

FORM 10-Q

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the quarterly period ended **December 24, 2017**.

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

**Commission file number 001-35962**

**NATHAN'S FAMOUS, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

**11-3166443**

(State or other jurisdiction of  
incorporation or organization)

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

**One Jericho Plaza, Second Floor – Wing A, Jericho, New York 11753**

(Address of principal executive offices)  
(Zip Code)

**(516) 338-8500**

(Registrant's telephone number, including area code)

\_\_\_\_\_  
(Former name, former address and former fiscal year, if changed since last report)

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

Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

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

Large accelerated filer

Accelerated filer

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

Emerging growth company

Smaller reporting company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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

At February 2, 2018 an aggregate of 4,184,549 shares of the registrant's common stock, par value of \$.01, were outstanding.

NATHAN'S FAMOUS, INC. AND SUBSIDIARIES

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**Nathan's Famous, Inc. and Subsidiaries**  
**CONSOLIDATED BALANCE SHEETS**  
December 24, 2017 and March 26, 2017  
(in thousands, except share and per share amounts)

**PART I. FINANCIAL INFORMATION**

**Item 1. Financial Statements.**

	<u>December 24, 2017</u> <u>(Unaudited)</u>	<u>March 26, 2017</u>
<b>ASSETS</b>		
<b>CURRENT ASSETS</b>		
Cash	\$ 67,288	\$ 56,915
Accounts and other receivables, net	11,873	8,948
Inventories	406	579
Prepaid expenses and other current assets (Note G)	3,352	1,093
Total current assets	<u>82,919</u>	<u>67,535</u>
Property and equipment, net of accumulated depreciation of \$8,525 and \$7,522, respectively	8,276	8,844
Goodwill	95	95
Intangible asset	1,353	1,353
Other assets	293	298
Total assets	<u>\$ 92,936</u>	<u>\$ 78,125</u>
<b>LIABILITIES AND STOCKHOLDERS' (DEFICIT)</b>		
<b>CURRENT LIABILITIES</b>		
Accounts payable	\$ 4,268	\$ 4,809
Accrued expenses and other current liabilities (Note H)	26,644	5,865
Deferred franchise fees	198	98
Total current liabilities	<u>31,110</u>	<u>10,772</u>
Long-term debt, net of unamortized debt issuance costs of \$5,374 and \$3,525, respectively (Note N)	144,626	131,475
Other liabilities	1,484	1,555
Deferred income taxes	751	814
Total liabilities	<u>177,971</u>	<u>144,616</u>
<b>COMMITMENTS AND CONTINGENCIES (Note O)</b>		
<b>STOCKHOLDERS' (DEFICIT)</b>		
Common stock, \$.01 par value; 30,000,000 shares authorized; 9,311,922 and 9,303,870 shares issued; and 4,184,549 and 4,176,497 shares outstanding at December 24, 2017 and March 26, 2017, respectively	93	93
Additional paid-in capital	60,723	60,582
(Accumulated deficit)	<u>(68,548)</u>	<u>(49,863)</u>
Stockholders' (deficit) equity before treasury stock	<u>(7,732)</u>	<u>10,812</u>
Treasury stock, at cost, 5,127,373 shares at December 24, 2017 and March 26, 2017, respectively	<u>(77,303)</u>	<u>(77,303)</u>
Total stockholders' (deficit)	<u>(85,035)</u>	<u>(66,491)</u>
Total liabilities and stockholders' (deficit)	<u>\$ 92,936</u>	<u>\$ 78,125</u>

*The accompanying notes are an integral part of these financial statements.*

Nathan's Famous, Inc. and Subsidiaries

CONSOLIDATED STATEMENTS OF EARNINGS

Thirteen and thirty-nine weeks ended December 24, 2017 and December 25, 2016

(in thousands, except share and per share amounts)

(Unaudited)

	Thirteen weeks ended		Thirty-nine weeks ended	
	December 24, 2017	December 25, 2016	December 24, 2017	December 25, 2016
<b>REVENUES</b>				
Sales	\$ 16,767	\$ 14,859	\$ 63,639	\$ 58,012
License royalties	4,228	3,990	17,393	15,602
Franchise fees and royalties	1,088	1,088	3,575	3,752
Total revenues	<u>22,083</u>	<u>19,937</u>	<u>84,607</u>	<u>77,366</u>
<b>COSTS AND EXPENSES</b>				
Cost of sales	12,599	10,785	48,165	41,732
Restaurant operating expenses	760	695	2,769	2,711
Depreciation and amortization	320	309	1,055	1,005
General and administrative expenses	3,034	3,394	10,064	10,309
Total costs and expenses	<u>16,713</u>	<u>15,183</u>	<u>62,053</u>	<u>55,757</u>
Income from operations	5,370	4,754	22,554	21,609
Loss on debt extinguishment	(8,872)	-	(8,872)	-
Interest expense	(3,650)	(3,663)	(10,976)	(11,002)
Interest income	44	35	114	71
Other income, net	22	21	64	64
(Loss) income before provision for income taxes	(7,086)	1,147	2,884	10,742
(Benefit) provision for income taxes	(3,307)	448	621	3,986
Net (loss) income	<u>\$ (3,779)</u>	<u>\$ 699</u>	<u>\$ 2,263</u>	<u>\$ 6,756</u>
<b>PER SHARE INFORMATION</b>				
(Loss) income per share:				
Basic	\$ (0.90)	\$ .17	\$ .54	\$ 1.62
Diluted	\$ (0.90)	\$ .17	\$ .54	\$ 1.61
Weighted average shares used in computing (loss) income per share:				
Basic	<u>4,185,000</u>	<u>4,175,000</u>	<u>4,180,000</u>	<u>4,171,000</u>
Diluted	<u>4,185,000</u>	<u>4,209,000</u>	<u>4,219,000</u>	<u>4,202,000</u>

The accompanying notes are an integral part of these financial statements.

Nathan's Famous, Inc. and Subsidiaries

CONSOLIDATED STATEMENT OF STOCKHOLDERS' (DEFICIT)

Thirty-nine weeks ended December 24, 2017

(in thousands, except share amounts)

(Unaudited)

	<u>Common Shares</u>	<u>Common Stock</u>	<u>Additional Paid-in Capital</u>	<u>(Accumulated Deficit)</u>	<u>Treasury Stock, at Cost Shares</u>	<u>Amount</u>	<u>Total Stockholders' (Deficit)</u>
Balance, March 26, 2017	9,303,870	\$ 93	\$ 60,582	\$ (49,863)	5,127,373	\$ (77,303)	\$ (66,491)
Shares issued in connection with share-based compensation plans	8,052	-	-	-	-	-	-
Withholding tax on net share settlement of share-based compensation plans	-	-	(157)	-	-	-	(157)
Share-based compensation	-	-	298	-	-	-	298
Cash dividends declared on common stock and restricted stock	-	-	-	(20,948)	-	-	(20,948)
Net income	-	-	-	2,263	-	-	2,263
<b>Balance, December 24, 2017</b>	<b><u>9,311,922</u></b>	<b><u>\$ 93</u></b>	<b><u>\$ 60,723</u></b>	<b><u>\$ (68,548)</u></b>	<b><u>5,127,373</u></b>	<b><u>\$ (77,303)</u></b>	<b><u>\$ (85,035)</u></b>

The accompanying notes are an integral part of these financial statements.

Nathan's Famous, Inc. and Subsidiaries

CONSOLIDATED STATEMENTS OF CASH FLOWS

Thirty-nine weeks ended December 24, 2017 and December 25, 2016

(in thousands)

(Unaudited)

	December 24, 2017	December 25, 2016
Cash flows from operating activities:		
Net income	\$ 2,263	\$ 6,756
Adjustments to reconcile net income to net cash provided by operating activities		
Loss on debt extinguishment	8,872	-
Depreciation and amortization	1,055	1,005
Amortization of debt issuance costs	932	910
Share-based compensation expense	298	482
Income tax benefit on stock option exercises	194	659
Provision for doubtful accounts	42	34
Deferred income taxes	(63)	92
Changes in operating assets and liabilities:		
Accounts and other receivables, net	(2,967)	(1,523)
Inventories	173	293
Prepaid expenses and other current assets	(2,259)	643
Other assets	5	15
Accounts payable, accrued expenses and other current liabilities	(779)	545
Deferred franchise fees	100	4
Other liabilities	(71)	(142)
Net cash provided by operating activities	<u>7,795</u>	<u>9,773</u>
Cash flows from investing activities:		
Purchase of property and equipment	(488)	(1,001)
Net cash (used in) investing activities	<u>(488)</u>	<u>(1,001)</u>
Cash flows from financing activities:		
Proceeds from issuance of long-term debt	150,000	-
Cash payments for extinguishment of debt	(135,000)	-
Premium paid on extinguishment of debt	(6,750)	-
Debt issuance costs	(4,902)	-
Proceeds from exercise of stock options	-	44
Dividends paid upon vesting of restricted stock	(125)	(375)
Payments of withholding tax on net share settlement of share-based compensation plans	(157)	(994)
Repurchase of treasury stock	-	(1,272)
Net cash provided by (used in) financing activities	<u>3,066</u>	<u>(2,597)</u>
Net increase in cash	10,373	6,175
Cash, beginning of period	56,915	50,228
Cash, end of period	<u>\$ 67,288</u>	<u>\$ 56,403</u>
Cash paid during the period for:		
Interest	<u>\$ 9,038</u>	<u>\$ 6,750</u>
Income taxes paid	<u>\$ 3,447</u>	<u>\$ 2,976</u>
Noncash financing activity:		
Dividends declared	<u>\$ 20,948</u>	<u>\$ -</u>

The accompanying notes are an integral part of these financial statements.

**NATHAN'S FAMOUS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

December 24, 2017

(Unaudited)

**NOTE A - BASIS OF PRESENTATION**

The accompanying consolidated financial statements of Nathan's Famous, Inc. and subsidiaries (collectively "Nathan's," the "Company," "we," "us" or "our") as of and for the thirteen and thirty-nine week periods ended December 24, 2017 and December 25, 2016 have been prepared in accordance with accounting principles generally accepted in the United States of America. The unaudited financial statements include all adjustments (consisting of normal recurring adjustments) which, in the opinion of management, are necessary for a fair presentation of financial condition, results of operations and cash flows for the periods presented. However, our results of operations are seasonal in nature, and the results of any interim period are not necessarily indicative of results for any other interim period or the full fiscal year.

Certain information and footnote disclosures normally included in financial statements in accordance with accounting principles generally accepted in the United States of America have been omitted pursuant to the requirements of the Securities and Exchange Commission. Management believes that the disclosures included in the accompanying consolidated interim financial statements and footnotes are adequate to make the information not misleading, but should be read in conjunction with the consolidated financial statements and notes thereto included in Nathan's Annual Report on Form 10-K for the fiscal year ended March 26, 2017.

A summary of the Company's significant accounting policies is identified in Note B of the Notes to Consolidated Financial Statements included in the Company's Annual Report on Form 10-K for the fiscal year ended March 26, 2017. There have been no changes to the Company's significant accounting policies subsequent to March 26, 2017.

**NOTE B- ADOPTION OF NEW ACCOUNTING PRONOUNCEMENTS**

In July 2015, the Financial Accounting Standards Board ("FASB") updated U.S. accounting guidance to simplify the ways businesses measure inventory. Companies that use the first-in, first-out (FIFO) method or the average cost method will measure inventory at the lower of its cost or net realizable value. Net realizable value is the estimated selling price in the normal course of business, minus the cost of completion, disposal, and transportation. Companies will no longer consider replacement cost or net realizable value less a normal profit margin when measuring inventory. The guidance was effective for the Company beginning in the quarter ended June 25, 2017 and did not have a material impact on its results of operations or financial position.

In August 2016, the FASB issued ASU 2016-15, "*Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments (a consensus of the Emerging Issues Task Force)*". This update addresses eight specific cash flow topics with the objective of reducing the existing diversity in practice for certain aspects under Topic 230. ASU 2016-15 is effective for annual reporting periods, and interim periods therein, beginning after December 15, 2017. The Company elected to early adopt ASU 2016-15 during the quarter ending December 24, 2017. The adoption of this guidance did not have a significant impact on the Company's consolidated financial statements.

**NOTE C - NEW ACCOUNTING PRONOUNCEMENTS NOT YET ADOPTED**

In May 2014, the FASB issued a new accounting standard that attempts to establish a uniform basis for recording revenue to virtually all industries' financial statements, under U.S. GAAP as further amended during 2016. The FASB issued certain updates to the standard, including clarifying reporting revenue between Principle versus Agent and clarification in determining performance obligations and licenses guidance. The revenue standard's core principle is built on the contract between a vendor and a customer for the provision of goods and services. It attempts to depict the exchange of rights and obligations between the parties in the pattern of revenue recognition based on the consideration to which the vendor is entitled. In order to accomplish this objective, companies must evaluate the following five basic steps: (i) identify the contract with the customer, (ii) identify the performance obligations in the contract, (iii) determine the transaction price, (iv) allocate the transaction price to the performance obligations in the contract, and (v) recognize revenue when (or as) the entity satisfies a performance obligation.

There are two basic transition methods that are available - full retrospective, or modified retrospective transition methods. Early adoption is prohibited. Public companies were originally expected to apply the new standard for annual periods beginning after December 15, 2016, including interim periods therein, which for Nathan's would have been its first quarter of fiscal 2018, beginning on March 27, 2017. On July 9, 2015, the FASB agreed to delay the standard's effective date to annual reporting periods beginning after December 15, 2017 which will now be our first quarter (June 2018) of our fiscal year ending March 31, 2019.

The Company has assigned internal resources to evaluate and implement the new standard, and will continue to provide updates during fiscal year 2018. The Company is continuing its evaluation of the impact of the new standard, but currently does not believe that the standard will materially impact its recognition of revenue for its Company-operated restaurants or its recognition of royalties from its franchised restaurants or retail licenses, which are based on a percentage of sales. The Company is still assessing the impact of the new standard on revenues from its Branded Product Program as well as decisions reached by the FASB Transition Resource Group in November 2016 on the treatment of minimum guarantees in licensing arrangements, which may affect the timing of the Company's recognition of royalty revenues. Currently, franchise and international development fees are recognized when the Company has performed substantially all initial services required by the agreements, which is generally when the franchisee begins operations. Under the new guidance, these fees may be recognized over the term of the agreements. The Company also expects that the adoption of this new guidance may change the reporting of contributions to the advertising fund from franchisees and other third parties and the related advertising fund expenditures, which are currently reported on a net basis in the Consolidated Statements of Earnings and Consolidated Balance Sheets. The Company expects the new guidance will require these advertising fund contributions and expenditures to be reported on a gross basis in the Consolidated Statement of Earnings. For the fiscal year ended March 26, 2017, advertising fund contributions from franchisees and other third parties were \$2,572,000, and therefore we expect this change may impact our total revenues and expenses. The Company plans to adopt this standard in the first quarter of fiscal 2019, beginning March 26, 2018, using the modified retrospective method.

In February 2016, the FASB issued a new accounting standard on leases. The new standard, among other changes, will require lessees to recognize a right-of-use asset and a lease liability on the balance sheet for all leases. The lease liability will be measured at the present value of the lease payments over the lease term. The right-of-use asset will be measured at the lease liability amount, adjusted for lease prepayments, lease incentives received and the lessee's initial direct costs (e.g. commissions). The new standard is effective for annual reporting periods beginning after December 15, 2018, including interim reporting periods within those annual reporting periods. This standard is required to take effect in Nathan's first quarter (June 2019) of our fiscal year ending March 29, 2020. The adoption will require a modified retrospective approach for leases that exist or are entered into after the beginning of the earliest period presented. The Company is currently evaluating the standard to determine the impact of the adoption on its consolidated financial statements but expects that the standard will result in a significant increase to its other assets and other liabilities.

In January 2017, the FASB issued an update to the accounting guidance to simplify the testing for goodwill impairment. The update removes the requirement to determine the implied fair value of goodwill to measure the amount of impairment loss, if any, under the second step of the current goodwill impairment test. A company will perform its annual or interim goodwill impairment test by comparing the fair value of a reporting unit with its carrying amount. A goodwill impairment charge will be recognized for the amount by which the reporting unit's carrying amount exceeds its fair value, not to exceed the carrying amount of the goodwill. The guidance is effective prospectively for public business entities for annual reporting periods beginning after December 15, 2019. This standard is required to take effect in Nathan's first quarter (June 2020) of our fiscal year ending March 28, 2021. Nathan's does not expect the adoption of this new guidance to have a material impact on its results of operations or financial position.

The Company does not believe that any other recently issued, but not yet effective accounting standards, when adopted, will have a material effect on the accompanying financial statements.

#### NOTE D – INCOME PER SHARE

Basic income per common share is calculated by dividing income by the weighted-average number of common shares outstanding and excludes any dilutive effect of stock options. Diluted income per common share gives effect to all potentially dilutive common shares that were outstanding during the period. Dilutive common shares used in the computation of diluted income per common share result from the assumed exercise of stock options and warrants, as determined using the treasury stock method.

The following chart provides a reconciliation of information used in calculating the per-share amounts for the thirteen and thirty-nine week periods ended December 24, 2017 and December 25, 2016, respectively.

#### Thirteen weeks

	Net (Loss) Income		Number of Shares		Net (Loss) Income Per Share	
	2017	2016	2017	2016	2017	2016
	(in thousands)		(in thousands)			
<b>Basic EPS</b>						
Basic calculation	\$ (3,779)	\$ 699	4,185	4,175	\$ (0.90)	\$ 0.17
Effect of dilutive employee stock options	-	-	-	34	-	-
<b>Diluted EPS</b>						
Diluted calculation	\$ (3,779)	\$ 699	4,185	4,209	\$ (0.90)	\$ 0.17

**Thirty-nine weeks**

	Net Income		Number of Shares		Net Income Per Share	
	2017	2016	2017	2016	2017	2016
	(in thousands)		(in thousands)			
<b>Basic EPS</b>						
Basic calculation	\$ 2,263	\$ 6,756	4,180	4,171	\$ 0.54	\$ 1.62
Effect of dilutive employee stock options	-	-	39	31	-	(0.01)
<b>Diluted EPS</b>						
Diluted calculation	\$ 2,263	\$ 6,756	4,219	4,202	\$ 0.54	\$ 1.61

No options to purchase shares of common stock for the thirty-nine week periods ended December 24, 2017 and December 25, 2016 or for the thirteen week period ended December 25, 2016 were excluded from the computation of diluted earnings per share. For the thirteen week period ended December 24, 2017, 47,000 options to purchase common stock were excluded from the computation of dilutive earnings per share as the effect would be anti-dilutive.

**NOTE E – FAIR VALUE MEASUREMENTS**

Nathan's follows a three-level fair value hierarchy that prioritizes the inputs to measure fair value. This hierarchy requires entities to maximize the use of "observable inputs" and minimize the use of "unobservable inputs." The valuation hierarchy is based upon the transparency of inputs to the valuation of an asset or liability on the measurement date. The three levels are defined as follows:

- Level 1 - inputs to the valuation methodology are quoted prices (unadjusted) for an identical asset or liability in an active market
- Level 2 - inputs to the valuation methodology include quoted prices for a similar asset or liability in an active market or model-derived valuations in which all significant inputs are observable for substantially the full term of the asset or liability
- Level 3 - inputs to the valuation methodology are unobservable and significant to the fair value measurement of the asset or liability

The Company's long-term debt had a face value of \$150,000,000 as of December 24, 2017 and a fair value of \$155,625,000 as of December 24, 2017. The Company estimates the fair value of its long-term debt based upon review of observable pricing in secondary markets as of the last trading day of the fiscal period. Accordingly, the Company classifies its long-term debt as Level 2.

The carrying amounts of accounts receivable and accounts payable approximate fair value due to the short-term maturity of the instruments.

Certain non-financial assets and liabilities are measured at fair value on a non-recurring basis; that is, the assets and liabilities are not measured at fair value on an ongoing basis, but are subject to fair value adjustments in certain circumstances, such as when evidence of impairment exists. At December 24, 2017, no fair value adjustment or material fair value measurements were required for non-financial assets or liabilities.

**NOTE F – ACCOUNTS AND OTHER RECEIVABLES, NET**

Accounts and other receivables, net, consist of the following (in thousands):

	December 24, 2017	March 26, 2017
Branded product sales	\$ 8,726	\$ 6,037
Franchise and license royalties	2,534	2,746
Other	1,093	622
	12,353	9,405
Less: allowance for doubtful accounts	480	457
Accounts and other receivables, net	\$ 11,873	\$ 8,948

Accounts receivable are due within 30 days and are stated at amounts due from franchisees, retail licensees and Branded Product Program customers, net of an allowance for doubtful accounts. Accounts that are outstanding longer than the contractual payment terms are generally considered past due. The Company does not recognize franchise and license royalties that are not deemed to be realizable.

The Company individually reviews each past due account and determines its allowance for doubtful accounts by considering a number of factors, including the length of time accounts receivable are past due, the Company's previous loss history, the customer's current and expected future ability to pay its obligation to the Company, the condition of the general economy and the industry as a whole. Based on management's assessment, the Company provides for estimated uncollectible amounts through a charge to earnings. After the Company has used reasonable collection efforts it writes off accounts receivable through a charge to the allowance for doubtful accounts.

Changes in the Company's allowance for doubtful accounts for the thirty-nine week period ended December 24, 2017 and the fiscal year ended March 26, 2017 are as follows (in thousands):

	<u>December 24, 2017</u>	<u>March 26, 2017</u>
Beginning balance	\$ 457	\$ 471
Bad debt expense	42	53
Accounts written off	(19)	(67)
Ending balance	<u>\$ 480</u>	<u>\$ 457</u>

NOTE G – PREPAID EXPENSES AND OTHER CURRENT ASSETS

Prepaid expenses and other current assets consist of the following (in thousands):

	<u>December 24, 2017</u>	<u>March 26, 2017</u>
Income taxes	\$ 2,751	\$ -
Insurance	247	319
Other	354	774
Total prepaid expenses and other current assets	<u>\$ 3,352</u>	<u>\$ 1,093</u>

NOTE H – ACCRUED EXPENSES, OTHER CURRENT LIABILITIES AND OTHER LIABILITIES

Accrued expenses and other current liabilities consist of the following (in thousands):

	<u>December 24, 2017</u>	<u>March 26, 2017</u>
Payroll and other benefits	\$ 2,087	\$ 2,708
Accrued rebates	1,245	1,050
Rent and occupancy costs	207	215
Deferred revenue	17	723
Construction costs	70	160
Interest	1,470	463
Professional fees	168	109
Income taxes	33	143
Dividend payable	21,073	125
Other	274	169
Total accrued expenses and other current liabilities	<u>\$ 26,644</u>	<u>\$ 5,865</u>

Other liabilities consist of the following (in thousands):

	<u>December 24, 2017</u>	<u>March 26, 2017</u>
Deferred development fees	\$ 154	\$ 67
Reserve for uncertain tax positions	419	366
Deferred rental liability	700	786
Dividend payable	-	125
Other	211	211
Total other liabilities	<u>\$ 1,484</u>	<u>\$ 1,555</u>

## NOTE I – SALES

The Company's sales for the thirteen and thirty-nine weeks ended December 24, 2017 and December 25, 2016 are as follows (in thousands):

	Thirteen weeks ended		Thirty-nine weeks ended	
	December 24, 2017	December 25, 2016	December 24, 2017	December 25, 2016
Branded Products	\$ 14,674	\$ 12,868	\$ 50,741	\$ 44,349
Company-operated restaurants	2,093	1,991	12,898	13,449
Other	-	-	-	214
Total sales	<u>\$ 16,767</u>	<u>\$ 14,859</u>	<u>\$ 63,639</u>	<u>\$ 58,012</u>

## NOTE J – INCOME TAXES

The income tax provisions for the thirty-nine week periods ended December 24, 2017 and December 25, 2016 reflect effective tax rates of 21.5% and 37.1%, respectively. Nathan's effective tax rates for the thirty-nine week periods ended December 24, 2017 and December 25, 2016 were reduced by 670 BPS and 610 BPS, respectively, as a result of the tax benefits associated with stock compensation. For the thirty-nine week periods ended December 24, 2017 and December 25, 2016, excess tax benefits of \$194,000 and \$659,000, respectively, were reflected in the Consolidated Statements of Earnings as a reduction to the provision for income taxes.

The amount of unrecognized tax benefits at December 24, 2017 was \$207,000, all of which would impact Nathan's effective tax rate, if recognized. As of December 24, 2017, Nathan's had \$212,000 of accrued interest and penalties in connection with unrecognized tax benefits.

During the fiscal year ending March 25, 2018, Nathan's will seek to settle additional uncertain tax positions with the tax authorities. As a result, it is reasonably possible the amount of unrecognized tax benefits, excluding the related accrued interest and penalties, could be reduced by up to \$5,000, which would favorably impact Nathan's effective tax rate, although no assurances can be given in this regard.

On December 22, 2017, the Enactment Date, President Trump signed the Tax Cuts and Jobs Act ("Act") into law which among other provisions, permanently reduces the top corporate tax rate from 35 percent to a flat 21 percent beginning January 1, 2018 and eliminates the corporate Alternative Minimum Tax. The new law limits the deduction of business interest, net of interest income, to 30 percent of the adjusted taxable income of the taxpayer in any taxable year. Any amount disallowed under the limitation is treated as business interest paid or accrued in the following year. Disallowed interest will have an indefinite carryforward. The new law also repeals the performance-based exception to the \$1.0 million deduction limitation on executive compensation and modifies the definition of "covered employees". The new law allows businesses to immediately write off the full cost of new equipment.

Pursuant to Staff Accounting Bulletin #118, Nathan's has determined reasonable estimates to its deferred assets and liabilities and pursuant to ASC 740, Income Taxes, the Company has recognized the effect(s) of the Act on current and deferred income taxes in its financial statements during the quarter ended December 24, 2017. Nathan's has recorded the following discrete adjustment to its deferred tax liability and unrecognized tax benefits which reduced the provision for income taxes by \$436,000 or 1510 BPS during the thirty-nine weeks ended December 24, 2017.

