenants and duties of any Loan Party arising under or in connection with any Hedging Contracts or Secured Hedge Agreements entered into with a Lender or any Affiliate of a Lender, including both regularly occurring payments and those due upon termination). The Debtor is obligated under and with respect to each of the Obligations in the same manner as if it was an original Borrower under the Credit Agreement and the Loan Documents, and an original maker of each of the Notes, by virtue of the execution by Debtor of a certain Joinder Agreement dated the date hereof.

1.2 As used herein, the term "Uniform Commercial Code" means the Massachusetts Uniform Commercial Code, as amended from time to time, except as to matters involving perfection, non-perfection, the effect of perfection, and priority of the security interest granted under this Agreement, as to which "Uniform Commercial Code" means the Uniform Commercial Code, of the state of each Debtor's organization, as amended from time to time. All of the terms used herein which are defined in the Uniform Commercial Code shall, unless otherwise defined herein, have the same meanings as specified therein, except that "instrument" shall have the meaning as defined in Article 9 of the Uniform Commercial Code.

1.3 "Collateral" means any and all personal property and fixtures of the Debtor in which the Administrative Agent and the Lenders now have, by this Agreement acquires or hereafter acquires a security interest.

**SECTION 2. SECURITY INTEREST OF ADMINISTRATIVE AGENT AND LENDERS IN COLLATERAL.** As security for the payment and performance of all

Obligations, the Administrative Agent and the Lenders shall have and the Debtor hereby grants to the Administrative Agent and the Lenders a continuing security interest in and pledges and assigns to the Administrative Agent and the Lenders the following property of the Debtor, whether such property is now owned or existing or is owned, acquired, or arises hereafter, wherever located, and all proceeds and products thereof: all personal property and fixtures of every kind and nature, including without limitation: all inventory, accounts, securities and other investment property, equipment, goods, instruments, documents of title, policies and certificates of insurance, chattel paper, deposit accounts, supporting obligations, letter-of-credit rights, commercial tort claims, all general intangibles (other than any franchise agreements between the Debtor and Buffalo Wild Wings International Inc. and licenses thereunder (each, a "Franchise Agreement")), (including without limitation, payment intangibles, patents, patent applications, trademarks, trademark applications, trade names, copyrights, copyright applications, software, engineering drawings, service marks, customer lists, goodwill, and all licenses, permits, agreements of any kind or nature pursuant to which the Debtor possesses, uses, or has authority to possess or use property (whether tangible or intangible) of others, or agreements to which others possess, use or have authority to possess or use property (whether tangible or intangible) of the Debtor), all other rights to the payment of money including without limitation any such property received in connection with any disposition of any Franchise Agreement, amounts due from Affiliates, tax refunds, and insurance proceeds, and all recorded data or records of any kind or nature, regardless of the medium of recording, including without limitation all software, writings, plans, specifications and schematics.

**SECTION 3. AUTHORIZATION TO FILE FINANCING STATEMENTS.** The Debtor hereby irrevocably authorizes the Administrative Agent at any time and from time to time to file, wherever such filing is deemed by the Administrative Agent to be necessary or desirable, any initial financing statements and amendments thereto indicating all or any part of the Collateral and containing any other information required by applicable law or deemed necessary or desirable by the Administrative Agent for the sufficiency or filing office acceptance of any financing statement or amendment. The Debtor agrees to furnish all such information to the Administrative Agent promptly upon request. The Debtor also ratifies its authorization for the Administrative Agent to have filed any initial financing statements or amendments thereto if filed prior to the date hereof. The Debtor hereby agrees to pay the cost of all such filings.

**SECTION 4. OTHER ACTIONS.** Further, to ensure the attachment, perfection and first priority of, and the ability of the Administrative Agent to enforce, the Administrative Agent and Lenders' security interest in the Collateral, the Debtor agrees, in each case at the expense of the Debtor, to take the following actions with respect to the following Collateral:



4.1 Promissory Notes and Tangible Chattel Paper. If the Debtor shall at any time hold or acquire any promissory notes or tangible chattel paper, the Debtor shall forthwith, in addition to other action required by the Administrative Agent, endorse, assign and deliver the same to the Administrative Agent and the Lenders, accompanied by such instruments of transfer or assignment duly executed in blank as the Administrative Agent may from time to time specify.

