

---

---

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

---

**FORM 8-K**

---

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported) April 24, 2012**

---

**Carrols Restaurant Group, Inc.**

(Exact name of registrant as specified in its charter)

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

**001-33174**  
(Commission  
File Number)

**16-1287774**  
(I.R.S. Employer  
Identification No.)

**968 James Street, Syracuse, New York**  
(Address of principal executive offices)

**13203**  
(Zip Code)

**Registrant's telephone number, including area code (315) 424-0513**

**N/A**  
(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13a-4(c))
- 
-

---

**ITEM 1.01. ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT.**

On April 24, 2012, Carrols Restaurant Group, Inc. (the “Company”), Carrols Corporation (“Carrols”), a wholly-owned subsidiary of the Company, and Fiesta Restaurant Group, Inc. (“Fiesta Restaurant Group”), a wholly-owned subsidiary of Carrols, entered into a Separation and Distribution Agreement, a Tax Matters Agreement, an Employee Matters Agreement and a Transition Services Agreement in connection with the anticipated spin-off (the “Spin-Off”) of Fiesta Restaurant Group by the Company. It is anticipated that the Spin-Off will be effectuated through a pro rata stock dividend of all of the outstanding shares of the common stock of Fiesta Restaurant Group by the Company to its stockholders (the “Distribution”).

**Separation and Distribution Agreement**

The Separation and Distribution Agreement (the “Separation Agreement”) dated as of April 24, 2012 among the Company, Carrols, Carrols LLC (“Carrols LLC”), a wholly-owned subsidiary of Carrols (solely with respect to indemnification) and Fiesta Restaurant Group provides a framework for the relationship between the Company, Carrols and Fiesta Restaurant Group following the Spin-Off, requires cooperation between the parties to fulfill the terms of the Spin-Off and specifies the terms and conditions of the Spin-Off. The Separation Agreement provides that, except as otherwise provided in such agreement, Fiesta Restaurant Group will assume all of the liabilities and perform all of the obligations arising under or relating to the operation of the Pollo Tropical and Taco Cabana businesses whether incurred before or after the Spin-Off. The Separation Agreement also contains certain mutual releases of liability and cross indemnification provisions customary for this type of transaction.

*The Distribution*

Among other things, the Separation Agreement required the parties to cause Fiesta Restaurant Group’s Form 10 Registration Statement, File No. 001-35373 (the “Form 10 Registration Statement”), which registers Fiesta Restaurant Group’s common stock under the Securities Exchange Act of 1934 to become effective, the Information Statement (the “Information Statement”), which was an exhibit to the Form 10 Registration Statement, to the Company’s stockholders, take any necessary action under state securities laws and list Fiesta Restaurant Group’s common stock on The NASDAQ Global Market. Fiesta Restaurant Group’s common stock has been approved for listing on The NASDAQ Global Select Market.

On April 19, 2012, Fiesta Restaurant Group effected a 23,161.822 for one stock split of its common stock to ensure that a sufficient number of shares of Fiesta Restaurant Group common stock are available for the Distribution. On or prior to May 7, 2012 (the “Distribution Date”), Fiesta Restaurant Group will issue to the Company, and the Company will deliver to the distribution agent, a sufficient number of shares of Fiesta Restaurant Group’s common stock for distribution to the Company’s stockholders on the Distribution Date. On the Distribution Date, the record holders of the Company’s common stock as of April, 26, 2012 (the “Record Date”) will be entitled to receive one share of Fiesta Restaurant Group common stock for every one share of the Company’s common stock held by such holder.

---

#### *Additional Covenants*

Carrols currently is a guarantor under 66 of Fiesta Restaurant Group's Pollo Tropical and Taco Cabana restaurant property leases and the primary lessee on five of Fiesta Restaurant Group's Pollo Tropical restaurant property leases. After completion of the Spin-Off, it is anticipated that Carrols will remain as a guarantor under 37 of such Pollo Tropical and Taco Cabana restaurant property leases and the primary lessee on five of Fiesta Restaurant Group's Pollo Tropical restaurant property leases. The Separation Agreement provides that the parties will cooperate and use their commercially reasonable efforts to obtain the release of such guarantees. Unless and until any such guarantees are released, Fiesta Restaurant has agreed to indemnify Carrols for any losses or liabilities or expenses that it may incur arising from or in connection with any such lease guarantees.

Carrols is currently a lessee of five Pollo Tropical restaurants. The Separation Agreement provides that the parties will cooperate and use their commercially reasonable efforts to cause Fiesta Restaurant Group to enter into a new master lease or individual leases with the lessor with respect to the Pollo Tropical restaurants where Carrols is currently a lessee. The Separation Agreement provides that until such new master lease or such individual leases are entered into, (i) Carrols will perform its obligations under the master lease for the five Pollo Tropical restaurants where it is a lessee and (ii) the parties will cooperate and use their commercially reasonable efforts to enter into with the lessor a non disturbance agreement or similar agreement which shall provide that Fiesta Restaurant Group or one of its subsidiaries shall become the lessee under such master lease with respect to such Pollo Tropical restaurants and perform the obligations of Carrols under such master lease in the event of a breach or default by Carrols.

Fiesta Restaurant, on the one hand, and the Company and Carrols, on the other hand, will provide each other with information (including, without limitation, corporate books and records) reasonably needed to comply with reporting, disclosure or filing requirements of governmental authorities; for use in judicial, regulatory, administrative and other proceedings or to satisfy audit, accounting, claims, regulatory litigation or similar requirements (other than claims or allegations that one party has against the other); to comply with obligations under the Separation Agreement and ancillary agreements; or other significant business purposes as mutually determined in good faith by the parties. Fiesta Restaurant Group, and the Company and Carrols, will also provide further assurance to the other of execution and delivery of such other documentation as necessary or desirable to effect the purposes of the Separation Agreement.

Fiesta Restaurant Group, on the one hand, and the Company and Carrols, on the other hand, have agreed to release each other and each other's respective directors, officers, members, managing members, agents and employees from all liabilities existing or arising from any acts or events occurring or failing to occur on or before the Distribution Date. These releases are subject to certain exceptions, including claims arising under the Separation Agreement and the ancillary agreements; any specified liabilities; any liability assumed by a party pursuant to the Separation Agreement; and liability for claims of third parties for which indemnification or contribution is available under the Separation Agreement.

Each of the Company and Carrols, on the one hand, and Fiesta Restaurant Group, on the other hand, have agreed to indemnify the other party and the other party's respective affiliates, successors and assigns, stockholders, directors, officers, members, managing members, agents and employees against liabilities arising out of or resulting from the failure of the indemnifying party to perform or discharge liabilities for which it is responsible under the Separation Agreement; the business of such party; any liability contemplated to be assumed or retained by such party; any breach or failure to perform by such party of its obligations under the Separation Agreement or ancillary agreements; or any untrue statement or alleged untrue statement of a material fact or omission or alleged omission to state a material fact required to be stated or necessary to make the statements not misleading of such party in the registration statements or information statements filed with the Securities and Exchange Commission. The amount of each party's indemnification obligations are subject to reduction by any insurance proceeds received by the party being indemnified. The Separation Agreement also specifies procedures with respect to claims subject to indemnification and related matters.

Subject to customary exceptions, the parties have agreed to hold in strict confidence and not to disclose without the other party's written consent, the confidential information of the other party. Each party will have sole authority to determine whether to assert or waive attorney-client, work product or other privileges with respect to its own information.

The Separation Agreement provides for (i) "tail" insurance and the rights of the parties to report claims for occurrences prior to the Distribution and set forth procedures for the administration of insured claims and (ii) continuing indemnification provided for Fiesta Restaurant Group's officers, directors and employees under the Company's amended and restated certificate of incorporation and amended and restated by-laws, as amended, to the same extent as such persons were previously indemnified prior to the Spin-Off for acts and omissions occurring at or prior to the Distribution Date and rights to advancement of expenses relating thereto.

For a period of two years following the Distribution Date, the parties have agreed not to solicit, recruit or hire any person who is employed by the other party immediately after the Distribution Date or was employed by the other party at any time during the six month period prior to the Distribution Date.

#### *Dispute Resolution*

The dispute resolution procedures set forth in the Separation Agreement apply to all disputes, controversies and claims arising out of the Separation Agreement, the ancillary agreements, the transactions that any of these agreements contemplate and the parties' commercial or economic relationship relating to the Separation Agreement or any ancillary agreement except as provided in the Separation Agreement.

Either party may commence the dispute resolution process by notice to the other party. The dispute notice, and the required written response of the other party, will set forth the position of the respective parties and a summary of their arguments. The parties will then attempt in good faith to resolve the dispute by negotiation between executives of each party who have authority to settle the dispute.

If for any reason the dispute is not resolved through mediation within 90 days of delivery of the dispute notice, then the dispute will be submitted to binding arbitration under the auspices of JAMS.

The parties are not required to negotiate a dispute before seeking relief from an arbitrator regarding a breach of any obligation of confidentiality or any claim where interim relief is sought to prevent serious and irreparable injury. However, the parties are required to make a good faith effort to negotiate the dispute while the arbitration proceeding is pending.

#### *Termination*

The Separation Agreement and any of the ancillary agreements may be terminated at any time prior to the Distribution Date by and in the sole discretion of the Company, without Fiesta Restaurant Group's approval. In the event of such termination, neither party will have any liability of any kind to the other party.

The foregoing description does not purport to be complete and is qualified in its entirety by reference to the Separation Agreement, which is attached hereto as Exhibit 10.1 and is incorporated by reference herein.

#### **Tax Matters Agreement**

The Tax Matters Agreement (the "Tax Matters Agreement") dated as of April 24, 2012 among the Company, Carrols, Carrols LLC (solely with respect to indemnification) and Fiesta Restaurant Group (1) governs the allocation of the tax assets and liabilities between Fiesta Restaurant Group and the Company and Carrols, (2) provides for certain restrictions and indemnities in connection with the tax treatment of the Spin-Off and (3) addresses certain other tax related matters, including, without limitation, those relating to (a) the obligations of the Company and Carrols and Fiesta Restaurant Group with respect to the preparation or filing of tax returns for all periods, and (b) the control of any income tax audits and any indemnities with respect thereto. The Tax Matters Agreement provides that if Fiesta Restaurant Group takes any actions after the Company's distribution of Fiesta Restaurant Group's shares in the Spin-Off that result in or cause the Distribution to be taxable to the Company, Fiesta Restaurant Group will be responsible under the Tax Matters Agreement for any resulting taxes imposed on Fiesta Restaurant Group or on the Company or Carrols. Further, the Tax Matters Agreement provides that Fiesta Restaurant Group will be responsible for 50% of the losses and taxes of the Company and its affiliates resulting from the Spin-Off not attributable to any such action of Fiesta Restaurant Group or an equivalent action by the Company.

The foregoing description does not purport to be complete and is qualified in its entirety by reference to the Tax Matters Agreement, which is attached hereto as Exhibit 10.2 and is incorporated by reference herein.

---

## Employee Matters Agreement

The Employee Matters Agreement (the “Employee Matters Agreement”) dated as of April 24, 2012 among the Company, Carrols, Carrols LLC (solely with respect to indemnification) and Fiesta Restaurant Group provides for the transition of employee benefits arrangements and allocates responsibility for certain employee benefits matters on and after the Distribution Date, including, without limitation, the treatment of the Company’s existing welfare benefit plans, savings and retirement plans, equity-based plan and deferred compensation plan, and Fiesta Restaurant Group’s establishment of new plans.

The Employee Matters Agreement generally provides for the following:

On or prior to the Distribution Date, to the extent not previously transferred, certain officers and employees of the Company or Carrols that are expected to be employed primarily in Fiesta Restaurant Group’s business will be transferred to Fiesta Restaurant Group. Except as provided in the Employee Matters Agreement, Carrols will retain as of the Distribution Date all liabilities under the Carrols benefit plans.

Fiesta Restaurant Group employees who participated in an existing benefit plan of the Company or Carrols will transfer participation to a comparable plan that Fiesta Restaurant Group will establish as contemplated by the Employee Matters Agreement.

Fiesta Restaurant Group will provide employees of Carrols who become Fiesta Restaurant Group employees with credit for all purposes, including eligibility, vesting, determination of benefit levels and benefit accruals, under any of Fiesta Restaurant Group’s benefit programs, policies and plans that Fiesta Restaurant establishes to the same extent as was recognized by Carrols. Fiesta Restaurant Group will also credit these employees with the amount of accrued but unused vacation time and other time-off benefits.

### *Treatment of Carrols Restaurant Group Stock Based Awards*

Employees of the Company, Carrols and its subsidiaries have been eligible to participate in the Company’s 2006 Stock Incentive Plan, as amended (the “Carrols Plan”). Under the Carrols Plan, the Company’s Compensation Committee has granted certain stock-based awards, including shares of restricted common stock of the Company and stock options to purchase common stock of the Company to employees and other eligible participants. The outstanding stock-based awards held by employees and other eligible participants of the Company, Fiesta Restaurant Group and its subsidiaries in connection with the Spin-Off were treated as set forth below. Pursuant to the Employee Matters Agreement, the Company continues to maintain the Carrols Plan after the completion of the Spin-Off, and Fiesta Restaurant Group has established a separate stock incentive plan.

### Stock Options

In connection with the Spin-Off and in accordance with the Carrols Plan, all outstanding vested stock options under the Carrols Plan were converted on March 5, 2012 into shares of the Company’s common stock using a conversion formula to preserve the intrinsic value of each option to the holder. As part of the Spin-Off, holders who received shares of the Company’s common stock upon the conversion of vested stock options under the Carrols Plan will receive a

distribution of one share of common stock of Fiesta Restaurant Group for one share of the Company's common stock on the Distribution Date. On March 5, 2012, the Company issued 666,090 shares of its common stock upon the conversion of outstanding vested stock options under the Carrols Plan, and therefore, an additional 666,090 shares of Fiesta Restaurant Group common stock will be issued and distributed on the Distribution Date.