Nathan's estimates that its blended federal tax rate will be 31% for its fiscal year ending March 25, 2018 and that its annual tax rate for the fiscal year ending March 25, 2018 will be in the range of approximately 40.8% to 43.1%, excluding the impact of the discrete items recorded and excess tax benefit associated with stock compensation. The final annual tax rate is subject to many variables, including the ultimate determination of revenue and income tax by state, among other factors, and therefore cannot be determined until the end of the fiscal year; therefore, the actual tax rate could differ from our current estimates. In addition, the ultimate benefit of the Act on Nathan's is unclear as the lower annual tax rate could be outweighed by the limitation of the deduction of interest expense and other provisions.

## NOTE K – SEGMENT INFORMATION

Nathan's considers itself to be a brand marketer of the Nathan's Famous signature products to the foodservice industry pursuant to its various business structures. Nathan's sells its products directly to consumers through its restaurant system of Company-operated and franchised restaurants, to distributors that resell our products to the foodservice industry through the Branded Product Program ("BPP") and by third party manufacturers pursuant to license agreements that sell our products to club stores and grocery stores nationwide. The Company's Chief Executive Officer has been identified as the Chief Operating Decision Maker ("CODM") who evaluates performance and allocates resources for the Branded Product Program, Product Licensing and Restaurant Operations segments based upon a number of factors, the primary profit measure being income from operations. Certain administrative expenses are not allocated to the segments and are reported within Corporate.

*Branded Product Program* – This segment derives revenue principally from the sale of hot dog products either directly to foodservice operators or to various foodservice distributors who resell the products to foodservice operators.

*Product licensing* – This segment derives revenue, primarily in the form of royalties, from licensing a broad variety of Nathan's Famous branded products, including our hotdogs, sausage and corned beef products, frozen French fries and additional products through retail grocery channels and club stores throughout the United States.

*Restaurant operations* – This segment derives revenue from the sale of our products at Company-owned restaurants and earns fees and royalties from its franchised restaurants.

Revenues from operating segments are from transactions with unaffiliated third parties and do not include any intersegment revenues.

Income from operations attributable to corporate consists principally of administrative expenses not allocated to the operating segments such as executive management, finance, information technology, legal, insurance, corporate office costs, corporate incentive compensation and compliance costs.

Interest expense, interest income and other income, net are managed centrally at the corporate level, and, accordingly, such items are not presented by segment since they are excluded from the measure of profitability reviewed by the CODM.

Operating segment information is as follows (in thousands):

	Thirteen weeks ended		Thirty-nine weeks ended	
	Dec. 24, 2017	Dec. 25, 2016	Dec. 24, 2017	Dec. 25, 2016
<b>Revenues</b>				
Branded Product Program	\$ 14,674	\$ 12,868	\$ 50,741	\$ 44,563
Product licensing	4,228	3,990	17,393	15,602
Restaurant operations	3,181	3,079	16,473	17,201
Corporate	-	-	-	-
Total revenues	<u>\$ 22,083</u>	<u>\$ 19,937</u>	<u>\$ 84,607</u>	<u>\$ 77,366</u>
<b>Income from operations</b>				
Branded Product Program	\$ 2,924	\$ 2,886	\$ 7,888	\$ 8,336
Product licensing	4,182	3,944	17,257	15,465
Restaurant operations	(21)	48	3,209	4,083
Corporate	(1,715)	(2,124)	(5,800)	(6,275)
Income from operations	<u>\$ 5,370</u>	<u>\$ 4,754</u>	<u>\$ 22,554</u>	<u>\$ 21,609</u>
Loss on debt extinguishment	(8,872)	-	(8,872)	-
Interest expense	(3,650)	(3,663)	(10,976)	(11,002)
Interest income	44	35	114	71
Other income, net	22	21	64	64
(Loss) income before provision for income taxes	<u>\$ (7,086)</u>	<u>\$ 1,147</u>	<u>\$ 2,884</u>	<u>\$ 10,742</u>

#### NOTE L – SHARE-BASED COMPENSATION

Total share-based compensation during the thirteen-week periods ended December 24, 2017 and December 25, 2016 was \$99,000 and \$136,000, respectively. Total share-based compensation during the thirty-nine week periods ended December 24, 2017 and December 25, 2016 was \$298,000 and \$482,000, respectively. Total share-based compensation is included in general and administrative expense in our accompanying Consolidated Statements of Earnings. As of December 24, 2017, there was \$200,000 of unamortized compensation expense related to share-based incentive awards. We expect to recognize this expense over approximately seven months, which represents the weighted average remaining requisite service periods for such awards.

The Company recognizes compensation cost for unvested stock-based incentive awards on a straight-line basis over the requisite service period. Compensation cost charged to expense under all stock-based incentive awards is as follows (in thousands):

	Thirteen weeks ended		Thirty-nine weeks ended	
	December 24, 2017	December 25, 2016	December 24, 2017	December 25, 2016
Stock options	\$ 38	\$ 38	\$ 114	\$ 114
Restricted stock	61	98	184	368
Total compensation cost	<u>\$ 99</u>	<u>\$ 136</u>	<u>\$ 298</u>	<u>\$ 482</u>

*Stock options outstanding:*

There were no new share-based awards granted during the thirty-nine week period ended December 24, 2017.

In connection with the Company's special cash dividend, paid on January 4, 2018, to stockholders of record as of December 22, 2017, the Company performed an analysis, pursuant to the anti-dilution provisions of the 2010 Plan (the "2010 Plan"), and issued replacement options to purchase 68,498 shares at an exercise price of \$33.438 for the unvested stock options outstanding as of the record date of December 22, 2017, cancelling 64,384 shares at an exercise price of \$35.58 per share. Nathan's performed its evaluation based on the closing price of its common stock on December 20, 2017, the day before the stock went ex-dividend, of \$83.20 per share, or \$78.20 per share excluding the dividend of \$5.00 per share. No other terms or conditions of the outstanding options were modified. The anti-dilution provisions of the original award were structured to equalize the award's fair value before and after the modification.

During the fiscal year ended March 29, 2015, the Company granted options to purchase 50,000 shares at an exercise price of \$53.89 per share, all of which expire five years from the date of grant. All such stock options vest ratably over a four-year period commencing August 6, 2015.

In connection with the Company's special cash dividend, paid on March 27, 2015, to stockholders of record as of March 20, 2015, the Company performed an analysis, pursuant to the anti-dilution provisions of the 2010 Plan, and issued replacement options to purchase 75,745 shares at an exercise price of \$35.58 for the unvested stock options outstanding as of March 29, 2015, canceling 50,000 shares at an exercise price of \$53.89. Nathan's performed its evaluation based on the closing price of its common stock on March 27, 2015 of \$73.56 per share, or \$48.56 per share excluding the dividend of \$25.00 per share. No other terms or conditions of the outstanding options were modified. The anti-dilution provisions of the original award were structured to equalize the award's fair value before and after the modification.

Transactions with respect to stock options for the thirty-nine weeks ended December 24, 2017 are as follows:

	<u>Shares</u>	<u>Weighted-Average Exercise Price</u>	<u>Weighted-Average Remaining Contractual Life</u>	<u>Aggregate Intrinsic Value (in thousands)</u>
Options outstanding at the beginning of the fiscal year	75,745	\$ 35.58	2.36	\$ 1,899
Granted	-	-	-	-
Replacement options issued (A)	68,498	\$ 33.438	1.61	\$ 3,093
Expired	-	-	-	-
Cancellation of outstanding options (A)	(64,384)	\$ 35.58	1.61	\$ 3,093
Exercised	<u>(11,361)</u>	\$ 35.58	-	379
Options Outstanding at December 24, 2017 (A)	<u>68,498</u>	<u>\$ 33.438</u>	<u>1.61</u>	<u>\$ 3,093</u>
Options exercisable at December 24, 2017 (A)	<u>48,348</u>	<u>\$ 33.438</u>	<u>1.61</u>	<u>\$ 2,183</u>

A- Represents the effects on outstanding options after giving effect to the replacement options issued in connection with the Company's special dividend to shareholders of record on December 22, 2017.

*Restricted stock:*

Transactions with respect to restricted stock for the thirty-nine weeks ended December 24, 2017 are as follows:

	Shares	Weighted-Average Grant-date Fair value Per share
Unvested restricted stock at March 26, 2017	10,000	\$ 49.80
Granted	-	-
Vested	(5,000)	\$ 49.80
Unvested restricted stock at December 24, 2017	<u>5,000</u>	<u>\$ 49.80</u>

NOTE M – STOCKHOLDERS' EQUITY

1. *Dividends*

On November 1, 2017, the Company's Board of Directors declared a special cash dividend of \$5.00 per share payable to stockholders of record as of December 22, 2017 of which approximately \$20,923,000 was paid on January 4, 2018 to the stockholders. The Company also accrued \$25,000 for the expected dividends payable on unvested restricted shares pursuant to the terms of the restricted stock agreement. As unvested restricted stock vests, the declared dividend is paid. We estimate that \$25,000 (see Note H) will be paid during our fiscal year ending March 31, 2019.

On March 10, 2015, the Company's Board of Directors declared a special cash dividend of \$25.00 per share payable to stockholders of record as of March 20, 2015 of which approximately \$115,100,000 was paid on March 27, 2015 to the stockholders. The Company accrued \$1,000,000 for the expected dividends payable on unvested restricted shares pursuant to the terms of the restricted stock agreements. As unvested restricted stock vests, the declared dividend is paid. We have paid \$875,000 of the accrued dividend and estimate that the remaining \$125,000 (see Note H) will be paid during our fiscal year ending March 31, 2019.

2. *Common Stock Purchase Rights*

On June 5, 2013, Nathan's adopted a new stockholder rights plan (the "2013 Rights Plan") under which all stockholders of record as of June 17, 2013 received rights to purchase shares of common stock (the "2013 Rights") and the previously existing "New Rights Plan" was terminated.

The 2013 Rights were distributed as a dividend. Initially, the 2013 Rights will attach to, and trade with, the Company's common stock. Subject to the terms, conditions and limitations of the 2013 Rights Plan, the 2013 Rights will become exercisable if (among other things) a person or group acquires 15% or more of the Company's common stock. Upon such an event and payment of the purchase price of \$100.00 (the "2013 Right Purchase Price"), each 2013 Right (except those held by the acquiring person or group) will entitle the holder to acquire one share of the Company's common stock (or the economic equivalent thereof) or, if the then-current market price is less than the then current 2013 Right Purchase Price, a number of shares of the Company's common stock which at the time of the transaction has a market value equal to the then current 2013 Right Purchase Price at a purchase price per share equal to the then current market price of the Company's Common Stock.

The Company's Board of Directors may redeem the 2013 Rights prior to the time they are triggered. Upon adoption of the 2013 Rights Plan, the Company initially reserved 10,188,600 shares of common stock for issuance upon exercise of the 2013 Rights. The 2013 Rights will expire on June 17, 2018 unless earlier redeemed or exchanged by the Company.

At December 24, 2017, the Company has reserved 5,696,732 shares of common stock for issuance upon exercise of the Common Stock Purchase Rights approved by the Board of Directors on June 5, 2013.

3. *Stock Repurchase Programs*

During the period from October 2001 through December 24, 2017, Nathan's purchased 5,127,373 shares of its common stock at a cost of approximately \$77,303,000 pursuant to various stock repurchase plans previously authorized by the Board of Directors. During the thirty-nine week period ended December 24, 2017, we did not repurchase any shares of common stock.

As of December 24, 2017, an aggregate of 260,258 shares can still be purchased under Nathan's existing stock buy-back program.

Purchases may be made from time to time, depending on market conditions, in open market or privately-negotiated transactions, at prices deemed appropriate by management. There is no set time limit on the repurchases to be made under these stock-repurchase plans.

NOTE N – LONG-TERM DEBT

Long-term debt consists of the following (in thousands):

	<u>December 24, 2017</u>	<u>March 26, 2017</u>
6.625% Senior secured notes due 2025	\$ 150,000	-
10.000% Senior secured notes due 2020	-	\$ 135,000
Less: unamortized debt issuance costs	(5,374)	(3,525)
Total long-term debt	<u>\$ 144,626</u>	<u>\$ 131,475</u>

On November 1, 2017, the Company completed the issuance of \$150,000,000 of 6.625% Senior Secured Notes due 2025 (the "2025 Notes") in a private offering in accordance with Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"). The 2025 Notes were issued pursuant to an indenture, dated November 1, 2017, (the "Indenture") by and among the Company, certain of its wholly-owned subsidiaries, as guarantors, and U.S. Bank National Association, as trustee and collateral trustee. The Company used the net proceeds of the 2025 Notes offering to satisfy and discharge the Indenture relating to the 2020 Notes (as hereinafter defined) and redeem the 2020 Notes (the "Redemption"), paid a portion of a special \$5.00 per share cash dividend to Nathan's stockholders of record (see Note M.1), with the remaining net proceeds for general corporate purposes, including working capital. The Company also funded the majority of the special dividend through its existing cash. The Redemption occurred on November 16, 2017. The Company performed the required evaluation of the refinancing and determined that a portion of the Redemption of the 2020 Notes is accounted for as a modification of the debt and a portion as an extinguishment of the debt. In connection with the Redemption, the Company recorded a loss on early extinguishment of debt of \$8,872,000 that primarily reflects a portion of the premium paid to redeem the 2020 Notes and the write-off of certain debt issuance costs.

On March 10, 2015, the Company completed the issuance of \$135,000,000 of 10.000% Senior Secured Notes due 2020 ("the 2020 Notes") in a Rule 144A transaction. The 2020 Notes were issued pursuant to an indenture, dated March 10, 2015 by and among the Company, certain of its wholly-owned subsidiaries, as guarantors, and U.S. Bank National Association, a national banking association, as trustee and collateral trustee. The Company used the proceeds to pay a special cash dividend of approximately \$116,100,000 (see Note M.1) with the remaining net proceeds for general corporate purposes, including working capital. Debt issuance costs of approximately \$5,985,000 were incurred, which were being amortized into interest expense over the remaining 5-year term of the 2020 Notes, or until redeemed.

The 2020 Notes bore interest at 10.000% per annum, payable semi-annually on March 15<sup>th</sup> and September 15<sup>th</sup>. An interest payment of \$6,750,000 was paid on September 14, 2017. The 2020 Notes had no scheduled principal amortization payments prior to its final maturity on March 10, 2020.

The 2025 Notes will have no scheduled principal amortization payments prior to its final maturity on November 1, 2025.

The Company paid a 5% call premium of \$6,750,000 associated with the Redemption and incurred debt issuance costs of \$4,902,000 in connection with the issuance of the 2025 Notes. The Company also incurred additional interest expense of approximately \$562,500 from the closing of the 2025 Notes on November 1, 2017 until the Redemption on November 16, 2017.

The 2025 Notes bear interest at 6.625% per annum, payable semi-annually on May 1<sup>st</sup> and November 1<sup>st</sup> of each year, beginning on May 1, 2018. Semi-annual interest payments are expected to be \$4,968,750. The Company expects to reduce its annual cash interest expense by approximately \$3,562,500 per annum.

The terms and conditions of the 2025 Notes are as follows:

There are no financial maintenance covenants associated with the 2025 Notes. As of December 24, 2017, Nathan's was in compliance with all covenants associated with the 2025 Notes.

The Indenture contains certain covenants limiting the Company's ability and the ability of its restricted subsidiaries (as defined in the Indenture) to, subject to certain exceptions and qualifications: (i) incur additional indebtedness; (ii) pay dividends or make other distributions on, redeem or repurchase, capital stock; (iii) make investments or other restricted payments; (iv) create or incur certain liens; (v) incur restrictions on the payment of dividends or other distributions from its restricted subsidiaries; (vi) enter into certain transactions with affiliates; (vii) sell assets; or (viii) effect a consolidation or merger. Certain Restricted Payments which may be made or indebtedness incurred by Nathan's or its Restricted Subsidiaries may require compliance with the following financial ratios:

*Fixed Charge Coverage Ratio:* the ratio of the Consolidated Cash Flow to the Fixed Charges for the relevant period, currently set at 2.0 to 1.0 in the Indenture. The Fixed Charge Coverage Ratio applies to determining whether additional Restricted Payments may be made, certain additional debt may be incurred and acquisitions may be made.

**Priority Secured Leverage Ratio:** the ratio of (a) Consolidated Net Debt outstanding as of such date that is secured by a Priority Lien to (b) Consolidated Cash Flow of Nathan's for the Test Period then most recently ended, in each case with such pro forma adjustments as are appropriate; currently set at 0.40 to 1.00 in the Indenture.

**Secured Leverage Ratio:** the ratio of (a) Consolidated Net Debt outstanding as of such date that is secured by a Lien on any property of Nathan's or any Guarantor to (b) Consolidated Cash Flow of Nathan's for the Test Period then most recently ended, in each case with such pro forma adjustments as are appropriate. The Secured Leverage Ratio under the Indenture is 3.75 to 1.00 and applies if Nathan's wants to incur additional debt on the same terms as the 2025 Notes.

The Indenture also contains customary events of default, including, among other things, failure to pay interest, failure to comply with agreements related to the Indenture, failure to pay at maturity or acceleration of other indebtedness, failure to pay certain judgments, and certain events of insolvency or bankruptcy. Generally, if any event of default occurs, the Trustee or the holders of at least 25% in principal amount of the 2025 Notes may declare the 2025 Notes due and payable by providing notice to the Company. In case of default arising from certain events of bankruptcy or insolvency, the 2025 Notes, will become immediately due and payable.

The 2025 Notes are general senior secured obligations, are fully and unconditionally guaranteed by substantially all of the Company's wholly-owned subsidiaries and rank *pari passu* in right of payment with all of the Company's existing and future indebtedness that is not subordinated, are senior in right of payment to any of the Company's existing and future subordinated indebtedness, are structurally subordinated to any existing and future indebtedness and other liabilities of the Company's subsidiaries that do not guarantee the 2025 Notes, and are effectively junior to all existing and future indebtedness that is secured by assets other than the collateral securing the 2025 Notes.

Pursuant to the terms of a collateral trust agreement, the liens securing the 2025 Notes and the guarantees will be contractually subordinated to the liens securing any future credit facility.

The 2025 Notes and the guarantees will be the Company and the guarantors' senior secured obligations and will rank:

- senior in right of payment to all of the Company and the guarantors' future subordinated indebtedness;
- effectively senior to all unsecured senior indebtedness to the extent of the value of the collateral securing the 2025 Notes and the guarantees;
- *pari passu* with all of the Company and the guarantors' other senior indebtedness;
- effectively junior to any future credit facility to the extent of the value of the collateral securing any future credit facility and the 2025 Notes and the guarantees and certain other assets;
- effectively junior to any of the Company and the guarantors' existing and future indebtedness that is secured by assets other than the collateral securing the 2025 Notes and the guarantees to the extent of the value of any such assets; and
- structurally subordinated to the indebtedness of any of the Company's current and future subsidiaries that do not guarantee the 2025 Notes.

The Company may redeem the 2025 Notes in whole or in part prior to November 1, 2020, at a redemption price of 100% of the principal amount of the 2025 Notes redeemed plus the Applicable Premium as of, plus accrued and unpaid interest. An Applicable Premium is the greater of 1% of the principal amount of the 2025 Notes; or the excess of the present value at such redemption date of (i) the redemption price of the 2025 Notes at November 1, 2020 plus (ii) all required interest payments due on the 2025 Notes through November 1, 2020 (excluding accrued but unpaid interest to the redemption date), computed using a discount rate equal to the Treasury Rate as of such redemption date plus 50 basis points; over the then outstanding principal amount of the 2025 Notes.

Prior to November 1, 2020, if using the net cash proceeds of certain equity offerings, the Company has the option to redeem up to 35% of the aggregate principal amount of the 2025 Notes at a redemption price equal to 106.625% of the principal amount of the 2025 Notes redeemed, plus accrued and unpaid interest and any additional interest.

On or after November 1, 2020, the Company may redeem some or all of the 2025 Notes at a decreasing premium over time, plus accrued and unpaid interest as follows:

<b><u>YEAR</u></b>	<b><u>PERCENTAGE</u></b>
On or after November 1, 2020 and prior to November 1, 2021	103.313%
On or after November 1, 2021 and prior to November 1, 2022	101.656%
On or after November 1, 2022	100.000%

In certain circumstances involving a change of control, the Company will be required to make an offer to repurchase all or, at the holder's option, any part, of each holder's 2025 Notes pursuant to the offer described below (the "Change of Control Offer"). In the Change of Control Offer, the Company will be required to offer payment in cash equal to 101% of the aggregate principal amount of 2025 Notes repurchased plus accrued and unpaid interest, to the date of purchase.

If the Company sells certain assets and does not use the net proceeds as required, the Company will be required to use such net proceeds to repurchase the 2025 Notes at 100% of the principal amount thereof, plus accrued and unpaid interest and additional interest penalty, if any, to the date of repurchase.

The 2025 Notes may be traded between qualified institutional buyers pursuant to Rule 144A of the Securities Act. We have recorded the 2025 Notes at cost.

#### NOTE O – COMMITMENTS AND CONTINGENCIES

##### 1. Commitments

On February 27, 2017, a wholly-owned subsidiary of the Company executed a Guaranty of Lease (the "Brooklyn Guaranty") in connection with its re-franchising of a restaurant located in Brooklyn, New York. The Company is obligated to make payments under the Brooklyn Guaranty in the event of a default by the tenant/franchisee. The Brooklyn Guaranty has an initial term of 10 years and one 5-year option and is limited to 24 months of rent for the first three years of the term. Nathan's has recorded a liability of \$204,000 in connection with the Brooklyn Guaranty which does not include potential percentage rent, real estate tax increases, attorney's fees and other costs as these amounts are not reasonably determinable at this time. Nathan's has received a personal guaranty from the franchisee for all obligations under the Brooklyn Guaranty. For the remainder of the term, the Brooklyn Guaranty is limited to 12 months of rent plus reasonable costs of collection and attorney's fees.

On December 6, 2017, the Company amended its employment agreement with Howard M. Lorber. Under the amendment, the term of the employment agreement was extended from December 31, 2017 to December 31, 2022 and the base compensation of Mr. Lorber will be \$1,000,000 per annum. All other terms and conditions remained the same.

##### 2. Contingencies

The Company and its subsidiaries are from time to time involved in ordinary and routine litigation. Management presently believes that the ultimate outcome of these proceedings, individually or in the aggregate, will not have a material adverse effect on the Company's financial position, cash flows or results of operations. Nevertheless, litigation is subject to inherent uncertainties and unfavorable rulings could occur. An unfavorable ruling could include money damages and, in such event, could result in a material adverse impact on the Company's results of operations for the period in which the ruling occurs.

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

### Forward-Looking Statements

Statements in this Form 10-Q quarterly report may be “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements include, but are not limited to, statements that express our intentions, beliefs, expectations, strategies, predictions or any other statements relating to our future activities or other future events or conditions. These statements are based on current expectations, estimates and projections about our business based, in part, on assumptions made by management. These statements are not guarantees of future performance and involve risks, uncertainties and assumptions that are difficult to predict. These risks and uncertainties, many of which are not within our control, include but are not limited to: economic, weather (including the affects on the supply of cattle and the impact of weather on sales at our restaurants, particularly during Summer months), and change in the price of beef trimmings; our ability to pass on the cost of any price increases in beef and beef trimmings, or labor costs; legislative and business conditions; the collectibility of receivables; changes in consumer tastes; the status of our licensing and supply agreements, including the impact of our supply agreement for hot dogs with John Morrell & Co., the impact of our debt service and repayment obligations under the 2025 Notes; the impact of the Tax Cuts and Jobs Act (“the Act”); the continued viability of Coney Island as a destination location for visitors; the ability to continue to attract franchisees; the impact of the new minimum wage legislation in New York State or other changes in labor laws, including court decisions which could render a franchisor as a “joint employee” or the impact of our new union contracts; our ability to attract competent restaurant and managerial personnel; the enforceability of international franchising agreements and the future effects of any food borne illness; such as bovine spongiform encephalopathy, BSE or e-coli; as well as those risks discussed from time to time in this Form 10-Q and our Form 10-K annual report for the year ended March 26, 2017, and in other documents we file with the Securities and Exchange Commission. Therefore, actual outcomes and results may differ materially from what is expressed or forecasted in the forward-looking statements. We generally identify forward-looking statements with the words “believe,” “intend,” “plan,” “expect,” “anticipate,” “estimate,” “will,” “should” and similar expressions. Any forward-looking statements speak only as of the date on which they are made, and we do not undertake any obligation to update any forward-looking statement to reflect events or circumstances after the date of this Form 10-Q.

### Introduction

As used in this Report, the terms “we”, “us”, “our”, “Nathan’s” or the “Company” mean Nathan’s Famous, Inc. and its subsidiaries (unless the context indicates a different meaning).

We are engaged primarily in the marketing of the “Nathan’s Famous” brand and the sale of products bearing the “Nathan’s Famous” trademarks through several different channels of distribution. Historically, our business has been the operation and franchising of quick-service restaurants featuring Nathan’s World Famous Beef Hot Dogs, crinkle-cut French-fried potatoes, and a variety of other menu offerings. Our Company-owned and franchised units operate under the name “Nathan’s Famous,” the name first used at our original Coney Island restaurant opened in 1916. Nathan’s product licensing program sells packaged hot dogs and other products to retail customers through supermarkets or grocery-type retailers for off-site consumption. Our Branded Product Program enables foodservice retailers and others to sell some of Nathan’s proprietary products outside of the realm of a traditional franchise relationship. In conjunction with this program, purchasers of Nathan’s products are granted a limited use of the Nathan’s Famous trademark with respect to the sale of the purchased products, including Nathan’s World Famous Beef Hot Dogs, certain other proprietary food items and paper goods. Our Branded Menu Program is a limited franchise program, under which foodservice operators may sell a greater variety of Nathan’s Famous menu items than under the Branded Product Program.

Our revenues are generated primarily from selling products under Nathan’s Branded Product Program, operating Company-owned restaurants, licensing agreements for the sale of Nathan’s products within supermarkets and club stores, the sale of Nathan’s products directly to other foodservice operators and the manufacture of certain proprietary spices by third parties and franchising the Nathan’s restaurant concept (including the Branded Menu Program).