4.2 Deposit Accounts In Other Institutions. For each deposit account that the Debtor at any time opens or maintains at an institution other than RBS Citizens, N.A., the Debtor shall, at the Administrative Agent's request and option, pursuant to an agreement in form and substance satisfactory to the Administrative Agent, give the Administrative Agent control of such deposit account by either (a) causing the depository bank to agree to comply at any time with instructions from the Administrative Agent to such depository bank directing the disposition of funds from time to time credited to such deposit account, without further consent of the Debtor, or (b) arranging for the Administrative Agent to become the customer of the depository bank with respect to the deposit account, with the Debtor being permitted to withdraw funds from such deposit account, only to the extent authorized by the Administrative Agent from time to time. The provisions of this paragraph shall not apply to (i) any deposit account for which the Debtor, the depository bank and the Administrative Agent have entered into a cash collateral agreement specially negotiated among the Debtor, the depository bank and the Administrative Agent for the specific purpose set forth therein, or (ii) deposit accounts specially and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of the Debtor's salaried employees, to the extent so employed. The Debtor agrees to promptly notify the Administrative Agent in writing at any time it establishes a deposit account with any institution or terminates any deposit account.

4.3 Investment Property. If the Debtor shall at any time hold or acquire any investment property, including without limitation, certificated securities, uncertificated securities, or securities held by the Debtor or its nominee through a securities intermediary or commodity intermediary, the Debtor shall promptly notify the Administrative Agent of such investment property and shall forthwith at the request of the Administrative Agent, take whatever action the Administrative Agent deems necessary or appropriate to give the Administrative Agent control of such investment property, including without limitation, executing and delivering endorsements, assignments, pledge agreements and other agreements in form and substance satisfactory to the Administrative Agent. Debtor will also cause any securities intermediary maintaining a securities account or commodities intermediary maintaining a commodities account to execute such agreements as the Administrative Agent shall from time to time require in order to ensure the Administrative Agent is granted control thereof, and to deliver to the Administrative Agent such agreement, reports, and other documentation as the Administrative Agent shall from time to time

require, and Debtor will hold in trust and deliver to the Administrative Agent any investment property received by the Debtor, together with any required endorsements.

4.4 Collateral in the Possession of a Bailee. If any goods are at any time in the possession of a bailee, the Debtor shall, unless otherwise directed by the Administrative Agent, promptly notify the Administrative Agent thereof and shall send notice to and obtain an acknowledgment from the bailee, in form and substance satisfactory to the Administrative Agent. Such acknowledgment shall state that the bailee holds such Collateral for the benefit of the Administrative Agent and the Lenders and shall act upon the instructions of the Administrative Agent, without the further consent of the Debtor. The Debtor hereby authorizes the Administrative Agent to obtain the acknowledgment directly from any bailee.

4.5 Electronic Chattel Paper and Transferable Records; Letter-of-credit Rights; Commercial Tort Claims; Patents, Trademarks and Copyrights. If the Debtor at any time (i) holds or acquires an interest in any electronic chattel paper or any "transferable record," as that term is defined in Section 201 of the federal Electronic Signatures in Global and National Commerce Act, or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, (ii) is a beneficiary under a letter-of-credit now or hereafter issued in favor of the Debtor, (iii) holds or acquires a commercial tort claim, or (iv) holds or acquires any rights in any patents, trademarks, or copyrights or applications therefor, then the Debtor shall immediately notify the Administrative Agent in writing of its interest therein, and shall provide such information and take such action as the Administrative Agent shall request in order that the Administrative Agent and the Lenders may perfect its security interest therein.

4.6 Government Contracts. Upon the request of the Administrative Agent, the Debtor will specifically assign to the Administrative Agent and the Lenders all federal government contracts and will cooperate with the Administrative Agent in giving notice of such assignment pursuant to the federal Assignment of Claims Act. The Debtor will cooperate with the Administrative Agent in providing such further information with respect to contracts with any state, other unit of local government or agency as the Administrative Agent may require and will provide such instruments or take such actions of further assurance with respect to such contracts as the Administrative Agent may require.

4.7 Other Actions as to all Collateral. The Debtor further agrees to take any other action reasonably requested by the Administrative Agent to ensure the attachment, perfection and first priority of, and the ability of the Administrative Agent and the Lenders to enforce, the Administrative Agent and Lenders' security interest in any and all of the Collateral including, without limitation, (a) executing, delivering and, where appropriate, filing financing statements and amendments relating thereto under the Uniform Commercial Code, as amended from time to time, to the extent, if any, that a Debtor's signature thereon is required therefor, (b) causing the Administrative Agent

and the Lenders' name to be noted as secured party on any certificate of title for a titled good or a good capable of being titled if such notation is deemed necessary or appropriate by the Administrative Agent for attachment, perfection or priority of, or ability of the Administrative Agent and the Lenders to enforce, the Administrative Agent and the Lenders' security interest in such Collateral, (c) complying with any provision of any statute, regulation or treaty of the United States or other state or jurisdiction as to any Collateral if compliance with such provision is deemed necessary or appropriate by the Administrative Agent for attachment, perfection or priority of, or ability of the Administrative Agent to enforce, the Administrative Agent's or the Lender's security interest in such Collateral, (d) obtaining governmental and other third party consents and approvals, including without limitation any consent of any licensor, lessor or other person obligated on Collateral, (e) obtaining waivers from mortgagees and landlords in form and substance satisfactory to the Administrative Agent and (f) taking all actions required by any earlier versions of the Uniform Commercial Code, as amended from time to time.