In connection with the Spin-Off and in accordance with the Carrols Plan, all outstanding unvested stock options under the Carrols Plan were converted on March 5, 2012 into restricted shares of the Company's common stock using a conversion formula to preserve the intrinsic value of each option to the holder. The time period of the restrictions on transferability of the restricted shares of the Company's common stock issued upon the conversion of unvested stock options under the Carrols Plan equal the remaining vesting period of such unvested stock options, and such restricted shares continue to be governed by the terms of the Carrols Plan. As part of the Spin-Off, holders who received restricted shares of the Company's common stock upon the conversion of unvested stock options under the Carrols Plan will receive a distribution of one restricted share of common stock of Fiesta Restaurant Group for one restricted share of the Company's common stock on the Distribution Date subject to the same terms and conditions applicable to the restricted shares of the Company's common stock, including, but not limited to, the time period remaining on the restrictions on transfer and forfeiture provisions. Following the Distribution Date, (a) employees of Fiesta Restaurant Group and other eligible participants under the Carrols Plan will continue to hold restricted shares of the Company's common stock subject to the terms of the Carrols Plan and (b) employees of the Company and other eligible participants under the Carrols Plan will continue to hold the restricted shares of Fiesta Restaurant Group common stock which will be received on the Distribution Date subject to the terms of the Carrols Plan. On March 5, 2012, the Company issued 288,435 restricted shares of its common stock upon the conversion of unvested stock options under the Carrols Plan, and therefore, 288,435 restricted shares of Fiesta Restaurant Group common stock will be issued and distributed on the Distribution Date.

#### Restricted Stock

In connection with the Spin-Off and in accordance with the Carrols Plan, on the Distribution Date persons who hold shares of the Company's restricted common stock issued under the Carrols Plan will receive restricted shares of Fiesta Restaurant Group common stock subject to the same terms and conditions applicable to the restricted shares of the Company's common stock, including, but not limited to, the time period remaining on the restrictions on transfer and forfeiture provisions. The restricted shares of Fiesta Restaurant Group common stock to be received on the Distribution Date will continue to be governed by the terms of the Carrols Plan. Each holder of restricted shares of the Company's common stock will receive a distribution of one share of restricted common stock of Fiesta Restaurant Group for each one share of the Company's restricted common stock held by such holder on the Record Date. Following the Distribution Date, (a) employees of Fiesta Restaurant Group and other eligible participants under the Carrols Plan will continue to hold restricted shares of the Company's common stock subject to the terms of the Carrols Plan and (b) employees of the Company and other eligible participants under the Carrols Plan will continue to hold the restricted shares of Fiesta Restaurant Group common stock which will be received on the Distribution Date subject to the terms of the Carrols

Plan. On the Distribution Date, 434,400 restricted shares of the Company's common stock issued under the Carrols Plan, which includes the 288,435 restricted shares of the Company's common stock issued upon the conversion of unvested stock options under the Carrols Plan, are expected to be outstanding, and therefore, 434,400 restricted shares of Fiesta Restaurant Group common stock will be issued and distributed on the Distribution Date.

The Employee Matters Agreement also addresses certain other matters, such as responsibility for COBRA coverage, compensation-related tax deductions and customary indemnification.

The foregoing description does not purport to be complete and is qualified in its entirety by reference to the Employee Matters Agreement, which is attached hereto as Exhibit 10.3 and is incorporated by reference herein.

#### **Transition Services Agreement**

Under the Transition Services Agreement (the "Transition Services Agreement") dated as of April 24, 2012 among the Company, Carrols, Fiesta Restaurant Group and Carrols LLC (solely with respect to indemnification), the Company and Carrols have agreed to provide certain support services (including accounting, tax accounting, treasury management, internal audit, financial reporting and analysis, human resources, and employee benefits management, information systems, restaurant systems support, legal, property management and insurance and risk management services) to Fiesta Restaurant Group, and Fiesta Restaurant Group has agreed to provide certain limited management services (including certain legal services) to the Company and Carrols.

The Transition Services Agreement establishes a baseline charge for each category or component of services to be provided and/or pro-rates the overall cost of such category or categories of services between Fiesta Restaurant Group and the Company and its subsidiaries. The price to be charged for each service will be based on the allocated cost of providing such service.

The Transition Services Agreement will be effective upon the Spin-Off and it will continue for a minimum term of three years, provided that Fiesta Restaurant Group may extend the term of the Transition Services Agreement by one additional year upon 90 days prior written notice to the Company and Carrols, provided further that Fiesta Restaurant Group may terminate the Transition Services Agreement with respect to any service provided thereunder at any time and from time to time upon 90 days prior written notice to the Company and Carrols.

Under the Transition Services agreement, the parties will exercise at least the same degree of care as it has historically exercised in performing the services including at least with the same level of quality, responsiveness and timeliness and utilizing individuals of such experience, training and skill.

The Transition Services agreement provides that each party will maintain, books and records in reasonable and customary detail pertaining to the provision of services. Each party will have the right to review such records.



Under the Transition Services Agreement, each party has agreed to reasonably cooperate with the other in carrying out the provisions of the Transition Services Agreement, including, but not limited to, exchanging information, providing electronic systems used in connection with the services, using commercially reasonable efforts to obtain all consents, licenses, sublicenses or approvals necessary to permit each party to perform its obligations under the Transition Services Agreement. In contemplation of termination of any services, each party has agreed with the other to cooperate in transitioning such services.

The Transition Services Agreement also provides that, subject to customary exception, each party has agreed to take all reasonable measures to maintain the confidentiality of confidential information and disclose such information only to its employees with a need to know such information. In addition, each party's confidential information supplied or developed by such party will remain the sole and exclusive property of such party.

Each party will indemnify the other from all liabilities (i) relating to a breach of the agreement or (ii) (1) incurred by a party or its affiliates or (2) of third parties unrelated to a party or its affiliates, in the case of (1) and (2) caused by the gross negligence or willful misconduct of any employee of an indemnifying party or its affiliates in connection with such party's performance under the Transition Services Agreement, except to the extent that any such liabilities are caused by the indemnified party. The procedures with respect to claims subject to indemnification will be governed by the Separation Agreement.

The parties have agreed to use their respective reasonable best efforts to resolve expeditiously any disputes between them with respect to the matters covered by the agreement. In the event that the parties are unable to resolve a dispute in the manner and within the time periods specified in the Transition Services Agreement, the dispute will be resolved in accordance with the arbitration procedures set forth in the Separation Agreement.

The foregoing description does not purport to be complete and is qualified in its entirety by reference to the Transition Services Agreement, which is attached hereto as Exhibit 10.4 and is incorporated by reference herein.

**ITEM 8.01. OTHER EVENTS.**

On April 25, 2012, the Company issued a press release announcing that (i) its Board of Directors has given final approval of the Spin-Off of Fiesta Restaurant Group by the Company, (ii) the Record Date of the Distribution in connection with the Spin-Off will be April 26, 2012, and (iii) the Distribution Date for the Spin-Off will be May 7, 2012. The entire text of the press release is attached hereto as Exhibit 99.1 and is incorporated by reference herein.

---

**ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS.**

(d) Exhibits

- 10.1 Separation and Distribution Agreement dated as of April 24, 2012 among Carrols Restaurant Group, Inc., Carrols Corporation, Carrols LLC and Fiesta Restaurant Group, Inc.
- 10.2 Tax Matters Agreement dated as of April 24, 2012 among Carrols Restaurant Group, Inc., Carrols Corporation, Carrols LLC and Fiesta Restaurant Group, Inc.
- 10.3 Employee Matters Agreement dated as of April 24, 2012 among Carrols Restaurant Group, Inc., Carrols Corporation, Carrols LLC and Fiesta Restaurant Group, Inc.
- 10.4 Transition Services Agreement dated as of April 24, 2012 among Carrols Restaurant Group, Inc., Carrols Corporation, Carrols LLC and Fiesta Restaurant Group, Inc.
- 99.1 Carrols Restaurant Group, Inc. Press Release dated April 25, 2012

---

### 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 hereunto duly authorized.

CARROLS RESTAURANT GROUP, INC.

Date: April 26, 2012

By: /s/ Joseph A. Zirkman

Name: Joseph A. Zirkman

Title: Vice President, General Counsel and Secretary

SEPARATION AND DISTRIBUTION AGREEMENT

among

CARROLS RESTAURANT GROUP, INC.

CARROLS CORPORATION

and

FIESTA RESTAURANT GROUP, INC.

dated as of

April 24, 2012

|                                                                                 |    |
|---------------------------------------------------------------------------------|----|
| ARTICLE I DEFINITIONS                                                           | 5  |
| ARTICLE II SEPARATION                                                           | 13 |
| 2.1 The Separation                                                              | 13 |
| 2.2 Charter and Bylaws                                                          | 13 |
| 2.3 No Representations or Warranties                                            | 13 |
| 2.4 Agreements                                                                  | 14 |
| 2.5 Transfers Not Effected Prior to the Distribution Date                       | 14 |
| ARTICLE III MUTUAL RELEASES; INDEMNIFICATION                                    | 15 |
| 3.1 Release of Pre-Closing Claims                                               | 15 |
| 3.2 Termination of Intercompany Agreements                                      | 17 |
| 3.3 Indemnification by Fiesta Restaurant Group                                  | 17 |
| 3.4 Indemnification by CRG, Carrols and Carrols LLC                             | 18 |
| 3.5 Indemnification Obligations Net of Insurance Proceeds                       | 18 |
| 3.6 Indemnification Obligations Net of Taxes                                    | 19 |
| 3.7 Procedures for Indemnification of Third Party Claims                        | 20 |
| 3.8 Direct Claims; Additional Matters                                           | 22 |
| 3.9 Contribution                                                                | 23 |
| 3.10 Remedies Cumulative                                                        | 23 |
| 3.11 Survival of Indemnities                                                    | 23 |
| ARTICLE IV THE DISTRIBUTION                                                     | 23 |
| 4.1 Delivery to Distribution Agent                                              | 23 |
| 4.2 Mechanics of the Distribution                                               | 23 |
| 4.3 Conditions Precedent to Consummation of the Separation and the Distribution | 24 |
| ARTICLE V ARBITRATION; DISPUTE RESOLUTION                                       | 25 |
| 5.1 Agreement to Resolve Disputes                                               | 25 |
| 5.2 Dispute Resolution                                                          | 25 |
| 5.3 Arbitration                                                                 | 26 |
| 5.4 Continuity of Service and Performance                                       | 26 |
| ARTICLE VI COVENANTS AND OTHER MATTERS                                          | 27 |
| 6.1 Other Agreement                                                             | 27 |
| 6.2 Further Instruments                                                         | 27 |
| 6.3 Provision of Books and Records                                              | 28 |
| 6.4 Agreement For Exchange of Information                                       | 28 |
| 6.5 Preservation of Legal Privileges                                            | 30 |
| 6.6 Payment of Expenses                                                         | 32 |
| 6.7 Surety Instruments                                                          | 32 |
| 6.8 Guarantee Obligations; Master Lease                                         | 32 |
| 6.9 Nonsolicitation of Employees                                                | 34 |
| 6.10 Confidentiality                                                            | 34 |

|                           |                                                                |    |
|---------------------------|----------------------------------------------------------------|----|
| 6.11                      | Indemnification of Directors, Officers and Employees           | 35 |
| 6.12                      | Other Insurance                                                | 37 |
| 6.13                      | Tax Matters                                                    | 38 |
| 6.14                      | Employee Matters                                               | 38 |
| 6.15                      | Transition Services                                            | 38 |
| 6.16                      | Voting Agreement                                               | 38 |
| ARTICLE VII MISCELLANEOUS |                                                                | 39 |
| 7.1                       | Limitation of Liability                                        | 39 |
| 7.2                       | Entire Agreement                                               | 39 |
| 7.3                       | Governing Law                                                  | 39 |
| 7.4                       | Termination                                                    | 39 |
| 7.5                       | Notices                                                        | 40 |
| 7.6                       | Counterparts                                                   | 40 |
| 7.7                       | Binding Effect; Assignment                                     | 40 |
| 7.8                       | No Third Party Beneficiaries                                   | 40 |
| 7.9                       | Severability                                                   | 40 |
| 7.10                      | Failure or Indulgence Not Waiver; Remedies Cumulative          | 41 |
| 7.11                      | Amendment                                                      | 41 |
| 7.12                      | Authority                                                      | 41 |
| 7.13                      | Construction                                                   | 41 |
| 7.14                      | Interpretation                                                 | 42 |
| 7.15                      | Conflicting Agreements                                         | 42 |
| SCHEDULES                 |                                                                |    |
| Schedule A                | Assumed Contracts                                              |    |
| Schedule B                | Lease Guarantee                                                |    |
| Schedule C                | Intercompany Accounts, Related Liabilities and Other Materials |    |
| Schedule D                | Master Lease                                                   |    |

## SEPARATION AND DISTRIBUTION AGREEMENT

This SEPARATION AND DISTRIBUTION AGREEMENT (this “Agreement”) is entered into as of April 24, 2012, between Carrols Restaurant Group, Inc., a Delaware corporation (“CRG”), Carrols Corporation, a Delaware corporation (“Carrols”) and Fiesta Restaurant Group, Inc., a Delaware corporation (“Fiesta Restaurant Group”). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in Article I hereof.