At December 24, 2017, our restaurant system consisted of 285 units comprised of 280 Nathan’s franchised units, including 124 Branded Menu units, and five Company-owned units (including one seasonal unit), located in 19 states, and 12 foreign countries. At December 25, 2016, our restaurant system consisted of 287 units comprised of 282 Nathan’s franchised units, including 114 Branded Menu units, and five Company-owned units (including one seasonal unit), located in 20 states, and 10 foreign countries.

In addition to plans for expansion through our Branded Product Program, licensing and franchising, Nathan’s continues to seek to co-brand within its restaurant system. Nathan’s is also the owner of the Arthur Treacher’s brand. Currently there are seven locations operating under our Arthur Treacher’s Branded Menu Program agreement.

As described in our Annual Report on Form 10-K for the year ended March 26, 2017, our future results could be materially impacted by many developments including our dependence on John Morrell & Co. as our principal supplier and the dependence of our licensing revenue and overall profitability on our agreement with John Morrell & Co. In addition, our future operating results could be impacted by supply constraints on beef or by increased costs of beef compared to earlier periods.

On November 1, 2017, the Company completed the issuance of \$150,000,000 of 6.625% Senior Secured Notes due 2025 (the "2025 Notes") and used the majority of the proceeds of this offering to redeem the 2020 Notes (the "Redemption"), paid a portion of the special \$5.00 cash dividend and will use any remaining proceeds for general corporate purposes, including working capital. Our future results could also be impacted by our obligations under the 2025 Notes. As a result of the issuance of the 2025 Notes, Nathan's expects to incur interest expense of \$9,937,500 per annum, reducing its cash interest expense by \$3,562,500 per annum. Nathan's expects to incur annual amortization of debt issuance costs of approximately \$685,000. Please refer to Note N – Long Term Debt, for the effects of the Company's refinancing from the preceding consolidated financial statements. The impact of interest expense on net income has been reflected in our results for the thirteen and thirty-nine week periods ended December 24, 2017 and December 25, 2016.

On March 10, 2015, we consummated a \$135,000,000 offering of 10.000% Senior Secured Notes due 2020 (the "2020 Notes") and paid a dividend of \$25.00 per share (or approximately \$116,100,000 in the aggregate). As a result of the issuance of the 2020 Notes, Nathan's incurred interest expense of \$13,500,000 per annum and annual amortization of debt issuance costs of approximately \$1,200,000.

As described below, we are also including information relating to EBITDA and Adjusted EBITDA in this Form 10-Q quarterly report.

On November 1, 2017, the Board of Directors declared a special cash dividend of \$5.00 per share, or \$20,923,000 to stockholders of record at the close of business on December 22, 2017, which was paid on January 4, 2018.

### **Critical Accounting Policies and Estimates**

As discussed in our Form 10-K for the fiscal year ended March 26, 2017, the discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in conformity with accounting principles generally accepted in the United States of America. The preparation of these financial statements requires us to make estimates and assumptions that affect the amounts of assets, liabilities, revenues and expenses reported in those financial statements. These judgments can be subjective and complex, and consequently, actual results could differ from those estimates. Our most critical accounting policies and estimates relate to revenue recognition; impairment of goodwill and other intangible assets; impairment of long-lived assets; share-based compensation and income taxes (including uncertain tax positions). Except for the adoption discussed in Note B – simplifying the measurement of inventory and simplifying the elements of cash flow classification; there have been no changes to the Company's significant accounting policies subsequent to March 26, 2017.

### **Adoption of New Accounting Pronouncements**

Please refer to Note B of the preceding consolidated financial statements for our discussion of the Adoption of New Accounting Pronouncements.

### **New Accounting Pronouncements Not Yet Adopted**

Please refer to Note C of the preceding consolidated financial statements for our discussion of New Accounting Pronouncements Not Yet Adopted.

### **EBITDA and Adjusted EBITDA**

The Company believes that EBITDA and Adjusted EBITDA are useful to investors to assist in assessing and understanding the Company's operating performance and underlying trends in the Company's business because EBITDA and Adjusted EBITDA are (i) among the measures used by management in evaluating performance and (ii) are frequently used by securities analysts, investors and other interested parties as a common performance measure.

### **Reconciliation of GAAP and Non-GAAP Measures**

The following is provided to supplement certain Non-GAAP financial measures.

In addition to disclosing results that are determined in accordance with Generally Accepted Accounting Principles in the United States of America ("US GAAP"), the Company has provided EBITDA which excludes (i) interest expense; (ii) provision for income taxes and (iii) depreciation and amortization expense. The Company has also provided Adjusted EBITDA excluding loss on early extinguishment of debt and stock-based compensation that the Company believes will impact the comparability of its results of operations.

EBITDA and Adjusted EBITDA are not recognized terms under US GAAP and should not be viewed as alternatives to net income (loss) or other measures of financial performance or liquidity in conformity with US GAAP. Additionally, our definitions of EBITDA and Adjusted EBITDA may differ from other companies. Analysis of results and outlook on a Non-US GAAP basis should be used as a complement to, and in conjunction with, data presented in accordance with US GAAP.

The following is a reconciliation of Net (loss) income to Adjusted EBITDA (in thousands):

	Thirteen weeks ended		Thirty-nine weeks ended	
	December 24, 2017	December 25, 2016	December 24, 2017	December 25, 2016
Net (loss) income	\$ (3,779)	\$ 699	\$ 2,263	\$ 6,756
Interest expense	3,650	3,663	10,976	11,002
(Benefit) provision for income taxes	(3,307)	448	621	3,986
Depreciation and amortization	320	309	1,055	1,005
EBITDA	(3,116)	5,119	14,915	22,749
Loss on debt extinguishment	8,872	-	8,872	-
Stock-based compensation	99	136	298	482
Adjusted EBITDA	\$ 5,855	\$ 5,255	\$ 24,085	\$ 23,231

## Results of Operations

### Thirteen weeks ended December 24, 2017 compared to thirteen weeks ended December 25, 2016

#### Revenues

Total sales increased by 12.8% to \$16,767,000 for the thirteen weeks ended December 24, 2017 (“third quarter fiscal 2018”) as compared to \$14,859,000 for the thirteen weeks ended December 25, 2016 (“third quarter fiscal 2017”). Foodservice sales from the Branded Product Program increased by 14.0% to \$14,674,000 for the third quarter fiscal 2018 as compared to sales of \$12,868,000 in the third quarter fiscal 2017. During the third quarter fiscal 2018, the volume of business increased by approximately 10.4%. Our average selling prices increased by approximately 3.0% as a result of our pricing strategy, which is more closely correlated to the cost of beef which increased by approximately 8.0%, during the third quarter fiscal 2018 as compared to the third quarter fiscal 2017. Total Company-owned restaurant sales increased by 5.1% to \$2,093,000 during the third quarter fiscal 2018 as compared to \$1,991,000 during the third quarter fiscal 2017 due primarily to higher sales at our Coney Island and Yonkers locations attributable to a higher check average of 3.8% and higher customer counts.

License royalties increased 6.0% to \$4,228,000 in the third quarter fiscal 2018 as compared to \$3,990,000 in the third quarter fiscal 2017. Total royalties earned on sales of hot dogs from our license agreement with John Morrell & Co. at retail and foodservice, substantially from sales of hot dogs to Sam’s Club, increased \$180,000 to \$3,680,000 for the third quarter fiscal 2018 as compared to \$3,500,000 in the third quarter fiscal 2017. The increase is due to an increase in retail volume during the third quarter fiscal 2018 as compared to the third quarter fiscal 2017, partly offset by lower average selling prices, on which our royalties are calculated. Royalties earned from all other licensing agreements for the manufacture and sale of Nathan’s products increased by \$58,000 during the third quarter fiscal 2018 as compared to the third quarter fiscal 2017.

Franchise fees and royalties were \$1,088,000 in both the third quarter fiscal 2018 and the third quarter fiscal 2017. Total royalties were \$963,000 in the third quarter fiscal 2018 as compared to \$984,000 in the third quarter fiscal 2017. Royalties earned under the Branded Menu program were \$259,000 in the third quarter fiscal 2018 as compared to \$214,000 in the third quarter fiscal 2017. Royalties earned under the Branded Menu Program are not based upon a percentage of restaurant sales but based upon product purchases. Traditional franchise royalties decreased to \$704,000 in the third quarter fiscal 2018 as compared to \$770,000 in the third quarter fiscal 2017. Franchise restaurant sales decreased to \$15,596,000 in the third quarter fiscal 2018 as compared to \$17,184,000 in the third quarter fiscal 2017 primarily due to the decline in comparable domestic sales and the impact of units closed in the previous fiscal year. Comparable domestic franchise sales (consisting of 92 Nathan’s outlets, excluding sales under the Branded Menu Program) were \$12,251,000 in the third quarter fiscal 2018 as compared to \$12,863,000 in the third quarter fiscal 2017.

At December 24, 2017, 280 franchised outlets, including domestic, international and Branded Menu Program outlets were operating as compared to 282 franchised outlets, including domestic, international and Branded Menu Program outlets at December 25, 2016. Total franchise fee income was \$125,000 in the third quarter fiscal 2018 as compared to \$104,000 in the third quarter fiscal 2017. Domestic franchise fee income was \$33,000 in the third quarter fiscal 2018 as compared to \$90,000 in the third quarter fiscal 2017, due primarily to the difference in the types of locations opened, and associated fees earned, between the two periods. International franchise fee income was \$92,000 in the third quarter fiscal 2018 as compared to \$6,000 during the third quarter fiscal 2017, primarily due to the timing of new international development fees. We also recognized \$8,000 in forfeited fees in the third quarter fiscal 2017. During the third quarter fiscal 2018, 8 new franchised outlets opened, including three units in Australia, one unit in the Philippines and two new Branded Menu Program outlets. During the third quarter fiscal 2017, 22 new franchised outlets opened, including nine new Branded Menu Program outlets.

## **Costs and Expenses**

Overall, our cost of sales increased by 16.8% or \$1,814,000 to \$12,599,000 in the third quarter fiscal 2018, as compared to \$10,785,000 in the third quarter fiscal 2017. Our gross profit (representing the difference between sales and cost of sales) was \$4,168,000 or 24.9% of sales during the third quarter fiscal 2018 as compared to \$4,074,000 or 27.4% of sales during the third quarter fiscal 2017. The margin reduction was primarily due to the higher cost of beef in the Branded Product Program and in the Company-operated restaurants in addition to the higher labor costs at the Company-owned restaurants.

Cost of sales in the Branded Product Program increased by approximately \$1,736,000 during the third quarter fiscal 2018 as compared to the third quarter fiscal 2017, primarily due to the 10.4% increase in the volume of product sold and the 8.0% increase in the average cost per pound of our hot dogs. We did not make any purchases during the third quarter fiscal 2018 or third quarter fiscal 2017 pursuant to any purchase commitments. If the cost of beef and beef trimmings increases and we are unable to pass on these higher costs through price increases or otherwise reduce any increase in our costs through the use of purchase commitments, our margins will be adversely impacted.

With respect to Company-owned restaurants, our cost of sales during the third quarter fiscal 2018 was \$1,434,000 or 68.5% of restaurant sales, as compared to \$1,355,000 or 68.1% of restaurant sales in the third quarter fiscal 2017 due primarily to the impact of higher food costs on higher revenues and higher labor costs principally associated with the effects of the New York State minimum wage increase. We expect that our labor costs going forward will continue to be impacted by the multi-year new increase in minimum wage requirements in New York State and any increase in food costs from higher commodity costs.

Restaurant operating expenses were \$760,000 in the third quarter fiscal 2018 as compared to \$695,000 in the third quarter fiscal 2017. The increase in restaurant operating costs results primarily from higher occupancy costs, insurance and utilities.

Depreciation and amortization was \$320,000 in the third quarter fiscal 2018 as compared to \$309,000 in the third quarter fiscal 2017.

General and administrative expenses decreased by \$360,000 or 10.6% to \$3,034,000 in the third quarter fiscal 2018 as compared to \$3,394,000 in the third quarter fiscal 2017. The decrease in general and administrative expenses was primarily attributable to lower compensation expenses, the timing of expenses in connection with our fiscal 2018 audit and lower bad debts.

## **Other Items**

On November 1, 2017, the Company completed the issuance of \$150,000,000 of the 2025 Notes in a private offering in accordance with Rule 144A under the Securities Act. The 2025 Notes were issued pursuant to the Indenture by and among the Company, certain of its wholly-owned subsidiaries, as guarantors, and U.S. Bank National Association, as trustee and collateral trustee. The Company used the net proceeds of the 2025 Notes offering to satisfy and discharge the Indenture relating to the 2020 Notes and redeem the 2020 Notes, paid a portion of a special \$5.00 per share cash dividend to Nathan's stockholders of record (see Note M.1), with the remaining net proceeds for general corporate purposes, including working capital. The Redemption occurred on November 16, 2017. The Company performed the required evaluation of the refinancing and determined that a portion of the Redemption of the 2020 Notes is accounted for as a modification of the debt and a portion as an extinguishment of the debt. In connection with the Redemption, the Company recorded a loss on early extinguishment of debt of \$8,872,000 that primarily reflects a portion of the premium paid to redeem the 2020 Notes and the write-off of certain debt issuance costs.

Interest expense of \$3,650,000 in the third quarter fiscal 2018 represents interest of \$1,847,000 on the 2020 Notes, \$1,470,000 accrued interest on the 2025 Notes and total amortization of debt issuance costs of \$333,000. On November 1, 2017, the Company issued the 2025 Notes and the Redemption occurred on November 16, 2017. The Company incurred additional interest expense of approximately \$562,500 from the time the 2025 Notes closed until the Redemption. As a result of the issuance of the 2025 Notes and the Redemption, the Company expects to reduce its annual interest expense by approximately \$3,562,500 per annum.

Interest income was \$44,000 in the third quarter fiscal 2018 as compared to \$35,000 in the third quarter fiscal 2017 due principally to rising interest rates earned on our money market account.

Other income, which primarily relates to a sublease of a franchised restaurant, was \$22,000 in the third quarter fiscal 2018 and \$21,000 in the third quarter fiscal 2017.

## **Provision for Income Taxes**

In the third quarter fiscal 2018, the income tax benefit was \$(3,307,000) or 46.7% of loss before income taxes as compared to the income tax provision of \$448,000 or 39.1% of earnings before income taxes in the third quarter fiscal 2017.

Nathan's effective tax rate for the thirteen week period ended December 25, 2016 was reduced by 330 BPS, as a result of the tax benefits associated with stock compensation. For the thirteen week period ended December 25, 2016, excess tax benefits of \$39,000, were reflected in the Consolidated Statements of Earnings as a reduction to the provision for income taxes. Pursuant to Staff Accounting Bulletin #118, Nathan's has determined reasonable estimates to its deferred assets and liabilities and pursuant to ASC 740, Income Taxes, the Company has recognized the effect(s) of the Act on current and deferred income taxes in its financial statements during the quarter ended December 24, 2017. Nathan's has recorded the following discrete adjustment to its deferred tax liability and unrecognized tax benefits which reduced the provision for income taxes by \$436,000 during the thirteen weeks ended December 24, 2017. As described in Note J to the Consolidated Financial Statements, Nathan's estimates that its blended federal tax rate will be 31% for its fiscal year ending March 25, 2018 and that its annual tax rate for the fiscal year ending March 25, 2018 will be in the range of approximately 40.8% to 43.1%, excluding the impact of the discrete items recorded and excess tax benefit associated with stock compensation. The final annual tax rate is subject to many variables, including the ultimate determination of revenue and income tax by state, among other factors, and therefore cannot be determined until the end of the fiscal year; therefore, the actual tax rate could differ from our current estimates. As of December 24, 2017, Nathan's had \$212,000 of accrued interest and penalties in connection with unrecognized tax benefits. Nathan's estimates that its unrecognized tax benefits, including the related accrued interest and penalties could be further reduced by up to \$5,000 during the remainder of fiscal 2018.

## Results of Operations

### Thirty-nine weeks ended December 24, 2017 compared to thirty-nine weeks ended December 25, 2016

#### Revenues

Total sales increased by 9.7% to \$63,639,000 for the thirty-nine weeks ended December 24, 2017 (“fiscal 2018 period”) as compared to \$58,012,000 for the thirty-nine weeks ended December 25, 2016 (“fiscal 2017 period”). Foodservice sales from the Branded Product Program increased by 14.4% to \$50,741,000 for the fiscal 2018 period as compared to sales of \$44,349,000 for the fiscal 2017 period. During the fiscal 2018 period, the volume of business increased by approximately 10.9%. Our average selling prices increased by approximately 3.2% in the fiscal 2018 period as a result of our pricing strategy, which is more closely correlated to the cost of beef which increased by approximately 8.6%, during the fiscal 2018 period as compared to the fiscal 2017 period. Total Company-owned restaurant sales were \$12,898,000 during the fiscal 2018 period as compared to \$13,449,000 during the fiscal 2017 period due primarily to lower sales at both Coney Island locations. Sales at our Company-owned restaurants were unfavorably affected during the fiscal 2018 period due primarily to unfavorable weather conditions. Direct retail sales also decreased by \$214,000 during the fiscal 2018 period as compared to the fiscal 2017 period as we began to transition this business into our Branded Product Program during fiscal 2017.

License royalties were \$17,393,000 in the fiscal 2018 period as compared to \$15,602,000 in the fiscal 2017 period. Total royalties earned on sales of hot dogs from our license agreement with John Morrell & Co. at retail and foodservice, substantially from sales of hot dogs to Sam’s Club, increased 11.5% to \$15,853,000 for the fiscal 2018 period as compared to \$14,214,000 for the fiscal 2017 period. The increase is due to an 8.5% increase in volume during the fiscal 2018 period as compared to the fiscal 2017 period, in addition to a 4.1% increase in average selling prices, on which our royalties are calculated. Royalties earned from all other licensing agreements for the manufacture and sale of Nathan’s products increased by \$152,000 during the fiscal 2018 period as compared to the fiscal 2017 period.

Franchise fees and royalties were \$3,575,000 in the fiscal 2018 period as compared to \$3,752,000 in the fiscal 2017 period. Total royalties were \$3,293,000 in the fiscal 2018 period as compared to \$3,386,000 in the fiscal 2017 period. Royalties earned under the Branded Menu program were \$873,000 in the fiscal 2018 period as compared to \$779,000 in the fiscal 2017 period. Royalties earned under the Branded Menu Program are not based upon a percentage of restaurant sales, but are based upon product purchases. Traditional franchise royalties were \$2,420,000 in the fiscal 2018 period as compared to \$2,607,000 in the fiscal 2017 period. Franchise restaurant sales decreased to \$54,737,000 in the fiscal 2018 period as compared to \$58,118,000 in the fiscal 2017 period primarily due to the decline in comparable domestic sales and the impact of units closed in the previous fiscal year. Comparable domestic franchise sales (consisting of 89 Nathan’s outlets, excluding sales under the Branded Menu Program) were \$40,490,000 in the fiscal 2018 period as compared to \$41,709,000 in the fiscal 2017 period.

At December 24, 2017, 280 franchised outlets, including domestic, international and Branded Menu Program outlets were operating as compared to 282 franchised outlets, including domestic, international and Branded Menu Program outlets at December 25, 2016. Total franchise fee income was \$282,000 in the fiscal 2018 period as compared to \$366,000 in the fiscal 2017 period. Domestic franchise fee income was \$140,000 in the fiscal 2018 period as compared to \$177,000 in the fiscal 2017 period due primarily to the difference in the types of locations opened, and associated fees earned, between the two periods. International franchise fee income was \$132,000 in the fiscal 2018 period as compared to \$156,000 in the fiscal 2017 period due to the timing of new international development fees. We also recognized \$10,000 and \$33,000 in forfeited fees in the fiscal 2018 and fiscal 2017 periods, respectively. During the fiscal 2018 period, 35 new franchised outlets opened, including 13 international locations, and 17 Branded Menu Program outlets. During the fiscal 2017 period, 42 new franchised outlets opened, including 16 international locations, and 20 Branded Menu Program outlets.

#### Costs and Expenses

Overall, our cost of sales increased by \$6,433,000 to \$48,165,000 in the fiscal 2018 period as compared to \$41,732,000 in the fiscal 2017 period. Our gross profit (representing the difference between sales and cost of sales) was \$15,474,000 or 24.3% of sales during the fiscal 2018 period as compared to \$16,280,000 or 28.1% of sales during the fiscal 2017 period. The margin decline was primarily due to the higher cost of beef in the Branded Products Program and in the Company-operated restaurants, in addition to the higher labor costs at the Company-owned restaurants.

Cost of sales in the Branded Product Program increased by approximately \$6,677,000 during the fiscal 2018 period as compared to the fiscal 2017 period, primarily due to the 10.9% increase in volume of product sold and the 8.6% increase in the average cost per pound of our hot dogs. During the fiscal 2017 period, we completed our purchase of approximately 662,000 lbs. of hot dogs pursuant to the open purchase commitment, representing approximately 4.1% of volume, which reduced our overall cost of hot dogs by approximately 36 BPS. We did not make any purchases during the fiscal 2018 period pursuant to any purchase commitments. If the cost of beef and beef trimmings increases and we are unable to pass on these higher costs through price increases or otherwise reduce any increase in our costs through the use of purchase commitments, our margins will be adversely impacted.

With respect to Company-owned restaurants, our cost of sales during the fiscal 2018 period was \$7,199,000 or 55.8% of restaurant sales, as compared to \$7,247,000 or 53.9% of restaurant sales in the fiscal 2017 period due primarily to the impact of lower revenues and higher labor costs principally associated with the effects of the New York State minimum wage increase. We expect that our future labor costs will continue to be impacted by the multi-year new increase in minimum wage requirements in New York State and any increase in food costs from higher commodity costs.

Restaurant operating expenses were \$2,769,000 in the fiscal 2018 period as compared to \$2,711,000 in the fiscal 2017 period. The increase in restaurant operating costs results primarily from higher occupancy and insurance costs.

Depreciation and amortization was \$1,055,000 in the fiscal 2018 period as compared to \$1,005,000 in the fiscal 2017 period.

General and administrative expenses decreased \$245,000 or 2.4% to \$10,064,000 in the fiscal 2018 period as compared to \$10,309,000 in the fiscal 2017 period. The decrease in general and administrative expenses was primarily attributable to reduced marketing and promotional activities in connection with the commemoration of our 100th anniversary during the fiscal 2017 period, partly offset by higher compensation expenses during the fiscal 2018 period.

#### **Other Items**

On November 1, 2017, the Company completed the issuance of \$150,000,000 of the 2025 Notes in a private offering in accordance with Rule 144A under the Securities Act. The 2025 Notes were issued pursuant to the Indenture by and among the Company, certain of its wholly-owned subsidiaries, as guarantors, and U.S. Bank National Association, as trustee and collateral trustee. The Company used the net proceeds of the 2025 Notes offering to satisfy and discharge the Indenture relating to the 2020 Notes and redeem the 2020 Notes, paid a portion of a special \$5.00 per share cash dividend to Nathan's stockholders of record (see Note M.1), with the remaining net proceeds for general corporate purposes, including working capital. The Redemption occurred on November 16, 2017. The Company performed the required evaluation of the refinancing and determined that a portion of the Redemption of the 2020 Notes is accounted for as a modification of the debt and a portion as an extinguishment of the debt. In connection with the Redemption, the Company recorded a loss on early extinguishment of debt of \$8,872,000 that primarily reflects a portion of the premium paid to redeem the 2020 Notes and the write-off of certain debt issuance costs.

Interest expense of \$10,976,000 in the fiscal 2018 period represents interest of \$8,574,000 on the 2020 Notes, \$1,470,000 accrued interest on the 2025 Notes and total amortization of debt issuance costs of \$932,000. On November 1, 2017, the Company issued the 2025 Notes and the Redemption occurred on November 16, 2017. The Company incurred additional interest expense of approximately \$562,500 from the time the 2025 Notes closed until the Redemption. As a result of the issuance of the 2025 Notes and the Redemption, the Company expects to reduce its annual interest expense by approximately \$3,562,500 per annum.

Interest income was \$114,000 in the fiscal 2018 period as compared to \$71,000 in the fiscal 2017 period. Nathan's established its interest bearing money market account during the fiscal 2017 period.

Other income, which primarily relates to a sublease of a franchised restaurant, was \$64,000 in the fiscal 2018 period, as compared to \$64,000 in the fiscal 2017 period.

#### **Provision for Income Taxes**

The income tax provisions for the thirty-nine week periods ended December 24, 2017 and December 25, 2016 reflect effective tax rates of 21.5% and 37.1%, respectively. Nathan's effective tax rates for the thirty-nine week periods ended December 24, 2017 and December 25, 2016 were reduced by 670 BPS and 610 BPS, respectively, as a result of the tax benefits associated with stock compensation. For the thirty-nine week periods December 24, 2017 and December 25, 2016, excess tax benefits of \$194,000 and \$659,000, respectively, were reflected in the Consolidated Statements of Earnings as a reduction to the provision for income taxes. The amount of unrecognized tax benefits at December 24, 2017 was \$207,000, all of which would impact Nathan's effective tax rate, if recognized. Pursuant to Staff Accounting Bulletin #118, Nathan's has determined reasonable estimates to its deferred assets and liabilities and pursuant to ASC 740, Income Taxes, the Company has recognized the effect(s) of the Act on current and deferred income taxes in its financial statements during the quarter ended December 24, 2017. Nathan's has recorded the following discrete adjustments to its deferred tax liability and unrecognized tax benefits which reduced the provision for income taxes by \$436,000 or 1510 BPS during the thirty-nine weeks ended December 24, 2017. As described in Note J to the Consolidated Financial Statements, Nathan's estimates that its blended federal tax rate will be 31% for its fiscal year ending March 25, 2018 and that its annual tax rate for the fiscal year ending March 25, 2018 will be in the range of approximately 40.8% to 43.1%, excluding the impact of the discrete items recorded and excess tax benefit associated with stock compensation. The final annual tax rate is subject to many variables, including the ultimate determination of revenue and income tax by state, among other factors, and therefore cannot be determined until the end of the fiscal year; therefore, the actual tax rate could differ from our current estimates. As of December 24, 2017, Nathan's had \$212,000 of accrued interest and penalties in connection with unrecognized tax benefits.