**SECTION 5. DEBTOR'S REPRESENTATIONS, WARRANTIES AND COVENANTS.** The Debtor represents, warrants and covenants as follows:

5.1 It has previously delivered to the Administrative Agent and the Lenders a certificate signed by the Debtor and entitled "Uniform Commercial Code Questionnaire and Certification" (the "Perfection Certificate").

5.2 It is an entity duly organized, existing and in good standing under the laws of its state of organization and is duly qualified and in good standing in every other state in which it is doing business.

5.3 The Debtor covenants with the Administrative Agent and the Lenders as follows: (a) without providing at least thirty (30) days prior written notice to the Administrative Agent, it will not change its name, its place of business or, if more than one, chief executive office, or its mailing address or organizational identification number if it has one, (b) if it does not have an organizational identification number and later obtains one, it shall forthwith notify the Administrative Agent of such organizational identification number, and (c) it will not change its type of organization, jurisdiction of organization or other legal structure. In connection with any such change it will execute and deliver, or cause to be executed and delivered, to the Administrative Agent all such additional security agreements, financing statements and other documents as the Administrative Agent shall reasonably require. This provision shall not be deemed to constitute consent to any change identified above or otherwise prohibited in any agreement between the Debtor and the Administrative Agent and the Lenders.

5.4 The execution, delivery and performance hereof are within its company powers, have been duly authorized, are not in contravention of law or the terms of its

charter, by-laws or other organization papers, or of any indenture, agreement or undertaking to which it is a party or by which it is bound.

5.5 The equipment is not used or bought primarily for personal, family or household purposes and is not used or bought primarily for use in farming operations.

5.6 It holds no commercial tort claim except as indicated in the Perfection Certificate.

5.7 The Perfection Certificate accurately sets forth the equipment which has been attached or is to be attached to real estate, and accurately provides a description of the real estate.

5.8 The Debtor further covenants with the Administrative Agent and the Lenders as follows: (a) the Collateral will be kept at those locations listed on the Perfection Certificate and it will not remove the Collateral from such locations, without providing at least thirty (30) days prior written notice to the Administrative Agent, (b) except for the security interest herein granted, it shall be the owner of or have other rights in the Collateral free from any lien, security interest or other encumbrance, other than as permitted in the Credit Agreement and other than those otherwise approved in writing by the Administrative Agent, and it shall defend the same against all claims and demands of all persons at any time claiming the same or any interests therein adverse to the Administrative Agent and/or the Lenders, (c) it shall not pledge, mortgage or create, or suffer to exist a security interest in the Collateral in favor of any person other than the Administrative Agent and the Lenders other than as permitted by the Credit Agreement and other than as otherwise approved in writing by the Administrative Agent, (d) it will keep the Collateral in good order and repair and will not use the same in violation of law or any policy of insurance thereon, and will immediately notify the Administrative Agent of any material damage thereto or any material loss or significant diminution of the value thereof, (e) it will permit the Administrative Agent and the Lenders, or their designees, to inspect the Collateral at any reasonable time, wherever located, (f) it will pay promptly when due all taxes, assessments, governmental charges and levies upon the Collateral or incurred in connection with the use or operation of such Collateral or incurred in connection with this Agreement, (g) it has operated and will continue to operate, its business in compliance with all applicable provisions of the federal Fair Labor Standards Act, as amended, and with all applicable provisions of federal, state and local statutes and ordinances dealing with the control, shipment, storage or disposal of hazardous materials or substances, and (h) it will not sell or otherwise dispose, or offer to sell or otherwise dispose, of the Collateral or any interest therein except for sales and leases of inventory and licenses of general intangibles in the ordinary course of business, or as permitted by the terms of the Credit Agreement.

5.9 Subject to any limitations stated therein or in connection therewith, all balance sheets, earnings statements and other financial data which have been or may

hereafter be furnished to the Administrative Agent and the Lenders to induce them to enter into this Agreement or otherwise in connection herewith, do or shall fairly represent the financial condition of the Debtor as of the dates, and the results of its operations, for the periods for which the same are furnished, and all other information, reports and other papers and data furnished to the Administrative Agent or the Lenders are or shall be at the time the same are so furnished accurate and correct in all material respects and complete.

5.10 It will pay any excise, sales or other tax or charge which may become due and payable with respect to any sale or other transaction giving rise to an account or other right to the payment of money, or with respect to the collection thereof and shall reimburse the Administrative Agent for any payment by it of any such tax or charge.