### RECITALS

WHEREAS, Fiesta Restaurant Group is a wholly owned Subsidiary of Carrols;

WHEREAS, Carrols is a wholly owned Subsidiary of CRG;

WHEREAS, the Board of Directors of CRG has determined that it would be appropriate and desirable for CRG to separate the Fiesta Business from the CRG Business;

WHEREAS, Fiesta Restaurant Group was incorporated in April 2011 in contemplation of the separation of the Fiesta Business from the CRG Business;

WHEREAS, in contemplation of the separation of the Fiesta Business from the CRG Business, Carrols contributed all of the outstanding shares of Pollo Operations, Inc., a Florida corporation, Pollo Franchise Inc., a Florida corporation, and Taco Cabana, Inc., a Delaware corporation, to Fiesta Restaurant Group in consideration of Fiesta Restaurant Group issuing 1,000 shares of its common stock, par value \$.01 per share (“Fiesta Common Stock”) to Carrols;

WHEREAS, in contemplation of the separation of the Fiesta Business from the CRG Business, on August 5, 2011, (i) Fiesta Restaurant Group (A) issued \$200 million of 8.875% Senior Secured Second Lien Notes due 2016 (the “Fiesta Notes”) pursuant to an Indenture (the “Fiesta Indenture”) among Fiesta Restaurant Group, certain subsidiaries of Fiesta Restaurant Group (the “Fiesta Guarantors”) and The Bank of New York Mellon Trust Company, N.A. and (B) entered into a Credit Agreement, as amended (the “Fiesta Credit Facility”), among Fiesta Restaurant Group, the Fiesta Guarantors, Wells Fargo Bank, National Association, as administrative agent and the lenders party thereto, consisting of a revolving credit facility that provides for aggregate borrowings of up to \$25 million, and (ii) Carrols LLC, a Delaware limited liability company (“Carrols LLC”) and a wholly owned Subsidiary of Carrols, entered into a Credit Agreement, as amended (the “Carrols LLC Facility”), among Carrols LLC, Wells Fargo Bank, National Association, as administrative agent, M&T Bank, as syndication agent, Regions Bank, as documentation agent and the lenders party thereto, consisting of aggregate term loan borrowings of \$65 million and a revolving credit facility that provides for aggregate borrowings of up to \$20 million;

WHEREAS, Carrols LLC used net proceeds from the term loan borrowings of \$65 million under the Carrols LLC Facility and Fiesta Restaurant Group used net proceeds from the sale of the Fiesta Notes to distribute funds to Carrols to enable Carrols to (i) repay all outstanding indebtedness under Carrols prior senior credit facility, (ii) repurchase its outstanding 9% Senior Subordinated Notes due 2013 pursuant to a cash tender offer and related consent solicitation and to pay the related tender premium and redeem any such notes not tendered and repurchased in the tender offer and (iii) pay related fees and expenses;

WHEREAS, in furtherance of the separation of the Fiesta Business from the CRG Business, the Board of Directors of CRG has determined that, following the Separation, it would be appropriate and desirable for CRG to distribute (the “Distribution”) on a pro rata basis to the holders of outstanding shares of common stock, par value \$.01 per share, of CRG (“CRG Common Stock”) all of the outstanding shares of Fiesta Common Stock owned by CRG as of the Distribution Date;

WHEREAS, for U.S. federal income tax purposes, (i) certain transactions to be effected in connection with the Separation are intended to qualify as reorganizations under Sections 355 and/or 368 or as liquidations under Section 332(a) of the U.S. Internal Revenue Code of 1986, as amended (the “Code”), respectively, and (ii) the Distribution is intended to qualify as a transaction under Section 355 of the Code; and

WHEREAS, the parties intend in this Agreement, including the Schedules hereto, to set forth the principal arrangements between them regarding the Separation and the Distribution.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth below, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

**1.1 Action.** “Action” means any demand, claim, action, suit, countersuit, arbitration, litigation, inquiry, proceeding or investigation by or before any Governmental Authority or any arbitration or mediation tribunal or authority.

**1.2 Affiliates.** An “Affiliate” of any Person means another Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For this purpose “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Person controlled, whether through ownership of voting securities, by contract or otherwise.

**1.3 Agreement.** “Agreement” has the meaning set forth in the preamble.

**1.4 Ancillary Agreements.** “Ancillary Agreements” has the meaning set forth in Section 2.4.

**1.5 Appropriate Member of the CRG Group.** “Appropriate Member of the CRG Group” has the meaning set forth in Section 3.4.

**1.6 Appropriate Member of the Fiesta Group.** “Appropriate Member of the Fiesta Group” has the meaning set forth in Section 3.3.

**1.7 Asset.** “Asset” means all rights, properties or assets, whether real, personal or mixed, tangible or intangible, of any kind, nature and description, whether accrued, contingent or otherwise, and wheresoever situated and whether or not carried or reflected, or required to be carried or reflected, on the books of any Person.



1.8 **Assumed Contracts.** “Assumed Contracts” means the Contracts set forth on Schedule A.

1.9 **Business Day.** “Business Day” means a day other than a Saturday, a Sunday or a day on which banking institutions located in the State of New York are authorized or obligated by law or executive order to close.

1.10 **Carrols.** “Carrols” has the meaning set forth in the preamble.

1.11 **Carrols LLC.** “Carrols LLC” has the meaning set forth in the recitals.

1.12 **Carrols LLC Credit Facility.** “Carrols LLC Credit Facility” has the meaning set forth in the recitals.

1.13 **Code.** “Code” has the meaning set forth in the recitals.

1.14 **Confidential Information.** “Confidential Information” has the meaning set forth in Section 6.10(a).

1.15 **Consent.** “Consent” means any consents, waivers or approvals from, or notification requirements to, any third parties, including any notices or reports to be submitted to, filings to be made with, or consents, registrations, approvals, permits or authorizations to be obtained from, any Governmental Authority.

1.16 **Contract.** “Contract” means any contract, agreement, lease, license, sales order, purchase order, instrument or other commitment or arrangement that is binding on any Person or entity or any part of its property under applicable Law.

1.17 **Costs.** “Costs” has the meaning set forth in Section 6.11.

1.18 **CRG.** “CRG” has the meaning set forth in the preamble.

1.19 **CRG Assets.** “CRG Assets” means all Assets of CRG and its Subsidiaries other than the Fiesta Assets.

1.20 **CRG Books and Records.** “CRG Books and Records” means the corporate books and records (whether in hard copy or electronic format and including all minute books, corporate charters and by-laws or comparable constitutive documents, records of share issuances and related corporate records) of the CRG Group and such other books and records, including operating, accounting, engineering, corporate department and any other written record, whether in hard copy or electronic format, to the extent they relate to the CRG Business, the CRG Assets, or the CRG Liabilities, excluding the Fiesta Books and Records.

Notwithstanding the foregoing, “CRG Books and Records” shall not include any Tax Returns or other information, documents or materials relating to Taxes. For the avoidance of doubt, no Information meeting the definition of “CRG Books and Records” shall be deemed not to be CRG Books and Records because it is provided by any member of the CRG Group to any member of the Fiesta Group after the Distribution Date in connection with the provision of services by any member of the Fiesta

Group pursuant to the Transition Services Agreement, or because it is generated, maintained or held in connection with the provision of services by any member of the Fiesta Group pursuant to the Transition Services Agreement after the Distribution Date. Furthermore, Fiesta Restaurant Group, CRG and Carrols each acknowledge and agree that the CRG Books and Records described in the immediately preceding sentence shall belong solely to CRG or Carrols and shall not be considered Privileged Information of Fiesta Restaurant Group.

1.21 **CRG Business.** “CRG Business” means any business and operations relating to the Burger King business conducted by CRG and its Subsidiaries.

1.22 **CRG Common Stock.** “CRG Common Stock” has the meaning set forth in the recitals.

1.23 **CRG Group.** “CRG Group” means CRG and its Subsidiaries, other than the Fiesta Group.

1.24 **CRG Guarantees.** “CRG Guarantees” has the meaning set forth in Section 6.8(a).

1.25 **CRG Indemnities.** “CRG Indemnities” has the meaning set forth in Section 3.3.

1.26 **CRG Liabilities.** “CRG Liabilities” means all Liabilities of CRG Group, whether arising prior to, on or after the Distribution Date, other than the Fiesta Liabilities.

1.27 **CRG Policies.** “CRG Policies” has the meaning set forth in Section 6.12(b).

1.28 **D&O Insurance.** “D&O Insurance” has the meaning set forth in Section 6.11.

1.29 **Dispute.** “Dispute” has the meaning set forth in Section 5.2.

1.30 **Dispute Notice.** “Dispute Notice” has the meaning set forth in Section 5.2.

1.31 **Distribution.** “Distribution” has the meaning set forth in the recitals.

1.32 **Distribution Agent.** “Distribution Agent” has the meaning set forth in Section 4.1.

1.33 **Distribution Date.** “Distribution Date” means the date on which the Distribution Time occurs.

1.34 **Distribution Time.** “Distribution Time” means the time at which the Distribution is effective.

1.35 **Employee Matters Agreement.** “Employee Matters Agreement” means the Employee Matters Agreement dated the date hereof among CRG and Fiesta Restaurant Group.

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

1.37 **Fiesta Assets.** “Fiesta Assets” means only the following Assets of Fiesta and its Subsidiaries:

(i) all of the outstanding equity interests of the members of the Fiesta Group (other than the Fiesta Common Stock);

(ii) all Assets reflected on the Fiesta Balance Sheet or any schedule thereto that are owned by Fiesta Restaurant Group or any of its Subsidiaries as of the Distribution Time;

(iii) all Assets transferred to the Fiesta Group prior to the Distribution Date, including the Prior Transfers;

(iv) any Assets assigned to the Fiesta Group pursuant to this Agreement or any Ancillary Agreement; and

(v) except as otherwise provided in this Agreement or one or more Ancillary Agreements, all other Assets held by a member of the CRG Group or Fiesta Group and used primarily in or that primarily relate to the Fiesta Business on or prior to the Distribution Time.

For the avoidance of doubt, if any Assets described in clauses (i), (iii) or (v) above are disposed of or lost prior to the Distribution Time, neither such Assets nor the net proceeds therefrom shall constitute Fiesta Assets.

**1.38 Fiesta Balance Sheet.** “Fiesta Balance Sheet” means the audited balance sheet of the Fiesta Group at January 1, 2012 included in the Information Statement.

**1.39 Fiesta Books and Records.** “Fiesta Books and Records” means the corporate books and records (whether in hard copy or electronic format and including all minute books, corporate charters and by-laws or comparable constitutive documents, records of share issuances and related corporate records) of any member of the Fiesta Group and such other books and records, including operating, accounting, engineering, corporate department and any other written record, whether in hard copy or electronic format, to the extent they primarily relate to the Fiesta Business, the Fiesta Assets or the Fiesta Liabilities, including, without limitation, all such books and records primarily relating to Persons who are employees of the Fiesta Group as of the Distribution Time, the purchase of materials, supplies and services, dealings with customers of the Fiesta Business, and all files relating to any Action the liability with respect to which is a Fiesta Liability, except that no portion of the books and records of the CRG Group containing minutes of meetings of any board of directors of any of them shall be included.

Notwithstanding the foregoing, “Fiesta Books and Records” shall not include any Tax Returns or other information, documents or materials relating to Taxes. For the avoidance of doubt, no Information meeting the definition of “Fiesta Books and Records” shall be deemed not to be Fiesta Books and Records because it is provided by any member of the Fiesta Group to any member of the CRG Group after the Distribution Date in connection with the provision of services by any member of the CRG Group pursuant to the Transition Services Agreement, or because it is generated, maintained or held in connection with the provision of services by any member of the CRG Group pursuant to the Transition Services Agreement after the Distribution Date. Furthermore, Fiesta Restaurant Group, CRG and Carrols each acknowledge and agree that the Fiesta Books and Records described in the immediately preceding sentence shall belong solely to Fiesta Restaurant Group and shall not be considered Privileged Information of the CRG Group.

**1.40 Fiesta Business.** “Fiesta Business” means the business and operations relating to the Pollo Tropical and Taco Cabana businesses conducted by Fiesta Restaurant Group and its Subsidiaries as of the Distribution Time, as such business and operations are described in the Information Statement.

1.41 **Fiesta Common Stock.** “Fiesta Common Stock” has the meaning set forth in the recitals.

1.42 **Fiesta Credit Facility.** “Fiesta Credit Facility” has the meaning set forth in the recitals.

1.43 **Fiesta Group.** “Fiesta Group” means Fiesta Restaurant Group and its Subsidiaries and each Person that becomes a Subsidiary of Fiesta Restaurant Group after the Distribution Date.

1.44 **Fiesta Guarantees.** “Fiesta Guarantees” has the meaning set forth in Section 6.8(b).

1.45 **Fiesta Guarantors.** “Fiesta Guarantors” has the meaning set forth in the recitals.

1.46 **Fiesta Indemnitees.** “Fiesta Indemnitees” has the meaning set forth in Section 3.4.

1.47 **Fiesta Indenture.** “Fiesta Indenture” has the meaning set forth in the recitals.

1.48 **Fiesta Liabilities.** “Fiesta Liabilities” shall mean (without duplication):

(i) all Liabilities of the entities comprising the Fiesta Group, whether arising prior to, on or after the Distribution Date;

(ii) except as otherwise expressly provided in this Agreement or one or more Ancillary Agreements, all Liabilities reflected on the Fiesta Balance Sheet or any schedule thereto that remain outstanding as of the Distribution Time;

(iii) all Liabilities delegated or allocated to, or assumed by, Fiesta Restaurant Group or any member of the Fiesta Group under this Agreement or any Ancillary Agreement, including Liabilities related to Assumed Contracts;

(iv) except as otherwise expressly provided in this Agreement or one or more Ancillary Agreements, all Liabilities arising out of the Fiesta Assets or the operation of the Fiesta Business, whether prior to, on or after the Distribution Date;

1.49 **Fiesta Notes.** “Fiesta Notes” has the meaning set forth in the recitals.

1.50 **Fiesta Restaurant Group.** “Fiesta Restaurant Group” has the meaning set forth in the preamble.