## Off-Balance Sheet Arrangements

Nathan's did not have any open purchase commitments for hot dogs outstanding as of December 24, 2017. Nathan's may enter into purchase commitments in the future as favorable market conditions become available.

## Liquidity and Capital Resources

Cash at December 24, 2017 aggregated \$67,288,000, a \$10,373,000 increase during the fiscal 2018 period as compared to cash of \$56,915,000 at March 26, 2017. Net working capital decreased to \$51,809,000 from \$56,763,000 at March 26, 2017, which primarily relates to the special dividend of approximately \$20,923,000 payable to the shareholders of record on December 22, 2017 that was paid on January 4, 2018.

On November 1, 2017, the Company issued the 2025 Notes and used the majority of the proceeds for the Redemption, paid a portion of the special \$5.00 cash dividend and will use any remaining proceeds for general corporate purposes, including working capital. Our future results could also be impacted by our obligations under the 2025 Notes, as well as the new limitation on the deduction of interest expense under the Act. As a result of the issuance of the 2025 Notes, Nathan's expects to incur interest expense of \$9,937,500 per annum, reducing its cash interest expense by \$3,562,500 per annum. Nathan's expects to incur annual amortization of debt issuance costs of approximately \$685,000. Please refer to Note N – Long Term Debt, for the effects of the Company's refinancing from the preceding consolidated financial statements. The impact of interest expense on net income has been reflected in our results for the thirteen and thirty-nine week periods ended December 24, 2017 and December 25, 2016.

On March 10, 2015, we issued the 2020 Notes and paid a dividend of \$25.00 per share (or approximately \$116,100,000 in the aggregate). In connection with the 2020 Notes, Nathan's incurred interest expense of \$13,500,000 per annum and annual amortization of debt issuance costs of approximately \$1,200,000.

Nathan's used the net proceeds of the 2025 Notes offering to satisfy and discharge the Indenture relating to the 2020 Notes and the Redemption, paid a portion of a special \$5.00 per share cash dividend to Nathan's stockholders of record (see Note M.1) with the remaining net proceeds for general corporate purposes, including working capital. The payment in connection with the Redemption was approximately \$144,000,000. Nathan's also funded the majority of the special dividend through its existing cash. The Redemption occurred on November 16, 2017.

The Company paid a 5% call premium of \$6,750,000 associated with the Redemption and incurred debt issuance costs of \$4,902,000 in connection with the issuance of the 2025 Notes. The Company also incurred additional interest expense of approximately \$562,500 from the closing of the 2025 Notes on November 1, 2017 until the Redemption.

The 2025 Notes bear interest at 6.625% per annum, payable semi-annually on May 1<sup>st</sup> and November 1<sup>st</sup> of each year, beginning on May 1, 2018. Semi-annual interest payments are expected to be \$4,968,750. The 2025 Notes have no scheduled principal amortization payments prior to its final maturity on November 1, 2025. As a result of the issuance of the 2025 Notes and the Redemption, the Company expects to reduce its annual interest expense by approximately \$3,562,500 per annum.

The Indenture for the 2025 Notes contains certain covenants limiting the Company's ability and the ability of its restricted subsidiaries (as defined in the Indenture) to, subject to certain exceptions and qualifications: (i) incur additional indebtedness; (ii) pay dividends or make other distributions on, redeem or repurchase, capital stock; (iii) make investments or other restricted payments; (iv) create or incur certain liens; (v) incur restrictions on the payment of dividends or other distributions from its restricted subsidiaries; (vi) enter into certain transactions with affiliates; (vii) sell assets; or (viii) effect a consolidation or merger.

The Indenture for the 2025 Notes also contains customary events of default, including, among other things, failure to pay interest, failure to comply with agreements related to the Indenture, failure to pay at maturity or acceleration of other indebtedness, failure to pay certain judgments, and certain events of insolvency or bankruptcy. Generally, if any event of default occurs, the Trustee or the holders of at least 25% in principal amount of the 2025 Notes may declare the 2025 Notes due and payable by providing notice to the Company. In case of default arising from certain events of bankruptcy or insolvency, the 2025 Notes will become immediately due and payable.

The 2025 Notes are general senior secured obligations, are fully and unconditionally guaranteed by substantially all of the Company's wholly-owned subsidiaries and rank *pari passu* in right of payment with all of the Company's existing and future indebtedness that is not subordinated, are senior in right of payment to any of the Company's existing and future subordinated indebtedness, are structurally subordinated to any existing and future indebtedness and other liabilities of the Company's subsidiaries that do not guarantee the 2025 Notes, and are effectively junior to all existing and future indebtedness that is secured by assets other than the collateral securing the 2025 Notes. Pursuant to the terms of a collateral trust agreement, the liens securing the 2025 Notes and the guarantees will be contractually subordinated to the liens securing any future credit facility.

The 2025 Notes and the guarantees will be the Company and the guarantors' senior secured obligations and will rank:

- senior in right of payment to all of the Company and the guarantors' future subordinated indebtedness;
- effectively senior to all unsecured senior indebtedness to the extent of the value of the collateral securing the 2025 Notes and the guarantees;
- *pari passu* with all of the Company and the guarantors' other senior indebtedness;
- effectively junior to any future credit facility to the extent of the value of the collateral securing any future credit facility and the 2025 Notes and the guarantees and certain other assets;
- effectively junior to any of the Company and the guarantors' existing and future indebtedness that is secured by assets other than the collateral securing the 2025 Notes and the guarantees to the extent of the value of any such assets; and
- structurally subordinated to the indebtedness of any of the Company's current and future subsidiaries that do not guarantee the 2025 Notes.

Cash provided by operations of \$7,795,000 in the fiscal 2018 period is primarily attributable to net income of \$2,263,000 in addition to other non-cash operating items of \$11,330,000, offset by increases in changes in other operating assets and liabilities of \$5,798,000. Non-cash operating items include \$194,000 of excess income tax benefits from stock-based compensation arrangements as a result of the accounting for certain aspects of its share-based payments to employees. In the fiscal 2018 period, accounts and other receivables increased by \$2,967,000 compared to the fiscal 2017 period due primarily to higher receivables from Branded Product Program sales of \$2,489,000 and increased seasonal advances to the Advertising Fund of \$593,000, partly offset by lower seasonal license royalties of \$358,000. In the fiscal 2018 period, prepaid expenses and other current assets increased by \$2,259,000 due principally to prepaid income taxes of \$2,751,000 which were deposited prior to the successful debt refinancing. The decrease in accounts payable, accrued expenses and other current liabilities of \$779,000 is primarily due to reductions in deferred revenue of \$706,000 that was recognized into income during the fiscal 2018 period, accrued payroll and other benefits of \$621,000 due primarily to the payment of prior year incentive compensation, lower accounts payable of \$541,000 arising primarily from seasonally lower product purchases for the Branded Product Program, which were partly offset by higher accrued interest of \$1,007,000 and accrued rebates of \$195,000. The decrease in other liabilities of \$71,000 is primarily due to dividend payments of \$125,000 on vested restricted stock, offset by an increase in the accrual for uncertain tax positions of \$53,000. The Company also declared a \$5.00 per share special cash dividend to the shareholders of record as of the close of business on December 22, 2017 which was paid on January 4, 2018 in the amount of \$20,923,000 which has been presented as a noncash financing activity on the accompanying consolidated statement of cash flows.

Cash used in investing activities was \$488,000 in the fiscal 2018 period in connection with capital expenditures incurred for our Branded Product Program and select restaurant improvements.

Cash provided by financing activities of \$3,066,000 in the fiscal 2018 period relates to the Company's refinancing of the 2020 Notes. The Company received gross proceeds of \$150,000,000 from the sale of 2025 Notes, repaid the 2020 Notes, paid a call premium of \$6,750,000 in addition to \$4,902,000 of debt issuance costs. The Company also paid \$157,000 for withholding taxes on the net share vesting of employee restricted stock and dividends of \$125,000 relating to the previously declared special cash dividend in connection with the vesting of 5,000 shares of the Company's restricted stock.

During the period from October 2001 through December 24, 2017, Nathan's purchased 5,127,373 shares of its common stock at a cost of approximately \$77,303,000 pursuant to its stock repurchase plans previously authorized by the Board of Directors. Since March 26, 2007, we have repurchased 3,236,273 shares at a total cost of approximately \$70,145,000, reducing the number of shares then-outstanding by 53.8%.

On February 1, 2016 and March 11, 2016, the Company's Board of Directors authorized increases to the sixth stock repurchase plan for the purchase of up to 1,200,000 shares of its common stock on behalf of the Company. As of December 24, 2017, Nathan's has repurchased 939,742 shares at a cost of \$29,641,000 under the sixth stock repurchase plan. At December 24, 2017, there were 260,258 shares remaining to be repurchased pursuant to the sixth stock repurchase plan. The plan does not have a set expiration date. Purchases under the Company's stock repurchase program may be made from time to time, depending on market conditions, in open market or privately-negotiated transactions, at prices deemed appropriate by management. There is no set time limit on the repurchases.

Management believes that available cash, marketable securities and cash generated from operations should provide sufficient capital to finance our operations, and satisfy our debt service requirements, for at least the next 12 months.

As discussed above, we had cash at December 24, 2017 aggregating \$67,288,000. Our Board routinely monitors and assesses its cash position and our current and potential capital requirements. In November 2017, we successfully refinanced \$135.0 million 10.000% Notes due 2020 with \$150.0 million 6.625% Notes due 2025 and, our Board of Directors announced the payment of a \$5.00 per share special dividend to the shareholders of record as of the close of business on December 22, 2017. We may continue to return capital to our shareholders through stock repurchases or cash dividends, subject to any restrictions in the Indenture, although there is no assurance that the Company will make any repurchases under its existing stock-repurchase plan.

We expect that in the future we will make investments in certain existing restaurants, support the growth of the Branded Product and Branded Menu Programs, service the outstanding debt and continue our stock repurchase programs, funding those investments from our operating cash flow. We may also incur capital and other expenditures or engage in investing activities in connection with opportunistic situations that may arise on a case-by-case basis. We are not required to make interest payments during the remainder of our fiscal year ending March 25, 2018. Pursuant to the Indenture, we will be required to make semi-annual interest payments of \$4,968,750 on May 1, 2018 and November 1, 2018.

At December 24, 2017, we sublet one property to a franchisee that we lease from a third party. We remain contingently liable for all costs associated with this property including: rent, property taxes and insurance. We may incur future cash payments with respect to such property, consisting primarily of future lease payments, including costs and expenses associated with terminating any of such leases.

The following schedule represents Nathan's cash contractual obligations and commitments by maturity as of December 24, 2017 (in thousands):

Cash Contractual Obligations	Payments Due by Period				
	Total	Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years
Long term debt (a)	\$ 150,000	\$ -	\$ -	\$ -	\$ 150,000
Employment Agreements	6,700	1,100	2,000	2,000	1,600
Dividends Payable	21,073	21,073	-	-	-
Operating Leases	11,540	1,652	2,717	2,137	5,034
Gross Cash Contractual Obligations	189,313	23,825	4,717	4,137	156,634
Sublease Income	2,175	329	640	474	732
Net Cash Contractual Obligations	\$ 187,138	\$ 23,496	\$ 4,077	\$ 3,663	\$ 155,902

a) Represents the Notes due 2025.

b) At December 24, 2017, the Company had unrecognized tax benefits of \$207,000. The Company believes that it is reasonably possible that the unrecognized tax benefits may decrease by \$5,000 within the next year. A reasonable estimate of the timing of the remaining liabilities is not practicable.

On February 27, 2017, a wholly-owned subsidiary of the Company executed a Guaranty of Lease (the "Brooklyn Guaranty") in connection with its re-franchising of a restaurant located in Brooklyn, New York. The Company is obligated to make payments under the Brooklyn Guaranty in the event of a default by the tenant/franchisee. The Brooklyn Guaranty has an initial term of 10 years and one 5-year option and is limited to 24 months of rent for the first three years of the term. Nathan's has recorded a liability of \$204,015 in connection with the Brooklyn Guaranty which does not include potential percentage rent, real estate tax increases, attorney's fees and other costs as these amounts are not reasonably determinable at this time. Nathan's has received a personal guaranty from the franchisee for all obligations under the Brooklyn Guaranty. For the remainder of the term, the Brooklyn Guaranty is limited to 12 months of rent plus reasonable costs of collection and attorney's fees.

## Inflationary Impact

We do not believe that general inflation has materially impacted earnings since 2006. However, we have experienced significant volatility in our costs for our hot dogs and certain food products, distribution costs and utilities. From 2011 through 2014, we experienced unprecedented increases in the cost of beef. Beginning March 2015, the beef markets stabilized through June 2015 before subsequently declining by approximately 30%. As a result of the decline through March 2016, the market price of hot dogs during the fiscal year ended March 27, 2016 was approximately 7.1% lower than the fiscal year ended March 29, 2015. During the fiscal 2017 period, beef prices remained favorable, and as such, our market price for hot dogs was 17.1% lower than during the period ended September 25, 2016. Despite the favorable pricing of fiscal 2017, prices began escalating in January 2017 and continued through June 2017 before beginning to slightly decline until July which is when the costs stabilized for the balance of 2017 at approximately 10% higher than the last six months of 2016. As such, our market price for hot dogs during our fiscal 2018 period was approximately 8.2% higher than the fiscal 2017 period. We are unable to predict the future cost of our hot dogs and expect to experience price volatility for our beef products during fiscal 2018. To the extent that beef prices increase as compared to earlier periods, it could impact our results of operations. In the past, we entered into purchase commitments for a portion of our hot dogs to reduce the impact of increasing market prices. Most recently, we concluded a purchase commitment for approximately 2,600,000 pounds of hot dogs at approximately \$2.01 per pound which we purchased between February and May 2016. We may attempt to enter into similar purchase arrangements for hot dogs and other products in the future. Additionally, we expect to continue experiencing volatility in oil and gas prices on our distribution costs for our food products and utility costs in the Company-owned restaurants and volatile insurance costs resulting from the uncertainty of the insurance markets.

In March 2010, the Federal government passed new legislation to reform the U.S. health care system. As part of the plan, employers will be expected to provide their employees that work more than 30 hours per week with minimum levels of healthcare coverage or incur certain financial penalties. As Nathan's workforce includes numerous part-time workers that typically are not offered healthcare coverage, we may be forced to expand healthcare coverage or potentially incur new penalties which may increase our health care costs.

New York State recently passed legislation increasing the minimum hourly wage for fast food workers of restaurant chains with 30 or more locations nationwide. The increase will be phased in differently between New York City and the rest of New York State. Effective December 31, 2017, the minimum wage increased to \$13.50 and \$11.75 in New York City and outside of New York City, respectively.

In New York City, the hourly rate of pay will increase to \$15.00 on Dec. 31, 2018.

The minimum hourly rate of pay for the remainder of New York State will increase to:

\$12.75 on Dec. 31, 2018; \$13.75 on Dec. 31, 2019; \$14.50 on Dec. 31, 2020; and \$15.00 on July 1, 2021.

All of Nathan's Company-operated restaurants are within New York State, three of which operate within New York City that have been affected by this new legislation.

The Company is further studying the impact on the Company's operations and is developing strategies and tactics, including pricing and potential operating efficiencies, to minimize the effects of these increases and future increases. We have recently increased certain selling prices to pass on recent cost of sales increases. However, if we are unable to fully offset these and future increases through pricing and operating efficiencies, our margins and profits will be negatively affected. We believe that these increases in the minimum wage could have a significant financial impact on our financial results and the results of our franchisees that operate in New York State. Our business could be negatively impacted if the decrease in margins for our franchisees results in the potential loss of new franchisees or the closing of a significant number of franchised restaurants.

Effective April 1, 2014, the City of New York, passed legislation requiring employers to offer paid sick leave to all employees, including part-time employees, who work more than 80 hours for the employer. Nathan's operates three restaurants that have been affected by this legislation.

Effective December 1, 2016, changes to the Fair Labor Standards Act were to take effect until nationwide implementation was enjoined by a Federal District Court. The legislation would have increased the minimum salary threshold for overtime exemption from \$23,660 to \$47,476 per annum. Nathan's performed its evaluation of its workforce and determined that the proposed legislation is not expected to have a significant impact on our results of operations.

On May 30, 2017, New York City Mayor Bill de Blasio signed into law the Fair Work Week Legislation package of bills that the city estimates will cover some 65,000 fast food workers by giving them more predictable work schedules effective November 27, 2017. A key component of the package is a requirement that fast food restaurants schedule their workers at least two weeks in advance or pay employees between \$10 to \$75 per scheduling change depending on the situation. Due to Nathan's dependency on weather conditions at our two beach locations during the summer, we are unable to determine the potential impact on our results of operations, which could be material. We have estimated that the daily penalty could amount to as much as \$10,000 per day during the height of the summer season for these two restaurants.

Continued increases in labor, food and other operating expenses, including health care, could adversely affect our operations and those of the restaurant industry and we might have to further reconsider our pricing strategy as a means to offset reduced operating margins.

The Company's business, financial condition, operating results and cash flows can be impacted by a number of factors, including but not limited to those set forth above in "Management's Discussion and Analysis of Financial Condition and Results of Operations," any one of which could cause our actual results to vary materially from recent results or from our anticipated future results. For a discussion identifying additional risk factors and important factors that could cause actual results to differ materially from those anticipated, also see the discussions in "Forward-Looking Statements" and "Notes to Consolidated Financial Statements" in this Form 10-Q and "Risk Factors" in this Form 10-Q and our Form 10-K for our fiscal year ended March 26, 2017.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk.**

#### **Cash**

We have historically invested our cash in money market funds or short-term, fixed rate, highly rated and highly liquid instruments which are generally reinvested when they mature. Although these existing investments are not considered at risk with respect to changes in interest rates or markets for these instruments, our rate of return on short-term investments could be affected at the time of reinvestment as a result of intervening events. As of December 24, 2017, Nathan's cash aggregated \$67,288,000. Earnings on this cash would increase or decrease by approximately \$168,000 per annum for each 0.25% change in interest rates.

#### **Borrowings**

At December 24, 2017, we had \$150.0 Million of 2025 Notes outstanding which are due in November 2025. Interest expense on these borrowings would increase or decrease by approximately \$375,000 per annum for each 0.25% change in interest rates. We currently do not anticipate entering into interest rate swaps or other financial instruments to hedge our borrowings.

#### **Commodity Costs**

We do not believe that general inflation has materially impacted earnings since 2006. However, we have experienced significant volatility in our costs for our hot dogs and certain food products, distribution costs and utilities. Our commodity costs for beef have been especially volatile since fiscal 2004. From 2011 through 2014, we experienced unprecedented increases in the cost of beef. Beginning March 2015, the beef markets stabilized through June 2015 before subsequently declining by approximately 30%. As a result of the decline through March 2016, the market price of hot dogs during the fiscal 2016 period was approximately 7.1% lower than the fiscal 2015 period. During the fiscal 2017 period, beef prices remained favorable, and as such, our market price for hot dogs was 17.1% lower than during the fiscal 2016 period. Despite the favorable pricing of fiscal 2017, prices began escalating in January 2017 and continued through June 2017 before beginning to slightly decline until July which is when the costs stabilized for the balance of 2017 at approximately 10% higher than the last six months of 2016. As such, our market price for hot dogs during our fiscal 2018 period was approximately 8.2% higher than the fiscal 2017 period. We are unable to predict the future cost of our hot dogs and expect to experience price volatility for our beef products during fiscal 2018. To the extent that beef prices increase as compared to earlier periods, it could impact our results of operations. In the past, we entered into purchase commitments for a portion of our hot dogs to reduce the impact of increasing market prices. During fiscal 2017, we concluded a purchase commitment for approximately 2,600,000 pounds of hot dogs at approximately \$2.01 per pound which we purchased between February and May 2016. We may attempt to enter into similar purchase arrangements for hot dogs and other products in the future. Additionally, we expect to continue experiencing volatility in oil and gas prices on our distribution costs for our food products and utility costs in the Company-owned restaurants and volatile insurance costs resulting from the uncertainty of the insurance markets.

With the exception of purchase commitments, we have not attempted to hedge against fluctuations in the prices of the commodities we purchase using future, forward, option or other instruments. As a result, we expect that the majority of our future commodity purchases will be subject to market changes in the prices of such commodities. We have attempted to enter sales agreements with our customers that are correlated to our cost of beef, thus reducing our market volatility, or have passed through permanent increases in our commodity prices to our customers that are not on formula pricing, thereby reducing the impact of long-term increases on our financial results. A short-term increase or decrease of 10.0% in the cost of our food and paper products for the thirty-nine weeks ended December 24, 2017 would have increased or decreased our cost of sales by approximately \$4,303,000.

#### **Foreign Currencies**

Foreign franchisees generally conduct business with us and make payments in United States dollars, reducing the risks inherent with changes in the values of foreign currencies. As a result, we have not purchased future contracts, options or other instruments to hedge against changes in values of foreign currencies and we do not believe fluctuations in the value of foreign currencies would have a material impact on our financial results.

**Item 4. Controls and Procedures.****Evaluation of Disclosure Controls and Procedures**

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures, as required by Exchange Act Rule 13a-15. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of the period covered by this report, our disclosure controls and procedures were effective to ensure that the information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified by the SEC's rules and forms and that such information is accumulated and communicated to our management, including our principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure.

**Changes in Internal Controls**

There were no changes in our internal controls over financial reporting that occurred during the quarter ended December 24, 2017 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**Limitations on the Effectiveness of Controls**

We believe that a control system, no matter how well designed and operated, cannot provide absolute assurance that the objectives of the control system are met, and no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within a company have been detected. Our disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives and our Chief Executive Officer and Chief Financial Officer have concluded that such controls and procedures are effective at the reasonable assurance level.

## **PART II. OTHER INFORMATION**

### **Item 1. Legal Proceedings.**

None

### **Item 1A. Risk Factors.**

In addition to the other information set forth in this report, you should carefully consider the risk factors discussed in Part I, “Item 1A. Risk Factors” in the Annual Report on Form 10-K for the fiscal year ended March 26, 2017, which could materially affect our business, financial condition or future results. The risks described in our Annual Report on Form 10-K are not the only risks facing Nathan's. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition and/or operating results.

### **Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.**

None.

### **Item 3. Defaults Upon Senior Securities.**

None.

### **Item 4. Mine Safety Disclosures.**

None.

### **Item 5. Other Information.**

None

## Item 6. Exhibits.

- 3.1 Certificate of Incorporation. (Incorporated by reference to Exhibit 3.1 to Registration Statement on Form S-1 No. 33- 56976.)
- 3.2 Amendment to the Certificate of Incorporation, filed December 15, 1992. (Incorporated by reference to Exhibit 3.2 to Registration Statement on Form S-1 No. 33-56976.)
- 3.3 By-Laws, as amended. (Incorporated by reference to Exhibit 3.1 to Form 8-K dated November 6, 2006.)
- 4.1 Specimen Stock Certificate. (Incorporated by reference to Exhibit 4.1 to Registration Statement on Form S-1 No. 33-56976.)
- 4.2 Rights Agreement, dated as of June 5, 2013, between Nathan's Famous, Inc. and American Stock Transfer and Trust Company, LLC, as Rights Agent, which includes form of Rights Certificate as Exhibit A and the Summary of Rights to Purchase as Exhibit B. (Incorporated by reference to Exhibit 4.2 to the Company's Current Report filed on Form 8-K dated June 11, 2013.)
- 4.3 Indenture, dated as of November 1, 2017, by and among Nathan's Famous, Inc., certain of its wholly owned subsidiaries, as guarantors, and U.S. Bank National Association, a National Banking Association, as trustee and collateral trustee (including the form of Note (Incorporated by reference to Exhibit 4.1 to the Company's Current Report filed on Form 8-K dated November 1, 2017.))
- 10.1 \*\*Amendment, dated as of December 6, 2017 to the Employment Agreement dated as of December 15, 2016, as amended November 1, 2012 between Howard M. Lorber and Nathan's Famous, Inc. (Incorporated by reference to Exhibit 10.1 to the Company's Current Report filed on Form 8-K dated December 12, 2017.)
- 10.2 \*Parity Lien Security Agreement, dated November 1, 2017, by and among Nathan's Famous, Inc. and The Other Assignors Identified Herein and U.S. Bank National Association, as Collateral Trustee.
- 31.1 \*Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 \*Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 \*Certification by Eric Gatoff, CEO, Nathan's Famous, Inc., pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2 \*Certification by Ronald G. DeVos, CFO, Nathan's Famous, Inc., pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 101.1 \*The following materials from the Nathan's Famous, Inc., Quarterly Report on Form 10-Q for the quarter ended December 24, 2017 formatted in Extensible Business Reporting Language (XBRL): (i) the Consolidated Balance Sheets, (ii) the Consolidated Statements of Earnings, (iii) the Consolidated Statement of Stockholders' Equity, (iv) the Consolidated Statements of Cash Flows and (v) related notes.

\*Filed herewith.

\*\* Indicates a management plan or amendment.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

NATHAN'S FAMOUS, INC.

Date: February 2, 2018

By: /s/ Eric Gatoff  
Eric Gatoff  
Chief Executive Officer  
(Principal Executive Officer)

Date: February 2, 2018

By: /s/ Ronald G. DeVos  
Ronald G. DeVos  
Vice President - Finance  
and Chief Financial Officer  
(Principal Financial and Accounting Officer)

## Exhibit Index.

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\*Filed herewith.

\*\* Indicates a management plan or amendment.