5.11 To its the knowledge, there are no actions, suits or proceedings, other than as disclosed in writing to the Administrative Agent, pending or, to its knowledge, threatened against it or any Subsidiary, at law or in equity or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality which may result in any material adverse change to its or its Subsidiary's business, properties or assets, or in their condition, financial or otherwise.

5.12 No approval or authorization or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery or performance by it of this Agreement or the consummation of the transaction contemplated hereby.

5.13 To the extent that it has an employee benefit plan or other plan maintained for its employees or any of its Subsidiaries which is covered by Title IV of the Employee Retirement Income Security Act of 1974, no reportable event, as defined in such Act, has occurred and is continuing with respect to any such employee benefit plan. It will not incur any liability to the Pension Benefit Guaranty Corporation ("PBGC") established under ERISA in connection with any pension plan (or other class of employee benefit which the PBGC has elected to insure) established or maintained by it; nor allow any circumstance to arise which would permit PBGC to institute proceedings to terminate any such pension plan; nor permit any pension plan maintained by it to: (a) engage in any "prohibited transaction" as such term is defined in Section 4975 of the Internal Revenue Code of 1954, as amended, or (b) incur any "accumulated funding deficiency" as such term is defined in Section 302 of ERISA, whether or not waived.

5.14 Until the occurrence of an Event of Default, it may have possession of the Collateral and use it in any lawful manner not inconsistent with this Agreement and not inconsistent with any policy of insurance thereon.

5.15 Without the prior written consent of the Administrative Agent, it will not grant any allowances, adjustments or discounts (except customary cash discounts or normal returns in the ordinary course of business) or enter into any agreement or take any other action with respect thereto except as directed or approved by the Administrative Agent.

5.16 It shall furnish the Administrative Agent with such reports concerning the Collateral as the Administrative Agent shall reasonably request from time to time, such reports to be in form satisfactory to the Administrative agent in its reasonable discretion.

## **SECTION 6. COLLATERAL PROTECTION EXPENSES; PRESERVATION OF COLLATERAL.**

6.1 Expenses Incurred by Administrative Agent and the Lenders. In their discretion, the Administrative Agent and the Lenders may discharge taxes, liens, security interests and other encumbrances at any time levied or placed on any of the Collateral, may pay for insurance on the Collateral, may pay for the maintenance and preservation of the Collateral, may pay for credit enhancements to insure the Administrative Agent and the Lenders against risks of loss or disposition of Collateral or to provide to the Administrative Agent and the Lenders a guaranteed return from the collection or disposition of Collateral, make repairs thereto and pay any necessary filing fees. Debtor agrees to reimburse the Administrative Agent and the Lenders on demand for any payment made or any expense incurred by the Administrative Agent or the Lenders pursuant to the foregoing authorization. The Administrative Agent and the Lenders shall have no obligation to the Debtor to make any such expenditures, nor shall the making thereof relieve the Debtor of any default.

6.2 Obligations and Duties of the Administrative Agent and the Lenders. Anything herein to the contrary notwithstanding, the Debtor shall remain liable under each contract or agreement comprised in the Collateral to be observed or performed by the Debtor thereunder. The Administrative Agent and the Lenders shall not have any obligation or liability under any such contract or agreement by reason of or arising out of this Agreement or the receipt by the Administrative Agent and/or the Lenders of any payment relating to any of the Collateral, nor shall the Administrative Agent and the Lenders be obligated in any manner to perform any of the obligations of the Debtor under or pursuant to any such contract or agreement, to make inquiry as to the nature or sufficiency of any payment received by the Administrative Agent or the Lenders in respect of the Collateral or as to the sufficiency of any performance by any party under any such contract or agreement, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to the Administrative Agent and the Lenders or to which the Administrative Agent and the Lenders may be entitled at any time or times. The Administrative Agent and the Lenders' sole duty with respect to the custody, safe

keeping and physical preservation of the Collateral in its possession, under the Uniform Commercial Code, as amended from time to time, or otherwise, shall be to deal with such Collateral in the same manner as the Administrative Agent and/or the Lenders deal with similar property for their own account.

**SECTION 7. PROMISES TO PAY.** The Debtor promises to pay to the Administrative Agent and the Lenders on demand all taxes, charges and expenses of every kind or description including reasonable attorneys' fees, disbursements and expenses of litigation, reasonably incurred or expended by any of them in connection with or in any way related to their relationship with the Debtor, whether hereunder or otherwise, including without limitation those incurred or expended in connection with the preparation of this Agreement or any amendment hereof, the collection or sale or attempted collection or sale of accounts or Obligations, the supervision, protection and collection of and realization upon any Collateral, and the protection or enforcement of their rights hereunder. The Debtor authorizes the Administrative Agent and the Lenders to charge the interest, charges, taxes, and expenses provided for herein to any deposit account maintained by the Debtor with the Administrative Agent or the Lenders. Until paid, all amounts due and payable by the Debtor hereunder shall be a debt secured by the Collateral and shall bear, whether before or after judgment, interest at the rate of fifteen percent (15%) per annum.