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

1.52 **Good Faith Judgment.** “Good Faith Judgment” shall mean the good faith judgment of the Chief Executive Officer of CRG or Fiesta Restaurant Group, as the case may be, in office as of the Distribution Date, or his respective successor.

1.53 **Governmental Authority.** “Governmental Authority” shall mean any U.S. federal, state, local or non-U.S. court, government, department, commission, board, bureau, agency, official or other regulatory, administrative or governmental authority.

1.54 **Group.** “Group” means either of the CRG Group or the Fiesta Group, as the context requires.

**1.55 Indebtedness.** “Indebtedness” of any Person means (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to Assets purchased by such Person, (e) all obligations of such Person issued or assumed as the deferred purchase price of property or services, (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, lien, pledge, or other encumbrance on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (g) all guarantees by such Person of Indebtedness of others, (h) all capital lease obligations of such Person, and (i) all securities or other similar instruments convertible or exchangeable into any of the foregoing, but excluding daily cash overdrafts associated with routine cash operations.

**1.56 Indemnifiable Loss.** “Indemnifiable Loss” has the meaning set forth in Section 3.5(a).

**1.57 Indemnified Persons.** “Indemnified Persons” has the meaning set forth in Section 6.11.

**1.58 Indemnifying Party.** “Indemnifying Party” has the meaning set forth in Section 3.5(a).

**1.59 Indemnitee.** “Indemnitee” has the meaning set forth in Section 3.5(a).

**1.60 Indemnity Payment.** “Indemnification Payment” has the meaning set forth in Section 3.5(a).

**1.61 Information.** “Information” means information, whether or not patentable or copyrightable, in written, oral, electronic or other tangible or intangible forms, stored in any medium, including studies, reports, records, books, contracts, instruments, surveys, discoveries, ideas, concepts, know-how, techniques, designs, specifications, drawings, blueprints, diagrams, models, prototypes, samples, flow charts, data, computer data, disks, diskettes, tapes, computer programs or other software, marketing plans, customer names, communications by or to attorneys (including attorney-client privileged communications), memos and other materials prepared by attorneys or under their direction (including attorney work product), and other technical, financial, employee or business information or data.

**1.62 Information Statement.** “Information Statement” means the information statement filed as an exhibit to the Registration Statement (and any related documentation) to be distributed to holders of CRG Common Stock in connection with the Distribution, including any amendments or supplements thereto.

**1.63 Insurance Proceeds.** “Insurance Proceeds” means those monies:

- (a) received by an insured from an insurance carrier;
- (b) paid by an insurance carrier on behalf of the insured; or
- (c) received from any third party in connection with a Loss;

in any such case net of any out-of-pocket costs or expenses incurred in the collection thereof.

1.64 **Intercompany Agreement.** “Intercompany Agreement” means any Contract between any entities included within the Fiesta Group, on the one hand, and any entities within the CRG Group, on the other hand, entered into prior to the Distribution Date, excluding any Contract to which a Person other than CRG, Carrols, Fiesta or one of their Subsidiaries is a party.

1.65 **Law.** “Law” means any law, statute, ordinance, rule, regulation, order, writ, judgment, injunction or decree of any Governmental Authority.

1.66 **Liabilities.** “Liabilities” shall mean any and all Indebtedness, liabilities and obligations, whether accrued, fixed or contingent, mature or inchoate, known or unknown, reflected on a balance sheet or otherwise, including those arising under any Law, Action or any judgment of any court of any kind or any award of any arbitrator of any kind, and those arising under any Contract.

1.67 **Lease Guarantee.** “Lease Guarantee” means each of the guarantees by CRG or Carrols of all obligations of any Fiesta Group entity under the real property leases listed on Schedule B for certain Pollo Tropical and Taco Cabana restaurants.

1.68 **Losses.** “Losses” shall mean any and all damages, losses, deficiencies, Liabilities, obligations, penalties, judgments, settlements, claims, payments, interest costs, fines and expenses (including the costs and expenses of any and all Actions and demands, assessments, judgments, settlements and compromises relating thereto and attorneys’, accountants’, consultants’ and other professionals’ fees and expenses incurred in the investigation or defense thereof or the enforcement of rights hereunder), but excluding (a) consequential and punitive damages (other than consequential or punitive damages awarded to any third party against an Indemnitee for which indemnity is owed hereunder) and (b) any reduction in the value of the shares of Fiesta Common Stock or CRG Common Stock or other Fiesta Restaurant Group securities.

1.69 **Master Lease.** “Master Lease” means the master lease agreement identified on Schedule D under which Carrols is the lessee of five Pollo Tropical restaurants set forth on Schedule D in addition to certain Burger King restaurants.

1.70 **NASDAQ.** “NASDAQ” means The NASDAQ Global Market.

1.71 **Person.** “Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or a governmental entity or any department, agency or political subdivision thereof.

1.72 **Prior Transfer.** “Prior Transfer” means (i) a transfer prior to the date of this Agreement of any Fiesta Asset contained in the CRG Group to the Fiesta Group, (ii) an assumption prior to the date of this Agreement by the Fiesta Group of any of the Fiesta Liabilities, (iii) a transfer prior to the date of this Agreement of any CRG Asset contained in the Fiesta Group to the CRG Group, (iv) an assumption prior to the date of this Agreement by the CRG Group of any of the CRG Liabilities that are contained in the Fiesta Group and (v) the disbursement by Carrols to Fiesta Restaurant Group of \$2.5 million of excess proceeds from the term loan borrowings of \$65 million under the Carrols LLC Facility and the sale of Fiesta Notes.

1.73 **Privilege.** “Privilege” has the meaning set forth in Section 6.5(a).

1.74 **Privileged Information.** “Privileged Information” has the meaning set forth in Section 6.5(a).

1.75 **Proceeding.** “Proceeding” means any Action, suit, mediation, arbitration, claim, complaint, proceeding, inquiry or investigation.

1.76 **Record Date.** “Record Date” means the close of business on the date to be determined by the Board of Directors of CRG as the record date for determining stockholders of CRG entitled to receive shares of Fiesta Common Stock on the Distribution Date pursuant to Section 4.2.

1.77 **Record Holders.** “Record Holders” has the meaning set forth in Section 4.1.

1.78 **Registration Statement.** “Registration Statement” means the registration statement on Form 10 of Fiesta Restaurant Group (File No. 001-35373) with respect to the registration under the Exchange Act of the Fiesta Common Stock, including any amendments or supplements thereto.

1.79 **Response.** “Response” has the meaning set forth in Section 5.2(a).

1.80 **Securities Act.** “Securities Act” means the Securities Act of 1933, as amended.

1.81 **Senior Party Representatives.** “Senior Party Representatives” has the meaning set forth in Section 5.2(a).

1.82 **Separation.** “Separation” means:

- (i) the 23,161,822 for one split of the outstanding common stock of Fiesta Restaurant Group, which will occur prior to the Distribution Time;
- (ii) the recapitalization of Fiesta Restaurant Group such that the number of shares of Fiesta Common Stock issued and outstanding immediately before the Distribution Time will equal the number of shares of CRG Common Stock outstanding as of the Record Date, which Fiesta Common Stock owned by Carrols will constitute all of the issued and outstanding common stock of Fiesta Restaurant Group;
- (iii) the distribution by Carrols to CRG of all of the outstanding Fiesta Common Stock owned by Carrols immediately prior to the Distribution Time; and
- (iv) the settling of intercompany accounts and related Liabilities and other matters between CRG or any other member of the CRG Group, on the one hand, and Fiesta Restaurant Group or any other member of the Fiesta Group, on the other hand, as set forth on Schedule D.

1.83 **Subleases.** “Subleases” means the sublease agreements between Fiesta Restaurant Group or any member of the Fiesta Group and Carrols with respect to the Pollo Tropical restaurants listed on Schedule G which are leased to Carrols under the Master Lease.

**1.84 Subsidiary.** A “Subsidiary” of any Person means any corporation or other organization whether incorporated or unincorporated of which at least a majority of the securities or interests having by the terms thereof ordinary voting power to elect at least a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such Person or by any one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries.

**1.85 Surety Instruments.** “Surety Instruments” has the meaning set forth in Section 6.7.

**1.86 Taxes.** “Taxes” has the meaning set forth in the Tax Matters Agreement.

**1.87 Tax Returns.** “Tax Returns” has the meaning set forth in the Tax Matters Agreement.

**1.88 Tax Matters Agreement.** “Tax Matters Agreement” means the Tax Matters Agreement dated the date hereof among CRG, Carrols and Fiesta Restaurant Group.

**1.89 Third Party Claim.** “Third Party Claim” has the meaning set forth in Section 3.7(a).

**1.90 Transition Services Agreement.** “Transition Services Agreement” means the Transition Services Agreement dated the date hereof among Fiesta Restaurant Group, CRG and Carrols.

## ARTICLE II

### SEPARATION

**2.1 The Separation.** Each of CRG, Carrols and Fiesta Restaurant Group agrees on behalf of itself and its Subsidiaries that (a) subject to Section 3.8(e), the provisions of the Tax Matters Agreement shall exclusively govern the allocation of Assets and Liabilities related to Taxes and (b) the provisions of the Employee Matters Agreement shall exclusively govern the allocation of Assets and Liabilities related to existing employee benefits and plans of CRG and Carrols, which plans cover employees and former employees of members of both the CRG Group and the Fiesta Group.

**2.2 Charter and Bylaws.** Effective as of the Distribution Time, the Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws of Fiesta Restaurant Group shall be substantially in the forms as exhibits to the Registration Statement.

### **2.3 No Representations or Warranties.**

(a) Except as expressly set forth in this Agreement or in an Ancillary Agreement, Fiesta Restaurant Group, CRG and Carrols understand and agree that no member of the CRG Group is representing or warranting to Fiesta Restaurant Group or any member of the Fiesta Group in any way as to the Fiesta Business, the Fiesta Assets or the Fiesta Liabilities; and, no member of the Fiesta Group is representing or warranting to CRG or any member of the CRG Group in any way as to the CRG Business, the CRG Assets or the CRG Liabilities.



(b) Notwithstanding any other provisions of this Agreement, any Ancillary Agreement, or any other agreement or document contemplated by this Agreement, any Ancillary Agreement or otherwise, to the contrary, THE TRANSFERS AND ASSUMPTIONS REFERRED TO IN THIS AGREEMENT (INCLUDING PRIOR TRANSFERS), ANY ANCILLARY AGREEMENT, OR ANY OTHER AGREEMENT OR DOCUMENT CONTEMPLATED BY THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR OTHERWISE HAVE BEEN, OR WILL BE, MADE WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY NATURE (A) AS TO THE VALUE OR FREEDOM FROM ENCUMBRANCE OF, ANY ASSETS, (B) AS TO ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OF, OR ANY OTHER MATTER CONCERNING, ANY ASSETS OR (C) AS TO THE LEGAL SUFFICIENCY TO CONVEY TITLE TO ANY ASSETS. CRG, Carrols and Fiesta Restaurant Group hereby acknowledge and agree that ALL ASSETS INCLUDED IN PRIOR TRANSFERS AND PURSUANT TO ANY ANCILLARY AGREEMENT, OR ANY OTHER AGREEMENT OR DOCUMENT CONTEMPLATED BY THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR OTHERWISE AND ARE BEING OR WERE TRANSFERRED “AS IS, WHERE IS.”

**2.4 Agreements.** Prior to the Distribution Time, CRG, Carrols and Fiesta Restaurant Group shall execute and deliver (or shall cause their appropriate Subsidiaries to execute and deliver, as applicable) the agreements between them designated as follows:

(i) the Transition Services Agreement,

(ii) the Employee Matters Agreement,

(iii) the Tax Matters Agreement and,

(iv) such other written agreements, documents or instruments as the parties may agree are necessary or desirable and which specifically state that they are Ancillary Agreements within the meaning of this Agreement (collectively, the “Ancillary Agreements”).

**2.5 Transfers Not Effected Prior to the Distribution Date.** To the extent that any transfers contemplated by this Agreement (including the Prior Transfers) or any Ancillary Agreement shall not have been consummated as of the Distribution, the parties shall cooperate to effect such transfers as promptly following the Distribution as shall be practicable. Nothing herein shall be deemed to require the transfer of any Assets or the assumption of any Liabilities that by their terms or operation of law cannot be transferred or assumed; *provided*, that the Fiesta Group and the CRG Group shall cooperate and use their respective commercially reasonable efforts to obtain any necessary consents or approvals for the transfer of all Assets and the assumption of all Liabilities contemplated to be transferred or assumed pursuant to this Agreement (including the Prior Transfers) and any Ancillary Agreement and shall, even in the absence of necessary consents or approvals, transfer the equitable ownership of Assets when such a transfer is permitted. In the event that any such transfer of Assets or assumption of Liabilities has not been consummated effective as of the time of the Distribution, the party retaining such Asset or Liability shall thereafter hold such Asset in trust for the use and benefit of the party entitled thereto (at the expense of the party entitled thereto) and retain such Liability for the account of the party by whom such Liability is to be assumed pursuant hereto, and take such other action as may be

reasonably requested by the party to which such Asset is to be transferred, or by whom such Liability is to be assumed, as the case may be, in order to place such party, insofar as reasonably possible, in the same position as would have existed had such Asset or Liability been transferred or assumed as contemplated hereby. Without limiting any other duty of a party holding any Asset in trust for the use and benefit of the party entitled thereto, such party shall take all reasonable actions that it deems necessary to preserve the value of that Asset. As and when any such Asset becomes transferable or such Liability can be assumed, such transfer or assumption shall be effected forthwith. Subject to the foregoing, the parties agree that, as of the Distribution Time (or such earlier time as any such Asset may have been acquired or Liability assumed), each party hereto shall be deemed to have acquired complete and sole beneficial ownership over all of the Assets, together with all rights, powers and privileges incident thereto, and shall be deemed to have assumed in accordance with the terms of this Agreement all of the Liabilities, and all duties, obligations and responsibilities incident thereto, which such party is entitled to acquire or required to assume pursuant to the terms of this Agreement.