PARITY LIEN SECURITY AGREEMENT

by and among

NATHAN'S FAMOUS, INC.

and

THE OTHER ASSIGNORS IDENTIFIED HEREIN

and

U.S. BANK NATIONAL ASSOCIATION,

as COLLATERAL TRUSTEE

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Dated as of November 1, 2017

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Exhibit F	The Collateral Trustee and Secured Creditor Acknowledgments

## PARITY LIEN SECURITY AGREEMENT

This PARITY LIEN SECURITY AGREEMENT, dated as of November 1, 2017 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, this "Agreement"), is made by each of the undersigned assignors (each, an "Assignor" and, together with any other entity that becomes an assignor hereunder pursuant to Section 9.12 hereof, the "Assignors"), in favor of U.S. Bank National Association, a national banking association ("U.S. Bank"), as collateral trustee (in such capacity, together with its successors and assigns, if any, "Collateral Trustee"), for the benefit of the Secured Creditors (as defined below). Certain capitalized terms as used herein are defined in Article VIII hereof. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Collateral Trust Agreement (as defined below).

### WITNESSETH:

WHEREAS, Nathan's Famous, Inc., a Delaware corporation (the "Issuer"), each of Issuer's Subsidiaries party thereto as Guarantors (such Subsidiaries, together with Issuer, are referred to hereinafter each individually as a "Guarantor" and individually and collectively, jointly and severally, as "Guarantors"), and U.S. Bank National Association, as trustee (in such capacity, "Trustee") and as Collateral Trustee have entered into the Indenture, dated as of the date hereof (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Indenture"), pursuant to which the Issuer has issued the 6.625% Senior Secured Notes due 2025 (the "Notes"), all as contemplated therein;

WHEREAS, Collateral Trustee has agreed to act as agent for the benefit of the Secured Creditors in connection with the transactions contemplated by the Indenture, any Additional Parity Lien Agreement and this Agreement; and

WHEREAS, in order to induce the Trustee and the Collateral Trustee to enter into the Indenture and any Additional Parity Lien Agreement, and to induce the Holders or holders of any Additional Parity Lien Obligations to purchase the Notes from the Issuer as provided for in the Indenture or similar Instruments evidencing other Parity Lien Debt under any other Additional Parity Lien Agreement, as applicable, Assignors have agreed to grant a continuing security interest in and to the Collateral in order to secure the prompt and complete payment, observance and performance of, among other things, the Secured Obligations;

WHEREAS, following the date hereof, if not prohibited by the Indenture or any Additional Parity Lien Agreement, the Assignors may incur Additional Parity Lien Obligations (including Additional Notes) which are secured equally and ratably with the Assignors' obligations in respect of the Notes in accordance with Section 9.20 of this Agreement.

NOW, THEREFORE, in consideration of the benefits accruing to each Assignor, the receipt, sufficiency and adequacy of which are hereby acknowledged, each Assignor hereby agrees with Collateral Trustee for the benefit of the Secured Creditors as follows:

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ARTICLE I

SECURITY INTEREST

1.1 Grant of Security Interest. Each Assignor hereby unconditionally grants and pledges to Collateral Trustee, for the benefit of the Secured Creditors, to secure the Secured Obligations, a continuing security interest (hereinafter referred to as the "Security Interest") in all of the right, title and interest of such Assignor in, to and under all of the following personal property (and all rights therein) of such Assignor, or in which or to which such Assignor has any rights, in each case, whether now owned or hereafter acquired by such Assignor and wherever located (the "Collateral"):

- (a) all of such Assignor's Accounts;
- (b) all of such Assignor's Chattel Paper;
- (c) all of such Assignor's Commercial Tort Claims, including those from time to time set forth on Schedule 5 hereto;
- (d) all of such Assignor's Contracts, together with all Contract Rights arising thereunder;
- (e) all of such Assignor's Documents;
- (f) all of such Assignor's Equipment;
- (g) all of such Assignor's Books;
- (h) all of such Assignor's Negotiable Collateral;
- (i) all of such Assignor's General Intangibles;
- (j) all of such Assignor's Goods;
- (k) all of such Assignor's Instruments;
- (l) all of such Assignor's Inventory;
- (m) all of such Assignor's Software;
- (n) all of such Assignor's Investment Property;
- (o) all of such Assignor's Permits;
- (p) all of such Assignor's Deposit Accounts (or demand, deposit, time, savings or similar accounts);
- (q) all of such Assignor's Supporting Obligations and letter of credit rights;

(r) all of such Assignor's money, Cash Equivalents, or other assets of such Assignor that now or hereafter come into the possession, custody, or control of any Agent (or its agent or designee) or any Secured Creditor; and

(s) all of the proceeds (as such term is defined in the Code) and products, whether tangible or intangible, of any of the foregoing, including proceeds of insurance or Commercial Tort Claims covering or relating to any or all of the foregoing, and any and all Accounts, Books, Chattel Paper, Deposit Accounts, Equipment, Fixtures, General Intangibles, Inventory, Investment Property, Negotiable Collateral, Supporting Obligations, money, or other tangible or intangible property resulting from the sale, lease, license, exchange, collection, or other disposition of any of the foregoing, the proceeds of any award in condemnation with respect to any of the foregoing, any rebates or refunds, whether for taxes or otherwise, and all proceeds of any such proceeds, or any portion thereof or interest therein, and the proceeds thereof, and all proceeds of any loss of, damage to, or destruction of the above, whether insured or not insured, and, to the extent not otherwise included, any indemnity, warranty, or guaranty payable by reason of loss or damage to, or otherwise with respect to any of the foregoing (the "Proceeds"). Without limiting the generality of the foregoing, the term "Proceeds" includes whatever is receivable or received when Investment Property or proceeds are sold, exchanged, collected, or otherwise disposed of, whether such disposition is voluntary or involuntary, and includes proceeds of any indemnity or guaranty payable to any Assignor or any Agent from time to time with respect to any of the Investment Property.

Notwithstanding anything contained in this Agreement to the contrary, the term “Collateral” shall not include: (i) voting Capital Stock of any Foreign Subsidiary or Foreign Holding Company, in excess of 65% of the outstanding voting Capital Stock of such Foreign Subsidiary or Foreign Holding Company; or (ii) any rights or interest in any contract, lease, permit, license, or license agreement covering real or personal property of any Assignor if under the terms of such contract, lease, permit, license, or license agreement, or applicable law with respect thereto, the grant of a security interest or Lien therein is prohibited as a matter of law or under the terms of such contract, lease, permit, license, or license agreement and such prohibition or restriction has not been waived or the consent of the other party to such contract, lease, permit, license, or license agreement has not been obtained (provided, that, (A) the foregoing exclusions of this clause (ii) shall in no way be construed (1) to apply to the extent that any described prohibition or restriction is unenforceable under Section 9-406, 9-407, 9-408, or 9-409 of the Code or other applicable law, or (2) to apply to the extent that any consent or waiver has been obtained that would permit Collateral Trustee’s security interest or Lien notwithstanding the prohibition or restriction on the pledge of such contract, lease, permit, license, or license agreement and (B) the foregoing exclusions of clauses (i) and (ii) shall in no way be construed to limit, impair, or otherwise affect any of Collateral Trustee’s or any Secured Creditor’s continuing security interests in and Liens upon any rights or interests of any Assignor in or to (1) monies due or to become due under or in connection with any described contract, lease, permit, license, license agreement, or Capital Stock (including any Accounts or Capital Stock), or (2) any proceeds from the sale, license, lease, or other dispositions of any such contract, lease, permit, license, license agreement, or Capital Stock); (iii) any United States intent-to-use Trademark application prior to filing of a statement of use pursuant to 15 U.S.C. Section 1051(d) or an amendment to allege use pursuant to 15 U.S.C. Section 1051(c), to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of any registration that issues from such intent-to-use Trademark application under applicable federal law, provided, and it being agreed, that upon submission to the United States Patent and Trademark Office of a statement of use or an amendment to allege use, such intent-to-use Trademark application shall be considered Collateral; (iv) property (whether real, personal or mixed, tangible or intangible), and proceeds thereof, owned by any Assignor on the date hereof or hereafter acquired that is subject to a Lien securing Indebtedness, Disqualified Stock or Permitted Stock permitted to be incurred or issued pursuant to clause 4.08(b)(4) of the definition of Permitted Debt under the Indenture (unless already agreed), for so long as the contract or other agreement in which such Lien is granted (or the documentation providing for such Indebtedness, Disqualified Stock or Preferred Stock) validly prohibits the creation of any other Lien on such property; (v) 51% of the Capital Stock of Nathan’s Famous of Lynbrook, Inc.; (vi) (A) any real estate asset leased by any Assignor and (B) any real estate asset owned by any Assignor; (vii) all tax, payroll, employee benefit, fiduciary and trust accounts; or (viii) all motor vehicles the perfection of a security interest in which is excluded from the Uniform Commercial Code in the relevant jurisdiction.

1.2 Security for Secured Obligations. The Security Interest created hereby secures the payment and performance of the Secured Obligations, whether now existing or arising hereafter. Without limiting the generality of the foregoing, this Agreement secures the payment of all amounts which constitute part of the Secured Obligations and would be owed by Assignors, or any of them, to the Secured Creditors, or any of them, but for the fact that they are unenforceable or not allowable (in whole or in part) as a claim in an insolvency or liquidation proceeding involving any Assignor due to the existence of such insolvency or liquidation proceeding.

## ARTICLE II

### GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS

Each Assignor hereby represents, warrants and covenants to Collateral Trustee, for the benefit of the Secured Creditors, which representations and warranties shall be true, correct, and complete in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the Issue Date, and such representations and warranties shall survive the execution and delivery of this Agreement:

2.1 Necessary Filings. This Agreement creates a valid security interest in the Collateral of each Assignor, to the extent a security interest therein can be created under the Code, securing the payment and performance of the Secured Obligations. Except to the extent a security interest in the Collateral cannot be perfected by the filing of a financing statement under the Code, all filings and other actions necessary or desirable to perfect and protect such security interest have been duly taken or will have been taken (including, in the case of any Assignor organized in the State of Florida, the payment of all documentary stamps due and payable or to become due and payable pursuant to s.201.22 F.S.) upon the filing of financing statements listing each applicable Assignor, as a debtor, and Collateral Trustee, as secured party, in the jurisdictions listed next to such Assignor's name on Schedule 6. Upon the making of such filings, Collateral Trustee shall have not less than a Second Priority perfected security interest in the Collateral of each Assignor to the extent such security interest can be perfected by the filing of a financing statement. Upon filing of the Trademark Security Agreement and the Patent Security Agreement with the United States Patent and Trademark Office within three (3) months of execution and delivery of this Agreement, together with an appropriately completed recordation form, and the timely filing of the Copyright Security Agreement with the United States Copyright Office within one (1) month of execution and delivery of this Agreement, and upon filing of appropriate financing statements in the jurisdictions listed on Schedule 6, all action necessary or desirable to protect and perfect the Security Interest in and to each Assignor's Patents, Trademarks, or Copyrights shall have been taken and such perfected Security Interest shall be enforceable as such as against any and all creditors of and purchasers from any Assignor, to the extent such security interest can be perfected by such filings. All action by any Assignor necessary to protect and perfect such security interest on each item of Collateral has been duly taken.

2.2 No Liens. Such Assignor is, and as to all Collateral acquired by it from time to time after the date hereof, such Assignor, will be the owner of such Collateral free and clear from any Lien, security interest, encumbrance or other right, title or interest of any Person (other than Permitted Liens as defined in the Indenture or in any Additional Parity Lien Agreement), and such Assignor shall defend the Collateral against all claims and demands of all Persons at any time claiming the same or any interest therein adverse to Collateral Trustee.

2.3 Other Financing Statements. As of the date hereof, there is no financing statement (or similar statement or instrument of registration under any applicable law) covering or purporting to cover any interest of any kind in the Collateral (other than financing statements filed in respect of Permitted Liens), and such Assignor will not execute or authorize to be filed in any public office any financing statement (or similar statement or instrument of registration under any applicable law) or statements relating to the Collateral, except financing statements filed or to be filed in respect of and covering the security interests granted hereby by such Assignor or in connection with Permitted Liens (as defined in the Indenture or in any Additional Parity Lien Agreement).

2.4 Location of Inventory and Equipment. All Inventory and Equipment located within the United States and held on the date hereof, or held at any time during the four calendar months prior to the date hereof, by each Assignor (other than Inventory and Equipment in transit) is located at one of the locations shown on Schedule 1 hereto for such Assignor.

2.5 Legal Names; Type of Organization (and Whether a Registered Organization); Jurisdiction of Organization; Location; Organizational Identification Numbers; Changes Thereto; etc. The exact legal name of each Assignor, the type of organization of such Assignor, whether or not such Assignor is a Registered Organization, the jurisdiction of organization of such Assignor, such Assignor's Location, and the organizational identification number (if any) of such Assignor, is listed on Schedule 2 hereto for such Assignor. Such Assignor may change its legal name, its type of organization, its status as a Registered Organization (in the case of a Registered Organization), its jurisdiction of organization, its Location, or its organizational identification number (if any) from that used on Schedule 2 hereto; provided that (a) Collateral Trustee shall have received a written notice not less than twenty (20) days prior to the effectiveness of such change, together with a supplement to Schedule 2 which shall correct all information contained therein for such Assignor, and (b) in connection with such change, such Assignor shall have taken all actions as necessary to maintain the security interests of Collateral Trustee in the Collateral intended to be granted hereby at all times fully perfected and in full force and effect. In addition, to the extent that such Assignor does not have an organizational identification number on the date hereof and later obtains one, such Assignor shall promptly thereafter notify Collateral Trustee of such organizational identification number and shall take all actions as necessary to maintain the security interest of Collateral Trustee in the Collateral intended to be granted hereby fully perfected and in full force and effect.

2.6 Trade Names; Etc. Such Assignor does not have or operate in any jurisdiction under, or in the preceding five years has not had or operated in any jurisdiction under, any trade name, fictitious names or other names except its legal name as specified in Schedule 2 and such other trade or fictitious names as are listed on Schedule 3 hereto for such Assignor.

2.7 Certain Significant Transactions. During the one year period preceding the date of this Agreement, no Person shall have merged or consolidated with or into any Assignor, and no Person shall have liquidated into, or transferred all or substantially all of its assets to, any Assignor, in each case except as described in Schedule 4 hereto. With respect to any transactions so described in Schedule 4 hereto, the respective Assignor shall have furnished such information with respect to the Person (and the assets of the Person and locations thereof) which merged with or into or consolidated with such Assignor, or was liquidated into or transferred all or substantially all of its assets to such Assignor, and no security interest (excluding Permitted Liens) continues perfected on the date hereof with respect to any Person described above (or the assets transferred to the respective Assignor by such Person), including pursuant to Section 9-316(a)(3) of the Code.

2.8 As-Extracted Collateral; Timber-to-be-Cut. On the date hereof, such Assignor does not own, or expect to acquire, any property which constitutes, or would constitute, As-Extracted Collateral or Timber-to-be-Cut. If at any time after the date of this Agreement such Assignor owns, acquires or obtains rights to any As-Extracted Collateral or Timber-to-be-Cut, such Assignor shall furnish Collateral Trustee with prompt written notice thereof (which notice shall describe in reasonable detail the As-Extracted Collateral and/or Timber-to-be-Cut and the locations thereof) and shall take all actions reasonably necessary or desirable to perfect the security interest of Collateral Trustee therein.

2.9 Collateral in the Possession of a Bailee. If any Assignor's Inventory or other Goods are at any time in the possession of a bailee, and the fair market value of such Inventory or Goods in the possession of such bailee exceeds \$250,000, such Assignor shall promptly notify Collateral Trustee in writing thereof and shall use its commercially reasonable efforts to promptly obtain an acknowledgment from such bailee, in form and substance reasonably satisfactory to Collateral Trustee, that the bailee holds such Collateral for the benefit of Collateral Trustee and shall act upon the instructions of Collateral Trustee, without the further consent of such Assignor.

2.10 Consents. No consent, approval, authorization, or other order or other action by, and no notice to or filing with, any Governmental Authority or any other Person is required (a) for the grant of a security interest by such Assignor in and to the Collateral pursuant to this Agreement or for the execution, delivery, or performance of this Agreement by such Assignor, or (b) for the exercise by Collateral Trustee of the voting or other rights provided for in this Agreement with respect to the Investment Property or the remedies in respect of the Collateral pursuant to this Agreement, except as may be required in connection with such disposition of Investment Property by laws affecting the offering and sale of securities generally. No Intellectual Property Contract of any Assignor that is necessary to the conduct of such Assignor's business requires any consent of any other Person in order for such Assignor to grant the security interest granted hereunder in such Assignor's right, title or interest in or to such Intellectual Property Contract.

2.11 Recourse. This Agreement is made with full recourse to each Assignor and pursuant to and upon all the warranties, representations, covenants and agreements on the part of such Assignor contained herein, in the other Parity Lien Documents and in any certificate delivered in writing in connection herewith or therewith.

### ARTICLE III

#### SPECIAL PROVISIONS CONCERNING ACCOUNTS; CONTRACT RIGHTS; INSTRUMENTS; CHATTEL PAPER AND CERTAIN OTHER COLLATERAL

3.1 Additional Representations and Warranties. As of the time when each of its Accounts arises, each Assignor shall be deemed to have represented and warranted that, to such Assignor's knowledge, each such Account, and all records, papers and documents relating thereto (if any) are genuine and what they purport to be, and that all papers and documents (if any) relating thereto (a) will represent the genuine, legal, valid and binding obligation of the Account Debtor evidencing indebtedness unpaid and owed by the respective Account Debtor, (b) will evidence true and valid obligations, enforceable in accordance with their respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, moratorium, reorganization, or similar laws relating to or limiting creditors' rights generally and (c) will be in compliance and will conform in all material respects with all applicable laws.

3.2 Maintenance of Records. Each Assignor will keep and maintain at its own cost and expense accurate records of its Accounts and Contracts, including originals or electronic or other copies of all documentation (including each Contract) with respect thereto, records of all payments received, all credits granted thereon, all merchandise returned and all other material dealings therewith, and such Assignor will make the same available on such Assignor's premises to Collateral Trustee for inspection, at such Assignor's own cost and expense and otherwise in accordance with the Indenture and each applicable Additional Parity Lien Agreement. Upon the occurrence and during the continuance of an Event of Default and at the request of Collateral Trustee, such Assignor shall, at its own cost and expense, deliver to Collateral Trustee or to its representatives copies (and, if the Notes or any other Parity Lien Debt has been accelerated, originals (except where the originals have been delivered to Collateral Trustee's agent, bailee or designee, including the Priority Lien Representative in accordance with the terms of the Collateral Trust Agreement)) of all tangible evidence of its Accounts and Contract Rights (including all documents evidencing the Accounts and all Contracts) and such books and records (copies of which evidence and books and records may be retained by such Assignor). Upon the occurrence and during the continuance of an Event of Default and if Collateral Trustee so directs, such Assignor shall legend, in form and manner reasonably satisfactory to Collateral Trustee, the Accounts and the Contracts, as well as books, records and documents (if any) of such Assignor evidencing or pertaining to such Accounts and Contracts, with an appropriate reference to the fact that such Accounts and Contracts have been assigned to Collateral Trustee and that Collateral Trustee has a security interest therein.

3.3 Direction to Account Debtors; Contracting Parties; etc. Subject to the terms of the Collateral Trust Agreement, upon the occurrence and during the continuance of an Event of Default, if Collateral Trustee so directs any Assignor, such Assignor agrees (a) to cause all payments on account of the Accounts and Contracts to be made directly to the Cash Collateral Account, (b) to notify Account Debtors of any Assignor that the Accounts, General Intangibles, Chattel Paper or Negotiable Collateral of such Assignor have been assigned to Collateral Trustee, for the benefit of the Secured Creditors, or that Collateral Trustee has a security interest therein, and (c) that Collateral Trustee or Collateral Trustee's designee may collect the Accounts, General Intangibles and Negotiable Collateral of any Assignor directly, and any collection costs and expenses shall constitute part of such Assignor's Secured Obligations under the Parity Lien Documents. Without notice to or assent by any Assignor, Collateral Trustee may, upon the occurrence and during the continuance of an Event of Default and subject to the terms and provisions of the Collateral Trust Agreement, apply any or all amounts then in, or thereafter deposited in, the Cash Collateral Account toward the payment of the Secured Obligations in the manner provided in Section 6.10 of the Indenture and as provided in any similar provision under any Additional Parity Lien Agreement.

3.4 Possession of Collateral. In the event that any Collateral, including Proceeds, is evidenced by or consists of Negotiable Collateral, Investment Property, or Chattel Paper, in each case, having an aggregate value or face amount of \$250,000 or more for all such Negotiable Collateral, Investment Property, or Chattel Paper, the Assignors shall promptly (and in any event within two (2) Business Days after receipt thereof), notify Collateral Trustee in writing thereof, and if and to the extent that perfection or priority of Collateral Trustee's Security Interest is dependent on or enhanced by possession, the applicable Assignor, promptly (and in any event within five (5) Business Days) shall execute such other documents and instruments as necessary or, if applicable, endorse and deliver physical possession of such Negotiable Collateral, Investment Property, or Chattel Paper to Collateral Trustee (or its agent, bailee or designee, including the Priority Lien Representative in accordance with the terms of the Collateral Trust Agreement), together with such undated powers (or other relevant document of transfer) endorsed in blank as necessary, and shall do such other acts or things necessary or desirable to perfect and protect Collateral Trustee's Security Interest therein.

3.5 Assignors Remain Liable. Neither Collateral Trustee nor any other Secured Creditor shall have any obligation or liability under any Account (or any agreement giving rise thereto) or Contract by reason of or arising out of this Agreement or the receipt by Collateral Trustee or any other Secured Creditor of any payment relating to such Account or Contract pursuant hereto, nor shall Collateral Trustee or any other Secured Creditor be obligated in any manner to perform any of the obligations of any Assignor under or pursuant to any Account (or any agreement giving rise thereto) or Contract, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by them or as to the sufficiency of any performance by any party under any Account (or any agreement giving rise thereto) or Contract, 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 them or to which they may be entitled at any time or times. Anything herein to the contrary notwithstanding, (a) each of the Assignors shall remain liable under the contracts and agreements included in the Collateral to perform all of the duties and obligations thereunder to the same extent as if this Agreement had not been executed, and (b) the exercise by Collateral Trustee or any Secured Creditor of any of the rights hereunder shall not release any Assignor from any of its duties or obligations under such contracts and agreements included in the Collateral.

3.6 Letter-of-Credit Rights. If the Assignors (or any of them) are or become the beneficiary of letters of credit having a face amount or value of \$250,000 or more in the aggregate, then the applicable Assignor or Assignors shall promptly (and in any event within two (2) Business Days after becoming a beneficiary), notify Collateral Trustee in writing thereof and, promptly (and in any event within five (5) Business Days), pursuant to an agreement in form and substance reasonably satisfactory to Collateral Trustee, (a) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to Collateral Trustee (or its agent, bailee or designee, including the Priority Lien Representative in accordance with the terms of the Collateral Trust Agreement) of such Letter-of-Credit Rights or (b) arrange for Collateral Trustee (or its agent, bailee or designee, including the Priority Lien Representative in accordance with the terms of the Collateral Trust Agreement) to become the transferee beneficiary of such letter of credit, with Collateral Trustee agreeing, in each case, that the Proceeds of any drawing under the letter of credit are to be applied as provided in this Agreement and the Collateral Trust Agreement.

3.7 Commercial Tort Claims. All Commercial Tort Claims of each Assignor in existence on the date of this Agreement are described in Schedule 5 hereto. If the Assignors (or any of them) obtain Commercial Tort Claims having a value, or involving an asserted claim, in the amount of \$250,000 or more in the aggregate for all Commercial Tort Claims, then the applicable Assignor or Assignors shall promptly (and in any event within two (2) Business Days of obtaining such Commercial Tort Claim) notify Collateral Trustee in writing upon incurring or otherwise obtaining such Commercial Tort Claims and, promptly (and in any event within two (2) Business Days), amend Schedule 5 to describe such Commercial Tort Claims in a manner that reasonably identifies such Commercial Tort Claims and which is otherwise reasonably satisfactory to Collateral Trustee, and hereby authorizes the filing of additional financing statements or amendments to existing financing statements describing such Commercial Tort Claims, and agrees to do such other acts or things necessary or desirable to give Collateral Trustee a Second Priority, perfected security interest in any such Commercial Tort Claim.

3.8 Chattel Paper.

(a) Each Assignor shall take all steps reasonably necessary to grant Collateral Trustee control of all Electronic Chattel Paper in accordance with the Code and all “transferable records” as that term is defined in Section 16 of the Uniform Electronic Transaction Act and Section 201 of the federal Electronic Signatures in Global and National Commerce Act as in effect in any relevant jurisdiction, to the extent that the aggregate value or face amount of such Electronic Chattel Paper equals or exceeds \$250,000. Each Assignor will deliver all of its Tangible Chattel Paper to Collateral Trustee (or its agent, bailee or designee, including the Priority Lien Representative in accordance with the terms of the Collateral Trust Agreement).

(b) If any Assignor retains possession of any Chattel Paper or instruments (which retention of possession shall be subject to the extent permitted hereby and by the Parity Lien Documents), such Chattel Paper and instruments shall be marked with the following legend: “This writing and the obligations evidenced or secured hereby are subject to the security interest of U.S. Bank National Association, as Collateral Trustee for the benefit of the Secured Creditors”.

3.9 Government Contracts. Other than Accounts and Chattel Paper the aggregate value of which does not at any one time exceed \$250,000, if any Account or Chattel Paper arises out of a contract or contracts with the United States of America or any department, agency, or instrumentality thereof, Assignors shall promptly (and in any event within two (2) Business Days of the creation thereof) notify Collateral Trustee in writing thereof and, promptly execute any instruments or take any steps reasonably required in order that all moneys due or to become due under such contract or contracts shall be assigned to Collateral Trustee, for the benefit of the Secured Creditors, and shall provide written notice thereof under the Assignment of Claims Act, 31 U.S.C. 3727, or other applicable law.