**SECTION 8. INSURANCE; INSPECTION OF RECORDS; FURTHER ASSURANCES.**

8.1 The Debtor will maintain with financially sound and reputable insurers insurance with respect to its properties and business against such casualties and contingencies as shall be in accordance with general practices of businesses engaged in similar activities in similar geographic areas. Such insurance shall be in such minimum amounts that the Debtor will not be deemed a co-insurer under applicable insurance laws, regulations and policies and otherwise shall be in such amounts, contain such terms, be in such forms and be for such periods as may be reasonably satisfactory to the Administrative Agent. In addition, all such insurance shall be payable to the Administrative Agent and the Lenders as loss payee (with a lender's loss payable endorsement) under a standard loss payee clause. Without limiting the foregoing, the Debtor will (i) keep all of its physical property insured with casualty or physical hazard insurance on an "all risks" basis, with broad form flood and earthquake coverages and electronic data processing coverage, with a full replacement cost endorsement and an "agreed amount" clause in an amount equal to 100% of the full replacement cost of such property, (ii) maintain all such workers' compensation or similar insurance as may be required by law and (iii) maintain, in amounts and with deductibles comparable to those generally maintained by businesses engaged in similar activities in similar geographic areas, general public liability insurance against claims of bodily injury, death or property damage occurring, on, in or about the properties of the Debtor; business interruption insurance; and product liability insurance. All policies of

insurance shall provide for thirty (30) days written minimum cancellation notice to the Administrative Agent. In the event of failure to provide and maintain insurance as herein provided the Administrative Agent may, at its option, provide such insurance and charge the amount thereof to any deposit account maintained by the Debtor with the Administrative Agent or any of the Lenders. The Debtor shall furnish to the Administrative Agent certificates or other evidence satisfactory to the Administrative Agent of compliance with the foregoing insurance provisions.

The proceeds of any casualty insurance in respect of any casualty loss of any of the Collateral shall be dealt with as provided in the Credit Agreement.

8.2 The Debtor shall at all reasonable times and from time to time allow the Administrative Agent and the Lenders, by or through any of their officers, agents, attorneys or accountants, to examine, inspect or make extracts from the Debtor's books and records, and those of any related company, and to arrange for verification of accounts, under reasonable procedures, directly with account debtors or by other methods, and shall do, make, execute and deliver all such additional and further acts, things, deeds, assurances, and instruments as the Administrative Agent may require more completely to vest in and assure to the Administrative Agent and the Lenders their rights hereunder or in any Collateral and to carry into effect the provisions and intent of this Agreement.

## **SECTION 9. COLLECTION OF ACCOUNTS OR OTHER COLLATERAL.**

9.1 Until the Administrative Agent requests that debtors on accounts or other Collateral of the Debtor be notified of the Administrative Agent and the Lenders' security interest, the Debtor shall continue to collect them.

9.2 The Debtor shall, at the request of the Administrative Agent, notify the account debtors and other persons obligated on any of the Collateral of the security interest of the Administrative Agent and the Lenders in any account or other Collateral and that payment thereof is to be made directly to the Administrative Agent, and the Administrative Agent may itself at any such time, without notice to or demand upon the Debtor, so notify account debtors.

9.3 The Administrative Agent may also request that the Debtor holds the proceeds received from collection of Collateral as trustee for the Administrative Agent and the Lenders without commingling the same with other funds of the Debtor and shall turn the same over to the Administrative Agent, or to such bank as may be approved by the Administrative Agent, immediately upon receipt in the identical form received. The making of such a request or the giving of any such notification under Section 9.1 hereof, shall not affect the duties of the Debtor described above with respect to proceeds of collection of accounts received by the Debtor.



9.4 The Administrative Agent shall credit the proceeds of collection of accounts received by the Administrative Agent to the Obligations, such credits to be entered as of the third business day after receipt thereof by the Administrative Agent. Such credits shall be conditional upon final payment in cash or credits of the items giving rise to them. If any item is not so paid, the Administrative Agent, in its discretion, whether or not the item is returned, may either reverse any credit given for the item or charge it to any deposit account maintained by the Debtor with the Administrative Agent.

**SECTION 10. EVENTS OF DEFAULT.** The Debtor shall be in default under this Agreement upon the happening of any "Event of Default" under the Credit Agreement, as the same may be amended, modified, extended or renewed.