### ARTICLE III

#### MUTUAL RELEASES; INDEMNIFICATION

##### **3.1 Release of Pre-Closing Claims.**

(a) Except as provided in Section 3.1(c), effective as of the Distribution Date, Fiesta Restaurant Group does hereby, for itself and each other member of the Fiesta Group, their respective Affiliates, successors and assigns, and all Persons who at any time prior to the Distribution Date have been stockholders, directors, officers, members, managing members, agents or employees of any member of the Fiesta Group (in each case, in their respective capacities as such), remise, release and forever discharge CRG and Carrols, each member of the CRG Group and their respective Affiliates, successors and assigns, and all stockholders, directors, officers, agents or employees of any member of the CRG Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns, from any and all Liabilities whatsoever to Fiesta Restaurant Group and each other member of the Fiesta Group, whether at law or in equity (including any right of contribution), whether arising under any Contract, by operation of law or otherwise, existing or arising from any acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed on or before the Distribution Date, including in connection with the transactions and all other activities to implement any Prior Transfers, the Separation and the Distribution.

(b) Except as provided in Section 3.1(c), effective as of the Distribution Date, CRG and Carrols do hereby, for itself and each other member of the CRG Group, their respective Affiliates, successors and assigns, and all Persons who at any time prior to the Distribution Date have been stockholders, directors, officers, members, managing members, agents or employees of any member of the CRG Group (in each case, in their respective capacities as such), remise, release and forever discharge Fiesta Restaurant Group, each member of the Fiesta Group and their respective Affiliates, successors and assigns, and all stockholders, directors, officers, members, managing members, agents or employees of any member of the Fiesta Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators,

successors and assigns, from any and all Liabilities whatsoever to CRG and each other member of the CRG Group, whether at law or in equity (including any right of contribution), whether arising under any Contract, by operation of law or otherwise, existing or arising from any acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed on or before the Distribution Date, including in connection with the transactions and all other activities to implement Prior Transfers, the Separation and the Distribution.

(c) Nothing contained in Section 3.1(a) or (b) shall impair any right of any Person to enforce this Agreement, any Ancillary Agreement or any agreements, arrangements, commitments or understandings that are specified in, or contemplated to continue pursuant to, this Agreement or any Ancillary Agreement. Nothing contained in Section 3.1(a) or (b) shall release any Person from:

(i) any Liability, contingent or otherwise, assumed, transferred, assigned or allocated to the Group of which such Person is a member in accordance with, or any other Liability of any member of either Group under, this Agreement, any Ancillary Agreement, the Prior Transfer or any other Contract among any members of the CRG Group and the Fiesta Group;

(ii) any Liability that the parties may have with respect to indemnification or contribution pursuant to this Agreement for claims brought against the parties by third Persons, which Liability shall be governed by the provisions of this Article III and, if applicable, the appropriate provisions of the Ancillary Agreements;

(iii) any Liability that the parties may have with respect to the Subleases, or

(iv) any Liability the release of which would result in the release of any Person other than an Indemnatee; provided that the parties agree not to bring suit or permit any of their Subsidiaries to bring suit against any Indemnatee with respect to such Liability.

(d) Fiesta Restaurant Group shall not make, and shall not permit any member of the Fiesta Group to make, any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution or indemnification, against CRG, Carrols, Carrols LLC or any member of the CRG Group, or any other Person released pursuant to Section 3.1(a), with respect to any Liabilities released pursuant to Section 3.1(a). CRG, Carrols and Carrols LLC shall not make, and shall not permit any member of the CRG Group to make, any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution or any indemnification, against Fiesta Restaurant Group or any member of the Fiesta Group, or any other Person released pursuant to Section 3.1(b), with respect to any Liabilities released pursuant to Section 3.1(b).

(e) It is the intent of each of CRG, Carrols and Fiesta Restaurant Group by virtue of the provisions of this Section 3.1 to provide for a full and complete release and discharge of all Liabilities existing or arising from all acts and events occurring or failing to occur or alleged to have occurred or to have failed to occur and all conditions existing or alleged to have existed on or before the Distribution Date, between or among Fiesta Restaurant Group or any member of the Fiesta Group, on the one hand, and CRG, Carrols or any member of the CRG Group, on the

other hand (including any contractual agreements or arrangements existing or alleged to exist between or among any such members on or before the Distribution Date), except as expressly set forth in Section 3.1(c). At any time, at the request of any other party, each party shall cause each member of its respective Group to execute and deliver releases reflecting the provisions hereof.

**3.2 Termination of Intercompany Agreements.** Without limiting the generality of Section 3.1(e) and subject to the terms of Section 3.1 and Schedule D, each of the parties hereto agrees that, except for this Agreement, the Subleases and the Ancillary Agreements (including any amounts owed with respect to such agreements), all Intercompany Agreements and all other intercompany arrangements and course of dealings whether or not in writing and whether or not binding or in effect immediately prior to the Distribution Time shall terminate immediately prior to the Distribution Time (other than the Ancillary Agreements) unless the parties thereto otherwise agree in writing after the date of this Agreement.

**3.3 Indemnification by Fiesta Restaurant Group.** Except as provided in Sections 3.5 and 3.6, Fiesta Restaurant Group shall, and in the case of clauses (a), (b) and (c) below shall in addition cause the Appropriate Member of the Fiesta Group to, indemnify, defend and hold harmless CRG, Carrols, each member of the CRG Group and their respective Affiliates, successors and assigns, and all stockholders, directors, officers, members, managing members, agents or employees of any member of the CRG Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns (collectively, the “CRG Indemnitees”) from and against any and all Losses of the CRG Indemnitees relating to, arising out of or resulting from any of the following (without duplication):

(a) the failure of Fiesta Restaurant Group or any other member of the Fiesta Group or any other Person to pay, perform or otherwise promptly discharge any Fiesta Liabilities in accordance with their respective terms, whether prior to or after the Distribution Date;

(b) any Fiesta Liability;

(c) any breach by Fiesta Restaurant Group or any member of the Fiesta Group of this Agreement, the Subleases or any of the Ancillary Agreements;

(d) the conduct of the Fiesta Business;

(e) any obligation or Liability under any Lease Guarantee; and

(f) any untrue statement or alleged untrue statement of a material fact or omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, with respect to all Information contained in the Registration Statement or the Information Statement (other than Information regarding CRG or Carrols provided by CRG or Carrols in writing to Fiesta Restaurant Group for inclusion in the Registration Statement or the Information Statement).

As used in this Section 3.3, “Appropriate Member of the Fiesta Group” means the member or members of the Fiesta Group, if any, whose acts, conduct or omissions or failures to act caused, gave rise to or resulted in the Loss from and against which indemnity is provided.

**3.4 Indemnification by CRG, Carrols and Carrols LLC.** Except as provided in Sections 3.5 and 3.6, CRG, Carrols and Carrols LLC shall, jointly and severally, and in case of clauses (a), (b), (c) and (d) below shall in addition cause the Appropriate Member of the CRG Group to, indemnify, defend and hold harmless Fiesta Restaurant Group, each member of the Fiesta Group and their respective Affiliates, successors and assigns, and all stockholders, directors, officers, members, managing members, agents or employees of any member of the Fiesta Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns (collectively, the “Fiesta Indemnitees”) from and against any and all Losses of the Fiesta Indemnitees relating to, arising out of or resulting from any of the following (without duplication):

(a) the failure of CRG, Carrols or any other member of the CRG Group or any other Person to pay, perform or otherwise promptly discharge any CRG Liabilities in accordance with their respective terms, whether prior to or after the Distribution Date or the date hereof;

(b) any CRG Liability;

(c) any breach by CRG, Carrols or any member of the CRG Group of this Agreement, the Subleases, the Master Lease or any of the Ancillary Agreements;

(d) the conduct of the CRG Business; and

(e) any untrue statement or alleged untrue statement of a material fact or omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, with respect to information regarding CRG or Carrols provided by CRG or Carrols in writing to Fiesta Restaurant Group for inclusion in the Registration Statement or the Information Statement.

As used in this Section 3.4, “Appropriate Member of the CRG Group” means the member or members of the CRG Group, if any, whose acts, conduct or omissions or failures to act caused, gave rise to or resulted in the Loss from and against which indemnity is provided.

**3.5 Indemnification Obligations Net of Insurance Proceeds.**

(a) The parties intend that any Loss subject to indemnification or reimbursement pursuant to this Article III (an “Indemnifiable Loss”) will be net of Insurance Proceeds that actually reduce the amount of the Loss. Accordingly, the amount which any party (an “Indemnifying Party”) is required to pay to any Person entitled to indemnification hereunder (an “Indemnatee”) will be reduced by any Insurance Proceeds theretofore actually recovered by or on behalf of the Indemnatee in reduction of the related Loss. If an Indemnatee receives a payment (an “Indemnity Payment”) required by this Agreement from an Indemnifying Party in respect of any Loss and subsequently receives Insurance Proceeds, then the Indemnatee will pay to the Indemnifying Party an amount equal to the excess of the Indemnity Payments received over the amount of the

Indemnity Payments that would have been due if the Insurance Proceeds recovery had been received, realized or recovered before the Indemnity Payments were made. The Indemnatee shall use and cause its Affiliates to use commercially reasonable efforts to recover any proceeds of insurance policies to which the Indemnatee is entitled with respect to any Indemnifiable Loss if such Indemnifiable Loss is attributable to events that occurred prior to the Distribution Date. The existence of a claim by an Indemnatee for insurance or against a third party in respect of any Indemnifiable Loss shall not, however, delay any payment pursuant to the indemnification provisions contained in this Article III and otherwise determined to be due and owing by an Indemnifying Party; rather, the Indemnifying Party shall make payment in full of such amount so determined to be due and owing by it against an assignment by the Indemnatee to the Indemnifying Party of the portion of the claim of the Indemnatee for such insurance or against such third party equal to the amount of such payment. The Indemnatee shall use and cause its Affiliates to use commercially reasonable efforts to assist the Indemnifying Party in recovering or to recover on behalf of the Indemnifying Party, any Insurance Proceeds to which the Indemnifying Party is entitled with respect to any Indemnifiable Loss as a result of such assignment. The Indemnatee shall make available to the Indemnifying Party and its counsel all employees, books and records, communications, documents, items or matters within its knowledge, possession or control that are necessary, appropriate or reasonably deemed relevant by the Indemnifying Party with respect to the recovery of such Insurance Proceeds; provided, however, that subject to Section 6.5 hereof, nothing in this sentence shall be deemed to require a party to make available books and records, communications, documents or items which (i) in such party's Good Faith Judgment could result in a waiver of any Privilege with respect to a third party even if Fiesta Restaurant Group, CRG, Carrols and Carrols LLC cooperated to protect such Privilege as contemplated by this Agreement, or (ii) such party is not permitted to make available because of any Law or any confidentiality obligation to a third party, in which case such party shall use commercially reasonable efforts to seek a waiver of or other relief from such confidentiality restriction. Unless the Indemnifying Party has made payment in full of any Indemnifiable Loss, such Indemnifying Party shall use and cause its Affiliates to use commercially reasonable efforts to recover any Insurance Proceeds to which it or such Affiliate is entitled with respect to any Indemnifiable Loss.

(b) An insurer who would otherwise be obligated to pay any claims shall not be relieved of the responsibility with respect thereto or, solely by virtue of the indemnification provisions hereof, have any subrogation rights with respect thereto, it being expressly understood and agreed that no insurer or any other third party shall be entitled to a "windfall" (i.e., a benefit it would not be entitled to receive in the absence of the indemnification provisions) by virtue of the indemnification provisions hereof.

**3.6 Indemnification Obligations Net of Taxes.** The parties intend that any Loss subject to indemnification or reimbursement pursuant to this Article III will be net of Taxes. Accordingly, the amount which an Indemnifying Party is required to pay to an Indemnatee will be adjusted to reflect any tax benefit to the Indemnatee from the underlying Loss and to reflect any Taxes imposed upon the Indemnatee as a result of the receipt of such payment. Such an adjustment will first be made at the time that the indemnity payment is made and will further be made, as appropriate, to take into account any change in the liability of the Indemnatee for Taxes that occurs in connection with the final

resolution of an audit by a taxing authority. For purposes of this Section 3.6, the value of such tax benefit shall be an amount equal to the product of (x) the amount of any present or future deduction allowable to the Indemnitee by the Code, or other applicable Law, as a result of the underlying Loss and (y) the highest statutory rate applicable under Section 11 of the Code, or other applicable Law. To the extent permitted by Law, the parties will treat any indemnity payment as a capital contribution made by CRG, Carrols or Carrols LLC to Fiesta Restaurant Group or as a distribution made by Fiesta Restaurant Group to CRG, Carrols or Carrols LLC, as the case may be, on the date recited above on which the parties entered into the Agreement.

### **3.7 Procedures for Indemnification of Third Party Claims.**

(a) If an Indemnitee shall receive notice or otherwise learn of the assertion by a Person (including any Governmental Authority) who is not a member of the CRG Group or the Fiesta Group of any claims or of the commencement by any such Person of any Action (collectively, a “Third Party Claim”) with respect to which an Indemnifying Party may be obligated to provide indemnification to such Indemnitee pursuant to Section 3.3 or 3.4, or any other Section of this Agreement or any Ancillary Agreement, such Indemnitee shall promptly give such Indemnifying Party written notice thereof. Any such notice shall describe the Third Party Claim in reasonable detail. Notwithstanding the foregoing, the failure of any Indemnitee or other Person to give notice as provided in this Section 3.7(a) shall not relieve the related Indemnifying Party of its obligations under this Article III, except to the extent that such Indemnifying Party is actually prejudiced by such failure to give notice.