3.10 Control Agreements.

(a) Each Assignor shall obtain an authenticated Control Agreement (which may include a Blocked Account Agreement) from each bank maintaining a Deposit Account for such Assignor;

(b) Each Assignor shall obtain an authenticated Control Agreement from each issuer of uncertificated securities having an aggregate fair market value in excess of \$250,000, each securities intermediary, or each commodities intermediary issuing or holding any financial assets or commodities to or for any Assignor; and

(c) Each Assignor shall obtain an authenticated Control Agreement with respect to all of such Assignor's Investment Property;

provided, however, that no Assignor shall be required to enter into a Control Agreement with respect to (a) any payroll account so long as such payroll account either (i) is a zero balance account or (ii) does not contain any amounts in excess of payroll due and payable within four (4) Business Days in an aggregate amount not to exceed \$5,000,000, (b) accounts funded solely to pay sales and use tax, and any such funds are so used within two (2) Business Days and (c) any accounts that do not have an average daily balance for the immediately preceding 30-day period in excess of \$100,000 individually or \$1,500,000 in the aggregate for all accounts, as of or after the Issue Date. Notwithstanding the foregoing, each Assignor is not required to deliver any Control Agreements pursuant to this Section 3.10 from Citibank, N.A., Capital One Bank, Mutual Securities, Inc. and U.S. Trust Bank of America Private Wealth Management until, in each case, the date that is 60 days following the date of this Agreement (or such later date as determined by the Priority Lien Representative in its sole discretion).

3.11 Blocked Accounts.

(a) Each Assignor shall (i) establish and maintain cash management services of a type and on terms as are commercially reasonable at one or more of the Blocked Account Banks listed on Schedule 7 (it being understood and agreed that cash management services as of the Issue Date are satisfactory to Collateral Trustee), and shall take reasonable steps to ensure that all of its and its Subsidiaries' Account Debtors forward payment of the amounts owed by them directly to such Blocked Account Bank, and (ii) deposit or cause to be deposited promptly, and in any event no later than the first Business Day after the date of receipt thereof, all of their Collections (including those sent directly by their Account Debtors to an Assignor) into a bank account of such Assignor (each, a "Blocked Account") at one of the Blocked Account Banks.

(b) Each Assignor shall establish and maintain Blocked Account Agreements with Collateral Trustee and the applicable Blocked Account Bank, in form and substance reasonably acceptable to Collateral Trustee. Each such Blocked Account Agreement shall provide, among other things, and in each case in accordance with the terms and provisions of the Collateral Trust Agreement, that (i) the Blocked Account Bank will comply with any instructions originated by Collateral Trustee directing the disposition of the funds in such Blocked Account without further consent by the applicable Assignor, (ii) the Blocked Account Bank waives, subordinates, or agrees not to exercise any rights of setoff or recoupment or any other claim against the applicable Blocked Account other than for payment of its service fees and other charges directly related to the administration of such Blocked Account and for returned checks or other items of payment, and (iii) upon the instruction of Collateral Trustee (an “Activation Instruction”), the Blocked Account Bank will forward by daily sweep all amounts in the applicable Blocked Account to the Trustee’s Account. Collateral Trustee agrees not to issue an Activation Instruction with respect to the Blocked Accounts unless an Event of Default has occurred and is continuing at the time such Activation Instruction is issued and such instruction is otherwise in accordance with the terms and provisions of the Collateral Trust Agreement.

(c) So long as no Default or Event of Default has occurred and is continuing, Issuer may amend Schedule 7 to add or replace a Blocked Account Bank or Blocked Account; provided, however, that prior to the time of the opening of such Blocked Account, the applicable Assignor and such prospective Blocked Account Bank shall have executed and delivered to Collateral Trustee a Blocked Account Agreement.

3.12 Further Actions. Each Assignor will, at its own expense, make, execute, endorse, acknowledge, file and/or deliver to the Collateral Trustee from time to time such vouchers, invoices, schedules, confirmatory assignments, conveyances, financing statements, transfer endorsements, certificates, reports and other assurances or instruments and take such further steps (including any and all actions as may be necessary or required under the Federal Assignment of Claims Act, 31 U.S.C. 3727) relating to its Accounts, Contracts, Instruments and other property or rights covered by the security interest hereby granted, as the Collateral Trustee may reasonably request in order to fully effect the purposes of this Agreement.

#### ARTICLE IV

##### SPECIAL PROVISIONS CONCERNING INTELLECTUAL PROPERTY

4.1 Representations and Warranties. Each Assignor hereby represents and warrants to Collateral Trustee, for the benefit of the Secured Creditors, which representations and warranties shall be true, correct, and complete in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the Issue Date and such representations and warranties shall survive the execution and delivery of this Agreement:

(a) Each Assignor owns, or is licensed, or otherwise possesses legally enforceable rights, to use, sell or license, as applicable, all Material Intellectual Property. Schedule 8(a) sets forth a true, complete and correct list of all Registered Intellectual Property and domain names owned or used by the Assignors and their Subsidiaries (collectively, the “Scheduled Intellectual Property”). Each Assignor has licenses for all Commercial Software used in its business and no Assignor has any obligation to pay fees, royalties and other amounts at any time pursuant to any such license other than in the ordinary course of such Assignor’s business. Each of the domain names listed on Schedule 8(a) is registered with the registrar listed opposite such domain name on Schedule 8(a) and such registration has been fully paid as of the date of closing.

(b) Schedule 8(b) sets forth a complete list of all material Intellectual Property Contracts (excluding Commercial Software and licenses under which any Assignor licenses its products to its customers in the ordinary course of its business). The applicable Assignor has delivered to Collateral Trustee correct and complete copies of all such licenses, sublicenses and agreements (as amended to date). No Assignor is in violation of any such license, sublicense or agreement, which violation could reasonably be expected to have a Material Adverse Effect.

(c) Each Assignor is the sole and exclusive owner of the Registered Intellectual Property (free and clear of any Liens except for Permitted Liens), and, subject to the terms and conditions of the Intellectual Property Contracts, has sole and exclusive rights to the use and distribution therefor or the material covered thereby in connection with the services or products in respect of which such Scheduled Intellectual Property are currently being used, sold, licensed or distributed.

(d) Intentionally omitted.

(e) To the Assignors' knowledge, the Assignors do not now and have not in the past five (5) years infringed or otherwise violated the Intellectual Property rights of any third party, except as set out in Schedule 8(c). To the Assignors' knowledge, no Person is violating any Intellectual Property in any material respect.

(f) The Scheduled Intellectual Property is not subject to any outstanding order, judgment, decree or agreement adversely affecting the Assignors' use thereof or their rights thereto and is subsisting and is, to the knowledge of the Assignors, valid and enforceable, except that Assignors make no representation or warranty as to the validity or enforceability of any trademark in a particular jurisdiction to the extent such trademark is not in continuous use for some or all of the goods and services for which it is registered, and (i) such goods and services are not being sold or provided under such trademark in such jurisdiction, and (ii) no current intent to sell or provide such goods and services under such mark exists. There is no litigation, opposition, cancellation, proceeding, objection or claim pending, asserted or threatened against any Assignor concerning the ownership, validity, registerability, enforceability, infringement or use of, or licensed right to use, any Intellectual Property. To the Assignors' knowledge, no valid basis for any such litigation, opposition, cancellation, proceeding, objection or claim exists, except that any trademark not in use for some or all of the goods and services for which it is registered may be subject to challenge as being unenforceable and/or invalid in a jurisdiction in which such trademark is registered but not in continuous use.

(g) The Registered Intellectual Property has been duly registered with, filed in or issued by, as the case may be, the United States Patent and Trademark Office, the United States Copyright Office or any other relevant Governmental Authority, and such registrations, issuances and applications remain in full force and effect, and are current and unexpired. The Assignors have properly executed and recorded all documents necessary to perfect their title to all Registered Intellectual Property, and have filed all documents and paid all taxes, fees, and other financial obligations required to maintain in force and effect all such items as they have come due.

(h) Each Assignor has taken reasonable measures in accordance with industry standards to protect the confidentiality and value of all Trade Secrets constituting Material Intellectual Property that are owned, used or held by the Assignors, and to the Assignors' knowledge, such Trade Secrets have not been used, disclosed to or discovered by any person except pursuant to valid and appropriate non-disclosure and/or license agreements which have not been breached.

(i) The IT Assets operate and perform in all material respects in accordance with the purpose for which they were acquired, and have not materially malfunctioned or failed within the past three (3) years. To the Assignors' knowledge, no person has gained unauthorized access to the IT Assets. The Assignors have implemented reasonable backup and disaster recovery technology consistent with industry practices.

(j) All employees and contractors of each Assignor who were involved in the creation or development of any Material Intellectual Property for such Assignor have signed agreements containing assignment of Intellectual Property rights to such Assignor and obligations of confidentiality.

#### 4.2 Maintenance.

(a) In the event that any Assignor becomes aware that any of its Material Intellectual Property is being infringed, misappropriated, diluted or otherwise violated by a third party in any manner in a jurisdiction where Assignor is using the mark, such Assignor shall promptly notify Collateral Trustee in writing.

(b) Each Assignor shall have the duty, with respect to Material Intellectual Property, to protect and diligently enforce and defend at such Assignor's expense its Material Intellectual Property, including to (i) sue for infringement, misappropriation, or dilution and file for opposition, interference, and cancellation against conflicting Material Intellectual Property rights of any Person as such Assignor deems appropriate under the circumstances using its reasonable business judgment, (ii) prosecute diligently any trademark application or service mark application that is part of the Trademarks pending as of the date hereof or hereafter until the termination of this Agreement as such Assignor deems appropriate under the circumstances using its reasonable business judgment, (iii) prosecute diligently any patent application that is part of the Patents pending as of the date hereof or hereafter until the termination of this Agreement, and (iv) require all employees, consultants, and contractors of each Assignor who were involved in the creation or development of such Material Intellectual Property to sign agreements containing assignment of Intellectual Property rights and obligations of confidentiality.

(c) With respect to its Material Intellectual Property, such Assignor agrees to preserve and maintain, at its expense, such Material Intellectual Property in full force and effect, including, to the extent that Assignor deems appropriate to do so under the circumstances using its reasonable business judgment, the payment of required fees and taxes, the filing of applications for renewal or extension, affidavits of use, and affidavits of incontestability, and the participation in interference, reexamination, opposition, cancellation, infringement and misappropriation proceedings. Each Assignor shall take reasonable and appropriate steps to preserve and protect each item of the foregoing Material Intellectual Property, including maintaining the quality of any and all products or services used or provided in connection with any of the Trademarks, materially consistent with the quality of the products and services as of the date hereof, and ensuring that all licensed users of any of the Trademarks use such consistent standards of quality.

(d) Each Assignor hereby agrees to take the steps described in this Section 4.2 with respect to all new or acquired Material Intellectual Property to which it or any of its Subsidiaries is now or later becomes entitled that is necessary in the conduct of such Assignor's business.

4.3 Abandonment. Each Assignor further agrees not to abandon any Material Intellectual Property or material Intellectual Property Contract related thereto.

4.4 Enforceability. Each Assignor agrees to notify Collateral Trustee promptly in writing of becoming aware (a) that any item of its Material Intellectual Property may have become abandoned, placed in the public domain, invalid or unenforceable, or (b) of any adverse determination or the institution of any proceeding (including, without limitation, the institution of any proceeding in the United States Patent and Trademark Office or any court but excluding non-final determinations of examiners in the United States Patent and Trademark Office or the United States Copyright Office) regarding any item of Material Intellectual Property. No Assignor shall do or permit any act or knowingly omit to do any act whereby any of its Material Intellectual Property may lapse or become invalid or unenforceable or placed in the public domain.

4.5 Intellectual Property Security Agreements. With respect to its Intellectual Property, each Assignor agrees to execute or otherwise authenticate agreements, in substantially the form set forth in Exhibits A through C hereto, as applicable, or otherwise in form and substance satisfactory to Collateral Trustee (each, an “Intellectual Property Security Agreement”), for recording the security interest granted hereunder in such Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office and any other United States Governmental Authority necessary to perfect the security interest granted hereunder in such U.S. Intellectual Property.

4.6 Additional Intellectual Property.

(a) In order to facilitate filings with the United States Patent and Trademark Office and the United States Copyright Office, each Assignor shall execute and deliver to Collateral Trustee one or more Copyright Security Agreements, Trademark Security Agreements, or Patent Security Agreements to further evidence Collateral Trustee’s Lien on such Assignor’s Patents, Trademarks, or Copyrights, and the General Intangibles of such Assignor relating thereto or represented thereby.

(b) Each Assignor agrees that should it obtain an ownership interest in any item of Intellectual Property that is not on the date hereof a part of the Collateral, or file an application for the registration of any Intellectual Property with the United States Copyright Office, the United States Patent and Trademark Office (except an intent-to-use trademark or service mark application that would otherwise be excluded from the Collateral) or any other relevant Governmental Authority, or should it file a statement of use or amendment to allege use with respect to an intent-to-use trademark or service mark application of such Assignor, (i) the provisions of this Agreement shall automatically apply thereto, and (ii) any such Intellectual Property shall automatically become part of the Collateral subject to the terms and conditions of this Agreement.

(c) On each date of the delivery of financial statements pursuant to Section 4.03(a)(1) and (2) of the Indenture, or as required by any other Additional Parity Lien Agreement, each Assignor shall provide Collateral Trustee with a written report of (i) all Patents and Trademarks that are registered or the subject of pending applications for registrations, and of all Intellectual Property Contracts that are material to the conduct of such Assignor’s business, in each case, which were acquired, registered, or for which applications for registration were filed by any Assignor during the period to which such financial statements relate, and (ii) all intent-to-use Trademark applications for which any statement of use or amendment to allege use were filed by any Assignor during the period to which such financial statements relate. In the case of such registrations and applications therefor, each such Assignor shall file the necessary documents with the appropriate Governmental Authority identifying the applicable Assignor as the owner (or as a co-owner thereof, if such is the case) of such Intellectual Property. In each of the foregoing cases, the applicable Assignor shall promptly cause to be prepared, executed, and delivered to Collateral Trustee supplemental schedules hereto and to the applicable Parity Lien Documents to identify such Patent and Trademark registrations and applications therefor (with the exception of Trademark applications filed on an intent-to-use basis for which no statement of use or amendment to allege use has been filed) and material Intellectual Property Contracts as being subject to the security interests created thereunder, and, subject to, and without limiting the generality of, Section 7.3 of the Collateral Trust Agreement, with respect to such U.S. Patent and U.S. Trademark registrations and applications therefor, shall execute and deliver one or more Patent Security Agreements and/or Trademark Security Agreements to record such security interests with the United States Patent and Trademark Office.

(d) Each Assignor shall promptly file an application with the United States Copyright Office for any Copyright that has not been registered with the United States Copyright Office if such Copyright is necessary in connection with the conduct of such Assignor's business unless in the reasonable business judgment of such Assignor, registration of such Copyright would not be reasonably prudent or commercially reasonable in the operation of such Assignor's business as then-currently conducted. Any expenses incurred in connection with the foregoing shall be borne by the Assignors. Anything to the contrary in this Agreement notwithstanding, in no event shall any Assignor, either itself or through any agent, employee, licensee, or designee, file an application for the registration of any Copyright with the United States Copyright Office or any similar office or agency in another country without giving Collateral Trustee written notice thereof at least ten (10) Business Days prior to such filing and complying with Section 4.6(a). Upon receipt from the United States Copyright Office of notice of registration of any Copyright, each Assignor shall promptly (but in no event later than ten (10) Business Days following such receipt) (i) notify (but without duplication of any notice required by this Section 4.6(d)) Collateral Trustee of such registration by causing to be prepared, executed, and delivered to Collateral Trustee supplemental schedules hereto and to the applicable Parity Lien Documents to identify such Copyright registrations as being subject to the security interests created thereunder, and (ii) execute and deliver one or more Copyright Security Agreements to record such security interests with the United States Copyright Office. If any Assignor acquires from any Person any Copyright registered with the United States Copyright Office or an application to register any Copyright with the United States Copyright Office, such Assignor shall promptly (but in no event later than ten (10) Business Days following such acquisition) (i) notify Collateral Trustee in writing of such acquisition and cause to be prepared, executed, and delivered to Collateral Trustee supplemental schedules hereto and to the applicable Parity Lien Documents to identify such Copyright registrations as being subject to the security interests created thereunder, and (ii) execute and deliver one or more Copyright Security Agreements to record such security interests with the United States Copyright Office. In the case of such Copyright registrations or applications therefor which were acquired by any Assignor, each such Assignor shall promptly (but in no event later than ten (10) Business Days following such acquisition) file the necessary documents with the appropriate Governmental Authority identifying the applicable Assignor as the owner (or as a co-owner thereof, if such is the case) of such Copyrights.

4.7 Duties of Secured Creditors. Assignors acknowledge and agree that the Secured Creditors shall have no duties with respect to any Intellectual Property or Intellectual Property Contracts of any Assignor. Without limiting the generality of this Section 4.7, Assignors acknowledge and agree that no Secured Creditor shall be under any obligation to take any steps necessary to preserve rights in the Collateral consisting of Intellectual Property or Intellectual Property Contracts against any other Person, but any Secured Creditor may do so at its option from and after the occurrence and during the continuance of an Event of Default, and all expenses incurred in connection therewith (including reasonable fees and expenses of attorneys and other professionals) shall be for the sole account of Issuer.

4.8 Confidentiality. Each Assignor shall take reasonable steps to maintain the confidentiality of, and otherwise protect and enforce its rights in, Material Intellectual Property that is a Trade Secret, including, as applicable (a) protecting the secrecy and confidentiality of its Trade Secrets constituting Material Intellectual Property by having and enforcing a policy requiring all current employees, consultants, licensees, vendors and contractors with access to such information to execute appropriate confidentiality agreements; (b) taking actions reasonably necessary to ensure that no such Trade Secret falls into the public domain; and (c) protecting the secrecy and confidentiality of the source code of all material software programs and applications, if any, of which it is the owner or licensee by having and enforcing a policy requiring any licensees (or sub-licensees) of such source code to enter into license agreements with commercially reasonable use and non-disclosure restrictions.

4.9 Additional Intellectual Property Contracts. No Assignor shall enter into any material Intellectual Property Contract to receive any license or rights in any Intellectual Property of any other Person unless such Assignor has used commercially reasonable efforts to permit the assignment of or grant of a security interest in such Intellectual Property Contract (and all rights of Assignor thereunder) to the Collateral Trustee (and any transferees thereof).

4.10 Remedies. If an Event of Default shall occur and be continuing and subject to Article VI and the Collateral Trust Agreement, Collateral Trustee (or its designee) may, at the direction of the Required Secured Creditors, take any or all of the following actions for the duration of such Event of Default and subject to any then-existing third party rights: (a) declare the entire right, title and interest of such Assignor in and to all Intellectual Property, vested in Collateral Trustee for the benefit of the Secured Creditors, in which event such rights, title and interest shall immediately vest, in Collateral Trustee for the benefit of the Secured Creditors, and Collateral Trustee shall be entitled to exercise the power of attorney referred to in Section 9.18 to execute, cause to be acknowledged and notarized and record said absolute assignment with the applicable Governmental Authority; (b) take and use, practice under or sell the Intellectual Property and the right to carry on the business and use the assets of such Assignor in connection with which the Intellectual Property has been used; and (c) direct such Assignor to refrain, in which event such Assignor shall refrain, from using or practicing under the Intellectual Property in any manner whatsoever, directly or indirectly, and such Assignor shall execute such further documents that Collateral Trustee may reasonably request to further confirm this and to transfer ownership of the Intellectual Property to Collateral Trustee.

## ARTICLE V

### PROVISIONS CONCERNING ALL COLLATERAL

5.1 Protection of Collateral Trustee's Security. Except to the extent not otherwise prohibited by the Parity Lien Documents, each Assignor will do nothing to impair the rights of Collateral Trustee in the Collateral. Each Assignor will at all times cause to be maintained insurance, at such Assignor's own expense or the expense of Issuer to the extent and in the manner provided in the Parity Lien Documents. Except to the extent otherwise permitted to be retained by such Assignor or applied by such Assignor pursuant to the terms of the Parity Lien Documents, Collateral Trustee shall, at the time any Proceeds of such insurance are distributed to the Secured Creditors, apply such Proceeds, subject to the Collateral Trust Agreement, in accordance with Section 6.10 of the Indenture and any similar section under any Additional Parity Lien Agreement, if any. Each Assignor assumes all liability and responsibility in connection with the Collateral acquired by it and the liability of such Assignor to pay the Secured Obligations shall in no way be affected or diminished by reason of the fact that such Collateral may be lost, destroyed, stolen, damaged or for any reason whatsoever unavailable to such Assignor.

5.2 Warehouse Receipts Non-Negotiable. To the extent practicable, each Assignor agrees that if any warehouse receipt or receipt in the nature of a warehouse receipt is issued with respect to any of its Inventory, such Assignor shall request that such warehouse receipt or receipt in the nature thereof shall not be "negotiable" (as such term is used in Section 7-104 of the Code as in effect in any relevant jurisdiction or under other relevant law).

5.3 Additional Information. Each Assignor will, at its own expense, from time to time upon the reasonable request of Collateral Trustee, promptly furnish to Collateral Trustee such information with respect to the Collateral (including the identity of the Collateral or such components thereof as may have been reasonably requested by Collateral Trustee in writing, the value and location of such Collateral, etc.) as may be requested by Collateral Trustee. Without limiting the foregoing, each Assignor agrees that it shall promptly furnish to Collateral Trustee such updated Schedules hereto as necessary to reflect the change in Collateral.

5.4 Further Actions. Each Assignor will, at its own expense and upon the reasonable request of Collateral Trustee, make, execute, endorse, acknowledge, file and/or deliver to Collateral Trustee from time to time such lists, descriptions and designations of its Collateral, warehouse receipts, receipts in the nature of warehouse receipts, bills of lading, documents of title, vouchers, invoices, schedules, confirmatory assignments, conveyances, transfer endorsements, certificates, reports and other assurances or instruments and take such further steps relating to the Collateral and other property or rights covered by the security interest hereby granted, which Collateral Trustee reasonably requests to perfect, preserve, protect or enforce its security interest in the Collateral or to enable Collateral Trustee to exercise and enforce its rights and remedies hereunder with respect to any of the Collateral.

5.5 Financing Statements. Each Assignor agrees to deliver to Collateral Trustee such financing statements (including financing statements covering "all assets" or "all personal property" of the Assignor to be filed with the Secretary of State of the State of such Assignor's organization), in form and substance reasonably acceptable to Collateral Trustee, as Collateral Trustee may from time to time reasonably request to establish and maintain a valid, enforceable, perfected security interest in the Collateral as provided herein and the other rights and security contemplated hereby. Each Assignor will pay any applicable filing fees, recordation taxes and related expenses relating to its Collateral. Each Assignor hereby authorizes, but does not obligate, Collateral Trustee at any time and from time to time to file, transmit, or communicate, as applicable, any such financing statements and amendments without the signature of such Assignor where permitted by law (a) describing the Collateral as "all personal property of debtor" or "all assets of debtor" or words of similar effect, (b) describing the Collateral as being of equal or lesser scope or with greater detail, or (c) that contain any information required by part 5 of Article 9 of the Code for the sufficiency of filing office acceptance. Each Assignor also hereby ratifies any and all financing statements or amendments previously filed by Collateral Trustee in any jurisdiction with respect to the Collateral of the Assignors. Each Assignor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement filed in connection with this Agreement without the prior written consent of Collateral Trustee, subject to such Assignor's rights under Section 9-509(d)(2) of the Code.

5.6 Transfers and Other Liens. Assignors shall not (a) sell, assign (by operation of law or otherwise) or otherwise dispose of, or grant any option with respect to, any of the Collateral, except as expressly permitted by the Indenture or by any applicable Additional Parity Lien Agreement, or (b) create or permit to exist any Lien upon or with respect to any of the Collateral of any Assignor, except for Permitted Liens. The inclusion of Proceeds in the Collateral shall not be deemed to constitute Collateral Trustee's consent to any sale or other disposition of any of the Collateral except as expressly permitted in this Agreement or the other Parity Lien Documents.

ARTICLE VI

REMEDIES UPON OCCURRENCE OF AN EVENT OF DEFAULT

6.1 Remedies; Obtaining the Collateral Upon Default. Each Assignor agrees that, upon the occurrence and continuance of an Event of Default, Collateral Trustee, in addition to any rights now or hereafter existing under applicable law and under the other provisions of this Agreement and any other Parity Lien Document, shall have all rights as a secured creditor under the Code, and such additional rights and remedies to which a secured creditor is entitled under the laws in effect in any jurisdiction where any rights and remedies hereunder may be asserted, including without limitation, the following (in each case subject to the terms of the Collateral Trust Agreement):

(a) Collateral Trustee without demand of performance or other demand, advertisement or notice of any kind (except a notice specified below of time and place of public or private sale) to or upon any Assignor or any other Person (all and each of which demands, advertisements and notices are hereby expressly waived to the maximum extent permitted by the Code or any other applicable law), may take immediate possession of all or any portion of the Collateral and (i) require Assignors to, and each Assignor hereby agrees that it will at its own expense and upon request of Collateral Trustee forthwith, assemble all or part of the Collateral as directed by Collateral Trustee and make it available to Collateral Trustee at one or more locations where such Assignor regularly maintains Inventory, and (ii) without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of Collateral Trustee's offices or elsewhere, for cash, on credit, and upon such other terms as Collateral Trustee may deem commercially reasonable. Each Assignor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to the applicable Assignor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification and specifically such notice shall constitute a reasonable "authenticated notification of disposition" within the meaning of Section 9-611 of the Code. Collateral Trustee shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. Collateral Trustee may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Assignor agrees that the internet shall constitute a "place" for purposes of Section 9-610(b) of the Code. Each Assignor agrees that any sale of Collateral to a licensor pursuant to the terms of a license agreement between such licensor and an Assignor is sufficient to constitute a commercially reasonable sale (including as to method, terms, manner, and time) within the meaning of Section 9-610 of the Code.

(b) Collateral Trustee may instruct the obligor or obligors on any agreement, instrument or other obligation (including the Accounts and the Contracts) constituting the Collateral to make any payment required by the terms of such agreement, instrument or other obligation directly to Collateral Trustee and may exercise any and all remedies of such Assignor in respect of such Collateral.