**SECTION 11. DISPOSITION OF COLLATERAL**

11.1 Upon the occurrence of any Event of Default and at any time thereafter (such default not having been cured), the Administrative Agent and the Lenders shall have the right to take immediate possession of the Collateral, and for that purpose the Administrative Agent may, so far as the Debtor can give authority therefor, enter upon any premises on which Collateral may be situated and remove the same therefrom. The Administrative Agent may in its discretion require the Debtor to assemble all or any part of the Collateral at such location or locations as the Administrative Agent may reasonably designate. The Debtor waives demand and notice with respect to and assents to any repossession of Collateral. Except for Collateral which is perishable or threatens to decline speedily in value or which is of a type customarily sold on a recognized market, the Administrative Agent shall give to the Debtor at least ten (10) days' prior written notice of the time and place of any public sale of Collateral or of the time after which any private sale of any other intended disposition is to be made. The Administrative Agent and the Lenders shall also have in any jurisdiction where enforcement hereof is sought, in addition to all other rights and remedies, the rights and remedies of a secured party under the applicable Uniform Commercial Code, as amended from time to time. The residue of any proceeds of collection or sale, after satisfying all Obligations in such order of preference as the Administrative Agent may determine and making proper allowance for interest on Obligations not then due, and after making any payments required by the applicable Uniform Commercial Code, as amended from time to time, shall be credited to any deposit account maintained by the Debtor with the Administrative Agent. The Debtor shall remain liable for any deficiency. The Debtor hereby waives any and all rights that it may have to a judicial hearing in advance of the enforcement of any of the Administrative Agent and the Lenders' rights hereunder, including, without limitation, its right following an Event of Default to take immediate possession of the Collateral and to exercise its rights with respect thereto.

11.2 The Administrative Agent may at any time in its discretion transfer any securities or other property constituting Collateral into its own name or that of its nominee and receive the income thereon and hold the same as security for Obligations or apply it on principal or interest due on Obligations. Insofar as Collateral shall consist of accounts, general intangibles, other claims and rights to the payment of money, insurance policies, instruments, chattel paper, choses in action or the like, the Administrative Agent may, without notice to or demand on the Debtor, demand, collect, receipt for, settle, compromise, adjust, use, sue for, foreclose or realize upon Collateral as the Administrative Agent may determine, whether or not Obligations or Collateral are then due and for the purpose of realizing the Administrative Agent and the Lenders' rights therein, the Administrative Agent may receive, open and dispose of mail addressed to the Debtor and endorse notes, checks, drafts, money orders, documents of title or other evidences of payment, shipment or storage or any form of Collateral on behalf of and in the name of the Debtor. The powers conferred on the Administrative Agent by this Section are solely to protect the interest of the Administrative Agent and the Lenders and shall not impose any duties on the Administrative Agent or the Lenders to exercise any powers.

11.3 The Administrative Agent and the Lenders shall not be required to marshal any present or future collateral security (including but not limited to this Agreement and the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of its rights hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights, however existing or arising. To the extent that it lawfully may, the Debtor hereby agrees that it will not invoke, jointly or individually, any law relating to the marshaling of collateral which might cause delay in or impede the enforcement of the Administrative Agent and the Lenders' rights under this Agreement or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, the Debtor hereby irrevocably waives the benefits of all such laws.

**SECTION 12. STANDARDS FOR EXERCISING REMEDIES.** To the extent that applicable law imposes duties on the Administrative Agent and the Lenders to exercise remedies in a commercially reasonable manner, the Debtor acknowledges and agrees that it is not commercially unreasonable for the Administrative Agent or the Lenders (a) to fail to incur expenses reasonably deemed significant by the Administrative Agent to prepare Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition, (b) to fail to obtain third party consents for access to Collateral to be disposed of, or to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (c) to fail to exercise collection remedies against account

debtors or other persons obligated on Collateral or to remove liens or encumbrances on or any adverse claims against Collateral, (d) to exercise collection remedies against account debtors and other persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (e) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (f) to contact other persons, whether or not in the same business as the Debtor, for expressions of interest in acquiring all or any portion of the Collateral, (g) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the collateral is of a specialized nature, (h) to dispose of Collateral by utilizing Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (i) to dispose of assets in wholesale rather than retail markets, (j) to disclaim disposition warranties, (k) to purchase reasonable insurance or credit enhancements at the cost of the Debtor to insure the Administrative Agent and the Lenders against risks of loss, collection or disposition of Collateral or to provide to the Administrative Agent and the Lenders a guaranteed return from the collection or disposition of Collateral, or (l) to the extent deemed appropriate by the Administrative Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Administrative Agent in the collection or disposition of any of the Collateral. The Debtor acknowledges that the purpose of this Section 12 is to provide non-exhaustive indications of what actions or omissions by the Administrative Agent or the Lenders would not be commercially unreasonable in the exercise of remedies against the Collateral and that other actions or omissions by the Administrative Agent or the Lenders shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 12. Without limitation upon the foregoing, nothing contained in this Section 12 shall be construed to grant any rights to the Debtor or to impose any duties on the Administrative Agent or the Lenders that would not have been granted or imposed by this Agreement or by applicable law in the absence of this Section 12.