(b) An Indemnifying Party may elect to defend (and, unless the Indemnifying Party has specified any reservations or exceptions, to seek to settle or compromise), at such Indemnifying Party’s own expense and by such Indemnifying Party’s own counsel, any Third Party Claim. Within 30 days after the receipt of notice from an Indemnitee in accordance with Section 3.7(a) (or sooner, if the nature of such Third Party Claim so requires), the Indemnifying Party shall notify the Indemnitee of its election whether the Indemnifying Party will assume responsibility for defending such Third Party Claim, which election shall specify any reservations or exceptions. The failure to give such notice of election within the 30-day period shall be deemed a rejection of the opportunity to assume responsibility. After notice from an Indemnifying Party to an Indemnitee of its election to assume the defense of a Third Party Claim (or in the case where CRG, Carrols or Carrols LLC, as the Indemnitee or on behalf of a member of the CRG Group as the Indemnitee, elects to defend a Third Party Claim pursuant to paragraph (c)(i) or (c)(ii), after notice from CRG, Carrols or Carrols LLC to the Indemnifying Party), such non-defending party shall have the right to employ separate counsel and to participate in (but not control) the defense, compromise or settlement thereof, but the fees and expenses of such counsel shall be at the expense of such non-defending party.

(c) A party’s right to defend any Third Party Claim pursuant to Section 3.7(b) includes the right (after consultation with the other party following at least five Business Days’ written notice thereof) to compromise, settle or consent to the entry of any judgment or determination of liability concerning such Third Party Claim; provided, however, that the Indemnifying Party shall not compromise, settle or consent to the entry of judgment or determination of liability concerning any Third Party Claim without prior written approval by the Indemnitee (which may

not be unreasonably withheld) if the terms or conditions of such compromise, settlement or consent would, in the reasonable judgment of the Indemnitee, have a material adverse financial impact or a material adverse effect upon the ongoing operations of the Indemnitee. Notwithstanding any other provision of this Section 3.7, unless otherwise specifically agreed to by the parties in writing (which agreement may not be unreasonably withheld), no party shall enter into any compromise or settlement or consent to the entry of any judgment which does not include as an unconditional term thereof the giving by the third party of a release of both the Indemnitee and the Indemnifying Party from all further liability concerning such Third Party Claim.

(d) If the party having the right to elect to defend a particular Third Party Claim pursuant to Section 3.7(b) elects, or is deemed to have elected, not to defend a particular Third Party Claim, the other party may defend such Third Party Claim without any prejudice to its rights to indemnification from the Indemnifying Party pursuant to this Article III. In such case, such other party shall have the right to compromise, settle or consent to the entry of any judgment with respect to such Third Party Claim as provided in Section 3.7(c) without the consent of the Indemnifying Party.

(e) The Indemnifying Party shall bear all costs and expenses of defending any Third Party Claim; provided, however, that (A) if both parties may be Indemnifying Parties with respect to such Third Party Claim but only one party is defending such Third Party Claim, the non-defending party shall reimburse the defending party promptly upon demand by the defending party for the non-defending party's proportionate share, allocated based on each party's proportionate responsibility for the Indemnifiable Loss pursuant to this Agreement, of all out-of-pocket costs and expenses reasonably incurred in connection with the defending party's defense of such Third Party Claim, and (B) if both parties may be Indemnifying Parties with respect to such Third Party Claim and both parties are defending such Third Party Claim, the parties shall effect such reimbursements necessary so that each party bears its proportionate share, allocated based on each party's proportionate responsibility for the Indemnifiable Loss pursuant to this Agreement, of all out-of-pocket costs and expenses reasonably incurred in connection with the defense of such Third Party Claim.

(f) The non-defending or co-defending party shall make available to the other party and its counsel all employees, books and records, communications, documents, items or matters within its knowledge, possession or control that are necessary, appropriate or reasonably deemed relevant by the other party with respect to such defense; provided, however, that subject to Section 6.5 hereof, nothing in this subparagraph (g) shall be deemed to require a party to make available books and records, communications, documents or items which (i) in such party's Good Faith Judgment could result in a waiver of any Privilege with respect to a third party even if Fiesta Restaurant Group and CRG, Carrols or Carrols LLC cooperated to protect such Privilege as contemplated by this Agreement, or (ii) such party is not permitted to make available because of any Law or any confidentiality obligation to a third party, in which case such party shall use commercially reasonable efforts to seek a waiver of or other relief from such confidentiality restriction.

(g) With respect to any Third Party Claim in which both parties are, or reasonably may be expected to be, named as parties, or that otherwise implicates both parties to a material degree, the parties shall reasonably cooperate with respect to such Third Party Claim and maintain a joint defense in a manner that will preserve applicable privileges.



(h) Upon final judgment, determination, settlement or compromise of any Third Party Claim, and unless otherwise agreed by the parties in writing, the Indemnifying Party shall pay promptly on behalf of the Indemnatee, or to the Indemnatee in reimbursement of any amount theretofore required to be paid by it, all amounts required to be paid by the Indemnifying Party pursuant to this Article III with respect to such claim as determined by such final judgment, determination, settlement or compromise.

### **3.8 Direct Claims; Additional Matters.**

(a) Any claim on account of a Loss which does not result from a Third Party Claim shall be asserted by written notice given by the Indemnatee to the Indemnifying Party. Any such notice shall describe the claim in reasonable detail. Such Indemnifying Party shall have a period of 30 days after the receipt of such notice within which to respond thereto. If such Indemnifying Party does not respond within such 30-day period, such Indemnifying Party shall be deemed to have refused to accept responsibility to make payment. If such Indemnifying Party does not respond within such 30-day period or rejects such claim in whole or in part, such Indemnatee shall be free to pursue such remedies as may be available to such party as contemplated by this Agreement and the Ancillary Agreements.

(b) In the event of payment by or on behalf of any Indemnifying Party to any Indemnatee in connection with any Third Party Claim, such Indemnifying Party shall be subrogated to and shall stand in the place of such Indemnatee in respect of any rights, defenses or claims of such Indemnatee relating to such Third Party Claim. Such Indemnatee shall cooperate with such Indemnifying Party as may reasonably be required in connection with the prosecution of any subrogated right, defense or claim, and its reasonable out-of-pocket costs and expenses in connection therewith shall be reimbursed by the Indemnifying Party.

(c) In the event of an Action in which the Indemnatee is a named defendant, if either the Indemnatee or Indemnifying Party shall so request, the parties shall endeavor to cause the Indemnatee not to remain a named defendant, if reasonably practicable.

(d) THE PARTIES UNDERSTAND AND AGREE THAT THE RELEASE FROM LIABILITIES AND INDEMNIFICATION OBLIGATIONS HEREUNDER AND UNDER THE ANCILLARY AGREEMENTS MAY INCLUDE RELEASE FROM LIABILITIES AND INDEMNIFICATION FOR LOSSES RESULTING FROM, OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, AN INDEMNITEE'S OWN NEGLIGENCE OR STRICT LIABILITY.

(e) Notwithstanding anything herein to the contrary, the parties acknowledge and agree that indemnification for Losses (including Taxes) incurred as a result of any breach of the Tax Matters Agreement shall be governed by this Article III.

**3.9 Contribution.** If the indemnification provided for in this Article III is unavailable to an Indemnitee in respect of any Losses for which indemnification is provided for herein, then the Indemnifying Party, in lieu of indemnifying such Indemnitee, shall contribute to the Losses paid or payable by such Indemnitee as a result of such Indemnifiable Loss in such proportion as is appropriate to reflect the relative fault of Fiesta Restaurant Group and each other member of the Fiesta Group, on the one hand, and CRG, Carrols, Carrols LLC and each other member of the CRG Group, on the other hand, in connection with the circumstances which resulted in such Indemnifiable Loss. With respect to any Indemnifiable Loss relating to matters covered by Section 3.3(d) or 3.4(d) or otherwise relating to misstatements or omissions under securities or antifraud laws, the relative fault of a member of the Fiesta Group, on the one hand, and of a member of the CRG Group, on the other hand, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to a member of the Fiesta Group or a member of the CRG Group and, with respect to information relating to the CRG Group, whether such information was supplied by CRG.

**3.10 Remedies Cumulative.** The remedies provided in this Article III shall be cumulative and, subject to the provisions of Article V, shall not preclude assertion by any Indemnitee of any other rights or the seeking of any and all other remedies against any Indemnifying Party.

**3.11 Survival of Indemnities.** The rights and obligations of each of CRG, Carrols or Carrols LLC and Fiesta Restaurant Group and their respective Indemnitees under this Article III shall survive the sale or other transfer by any party of any Assets or businesses or the assignment by it of any Liabilities.

## ARTICLE IV

### THE DISTRIBUTION

**4.1 Delivery to Distribution Agent.** Subject to Section 4.3, on or prior to the Distribution Date CRG will deliver to American Stock Transfer & Trust Company, as distribution agent (the “Distribution Agent”), for the benefit of holders of record of CRG Common Stock at the close of business on the Record Date (the “Record Holders”) a stock certificate representing (or authorize the related book-entry transfer of) all outstanding shares of Fiesta Common Stock and will order the Distribution Agent to effect the Distribution at the Distribution Time in the manner set forth in Section 4.2.

#### **4.2 Mechanics of the Distribution.**

(a) On the Distribution Date, (i) Carrols will distribute, immediately prior to the Distribution Time, all of the outstanding shares of Fiesta Common Stock to CRG and (ii) CRG will direct the Distribution Agent to distribute, at the Distribution Time, to each Record Holder one share of Fiesta Common Stock for each share of CRG Common Stock held by such Record Holder. All of the shares of Fiesta Common Stock so issued will be validly issued, fully paid and non-assessable. The Distribution will be effective as of the Distribution Time.

(b) Carrols Restaurant Group and Fiesta Restaurant Group shall mail or cause to be mailed to the Record Holders, on or prior to the Distribution Date, the Information Statement.

**4.3 Conditions Precedent to Consummation of the Separation and the Distribution.** Neither the Separation, the Distribution nor the related transactions set forth in this Agreement or in any of the Ancillary Agreements will become effective unless the following conditions have been satisfied or waived by CRG and Carrols, in their sole and absolute discretion, at or before the Distribution Time:

- (a) the private letter ruling from the Internal Revenue Service dated February 3, 2012 confirming that distribution of the Fiesta Common Stock will be tax-free to Carrols Restaurant Group and the Carrols Restaurant Group stockholders for U.S. federal income tax purposes and any supplemental rulings received before the date of this Agreement will continue to be in effect;
- (b) Carrols Restaurant Group will have received an opinion of its tax advisor confirming that the distribution of the Fiesta Common Stock to Carrols Restaurant Group's stockholders should qualify as a tax-free distribution under Section 355 and related provisions of the Code, to Carrols Restaurant Group, the Carrols Restaurant Group stockholders and to Fiesta Restaurant Group for U.S. federal income tax purposes;
- (c) the Separation and the Distribution will not violate or result in a breach of any Law or any material agreement;
- (d) the Registration Statement will have become effective under the Exchange Act, no stop order relating to the Registration Statement will be in effect and the Information Statement having been mailed to stockholders of Carrols Restaurant Group;
- (e) Carrols Restaurant Group will have received all permits, registrations and consents required under the securities or blue sky laws of states or other political subdivisions of the United States or of other foreign jurisdictions in connection with the Distribution;
- (f) NASDAQ will have approved Fiesta Common Stock for listing, subject to official notice of issuance;
- (g) the Ancillary Agreements will have been executed and delivered by each of the parties thereto and no party will be in material breach of any Ancillary Agreement;
- (h) all Consents required to be received or made before the Distribution may take place will have been received or made and be in full force and effect, except where the failure to obtain such Consents would not have a material adverse effect on the ability of the parties to complete the Separation and Distribution or on the business, assets, liabilities, condition or results of operations of Fiesta Restaurant Group, Carrols Restaurant Group, or its respective Subsidiaries, taken as a whole;
- (i) no order, injunction or decree issued by a Governmental Authority preventing the consummation of the Separation or the Distribution or any of the other transactions contemplated by this Agreement or any of the Ancillary Agreements; and
- (j) the Separation and the Distribution will not violate, conflict with or result in a breach (with or without the passage of time) of the terms of, or require a Consent under, the Carrols LLC Credit Facility, Fiesta Credit Facility and the Fiesta Indenture.

Each of the conditions set forth in this Section 4.3 is for the benefit of CRG and Carrols, and CRG and Carrols may, in their sole and absolute discretion, determine whether to waive any condition, in whole or in part. Any determination made by CRG and Carrols concerning the satisfaction or waiver of any or all of the conditions in this Section 4.3 will be conclusive and binding on the parties. The satisfaction of the conditions will not create any obligation on the part of CRG or Carrols to Fiesta Restaurant Group or any other Person to effect the Separation or the Distribution or in any way limit CRG's or Carrols' right to terminate as set forth in Section 7.4 or alter the consequences of any termination from those specified in Section 7.4.

## ARTICLE V

### ARBITRATION; DISPUTE RESOLUTION

**5.1 Agreement to Resolve Disputes.** Except as otherwise specifically provided in any Ancillary Agreement, the procedures for discussion, negotiation and dispute resolution set forth in this Article V shall apply to all disputes, controversies or claims (whether sounding in contract, tort or otherwise) that may arise out of or relate to or arise under or in connection with this Agreement or any Ancillary Agreement, or the transactions contemplated hereby or thereby (including all actions taken in furtherance of the transactions contemplated hereby or thereby on or prior to the date hereof), or the commercial or economic relationship of the parties relating hereto or thereto, between or among any member of the CRG Group on the one hand and the Fiesta Group on the other hand. Except as otherwise specifically provided in any Ancillary Agreement, each party agrees on behalf of itself and each member of its respective Group that the procedures set forth in this Article V shall be the sole and exclusive remedy in connection with any dispute, controversy or claim relating to any of the foregoing matters and irrevocably waives any right to commence any Action in or before any Governmental Authority, except as otherwise required by Law.