(c) Each Assignor hereby grants to Collateral Trustee a license or other right to use, license and sublicense without liability for royalties or any other charge, all such Assignor's Intellectual Property, including but not limited to, any labels, Patents, Trademarks, trade names, URLs, domain names, industrial designs, Copyrights, and advertising matter, whether owned by any Assignor or with respect to which any Assignor has rights under license, sublicense, or other agreements (including any Intellectual Property Contract), as it pertains to the Collateral and to exercise any other rights and remedies under this Article VI, in preparing for sale, advertising for sale and selling any Collateral, and each Assignor's rights under all licenses and all franchise agreements shall inure to the benefit of Collateral Trustee.

(d) Any cash held by Collateral Trustee as Collateral and all cash proceeds received by Collateral Trustee in respect of any sale of, collection from, or other realization upon all or any part of the Collateral shall be applied against the Secured Obligations in the order set forth in the Collateral Trust Agreement.

(e) Collateral Trustee may, in addition to other rights and remedies provided for herein, in the other Parity Lien Documents, or otherwise available to it under applicable law and without the requirement of notice to or upon any Assignor or any other Person (which notice is hereby expressly waived to the maximum extent permitted by the Code or any other applicable law), (i) with respect to any Assignor's Deposit Accounts, including any Blocked Accounts, in which Collateral Trustee's Liens are perfected by control under Section 9-104 of the Code, instruct the bank maintaining such Deposit Account for the applicable Assignor to pay the balance of such Deposit Account to or for the benefit of Collateral Trustee, and (ii) with respect to any Assignor's Securities Accounts in which Collateral Trustee's Liens are perfected by control under Section 9-106 of the Code, instruct the securities intermediary maintaining such Securities Account for the applicable Assignor to (A) transfer any cash in such Securities Account to or for the benefit of Collateral Trustee, or (B) liquidate any financial assets in such Securities Account that are customarily sold on a recognized market and transfer the cash proceeds thereof to or for the benefit of Collateral Trustee.

(f) Collateral Trustee may take any other action as specified in clauses (a) through (e), inclusive, of Section 9-607 of the Code.

Each Assignor hereby acknowledges that the Secured Obligations arise out of a commercial transaction, and agrees that if an Event of Default shall occur and be continuing, Collateral Trustee shall have the right to an immediate writ of possession without notice of a hearing. Collateral Trustee shall have the right to the appointment of a receiver for the properties and assets of each Assignor, and each Assignor hereby consents to such rights and such appointment and hereby waives any objection such Assignor may have thereto or the right to have a bond or other security posted by Collateral Trustee.

6.2 Remedies; Disposition of the Collateral. To the extent permitted by any such Requirements of Law, Collateral Trustee may bid for and become the purchaser (and may pay all or any portion of the purchase price by crediting Secured Obligations against the purchase price) of the Collateral or any item thereof offered for disposition in accordance with this Section 6.2 without accountability to any Assignor. Each Assignor agrees to do or cause to be done all such other acts and things as may be reasonably necessary to make such disposition or dispositions of all or any portion of the Collateral valid and binding and in compliance with any and all applicable laws, regulations, orders, writs, injunctions, decrees or awards of any and all courts, arbitrators or governmental instrumentalities, domestic or foreign, having jurisdiction over any such sale or sales, all at such Assignor's expense.

6.3 Waiver of Claims. Except as otherwise provided in this Agreement, EACH ASSIGNOR HEREBY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, NOTICE AND JUDICIAL HEARING IN CONNECTION WITH COLLATERAL TRUSTEE'S TAKING POSSESSION OR COLLATERAL TRUSTEE'S DISPOSITION OF ANY OF THE COLLATERAL, INCLUDING ANY AND ALL PRIOR NOTICE AND HEARING FOR ANY PREJUDGMENT REMEDY OR REMEDIES, and each Assignor hereby further waives, to the extent permitted by law:

(a) all damages occasioned by such taking of possession or any such disposition except any damages which are the result of Collateral Trustee's gross negligence or willful misconduct (as determined by a final non-appealable order of a court of competent jurisdiction);

(b) all other requirements as to the time, place and terms of sale or other requirements with respect to the enforcement of Collateral Trustee's rights hereunder; and

(c) all rights of redemption, appraisalment, valuation, stay, extension or moratorium now or hereafter in force under any applicable law in order to prevent or delay the enforcement of this Agreement or the absolute sale of the Collateral or any portion thereof, and each Assignor, for itself and all who may claim under it, insofar as it or they now or hereafter lawfully may, hereby waives the benefit of all such laws.

To the fullest extent permitted by applicable law, any sale of, or the grant of options to purchase, or any other realization upon, any Collateral in accordance with the terms hereof shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of the relevant Assignor therein and thereto, and shall be a perpetual bar both at law and in equity against such Assignor and against any and all Persons claiming or attempting to claim the Collateral so sold, optioned or realized upon, or any part thereof, from, through and under such Assignor.

6.4 Application of Proceeds. All moneys collected by Collateral Trustee upon any sale or other disposition of the Collateral, together with all other moneys received by Collateral Trustee under any Parity Lien Document, shall be applied in accordance with the terms of the Collateral Trust Agreement. In the event the proceeds of Collateral are insufficient to satisfy all of the Secured Obligations in full, each Assignor shall remain jointly and severally liable for any such deficiency.

6.5 Remedies Cumulative. Each and every right, power and remedy hereby specifically given to Collateral Trustee or any of the other Secured Creditors shall be in addition to every other right, power and remedy specifically given to Collateral Trustee or any of the other Secured Creditors under this Agreement or the other Parity Lien Documents now or hereafter existing at law, in equity, by statute or otherwise and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time or simultaneously and as often and in such order as may be deemed expedient by Collateral Trustee. All such rights, powers and remedies shall be cumulative and concurrent and the exercise or the beginning of the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of Collateral Trustee in the exercise of any such right, power or remedy and no renewal or extension of any of the Secured Obligations shall impair any such right, power or remedy or shall be construed to be a waiver of any Default or Event of Default or an acquiescence thereof. No notice to or demand on any Assignor in any case shall entitle it to any other or further notice or demand in similar or other circumstances or constitute a waiver of any of the rights of Collateral Trustee to any other or further action in any circumstances without notice or demand. In the event that Collateral Trustee shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit Collateral Trustee may recover, to the fullest extent permitted by applicable law, reasonable expenses, including reasonable attorneys' fees, and the amounts thereof shall be included in such judgment.

6.6 Discontinuance of Proceedings. In case Collateral Trustee shall have instituted any proceeding to enforce any right, power or remedy under this Agreement by foreclosure, sale, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to Collateral Trustee, then and in every such case the relevant Assignor, Collateral Trustee and each holder of any of the Secured Obligations shall be restored to their former positions and rights hereunder with respect to the Collateral subject to the security interest created under this Agreement, and all rights, remedies and powers of Collateral Trustee shall continue as if no such proceeding had been instituted.

6.7 Marshaling. Collateral Trustee shall not be required to marshal any present or future collateral security (including but not limited to the Collateral) for, or other assurances of payment of, the Secured 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 and remedies hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that it lawfully may, each Assignor hereby agrees that it will not invoke any law relating to the marshaling of collateral which might cause delay in or impede the enforcement of Collateral Trustee's rights and remedies under this Agreement or under any other instrument creating or evidencing any of the Secured Obligations or under which any of the Secured Obligations is outstanding or by which any of the Secured Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, each Assignor hereby irrevocably waives the benefits of all such laws.

6.8 Collateral Trustee's Right to Perform Contracts, Exercise Rights, etc. Upon the occurrence and during the continuance of an Event of Default (but subject to the terms of the Collateral Trust Agreement), Collateral Trustee (or its designee) may proceed to perform any and all of the obligations of any Assignor contained in any contract, lease, or other agreement and exercise any and all rights of any Assignor therein contained as fully as such Assignor itself could.

## ARTICLE VII

### INDEMNITY

7.1 Indemnity. Each Assignor jointly and severally agrees to indemnify, reimburse and hold Collateral Trustee, each other Secured Creditor and their respective successors, assigns, directors, employees, affiliates and agents (hereinafter in this Section 7.1 referred to individually as "Indemnitee" and, collectively as "Indemnitees") harmless from any and all liabilities, obligations, damages, injuries, penalties, claims, demands, actions, suits, judgments and any and all costs, expenses or disbursements (including reasonable attorneys' fees and expenses) (for the purposes of this Section 7.1 the foregoing are collectively called "expenses") of whatsoever kind and nature imposed on, asserted against or incurred by any of the Indemnitees in any way relating to, arising out of or connected with (i) this Agreement, (ii) any other document executed in accordance with the terms hereof, (iii) the administration of this Agreement and the other documents executed in accordance with the terms hereof, (iv) the exercise or enforcement of any of the terms of, or the preservation of any rights under any thereof, (v) the custody, preservation, use or operation of, or, upon an Event of Default, the sale of, collection from, or other realization upon, any of the Collateral in accordance with this Agreement and the other Parity Lien Documents, or (vi) the failure by any Assignor to perform or observe any of the provisions hereof; provided that no Indemnitee shall be indemnified pursuant to this Section 7.1(a) for losses, damages or liabilities to the extent caused by the gross negligence or willful misconduct of such Indemnitee (as determined by a court of competent jurisdiction in a final and non-appealable decision). Each Indemnitee agrees to promptly notify the relevant Assignor of any such assertion of which such Indemnitee has knowledge; provided that no delay by an Indemnitee in providing any such notification to an Assignor shall limit the indemnification obligation hereunder, except to the extent the relevant indemnified obligation to such Indemnitee has increased as a result of such delay.

(b) Without limiting the application of Section 7.1(a) hereof, each Assignor agrees, jointly and severally, to pay or reimburse Collateral Trustee for any and all reasonable fees, costs and expenses of whatever kind or nature incurred in connection with the creation, preservation or protection of Collateral Trustee's Liens on, and security interest in, the Collateral, including all fees and taxes in connection with the recording or filing of instruments and documents in public offices, payment or discharge of any taxes or Liens upon or in respect of the Collateral, premiums for insurance with respect to the Collateral incurred under Section 10.08 of the Indenture and all other fees, costs and expenses in connection with protecting, maintaining or preserving the Collateral and Collateral Trustee's interest therein, whether through judicial proceedings or otherwise, or in defending or prosecuting any actions, suits or proceedings arising out of or relating to the Collateral.

(c) Without limiting the application of Section 7.1(a) or (b) hereof, each Assignor agrees, jointly and severally, to pay, indemnify and hold each Indemnitee harmless from and against any loss, costs, damages and expenses which such Indemnitee may suffer, expend or incur in consequence of or growing out of any misrepresentation by any Assignor in this Agreement, any other Parity Lien Document or in any certificate delivered in compliance with this Agreement or any other Parity Lien Document.

(d) If and to the extent that the obligations of any Assignor under this Section 7.1 are unenforceable for any reason, such Assignor hereby agrees to make the maximum contribution to the payment and satisfaction of such obligations which is permissible under applicable law.

7.2 Indemnity Obligations Secured by Collateral; Survival. Any amounts paid by any Indemnitee as to which such Indemnitee has the right to reimbursement shall constitute Secured Obligations secured by the Collateral. The indemnity obligations of each Assignor contained in this Article VII shall continue in full force and effect and survive the termination of the Parity Lien Documents and the repayment of the Secured Obligations.

## ARTICLE VIII

### DEFINITIONS

The following terms shall have the meanings herein specified. Except as otherwise defined herein, all capitalized terms used herein and defined in the Collateral Trust Agreement shall be used herein as therein defined. Any terms (whether capitalized or lower case) used in this Agreement that are defined in the Code shall be construed and defined as set forth in the Code unless otherwise defined herein or in the Collateral Trust Agreement; provided, however, that to the extent that the Code is used to define any term used herein and if such term is defined differently in different Articles of the Code, the definition of such term contained in Article 9 of the Code shall govern.

“Account” means an “account” (as that term is defined in Article 9 of the Code), and in any event shall include all rights to payment of any monetary obligation, whether or not earned by performance, (a) for property that has been or is to be sold, leased, licensed, assigned or otherwise disposed of, (b) for services rendered or to be rendered, (c) for a policy of insurance issued or to be issued, (d) for a secondary obligation incurred or to be incurred, (e) for energy provided or to be provided, (f) for the use or hire of a vessel under a charter or other contract, (g) arising out of the use of a credit or charge card or information contained on or for use with the card, or (h) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State. Without limiting the foregoing, the term “account” shall include all Health-Care-Insurance Receivables.

“Account Debtor” means an account debtor (as that term is defined in the Code).

“Activation Instruction” has the meaning provided in Section 3.11(b).

“Additional Notes” shall have the meaning provided in the Indenture.

“Additional Parity Lien Agent” shall mean the person appointed to act as trustee, agent or representative for any holder of Additional Parity Lien Obligations pursuant to any Additional Parity Lien Agreement and designated as “Additional Parity Lien Agent” for such holder in an Additional Parity Lien Joinder Agreement delivered to the Collateral Trustee pursuant to Section 9.20, together with its successors and assigns in such capacity.

“Additional Parity Lien Agreement” shall mean an indenture, credit agreement or other agreement under which any Additional Parity Lien Obligations (other than Additional Notes) are incurred and any notes or other instruments representing such Additional Parity Lien Obligations, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Additional Parity Lien Joinder Agreement” shall mean an agreement substantially in the form of Exhibit E.

“Additional Parity Lien Obligations” shall mean Parity Lien Obligations (as defined in the Collateral Trust Agreement) other than the Obligations under the Notes or Additional Notes.

“Agents” means, collectively, the Collateral Trustee, the Trustee and any Additional Parity Lien Agent.

“Agreement” means this Parity Lien Security Agreement, together with all Exhibits and Schedules hereto, as such agreement may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“As-Extracted Collateral” shall mean “as-extracted collateral” as such term is defined in the Code.

“Assignor” has the meaning provided in the first paragraph of this Agreement.

“Blocked Account” has the meaning provided in Section 3.11(a).

“Blocked Account Agreement” means an agreement, in form and substance reasonably satisfactory to Collateral Trustee, among a Blocked Account Bank, one or more Assignors, Collateral Trustee and Priority Lien Representative, as such agreement may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Blocked Account Banks” means such banks or financial institutions selected by Issuer and reasonably acceptable to Collateral Trustee.

“Books” means books and records (including each Assignor’s Records indicating, summarizing, or evidencing such Assignor’s assets (including the Collateral) or liabilities, each Assignor’s Records relating to such Assignor’s business operations or financial condition, and each Assignor’s goods or General Intangibles related to such information).

“Cash Collateral Account” means a deposit account in the name of Collateral Trustee (or its agent, bailee or designee, including the Priority Lien Representative in accordance with the terms of the Collateral Trust Agreement) at a bank or financial institutional selected by Collateral Trustee and approved by Issuer.

“Chattel Paper” means chattel paper (as that term is defined in the Code), and includes tangible chattel paper and electronic chattel paper.

“Code” means the New York Uniform Commercial Code, as in effect from time to time; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, priority, or remedies with respect to Collateral Trustee’s Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “Code” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies.

“Collateral” has the meaning provided in Section 1.1.

“Collateral Trustee” has the meaning provided in the first paragraph of this Agreement.

“Commercial Software” means commercially available, software programs generally available to the public which have been licensed to an Assignor or a Subsidiary of an Assignor pursuant to end-user licenses.

“Commercial Tort Claims” means commercial tort claims (as that term is defined in the Code), and includes those commercial tort claims listed on Schedule 5.

“Contract Rights” means all rights of any Assignor under each Contract, including (a) any and all rights to receive and demand payments under any or all Contracts, (b) any and all rights to receive and compel performance under any or all Contracts and (c) any and all other rights, interests and claims now existing or in the future arising in connection with any or all Contracts.

“Contracts” means all contracts between any Assignor and one or more additional parties (including any partnership agreements, joint venture agreements and limited liability company agreements).

“Control Agreement” means, with respect to a Securities Account or a Deposit Account, an agreement, in form and substance reasonably satisfactory to Collateral Trustee, which effectively gives “control” (as defined in the Code) to Collateral Trustee, for the benefit of the Secured Creditors, in such Securities Account and all investment property contained therein or Deposit Account and all funds contained therein, as the case may be.

“Copyright Security Agreement” means each Parity Lien Copyright Security Agreement executed and delivered by Assignors, or any of them, and Collateral Trustee, in substantially the form of Exhibit C.

“Copyrights” means, with respect to any Person, any and all rights in any works of authorship, including (a) all copyrights and moral rights, (b) all copyright registrations and recordings thereof and all applications in connection therewith, (c) all restorations, renewals and extensions thereof and amendments thereto, (d) all income, license fees, royalties, damages, and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past, present, and future infringements and other violations thereof, (e) the right to sue or otherwise recover for past, present, and future infringements and other violations thereof, and (f) all of such Person’s rights corresponding thereto throughout the world.

“Deposit Account” means a “deposit account” as that term is defined in the Code.

“Discharge of Priority Lien Obligations” has the meaning provided in the Collateral Trust Agreement.

“Electronic Chattel Paper” means electronic chattel paper (as that term is defined in the Code).

“Equipment” means, with respect to any Person, all of such Person’s now owned or hereafter acquired right, title, and interest with respect to equipment (including, without limitation, “equipment” as such term is defined in Article 9 of the Code), machinery, machine tools, motors, furniture, furnishings, fixtures, vehicles (including motor vehicles), tools, parts, goods (other than consumer goods, farm products, or Inventory), wherever located, including all attachments, accessories, accessions, replacements, substitutions, additions, and improvements to any of the foregoing.

“Event of Default” shall mean an “Event of Default” under and as defined in the Indenture or any Additional Parity Lien Agreement.

“Fixtures” means fixtures (as that term is defined in the Code).

“General Intangibles” means general intangibles (as that term is defined in the Code), and includes payment intangibles, contract rights, rights to payment, rights under Hedge Agreements (including the right to receive payment on account of the termination (voluntarily or involuntarily) of any such Hedge Agreements), rights arising under common law, statutes, or regulations, choses or things in action, goodwill, Intellectual Property, Intellectual Property Contracts, purchase orders, customer lists, monies due or recoverable from pension funds, route lists, rights to payment and other rights under any royalty or licensing agreements, including Intellectual Property Contracts, infringement claims, pension plan refunds, pension plan refund claims, insurance premium rebates, tax refunds, and tax refund claims, interests in a partnership or limited liability company which do not constitute a security under Article 8 of the Code, and any other personal property other than Commercial Tort Claims, money, Accounts, Chattel Paper, Deposit Accounts, Goods, Investment Property, Negotiable Collateral, and oil, gas, or other minerals before extraction.

“Goods” means goods (as that term is defined in the Code).

“Governing Documents” means, (a) with respect to any corporation, (i) the articles/certificate of incorporation (or the equivalent organizational documents) of such corporation, (ii) the by-laws (or the equivalent governing documents) of the corporation and (iii) any document setting forth the designation, amount and/or relative rights, limitations and preferences of any class or series of such corporation’s capital stock; (b) with respect to any general partnership, (i) the partnership agreement (or the equivalent organizational documents) of such partnership and (ii) any document setting forth the designation, amount and/or relative rights, limitations and preferences of any of the partnership interests; (c) with respect to any limited partnership, (i) the partnership agreement (or the equivalent organizational documents) of such partnership, (ii) a certificate of limited partnership (or the equivalent organizational documents) and (iii) any document setting forth the designation, amount and/or relative rights, limitations and preferences of any of the partnership interests; (d) with respect to any limited liability company, (i) the certificate of limited liability (or equivalent filings) of such limited liability company, (ii) the operating agreement (or the equivalent organizational documents) of such limited liability company, and (iii) any document setting forth the designation, amount and/or relative rights, limitations and preferences of any of such company’s membership interests; and (e) with respect to any unlimited liability company, (i) the certificate of incorporation (or the equivalent organizational documents) of such unlimited liability company, (ii) the memorandum and articles of association (or the equivalent governing documents) of such unlimited liability company and (iii) any document setting forth the designation, amount and/or relative rights, limitations and preferences of any class or series of such unlimited liability company’s Capital Stock.

“Governmental Authority” means any nation or government, any federal, state, provincial, city, town, municipal, county, local or other political subdivision thereof or thereto and any department, commission, board, bureau, instrumentality, agency, court, tribunal, administrative hearing body, arbitration panel, commission, or other similar dispute-resolving panel or body or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Health-Care-Insurance Receivable” means health-care-insurance receivable (as that term is defined in the Code).

“Hedge Agreement” means a “swap agreement” as that term is defined in Section 101(53B)(A) of the Bankruptcy Code.

“Indemnitee” has the meaning provided in Section 7.1(a).

“Indenture” has the meaning provided in the recitals of this Agreement.

“Instrument” means instrument (as that term is defined in the Code).

“Intellectual Property” means, with respect to any Person, any and all intellectual property rights of any kind, including Patents, Copyrights, Trademarks, Trade Secrets, algorithms, software programs (including source code and object code), processes, product designs, industrial designs, blueprints, drawings, data, specifications, documentations, reports, catalogs, literature, and any other forms of technology or proprietary information of any kind, and (a) all income, license fees, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past, present, and future infringements, misappropriations, dilutions and other violations thereof, (b) the right to sue or otherwise recover for any past, present or future infringements, misappropriations, dilutions and other violations thereof, and (c) all of such Person’s rights corresponding thereto throughout the world.

“Intellectual Property Contracts” means all agreements concerning Intellectual Property to which any of the Assignors or any of their Subsidiaries is a party including, without limitation, agreements granting any Assignor or any of its Subsidiaries rights to use Intellectual Property, franchise agreements, non-assertion agreements, settlement agreements, agreements granting rights to use Scheduled Intellectual Property, trademark coexistence agreements and trademark consent agreements.

“Intellectual Property Security Agreement” has the meaning provided in Section 4.5.

“Inventory” means all Assignors’ and their Subsidiaries’ now owned or hereafter acquired right, title, and interest with respect to inventory (as defined in the Code), including goods held for sale or lease or to be furnished under a contract of service, goods that are leased by an Assignor or any of its Subsidiaries as lessor, goods that are furnished by an Assignor or any of its Subsidiaries under a contract of service, and raw materials, work in process, or materials used or consumed in an Assignor’s or any of its Subsidiaries’ business.

“Investment Property” means investment property (as that term is defined in the Code).

“Issue Date” has the meaning provided in the Indenture.

“Issuer” has the meaning provided in the recitals to this Agreement.

“IT Assets” means the Assignors’ and their Subsidiaries’ computers, computer software, firmware, middleware, servers, workstations, routers, hubs, switches, data communications lines, and all other information technology equipment, and all associated documentation.

“Letter-of-Credit Rights” means letter-of-credit rights (as that term is defined in the Code).

“Location” of any Assignor, means such Assignor’s location as determined pursuant to Section 9-307 of the Code.

“Material Adverse Effect” means a material adverse effect on (a) the condition (financial or otherwise), operations, performance, business or properties of the Assignors, taken as a whole, (b) the rights and remedies of the Holders, holders of any Additional Parity Lien Obligations or Collateral Trustee under the Parity Lien Documents, (c) the ability of Issuer to repay the Obligations or the ability of any other Assignor to perform its respective obligations under the Parity Lien Documents, (d) the legality, validity or enforceability of any Parity Lien Document, or (e) the validity, enforceability or priority of the Liens granted to Collateral Trustee for its benefit and the ratable benefit of the Secured Creditors pursuant to the Security Documents, except to the extent any failure to be perfected arises as a result of Collateral Trustee failing to file continuation statements under the Code or inadvertently filing termination statements under the Code.

“Material Intellectual Property” means any Intellectual Property that is material to the business of any Assignor.

“Negotiable Collateral” means Letter-of-Credit Rights, Instruments, letters of credit, promissory notes, drafts and documents (as each such term is defined in the Code).

“Note Documents” means the “Note Documents” as defined in the Indenture.

“Notes” has the meaning provided in the recitals to this Agreement.

“Patent Security Agreement” means each Parity Lien Patent Security Agreement executed and delivered by Assignors, or any of them, and Collateral Trustee, in substantially the form of Exhibit B.

“Patents” means, with respect to any Person, inventions and discoveries, whether patentable or not, and all patents, registrations, invention disclosures and applications therefor, including (a) all continuations, divisionals, continuations-in-part, re-examinations, extensions, reissues, renewal applications, and renewals thereof and improvements thereon, (b) all income, license fees, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past, present, and future infringements and other violations thereof, (c) the right to sue or otherwise recover for past, present, and future infringements and other violations thereof, and (d) all of such Person’s rights corresponding thereto throughout the world.

“Permits” means all permits, licenses, authorizations, approvals, entitlements and accreditations.

“Permitted Liens” has the meaning provided in the Indenture.

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

“Priority Lien Documents” has the meaning provided in the Collateral Trust Agreement.

“Priority Lien Representative” has the meaning provided in the Collateral Trust Agreement.

“Proceeds” has the meaning provided in Section 1.1(s).

“Records” means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

“Registered Intellectual Property” means all Intellectual Property that has been registered with, filed in or issued by, as the case may be, the United States Patent and Trademark Office, the United States Copyright Office or other Governmental Authority.

“Registered Organization” has the meaning provided in the Code.

“Required Secured Creditors” shall mean the holders of a majority in aggregate outstanding or committed principal amount of (i) the Notes, including Additional Notes and (ii) any Indebtedness constituting Additional Parity Lien Obligations, voting as a single class, in each case, excluding any Notes including Additional Notes or Additional Parity Lien Obligations that are required to be disregarded for voting purposes under the Indenture or the applicable Additional Parity Lien Agreement.

“Requirements of Law” means, as to any Person, the charter and by-laws or other organizational or Governing Documents of such Person, the common law and all federal, state, provincial, local, foreign, multinational or international laws, statutes, codes, treaties, standards, orders, guidelines, ordinance, rule, regulation, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of, any Governmental Authority, in each case, that are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject, including, without limitation, the Securities Act, the Exchange Act, Regulations T, U and X of the Board of the Federal Reserve System or any successor, as amended, the Employee Retirement Income Security Act of 1974, as amended, the Internal Revenue Code of 1983, as amended, the Fair Labor Standards Act and any certificate of occupancy, zoning ordinance, building, environmental or land use requirement or Permit or environmental, labor, employment, occupational safety or health law, rule or regulation.

“Scheduled Intellectual Property” has the meaning provided in Section 4.1(a).