**SECTION 13. POWER OF ATTORNEY.** The Debtor hereby irrevocably constitutes and appoints the Administrative Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of f the Debtor or in the Administrative Agent's own name, for the purpose of carrying out the terms of this Agreement, to take any and all action that the Administrative Agent deems necessary or desirable and to execute any and all documents and instruments that the Administrative Agent deems necessary or desirable to accomplish the purposes of this Agreement. The powers conferred on the Administrative Agent hereunder are solely to protect its interests and the interests of the Lenders in the Collateral and shall not impose any duty upon it to exercise any such powers. The Administrative Agent shall be accountable only for the amounts that it actually receives as a result of the exercise of such powers and neither it nor any of its officers, directors, employees or agents shall be responsible to the Debtor for any act or

failure to act, except for the Administrative Agent's own gross negligence or willful misconduct.

**SECTION 14. SET OFF.** Any deposits or other sums at any time credited by or due from the Administrative Agent or the Lenders to the Debtor or any guarantors, and any securities or other property of the Debtor at any time in the possession of the Administrative Agent or any of the Lenders may at all times be held and treated as collateral for the payment of the Obligations. Regardless of the adequacy of collateral, the Administrative Agent and the Lenders may apply or set off such deposits or other sums (other than against payroll accounts which by law may not be set off against by the Administrative Agent or the Lenders) against such obligations at any time in the case of the Debtor but only with respect to matured obligations in the case of guarantors thereof.

**SECTION 15. WAIVERS.** The Debtor waives demand, notice, protest, notice of acceptance of this Agreement, notice of loans made, credit extended, Collateral received, delivered or repossessed or other action taken in reliance hereon, and all other demands and notices of any description, except for notices that the Administrative Agent and the Lenders have agreed to provide pursuant to the Credit Agreement, this Agreement and/or any other Loan Document. With respect to both Obligations and Collateral, the Debtor assents to any extension or postponement of the time of payment or other indulgence, to any substitution, exchange or release of or failure to perfect any security interest in any Collateral, to the addition or release of any party or person primarily or secondarily liable, to the acceptance of partial payments thereon and the settlement, compromising or adjusting of any thereof, all in such manner and at such time or times as the Administrative Agent may deem advisable. The Administrative Agent and the Lenders may exercise their rights with respect to Collateral without resorting or regard to other collateral or sources of reimbursement for Obligations. The Administrative Agent and the Lenders shall not be deemed to have waived any of their rights upon or under Obligations or Collateral unless such waiver be in writing and signed by the Administrative Agent. No delay or omission on the part of the Administrative Agent and the Lenders in exercising any other right shall operate as a waiver of such right or any other right. A waiver on any one occasion shall not be construed as a bar to or waiver of any right on any future occasion. All rights and remedies of the Administrative Agent and the Lenders on Obligations or Collateral, whether evidenced hereby or by any other instrument or papers, shall be cumulative and may be exercised separately or concurrently. The Administrative Agent and the Lenders shall have no duty as to the collection or protection of the Collateral or any income thereon, nor as to the preservation of rights against prior parties, nor as to the preservation of any rights pertaining thereto beyond the safe custody thereof as set forth in Section 6.2. The Debtor further waives any and all other surety defenses and all other defenses in the nature thereof.

**SECTION 16. GENERAL.** If at any time or times by assignment or otherwise, the Administrative Agent or any of the Lenders transfers any Obligation and collateral therefor, such transfer shall carry with it such party's powers and rights under this Agreement with respect to the Obligation and collateral transferred and the transferee shall become vested with said powers and rights whether or not they are specifically referred to in the transfer. The Debtor or the Administrative Agent may terminate this Agreement at any time upon written notice to the other party of such termination, provided, however, that such termination shall in no way affect any transactions entered into or rights created or obligations incurred prior to the receipt of such notice by the other party, as to which transactions, rights and obligations this Agreement shall be fully operative until the same are fully disposed of, concluded or liquidated. Prior to such termination this shall be a continuing agreement in every respect. This Agreement shall be effective as a sealed instrument when it is received at the head office of the Administrative Agent in Boston, Massachusetts, and it and all rights and obligations under it, including matters of construction, validity and performance, shall be governed by the laws of Massachusetts. No amendment, modification or waiver of any provision of this Agreement shall be effective unless in writing and signed and delivered by the Administrative Agent.