### **5.2 Dispute Resolution.**

(a) Either party may commence the dispute resolution process of this Section 5.2 by giving the other party written notice (a "Dispute Notice") of any of any controversy, claim or dispute of whatever nature arising out of or relating to or in connection with this Agreement, any Ancillary Agreement or the breach, termination, enforceability or validity thereof (a "Dispute") which has not been resolved in the normal course of business or as provided in the relevant Ancillary Agreement. The parties shall attempt in good faith to resolve any Dispute by negotiation between executive officers of each party ("Senior Party Representatives") who have authority to settle the Dispute and, unless discussions between the parties are already at a senior management level, who are at a higher level of management than the Persons who have direct responsibility for the administration of this Agreement or the relevant Ancillary Agreement. Within fifteen (15) days after delivery of the Dispute Notice, the receiving party shall submit to the other a written response (the "Response"). The Dispute Notice and the Response shall include (i) a statement setting forth the position of the party giving such notice and a summary of arguments supporting such position and (ii) the name and title of such party's Senior Party Representative and any other Persons who will accompany the Senior Party Representative at the meeting at which the parties will attempt to settle the Dispute. Within thirty (30) days after the delivery of the Dispute

Notice, the Senior Party Representatives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the Dispute. The parties shall cooperate in good faith with respect to any reasonable requests for exchanges of Information regarding the Dispute or a Response thereto.

(b) All negotiations, conferences and discussions pursuant to this Section 5.2 shall be confidential and shall be treated as compromise and settlement negotiations. Nothing said or disclosed, nor any document produced, in the course of such negotiations, conferences and discussions that is not otherwise independently discoverable shall be offered or received as evidence or used for impeachment or for any other purpose in any current or future arbitration.

(c) Any Dispute regarding the following matters is not required to be negotiated prior to seeking relief from an arbitrator: (i) breach of any obligation of confidentiality or waiver of Privilege; and (ii) any other claim where interim relief is sought to prevent serious and irreparable injury to one of the parties. However, the parties to the Dispute shall make a good faith effort to negotiate such Dispute, according to the above procedures, while such arbitration is pending.

### **5.3 Arbitration.**

(a) Subject to Section 5.3(b), if for any reason a Dispute is not resolved within ninety (90) days from delivery of the Dispute Notice in accordance with the dispute resolution process described in Section 5.2, the parties agree that such Dispute shall be settled by binding arbitration before a single arbitrator administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. The arbitrator selected to resolve the Dispute shall be bound exclusively by the laws of the State of New York without regard to its choice of law rules. Any decisions of award of the arbitrator will be final and binding upon the parties and may be entered as a judgment by the parties. Any rights to appeal or review such award by any court or tribunal are hereby waived to the extent permitted by Law.

(b) Costs of the arbitration shall be borne equally by the parties involved in the matter, except that each party shall be responsible for its own expenses, except as otherwise determined by the arbitrator.

(c) The parties agree to comply and cause the members of their applicable Group to comply with any award made in any arbitration proceeding pursuant to this Section 5.3, and agree to enforcement of or entry of judgment upon such award in any court of competent jurisdiction, including any federal or state court located in the City of New York, Borough of Manhattan. The arbitrator shall be entitled to award any remedy in such proceedings, including monetary damages, specific performance and all other forms of legal and equitable relief; provided, however, that the arbitrator shall not be entitled to award punitive, exemplary, treble or any other form of non-compensatory monetary damages unless in connection with indemnification for a Third Party Claim, to the extent of such claim.

**5.4 Continuity of Service and Performance.** Unless otherwise agreed in writing, the parties will continue to provide service and honor all other commitments under this Agreement and each Ancillary Agreement during the course of dispute resolution pursuant to the provisions of this Article V with respect to all matters not subject to such Dispute.

## COVENANTS AND OTHER MATTERS

**6.1 Other Agreements.** In addition to the specific agreements, documents and instruments annexed to this Agreement, CRG or Carrols and Fiesta Restaurant Group agree to execute or cause to be executed by the appropriate parties and deliver, as appropriate, such other agreements, instruments and other documents as may be reasonably requested by either party and necessary or desirable in order to effect the purposes of this Agreement and the Ancillary Agreements.

**6.2 Further Instruments.** At the request of Fiesta Restaurant Group or CRG or Carrols and without further consideration, the other party will execute and deliver, and will cause its applicable Subsidiaries to execute and deliver, to the requesting party and its Subsidiaries such other instruments of transfer, conveyance, assignment, substitution and confirmation and take such action as the requesting party may reasonably deem necessary or desirable in order more effectively to transfer, convey and assign to the requesting party and its Subsidiaries and confirm the requesting party's and its Subsidiaries' title to all of the Assets, rights and other things of value contemplated to be transferred to the requesting party and its Subsidiaries pursuant to this Agreement, the Ancillary Agreements, any documents referred to therein and any Prior Transfers, to put the requesting party and its Subsidiaries in actual possession and operating control thereof and to permit the requesting party and its Subsidiaries to exercise all rights with respect thereto (including rights under Contracts and other arrangements as to which the consent of any third party to the transfer thereof shall not have previously been obtained). At the request of Fiesta Restaurant Group or CRG or Carrols and without further consideration, the other party will execute and deliver, and will cause its applicable Subsidiaries to execute and deliver, to the requesting party and its Subsidiaries all instruments, assumptions, novations, undertakings, substitutions or other documents and take such other action as the requesting party may reasonably deem necessary or desirable in order to have the other party fully and unconditionally assume and discharge the Liabilities contemplated to be assumed by such party under this Agreement, any Ancillary Agreement, any document in connection herewith or the Prior Transfers and to relieve the Fiesta Group or the CRG Group, as applicable, of any Liability or obligation with respect thereto and evidence the same to third parties. Neither CRG or Carrols nor Fiesta Restaurant Group shall be obligated, in connection with the foregoing, to expend money other than reasonable out-of-pocket expenses, attorneys' fees and recording or similar fees. Furthermore, each party, at the request of another party hereto, shall execute and deliver such other instruments and do and perform such other acts and things as may be necessary or desirable for effecting completely the consummation of the transactions contemplated hereby or by the Prior Transfers.

### **6.3 Provision of Books and Records.**

As soon as practicable after the Distribution Date, subject to the provisions of this Section 6.3, CRG and Carrols shall use commercially reasonable efforts to deliver or cause to be delivered to Fiesta Restaurant Group all Fiesta Books and Records in the possession of the CRG Group, and Fiesta Restaurant Group shall use commercially reasonable efforts to deliver or cause to be delivered to CRG all CRG Books and Records in the possession of the Fiesta Group. The foregoing shall be limited by the following:

- (a) To the extent any document can be subdivided without unreasonable effort or cost into two portions, one of which constitutes a Fiesta Book and Record and the other of which constitutes a CRG Book and Record, such document shall be so subdivided and the appropriate portions shall be delivered to the parties.
- (b) Each party may retain copies of books and records delivered to the other, subject to holding in confidence in accordance with Section 6.10 Information contained in such books and records.
- (c) Without limiting the generality of the first paragraph of this Section 6.3, for a period beginning on the Distribution Date and continuing in perpetuity, if either CRG, Carrols or Fiesta Restaurant Group identifies any CRG Books and Records then in the possession of a member of the Fiesta Group or any Fiesta Books and Records then in the possession of a member of the CRG Group, as applicable, CRG or Carrols, or Fiesta, as the case may be, shall or shall cause any such CRG Books and Records or Fiesta Books and Records to be conveyed, assigned, transferred and delivered to the entity identified by Fiesta Restaurant Group, or CRG or Carrols, as the case may be, as the appropriate transferee.
- (d) Each party may refuse to furnish any Information if so doing, in such party's Good Faith Judgment, could result in a waiver of any Privilege with respect to a third party even if Fiesta Restaurant Group, CRG or Carrols cooperated to protect such Privilege as contemplated by this Agreement.
- (e) Neither party shall be required to deliver to the other books and records or portions thereof which are subject to any Law or confidentiality agreements which would by their terms prohibit such delivery; provided, however, if requested by the other party, such party shall use commercially reasonable efforts to seek a waiver of or other relief from such confidentiality restriction.

### **6.4 Agreement For Exchange of Information.**

- (a) From and after the Distribution Date, each of CRG, Carrols and Fiesta Restaurant Group agrees to provide, or cause to be provided, to each other as soon as reasonably practicable after written request therefor, any Information in the possession or under the control of such party that the requesting party reasonably needs (i) to comply with reporting, disclosure, filing or other requirements, requests or Laws imposed on the requesting party (including under applicable securities Laws) by a Governmental Authority having jurisdiction over the requesting party, (ii) for use in any pending or threatened judicial, regulatory, arbitration, mediation or other proceeding or investigation or in order to satisfy audit requirements (whether in connection with audits conducted by independent accounting firms, internal audits, or audits conducted by third parties entitled to do so by Contract, including customers and vendors), or in connection with accounting, claims, regulatory, litigation or other similar requirements, except in the case of a

dispute subject to this Article VI brought by one party against the other party (which shall be governed by such discovery rules as may be applicable under Article VI or otherwise), (iii) to comply with its obligations under this Agreement, any Ancillary Agreement or any Contract with a third party that is not an Affiliate, employee or agent of the requesting party, or (iv) for any other significant business need as mutually determined in good faith by the parties; provided, however, that in the event that any party determines that any such provision of Information is reasonably likely to be commercially detrimental or violate any Law or agreement, the parties shall take reasonable measures to permit the compliance with such obligations in a manner that avoids any such harm or consequence.

(b) Any Information owned by a party that is provided to a requesting party pursuant to this Section 6.4 shall be deemed to remain the property of the providing party. Unless specifically set forth herein, nothing contained in this Agreement shall be construed as granting or conferring rights of license or otherwise in any such Information.

(c) The party requesting the Information under this Section 6.4 will reimburse the other party for the reasonable out-of-pocket costs of creating, gathering and copying the Information.

(d) Except as otherwise agreed in writing, or as otherwise provided in any Ancillary Agreement, each party will use commercially reasonable efforts to retain in accordance with such party's record retention policies in effect from time to time (which will comply with all applicable Laws) all significant Information in the party's possession or under its control relating to the business, Assets or Liabilities of the other party's Group, and, before destroying or disposing of any Information relating to the business, Assets or Liabilities of the other party's Group, (i) the party proposing to dispose of or destroy the Information will use commercially reasonable efforts to provide no less than 30 days' prior written notice to the other party, specifying the Information proposed to be destroyed or disposed of and (ii) if, before the scheduled date for the destruction or disposal, the other party requests in writing that any of the Information proposed to be destroyed or disposed of be delivered to the other party, the party proposing to dispose of or destroy the Information will promptly arrange for the delivery of the requested Information to a location specified by, and at the expense of, the requesting party.

(e) Except as otherwise provided for herein or in any Ancillary Agreement, no party shall have any liability to any other party in the event that any Information exchanged or provided pursuant to this Section 6.4 is found to be inaccurate (including by misstatement or omission), in the absence of willful misconduct by the party providing such Information.

(f) The rights and obligations granted under this Section 6.4 are subject to any specific limitations, qualifications or additional provisions on the sharing, exchange or confidential treatment of Information set forth in this Agreement and any Ancillary Agreement.

(g) Each party hereto shall, except in the case of a dispute subject to Article V brought by one party against another party, use commercially reasonable efforts to make available to each other party, upon written request, (i) the former, current and future directors, officers, employees, other personnel and agents of such party's Group for fact finding, consultation and interviews and as witnesses to the extent such Persons may reasonably be required in connection with any Actions (other than Actions in which both CRG or any of its Subsidiaries, on the one hand, and Fiesta Restaurant Group or any of its Subsidiaries, on the other hand, as the case may be, are parties



and may reasonably be adverse to one another in such Action) in which the requesting party may from time to time be involved relating to the conduct of the Fiesta Business or the CRG Business and (ii) any books, records or other documents within its control or which it otherwise has the ability to make available, to the extent that any such person (giving consideration to business demands of such directors, officers, employees, other personnel and agents) or books, records or other documents may reasonably be required in connection with any judicial proceeding or other proceeding in which the requesting party may from time to time be involved, regardless of whether such judicial proceeding or other proceeding is a matter with respect to which indemnification may be sought hereunder. The requesting party shall bear all costs and expenses in connection therewith.