“Second Priority” means that the Security Interest is prior to all Liens other than the Liens granted to Priority Lien Representative and other Permitted Liens.

“Secured Creditors” means each Agent, each Holder (as defined in the Indenture), each Additional Parity Lien Agent, the holders of any Additional Parity Lien Obligations, or any one or more of them.

“Secured Obligations” means and includes, as to any Assignor, all Parity Lien Debt and all other Obligations in respect thereof, provided that obligations in respect of Additional Parity Lien Obligations shall not constitute “Secured Obligations” unless the Additional Parity Lien Agent for the holders of such Additional Parity Lien Obligations shall have executed an Additional Parity Lien Joinder Agreement in the form of Exhibit E hereto and shall have joined the Collateral Trust Agreement in accordance with the terms thereof.

“Securities Account” has the meaning ascribed to such term in Section 8-501(a) of the Code.

“Security Documents” means the Parity Lien Security Documents as defined in the Collateral Trust Agreement.

“Security Interest” has the meaning provided therefor in Section 1.1.

“Software” means software (as that term is defined in the Code).

“Supporting Obligations” means any supporting obligation (as that term is defined in the Code), now or hereafter owned by any Assignor, or in which any Assignor has any rights, and, in any event, shall include, but shall not be limited to all of such Assignor’s rights in any Letter-of-Credit Right or secondary obligation that supports the payment or performance of, and all security for, any Account, Chattel Paper, Document, General Intangible, Instrument or Investment Property.

“Tangible Chattel Paper” means tangible chattel paper (as that term is defined in the Code).

“Timber-to-be-Cut” means timber-to-be-cut (as that term is defined in the Code).

“Trade Secrets” means, with respect to any Person, confidential information, proprietary information, trade secrets, and know-how, including, without limitation, processes, schematics, business methods, formulae, drawings, prototypes, models, designs, recipes, including (a) all income, license fees, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past, present and future misappropriations and other violations thereof, (b) the right to sue or otherwise recover for past, present and future misappropriations and other violations thereof, and (c) all of such Person’s rights corresponding thereto throughout the world.

“Trademark Security Agreement” means each Parity Lien Trademark Security Agreement executed and delivered by Assignor, or any of them, and Collateral Trustee, in substantially the form of Exhibit A.

“Trademarks” means, with respect to any Person, any and all trademarks, trade names, brand names, certification marks, collective marks, d/b/a’s, Internet domain names, logos, symbols, trade dress, assumed names, fictitious names, service marks, and other indicia of origin, including (a) all registrations, applications and renewals thereof, (b) all income, license fees, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past, present and future infringements, dilutions and other violations thereof and injury to the goodwill associated therewith, (c) the right to sue or otherwise recover for past, present and future infringements, dilutions and other violations thereof and injury to the goodwill associated therewith, (d) the goodwill of the business connected with the use of, and symbolized by, the foregoing, and (e) all of such Person’s rights corresponding thereto throughout the world.

“Trustee” has the meaning provided in the recitals to this Agreement.

“U.S. Bank” has the meaning provided in the first paragraph of this Agreement.

## ARTICLE IX

### MISCELLANEOUS

9.1 Notices. Except as otherwise specified herein, all notices and other communications provided for hereunder shall be in writing and shall be mailed, telecopied or delivered in accordance with Section 7.8 of the Collateral Trust Agreement or, with respect to any Additional Parity Lien Agent, at the address set forth in the applicable Additional Parity Lien Joinder Agreement.

9.2 Waiver; Amendment. Except as provided in Sections 9.8 and 9.12, none of the terms and conditions of this Agreement may be amended, modified, supplemented or waved in any manner whatsoever except in accordance with the requirements specified in Section 7.1 of the Collateral Trust Agreement.

9.3 Obligations Absolute. The obligations of each Assignor hereunder shall be absolute and unconditional and shall remain in full force and effect without regard to, and shall not be released, suspended, discharged, terminated or otherwise affected by, any circumstance or occurrence whatsoever, including without limitation: (a) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of such Assignor; (b) any exercise or non-exercise, or any waiver of, any right, remedy, power or privilege under or in respect of this Agreement or any other Parity Lien Document; or (c) any amendment to or modification of any Parity Lien Document or any security for any of the Secured Obligations; whether or not such Assignor shall have notice or knowledge of any of the foregoing.

9.4 Successors and Assigns. This Agreement shall create a continuing security interest in the Collateral and shall (a) remain in full force and effect, subject to release and/or termination as set forth in Section 9.8, until the Secured Obligations have been paid in full in accordance with the provisions of the Indenture and any Additional Parity Lien Agreement, (b) be binding upon each Assignor, its successors and assigns; provided that the Assignors may not assign this Agreement or any rights or duties hereunder without Secured Parties' prior written consent and any prohibited assignment shall be absolutely void *ab initio*, and (c) inure, together with the rights and remedies of Collateral Trustee hereunder, to the benefit of Collateral Trustee, the other Secured Creditors and their respective successors, transferees and assigns. Without limiting the generality of the foregoing clause (c), any Holder or any other holder of any Additional Parity Lien Obligations may, in accordance with the provisions of the Indenture or any Additional Parity Lien Agreement, assign or otherwise transfer all or any portion of its rights and obligations under the Indenture or any Additional Parity Lien Agreement to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Holder herein or otherwise. All agreements, statements, representations and warranties made by each Assignor herein, in any other Parity Lien Document or in any certificate or other instrument delivered by such Assignor or on its behalf under this Agreement shall be considered to have been relied upon by the Secured Creditors and shall survive the execution and delivery of this Agreement and the other Parity Lien Documents regardless of any investigation made by the Secured Creditors or on their behalf.

9.5 Section Headings. The section headings and Table of Contents used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

9.6 GOVERNING LAW; SUBMISSION TO JURISDICTION; VENUE; WAIVER OF JURY TRIAL.

**(a) THIS AGREEMENT AND ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE) SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW RULES THAT WOULD RESULT IN THE APPLICATION OF A DIFFERENT GOVERNING LAW (OTHER THAN ANY MANDATORY PROVISIONS OF THE UCC RELATING TO THE LAW GOVERNING PERFECTION AND THE EFFECT OF PERFECTION OR PRIORITY OF THE SECURITY INTERESTS).**

(b) All judicial proceedings brought against any party hereto arising out of or relating to this Agreement may be brought in any state or federal court of competent jurisdiction in the State, County and City of New York. By executing and delivering this Agreement, each Assignor, for itself and in connection with its properties, irrevocably:

(i) accepts generally and unconditionally the nonexclusive jurisdiction and venue of such courts;

(ii) waives any defense of forum *non conveniens*;

(iii) agrees that service of all process in any such proceeding in any such court may be made by registered or certified mail, return receipt requested, to such party at its address provided in accordance with Section 7.8 of the Collateral Trust Agreement;

(iv) agrees that service as provided in clause (iii) above is sufficient to confer personal jurisdiction over such party in any such proceeding in any such court and otherwise constitutes effective and binding service in every respect; and

(v) agrees that each party hereto retains the right to serve process in any other manner permitted by law or to bring proceedings against any party in the courts of any other jurisdiction.

(c) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER PARITY LIEN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT, BREACH OF DUTY, COMMON LAW, STATUTE OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER PARITY LIEN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. EACH PARTY HERETO FURTHER REPRESENTS AND WARRANTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

9.7 Assignors' Duties. The powers conferred on Collateral Trustee hereunder are solely to protect Collateral Trustee's interest in the Collateral, for the benefit of the Secured Creditors, and shall not impose any duty upon Collateral Trustee to exercise any such powers. Notwithstanding anything herein to the contrary, the Collateral Trustee shall have no obligation to take any action whatsoever absent written instructions from the Required Secured Creditors. Except for the safe custody of any Collateral in its actual possession and the accounting for moneys actually received by it hereunder, Collateral Trustee shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. Collateral Trustee shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in its actual possession if such Collateral is accorded treatment substantially equal to that which Collateral Trustee accords its own property.

9.8 Termination; Release.

(a) Upon payment in full of the Secured Obligations in accordance with the provisions of the Indenture and any Additional Parity Lien Agreement, or otherwise in accordance with Section 10.04 of the Indenture or any substantially similar provision in any Additional Parity Lien Agreement, the Security Interest granted hereby shall terminate as provided under and in accordance with the terms of the Collateral Trust Agreement, and upon such termination all rights to the Collateral shall revert to Assignors or any other Person entitled thereto. At such time, Collateral Trustee will authorize the filing of appropriate termination statements to terminate such Security Interests. No transfer or renewal, extension, assignment, or termination of this Agreement or of the Indenture, any other Parity Lien Document, or any other instrument or document executed and delivered by any Assignor to Collateral Trustee nor any Additional Notes issued by the Issuer to any Holder, nor the taking of further security, nor the retaking or re-delivery of the Collateral to Assignors, or any of them, by Collateral Trustee, nor any other act of the Secured Creditors, or any of them, shall release any Assignor from any obligation, except a release or discharge executed in writing by Collateral Trustee in accordance with the provisions of this Agreement and the Collateral Trust Agreement. Collateral Trustee shall not by any act, delay, omission or otherwise, be deemed to have waived any of its rights or remedies hereunder, unless such waiver is in writing and signed by Collateral Trustee and then only to the extent therein set forth. A waiver by Collateral Trustee of any right or remedy on any occasion shall not be construed as a bar to the exercise of any such right or remedy which Collateral Trustee would otherwise have had on any other occasion.

(b) In the event that any part of the Collateral is sold or otherwise disposed of (to a Person other than an Assignor), in each case in connection with a sale or disposition permitted by the Note Documents and any Additional Parity Lien Agreement, and the proceeds of such sale, disposition (or from such release) or loss are applied in accordance with the terms of the Indenture or such other Note Documents or any Additional Parity Lien Agreement, as the case may be, to the extent required to be so applied, subject to the terms and provisions of the Collateral Trust Agreement, Collateral Trustee, at the request and expense of such Assignor and upon satisfaction of each of the applicable conditions precedent described in Article 4 of the Collateral Trust Agreement, will duly release from the security interest created hereby (and will execute and deliver such documentation, including termination or partial release statements and the like in connection therewith) and assign, transfer and deliver to such Assignor (without recourse and without any representation or warranty) such of the Collateral as is then being (or has been) so sold or otherwise disposed of, or released, or the subject of a total loss or constructive total loss as provided above and as may be in the possession of Collateral Trustee and has not theretofore been released pursuant to this Agreement. Furthermore, upon the release of any Assignor from the Note Guarantee in accordance with the provisions thereof, such Assignor (and the Collateral at such time assigned by the respective Assignor pursuant hereto) shall be released from this Agreement.

(c) At any time that an Assignor desires that Collateral Trustee take any action to acknowledge or give effect to any release of Collateral pursuant to the foregoing Section 9.8(a) or (b), such Assignor shall deliver to Collateral Trustee a certificate signed by an Authorized Officer of such Assignor satisfying the conditions of Section 4.1(b)(1) of the Collateral Trust Agreement and otherwise stating that the release of the respective Collateral is permitted pursuant to such Section 9.8(a) or (b).

(d) Collateral Trustee shall have no liability whatsoever to any other Secured Creditor, any Assignor or any other Person as the result of any release of Collateral by it upon receipt of the officers' certificate described in Section 9.8(c) hereof or which Collateral Trustee in good faith believes to be in accordance with this Section 9.8.

9.9 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by facsimile or other electronic imaging means), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or other electronic transmission (e.g. "pdf" or "tif" format) shall be effective as delivery of a manually executed counterpart hereof.

9.10 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. The parties hereto shall endeavor in good-faith negotiations to replace any invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

9.11 Collateral Trustee and the other Secured Creditors.

(a) Collateral Trustee shall be under no obligation or duty to take any action under, or with respect to, any Parity Lien Document if taking such action (i) would subject Collateral Trustee to a tax in any jurisdiction where it is not then subject to a tax or (ii) would require Collateral Trustee to qualify to do business, or obtain any license, in any jurisdiction where it is not then so qualified or licensed or (iii) would subject Collateral Trustee to *in personam* jurisdiction in any locations where it is not then so subject.

(b) Collateral Trustee may deem and treat any Person identified by Trustee as a Holder under the Indenture for all purposes of the Note Documents and any Person identified by an Additional Priority Agent as the holder of any Additional Priority Lien Obligation for all purposes of the applicable Additional Priority Lien Agreement. Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is a Secured Creditor shall be final and conclusive and binding on any subsequent transferee or assignee of such Secured Creditor.

(c) Collateral Trustee will hold in accordance with this Agreement all items of the Collateral at any time received under this Agreement for the benefit of the Secured Creditors. It is expressly understood and agreed that the obligations of Collateral Trustee as holder of the Collateral and interests therein and with respect to the disposition thereof, and otherwise under this Agreement, are only those expressly set forth in this Agreement, the Collateral Trust Agreement and the other Parity Lien Documents. Collateral Trustee shall act hereunder on the terms and conditions set forth herein and in the Collateral Trust Agreement and the other Parity Lien Documents (including, without limitation, its rights, protections and immunities), the terms of which shall be deemed incorporated herein by reference as fully as if the same were set forth herein in their entirety; provided that if an Event of Default has occurred and is continuing, the Collateral Trustee shall exercise, or refrain from exercising, any remedies provided for herein in accordance with the Collateral Trust Agreement and the written instructions of the Required Secured Creditors.

9.12 Additional Assignors. It is understood and agreed that any Subsidiary of the Issuer that desires to become an Assignor hereunder, or is required to execute a counterpart of this Agreement after the date hereof pursuant to the requirements of the Indenture, any other Note Document or any Additional Parity Lien Agreement, shall become an Assignor hereunder by (a) executing a Joinder Agreement, (b) delivering supplements to Schedules 1 through 8(C), inclusive, hereto as are necessary to cause such Schedules to be complete and accurate with respect to such additional Assignor on such date and (c) taking all actions as specified in this Agreement as would have been taken by such Assignor had it been an original party to this Agreement, in each case, with all documents required above to be delivered to Collateral Trustee and with all documents and actions required above to be taken to the reasonable satisfaction of Collateral Trustee. Such Subsidiary shall become an Assignor hereunder with the same force and effect as if originally named as an Assignor herein. The execution and delivery of any instrument adding an additional Assignor as a party to this Agreement shall not require the consent of any Assignor hereunder. The rights and obligations of each Assignor hereunder shall remain in full force and effect notwithstanding the addition of any new Assignor hereunder.

9.13 Patent, Trademark, Copyright Security Agreements. The provisions of the Copyright Security Agreements, Trademark Security Agreements, and Patent Security Agreements are supplemental to the provisions of this Agreement, and nothing contained in the Copyright Security Agreements, Trademark Security Agreements, or the Patent Security Agreements shall limit any of the rights or remedies of Collateral Trustee hereunder. In the event of any conflict between any provision in this Agreement and a provision in a Copyright Security Agreement, Trademark Security Agreement or Patent Security Agreement, such provision of this Agreement shall control.

9.14 Collateral Trustee. Each reference herein to any right granted to, benefit conferred upon or power exercisable by "Collateral Trustee" shall be a reference to Collateral Trustee, for the benefit of the Secured Creditors. If any Assignor fails to perform any agreement contained herein, Collateral Trustee may itself perform, or cause performance of, such agreement, and the reasonable expenses of Collateral Trustee incurred in connection therewith shall be payable, jointly and severally, by Assignors. Without limiting the generality of the foregoing, each of the rights, privileges and indemnities of the Collateral Trustee in Section 7.12 of the Collateral Trust Agreement are hereby incorporated by reference.

9.15 Interpretation. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed against any Secured Creditor or any Assignor, whether under any rule of construction or otherwise. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

9.16 Merger, Amendments; Etc. THIS AGREEMENT, TOGETHER WITH THE OTHER PARITY LIEN DOCUMENTS, REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN AGREEMENTS BETWEEN THE PARTIES. No waiver of any provision of this Agreement, and no consent to any departure by any Assignor herefrom, shall in any event be effective unless the same shall be in writing and signed by Collateral Trustee, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No amendment of any provision of this Agreement shall be effective unless the same shall be in writing and signed by Collateral Trustee and each Assignor to which such amendment applies.

9.17 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise, (a) any definition of or reference in this Agreement to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import in this Agreement, shall be construed to refer to this Agreement or such other Parity Lien Document, as the case may be, in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any right or interest in or to assets and properties of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible. All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference.

9.18 Power of Attorney. Each Assignor hereby irrevocably designates, makes, constitutes and appoints Collateral Trustee (and all Persons designated by Collateral Trustee) as such Assignor’s true and lawful attorney (and agent-in-fact), with full authority in the place and stead of such Assignor and in the name of such Assignor or otherwise, at such time as an Event of Default has occurred and is continuing, but in each case subject to the terms of the Collateral Trust Agreement, to take any action and to execute any instrument which Collateral Trustee may reasonably deem necessary or advisable (but without any obligation to do so) to accomplish the purposes of this Agreement, including, without limitation:

(a) receive, indorse, and collect any drafts or other instruments, documents, Negotiable Collateral, Chattel Paper, freight bill, bill of lading or similar document relating to the Collateral (including, without limitation, any items of payment or proceeds relating to any Collateral) and shall deposit such item of payment into a concentration account and credit the amount thereof (in accordance with the provisions of the Indenture and any Additional Parity Lien Agreement);

(b) sell or assign any Collateral, and settle any legal proceedings brought to collect any Collateral, in each case, upon such terms, for such amounts, and at such time or times as Collateral Trustee deems advisable, subject to the provisions of any Parity Document applicable thereto and to standards of commercial reasonableness;

(c) receive and open all mail addressed to such Assignor and to notify postal authorities to change the address for the delivery of mail to such Assignor to that of Collateral Trustee;

(d) prepare, file and sign such Assignor’s name to any notice of Lien, assignment, or satisfaction of Lien or similar document, which in each case is sent to Account Debtors of such Assignor or any of its Subsidiaries in connection with any portion of the Collateral;

(e) to the extent permitted by such Assignor’s license agreements, use the information recorded on or contained in any data processing equipment, computer hardware and software relating to the accounts receivable, Inventory, Equipment and any other Collateral;

(f) make and adjust claims under policies of casualty, property, boiler and machinery, business interruption insurance and other similar policies of insurance with respect to the Collateral (but excluding policies of liability or worker's compensation insurance) involving amounts greater than \$50,000;

(g) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in connection with the Accounts or any other Collateral of such Assignor;

(h) to file any claims or take any action or institute any proceedings which Collateral Trustee may deem necessary or desirable for the collection of any of the Collateral of such Assignor or otherwise to enforce the rights of Collateral Trustee with respect to any of the Collateral;

(i) to repair, alter, or supply goods, if any, necessary to fulfill in whole or in part the purchase order of any Person obligated to such Assignor in respect of any Account of such Assignor;

(j) to use any Intellectual Property or Intellectual Property Contracts of such Assignor in preparing for sale, advertising for sale, or selling Inventory or other Collateral and to collect any amounts due under Accounts, contracts or Negotiable Collateral of such Assignor;

(k) to execute any document which may be required by the United States Patent and Trademark Office, United States Copyright Office or any other Governmental Authority in order to effect an absolute assignment of all right, title and interest in or to any Intellectual Property of the Credit Parties, and record the same at the appropriate filing offices; and

(l) to bring suit in its own name, on behalf of the Secured Creditors, to enforce the Intellectual Property and Intellectual Property Contracts (it being understood and agreed that if Collateral Trustee shall commence any such suit, the appropriate Assignor shall, at the request of Collateral Trustee, do any and all lawful acts and execute any and all proper documents reasonably required by Collateral Trustee in aid of such enforcement).

To the extent permitted by law, each Assignor hereby ratifies all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until this Agreement is terminated.

9.19 Collateral Trust Agreement. REFERENCE IS MADE TO THE COLLATERAL TRUST AGREEMENT. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE LIEN AND SECURITY INTEREST GRANTED TO THE COLLATERAL TRUSTEE, FOR THE BENEFIT OF THE SECURED CREDITORS, PURSUANT TO THIS AGREEMENT AND THE EXERCISE OF ANY RIGHT OR REMEDY BY THE COLLATERAL TRUSTEE AND THE OTHER SECURED CREDITORS HEREUNDER ARE SUBJECT TO THE PROVISIONS OF THE COLLATERAL TRUST AGREEMENT. IN THE EVENT OF ANY CONFLICT OR INCONSISTENCY BETWEEN THE PROVISIONS OF THE COLLATERAL TRUST AGREEMENT AND THE PROVISIONS OF THIS AGREEMENT OR THE OTHER PARITY LIEN DOCUMENTS, THE PROVISIONS OF THE COLLATERAL TRUST AGREEMENT, INCLUDING BUT NOT LIMITED TO SECTION 7.3(a) THEREOF, SHALL CONTROL.

9.20 Additional Parity Lien Obligations. On or after the Issue Date, the Issuer may from time to time designate additional obligations as Additional Parity Lien Obligations by delivering to the Collateral Trustee, the Trustee and each Additional Parity Lien Agent (if any) (a) an Officer's Certificate (i) identifying the obligations so designated and the aggregate principal amount or face amount thereof, stating that such obligations are designated as "Additional Parity Lien Obligations" for purposes hereof, (ii) representing that such designation complies with the terms of the Indenture and each then extant Additional Parity Lien Agreement, and (iii) specifying the name and address of the Additional Parity Lien Agent for such obligations (if other than the Trustee); (b) except in the case of Additional Notes, a fully executed Additional Parity Lien Joinder Agreement (in the form attached as Exhibit E); (c) an Opinion of Counsel to the effect that the designation of such obligations as "Additional Parity Lien Obligations" does not violate the terms of the Indenture or any then extant Additional Parity Lien Agreement, subject to the qualifications specified therein; and (d) any documentation required by (and otherwise complying with the terms and conditions of) the Collateral Trust Agreement in order to become Parity Lien Obligations thereunder.

9.21 Incorporation by Reference.

(a) In connection with its execution and acting hereunder, the Collateral Trustee is entitled to all rights, privileges, benefits, protections, immunities and indemnities provided to it under the Indenture.

(b) By accepting the benefits of this Agreement and the other Security Documents, each Secured Creditor agrees that it is bound by the terms of the Collateral Trust Agreement applicable to such Secured Creditor.

9.22 Concerning the Collateral Trustee. Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed by the parties hereto that this Agreement has been signed by U.S. Bank National Association, not in its individual capacity or personally but solely in its capacity as the Collateral Trustee, in the exercise of the powers and authority conferred and vested in it under the Indenture and the Collateral Trust Agreement. In entering into this Agreement, the Collateral Trustee shall be entitled to the benefit of every provision of the Indenture, the Collateral Trust Agreement and any Security Document relating to the rights, exculpations or conduct of, affecting the liability of or otherwise affording protection to, the "Collateral Trustee" thereunder.

**[Remainder of this page intentionally left blank; signature page follows]**

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

NATHAN'S FAMOUS, INC.,  
a Delaware corporation

By: /s/Ronald G. DeVos  
Name: Ronald G. DeVos  
Title: Chief Financial Officer

NATHAN'S FAMOUS OPERATING CORP.  
NATHAN'S FAMOUS SYSTEMS, INC.  
NATHAN'S FAMOUS SERVICES, INC.  
NATHAN'S FAMOUS OF TIMES SQUARE, INC.  
NATHAN'S FAMOUS OF NEW JERSEY, INC.  
NATHAN'S FAMOUS OF FARMINGDALE, INC.  
NAMASIL REALTY CORP.  
NATHAN'S FAMOUS OF LYNBROOK, INC.  
NF TREACHERS CORP.  
NATHAN'S FAMOUS OF CENTRAL PARK AVENUE, INC.  
NATHAN'S FAMOUS SYSTEMS OF RUSSIA, INC.

By: /s/Ronald G. DeVos  
Name: Ronald G. DeVos  
Title: Chief Financial Officer

PARITY LIEN TRADEMARK SECURITY AGREEMENT

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Accepted and agreed to:

U.S. Bank National Association, as Collateral  
Trustee

By: Joshua A. Hahn  
Name: Joshua A. Hahn  
Title: Vice President

PARITY LIEN TRADEMARK SECURITY AGREEMENT

## CERTIFICATION

I, Eric Gatoff, certify that:

1. I have reviewed this quarterly report on Form 10-Q for the quarter ended December 24, 2017 of Nathan's Famous, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 2, 2018

/s/ Eric Gatoff  
Eric Gatoff  
Chief Executive Officer  
(Principal Executive Officer)

## CERTIFICATION

I, Ronald G. DeVos, certify that:

1. I have reviewed this quarterly report on Form 10-Q for the quarter ended December 24, 2017 of Nathan's Famous, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 2, 2018

/s/ Ronald G. DeVos  
Ronald G. DeVos  
Chief Financial Officer  
(Principal Financial Officer and  
Principle Accounting Officer)

CERTIFICATION PURSUANT TO

18 U.S.C. SECTION 1350

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Eric Gatoff, Chief Executive Officer of Nathan's Famous, Inc., certify that:

The quarterly report on Form 10-Q of Nathan's Famous, Inc. for the period ended December 24, 2017 fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934; and

The information contained in such report fairly presents, in all material respects, the financial condition and results of operations of Nathan's Famous, Inc.

/s/ Eric Gatoff  
Eric Gatoff  
Chief Executive Officer  
(Principal Executive Officer)  
Date: February 2, 2018

A signed original of this written statement required by Section 906 has been provided to Nathan's Famous, Inc. and will be retained by Nathan's Famous, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

CERTIFICATION PURSUANT TO

18 U.S.C. SECTION 1350

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Ronald G. DeVos, Chief Financial Officer of Nathan's Famous, Inc., certify that:

The quarterly report on Form 10-Q of Nathan's Famous, Inc. for the period ended December 24, 2017 fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934; and

The information contained in such report fairly presents, in all material respects, the financial condition and results of operations of Nathan's Famous, Inc.

/s/ Ronald G. DeVos

Ronald G. DeVos

Chief Financial Officer

(Principal Financial Officer and

Principal Accounting Officer)

Date: February 2, 2018

A signed original of this written statement required by Section 906 has been provided to Nathan's Famous, Inc. and will be retained by Nathan's Famous, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.