**SECTION 17. NOTICES.** Any notice or demand which by any provision of this Agreement is required or provided to be given shall be deemed to have been sufficiently given if given in accordance with Section 19.13 of the Credit Agreement.

**SECTION 18. SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective executors, administrators, successors and assigns. Administrative Agent has been appointed to act as Administrative Agent hereunder by the other Lenders. Administrative Agent shall have the right hereunder to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action in accordance with the terms of the Credit Agreement, any related agency agreement among Administrative Agent and the other Lenders (collectively, as amended, amended and restated, supplemented or otherwise modified or replaced from time to time, the "Agency Documents") and this Agreement. Debtor and all other Persons shall be entitled to rely on releases, waivers, consents, approvals, notifications and other acts of the Administrative Agent, without inquiry into the existence of required consents or approvals of the Lenders therefor.

The Administrative agent shall at all times be the same Person that is Agent under the Agency Documents. Written notice of resignation by the Administrative Agent pursuant to the Agency Documents shall also constitute notice of resignation as Administrative Agent under this Agreement. Removal of the Administrative Agent pursuant to any provision of the Agency Documents shall also constitute removal as the Administrative Agent under this Agreement. Appointment of a successor

Administrative Agent pursuant to the Agency Documents shall also constitute appointment of a successor Administrative Agent under this Agreement. Upon the acceptance of any appointment as Administrative Agent by a successor Administrative Agent under the Agency Documents, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Administrative Agent as the Administrative Agent under this Agreement, and the retiring or removed Administrative Agent shall promptly (i) assign and transfer to such successor Administrative Agent all of its right, title and interest in and to this Agreement and the Collateral secured herein, and (ii) execute and deliver to such successor Administrative Agent such assignments and amendments and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent of the liens and security interests created hereunder, whereupon such retiring or removed Administrative Agent shall be discharged from its duties and obligations under this Agreement. After any retiring or removed Administrative Agent's resignation or removal hereunder as Administrative Agent, the provisions of this Agreement and the Agency Documents shall inure to its benefit as to any actions taken or omitted to be taken by it under this Mortgage while it was the Administrative Agent hereunder.

**SECTION 19. SEVERABILITY.** In case any one or more provisions of this Agreement shall be found by a court or other tribunal of competent jurisdiction to be invalid or unenforceable for any reason or in any respect or circumstance, such invalidity or unenforceability shall not limit or impair the validity or enforcement of any other provision hereof or affect the validity or enforcement of the provisions of this Agreement under any other circumstances.

**SECTION 20. WAIVER OF JURY TRIAL AND SPECIAL DAMAGES.** THE PARTIES HERETO HEREBY WAIVE, TO THE EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER OF ANY KIND WHATSOEVER IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS AGREEMENT, ANY DOCUMENT RELATED HERETO OR THE RELATIONSHIPS ESTABLISHED HEREUNDER OR THEREUNDER. Except as prohibited by law, the Debtor hereby waives any right which each may have to claim or recover in any litigation referred to in the preceding sentence any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages. The Debtor (i) certifies that neither the Administrative Agent nor any of the Lenders nor any of their representatives, agents or attorneys has represented, expressly or otherwise, that the Administrative Agent and the Lenders would not, in the event of litigation, seek to enforce the foregoing waivers and (ii) acknowledges that, in extending credit or other accommodations to the Debtor, the Administrative Agent and the Lenders are relying upon, among other things, the waivers and certifications contained in this Section 20.

**SECTION 21. GOVERNING LAWS AND CONSENT TO JURISDICTION.** THIS AGREEMENT IS INTENDED TO TAKE EFFECT AS A SEALED INSTRUMENT AND SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS. The Debtor agrees that any suit for the enforcement of this Agreement may be brought in the courts of the Commonwealth of Massachusetts or any Federal Court sitting therein and consents to the non-exclusive jurisdiction of such court and to service of process in any such suit being made upon the Debtor by mail at the address specified herein. The Debtor hereby waives any objection that each may now or hereafter have to the venue of any such suit or any such court or based on such suit having been brought in an inconvenient court.

**SECTION 22. SECTION HEADINGS.** The headings of each section of this Agreement are for convenience only and shall not define or limit the provisions thereof.

(signature page to follow)

Executed by the party below as a document under seal as of the date first written above:


Fort Wayne North Burgers, Inc.  
An Indiana corporation

By: Ioana Ben-Ezra  
Ioana Ben-Ezra, Secretary



Executed by the party below as a document under seal as of the date first written above.

RBS CITIZENS, N.A.  
As Administrative Agent

By:   
\_\_\_\_\_  
Christopher J. Wickles,  
Senior Vice President