#### **6.5 Preservation of Legal Privileges.**

(a) CRG, Carrols and Fiesta Restaurant Group recognize that the members of their respective Groups possess and will possess information and advice that has been previously developed but is legally protected from disclosure under legal privileges, such as the attorney-client privilege or work product exemption and other concepts of legal privilege (“Privilege”). Each party recognizes that it shall be jointly entitled to the Privilege with respect to such privileged information and that each shall be entitled to maintain and use for its own benefit all such information and advice, but both parties shall ensure that such information is maintained so as to protect the Privileges with respect to the other party’s interest. CRG, Carrols and Fiesta Restaurant Group agree that their respective rights and obligations to maintain, preserve, assert or waive any or all Privileges belonging to either party with respect to the Fiesta Business or the CRG Business shall be governed by the provisions of this Section 6.5. With respect to matters relating to the CRG Business, CRG or Carrols shall have sole authority in perpetuity to determine whether to assert or waive any or all Privileges, and Fiesta Restaurant Group shall take no action (or permit any of its Subsidiaries to take action) without the prior written consent of CRG or Carrols that could, in CRG’s or Carrols’ Good Faith Judgment, result in any waiver of any Privilege that could be asserted by CRG or any of its Subsidiaries under applicable Law and this Agreement. With respect to matters relating to the Fiesta Business, Fiesta Restaurant Group shall have sole authority in perpetuity to determine whether to assert or waive any or all Privileges, and CRG shall take no action (or permit any of its Subsidiaries to take action) without the prior written consent of Fiesta Restaurant Group that could, in Fiesta’s Good Faith Judgment, result in any waiver of any Privilege that could be asserted by Fiesta Restaurant Group or any of its Subsidiaries under applicable Law and this Agreement. The rights and obligations created by this Section 6.5 shall apply to all Information as to which CRG or Fiesta Restaurant Group or their respective Subsidiaries would be entitled to assert or has asserted a Privilege without regard to the effect, if any, of the Separation and Distribution (“Privileged Information”). Privileged Information of CRG includes (i) any and all Privileged Information existing prior to the Distribution regarding the CRG Business but which after the Distribution is in the possession of Fiesta Restaurant Group or any of its Subsidiaries; (ii) all communications subject to a Privilege occurring prior to the Distribution between counsel for CRG or any of its Subsidiaries (including in-house counsel and former in-house counsel who are employees of Fiesta Restaurant Group) and any person who, at the time of the communication, was an employee of CRG or any of its Subsidiaries, regardless of whether such employee is or becomes an employee of Fiesta Restaurant Group or any of its Subsidiaries; and (iii) all Privileged Information generated,

received or arising after the Distribution that refers or relates to Privileged Information generated, received or arising prior to the Distribution. Privileged Information of Fiesta Restaurant Group includes (i) any and all Privileged Information generated prior to the Distribution regarding the Fiesta Business but which after the Distribution is in the possession of CRG or any of its Subsidiaries; (ii) all communications subject to a Privilege occurring prior to the Distribution between counsel for Fiesta Restaurant Group or any of its Subsidiaries and any person who, at the time of the communication, was an employee of Fiesta Restaurant Group or any of its Subsidiaries, regardless of whether such employee is or becomes an employee of CRG or any of its Subsidiaries; and (iii) all Privileged Information generated, received or arising after the Distribution that refers or relates to Privileged Information generated, received or arising prior to the Distribution.

(b) Upon receipt by CRG or Carrols, or Fiesta Restaurant Group, as the case may be, of any subpoena, discovery or other request from any third party that actually or arguably calls for the production or disclosure of Privileged Information of the other or if CRG or Carrols, or Fiesta Restaurant Group, as the case may be, obtains knowledge that any current or former employee of CRG or Carrols, or Fiesta Restaurant Group, as the case may be, has received any subpoena, discovery or other request from any third party that actually or arguably calls for the production or disclosure of Privileged Information of the other, CRG or Carrols, or Fiesta Restaurant Group, as the case may be, shall promptly notify the other of the existence of the request and shall provide the other a reasonable opportunity to review the Privileged Information and to assert any rights it may have under this Section 6.5 or otherwise to prevent the production or disclosure of Privileged Information. CRG or Carrols, or Fiesta Restaurant Group, as the case may be, will not produce or disclose to any third party any of the other's Privileged Information under this Section 6.5 unless (A) the other has provided its express written consent to such production or disclosure, or (B) a court of competent jurisdiction has entered an order not subject to interlocutory appeal or review finding that the Information is not entitled to protection from disclosure under any applicable privilege, doctrine or rule.

(c) CRG's and Carrols' transfer of Fiesta Books and Records and other Information to Fiesta Restaurant Group, CRG's and Carrols' agreement to permit Fiesta Restaurant Group to obtain Information existing prior to the Distribution, Fiesta Restaurant Group's transfer of CRG Books and Records and other Information and Fiesta Restaurant Group's agreement to permit CRG and Carrols to obtain Information existing prior to the Distribution are made in reliance on CRG's and Carrols, and Fiesta Restaurant Group's respective agreements, as set forth in Section 6.10 and this Section 6.5, to maintain the confidentiality of such Privileged Information and to take the steps provided herein for the preservation of all Privileges that may belong to or be asserted by CRG and Carrols or Fiesta Restaurant Group, as the case may be. The access to Privileged Information being granted pursuant to Section 6.3 hereof, the agreement to provide witnesses and individuals pursuant to Section 6.4(g) hereof and the disclosure to Fiesta Restaurant Group and CRG or Carrols of Privileged Information relating to the Fiesta Business or the CRG Business pursuant to this Agreement in connection with the Separation and Distribution shall not be asserted by CRG or Carrols, or Fiesta Restaurant Group to constitute, or otherwise be deemed, a waiver of any Privilege that has been or may be asserted under this Section 6.5 or otherwise. Nothing in this Agreement shall operate to reduce, minimize or condition the rights granted to CRG or Carrols and Fiesta Restaurant Group in, or the obligations imposed upon CRG or Carrols and Fiesta Restaurant Group by, this Section 6.5.

**6.6 Payment of Expenses.** Except as otherwise provided in this Agreement or in any Ancillary Agreement (a) CRG and Carrols, on the one hand, and Fiesta Restaurant Group, on the other hand, will bear all of the expenses incurred on or prior to the Distribution Date in connection with the Separation, the Distribution and the other transactions contemplated by this Agreement as mutually agreed to by the parties prior to the Distribution Time and (b) each party will bear its own expenses incurred after the Distribution Date in connection with the Separation, the Distribution and the other transactions contemplated by this Agreement.

**6.7 Surety Instruments.** On or after the Distribution Date, if any letters of credit, financial or surety bonds issued by third parties or other similar financial instruments issued by third parties (collectively, "Surety Instruments") for the account of Fiesta Restaurant Group or any of its Subsidiaries issued on behalf of or for the benefit of the CRG Business are outstanding, or if any Surety Instruments for the account of CRG or any of its Subsidiaries issued on behalf of or for the benefit of the Fiesta Business are outstanding, the party benefiting from the Surety Instruments shall, and shall cause its Subsidiaries to, use their respective commercially reasonable efforts to replace such Surety Instruments as promptly as practicable with Surety Instruments that (x) are issued for its own account or the account of any of its Subsidiaries (or any combination thereof), (y) are acceptable to the beneficiary or beneficiaries thereof and (z) neither impose any Liabilities, directly or indirectly, on the party not benefiting therefrom or any of its Subsidiaries nor encumber or otherwise restrict, directly or indirectly, any Assets of such party or any of its Subsidiaries. Following the Distribution Date, (i) the party benefiting from any such unreplaced Surety Instruments shall indemnify and hold harmless the other party's Group for any Losses arising from or relating to such unreplaced Surety Instruments as set forth in Section 3.3 or 3.4, as applicable, and (ii) the party benefiting from such Surety Instruments shall not, and shall not permit any of its Subsidiaries to, enter into, renew or extend the term of, increase its obligations under, or transfer to a third party, any loan, lease, Contract or other obligation in connection with which the other party or any of its Subsidiaries has issued, or caused to be issued, any Surety Instruments which remain outstanding. The parties hereto agree that neither party nor any of its respective Subsidiaries will have any obligation to renew any Surety Instruments issued on behalf of a member of the other party's Group after the expiration of any such Surety Instruments, provided that nothing in this Section 6.7 shall prevent a party from renewing any Surety Instrument.

**6.8 Guarantee Obligations; Master Lease.**

(a) CRG, Carrols, and Fiesta Restaurant Group shall cooperate and Fiesta Restaurant Group shall use its commercially reasonable efforts to terminate, or to cause Fiesta Restaurant Group, one of its Subsidiaries, or one of its Affiliates (other than, if applicable, CRG or any of its Subsidiaries) to be substituted in all respects for CRG and any of its Subsidiaries in respect of, all obligations of CRG or any of its Subsidiaries under any loan, financing, lease, Contract or other obligation, including any Lease Guarantee, (other than Surety Instruments governed by Section 6.7) in existence as of the Distribution Date pertaining to the Fiesta Business for which CRG or

any of its Subsidiaries is or may be liable as guarantor (“CRG Guarantees”). If such a termination or substitution is not effected by the Distribution Date, (i) Fiesta Restaurant Group shall indemnify and hold harmless the CRG Group for any Losses arising from or relating to CRG Guarantees, and (ii) neither CRG nor any of its Subsidiaries will have any obligation to renew any CRG Guarantees after the expiration of such CRG Guarantees. To the extent that CRG or any of its Subsidiaries have performance obligations under any CRG Guarantee, Fiesta Restaurant Group will use its commercially reasonable efforts to (i) perform such obligations on behalf of CRG and its Subsidiaries or (ii) otherwise take such action as reasonably requested by CRG so as to put CRG and its Subsidiaries in the same position as if Fiesta Restaurant Group, and not CRG and its Subsidiaries, had performed or were performing such obligations.

(b) CRG and Carrols, and Fiesta Restaurant Group shall cooperate and CRG and Carrols shall use its commercially reasonable efforts to terminate, or to cause CRG and Carrols, one of its Subsidiaries, or one of its Affiliates (other than, if applicable, Fiesta Restaurant Group or any of its Subsidiaries) to be substituted in all respects for Fiesta Restaurant Group and any of its Subsidiaries in respect of, all obligations of Fiesta Restaurant Group or any of its Subsidiaries under any loan, financing, lease, Contract or other obligation (other than Surety Instruments governed by Section 6.7) in existence as of the Distribution Date pertaining to the CRG Business for which Fiesta Restaurant or any of its Subsidiaries is or may be liable as guarantor (“Fiesta Guarantees”). If such a termination or substitution is not effected by the Distribution Date, (i) CRG and Carrols shall indemnify and hold harmless the Fiesta Group for any Losses arising from or relating to Fiesta Guarantees, and (ii) neither Fiesta Restaurant Group nor any of its Subsidiaries will have any obligation to renew any Fiesta Guarantees after the expiration of such Fiesta Guarantees. To the extent that Fiesta Restaurant Group or any of its Subsidiaries have performance obligations under any Fiesta Guarantee, CRG or Carrols will use its commercially its reasonable efforts to (i) perform such obligations on behalf of Fiesta Restaurant Group and its Subsidiaries or (ii) otherwise take such action as reasonably requested by Fiesta Restaurant Group so as to put Fiesta Restaurant Group and its Subsidiaries in the same position as if CRG or Carrols, and not Fiesta Restaurant Group and its Subsidiaries, had performed or were performing such obligations.

(c) CRG and Carrols, and Fiesta Restaurant Group shall cooperate and use their commercially reasonable efforts to cause Fiesta Restaurant Group or one of its Subsidiaries to enter into a new master lease or individual leases with the lessor under the Master Lease with respect to the Pollo Tropical restaurants identified on Schedule D that are currently subject to the Master Lease. Until such new master lease is entered into or all such individual leases are entered into, (i) CRG, Carrols or any of their Subsidiaries will perform its obligations under the Master Lease during the term thereof such that no breach, default or event of default shall occur or be continuing thereunder and (ii) CRG, Carrols or any of their Subsidiaries shall cooperate with Fiesta Restaurant Group or any of its Subsidiaries and use their commercially reasonable efforts to enter into, and cause the lessor under the Master Lease to enter into a non disturbance agreement or similar agreement on terms satisfactory to Fiesta Restaurant Group, which shall provide that Fiesta Restaurant Group or one of its Subsidiaries shall become the lessee under such Master Lease solely with respect to the Pollo Tropical restaurants leased by Carrols thereunder and perform the obligations of CRG, Carrols or any of their Subsidiaries under such Master Lease solely with respect to the Pollo Tropical restaurants leased by Carrols thereunder in the event of a breach or default thereunder by CRG, Carrols or any of their Subsidiaries.

---

## **6.9 Nonsolicitation of Employees.**

(a) After the Distribution Date until the second anniversary thereof, Fiesta Restaurant Group shall not, and shall cause its Affiliates and any employment agencies acting on its behalf not to, solicit, recruit or hire, without CRG's and Carrols' express written consent, any Persons who are employed by any member of the CRG Group immediately after the Distribution Date or were employed by any member of the CRG Group at any time during the six month period prior to the Distribution Date. Notwithstanding the foregoing, this prohibition on solicitation, recruitment and hiring does not apply to actions taken solely as a result of a restaurant level employee's affirmative response to a general recruitment effort directed to any restaurant level employee and carried out through a public solicitation or general solicitation.

(b) After the Distribution Date until the second anniversary thereof, CRG or Carrols shall not, and shall cause its respective Affiliates and any employment agencies acting on its respective behalf not to, solicit, recruit or hire, without Fiesta Restaurant Group's express written consent, any Persons who are employed by any member of the Fiesta Group immediately after the Distribution Date or were employed by any member of the Fiesta Group at any time during the six month period prior to the Distribution Date. Notwithstanding the foregoing, this prohibition on solicitation, recruitment and hiring does not apply to actions taken solely as a result of a restaurant level employee's affirmative response to a general recruitment effort directed to any restaurant level employee and carried out through a public solicitation or general solicitation.

## **6.10 Confidentiality.**

(a) CRG, Carrols, and Fiesta Restaurant Group shall hold and shall cause the members of the CRG Group and the Fiesta Group, respectively, to hold, and shall each cause their respective officers, employees, agents, consultants and advisors to hold, in strict confidence and not to disclose or release without the prior written consent of the other party, any and all Confidential Information (as defined herein); provided, that the parties may disclose, or may permit disclosure of, Confidential Information (i) to their respective auditors, attorneys, financial advisors, bankers and other appropriate consultants and advisors who have a need to know such information and are informed of their obligation to hold such information confidential to the same extent as is applicable to the parties hereto and in respect of whose failure to comply with such obligations, CRG or Carrols, or Fiesta Restaurant Group, as the case may be, will be responsible or (ii) to the extent any member of the CRG Group or the Fiesta Group is compelled to disclose any such Confidential Information by judicial or administrative process or, in the opinion of legal counsel, by other requirements of Law. Notwithstanding the foregoing, in the event that any demand or request for disclosure of Confidential Information is made pursuant to clause (ii) above, CRG or Carrols, or Fiesta Restaurant Group, as the case may be, shall promptly notify the other of the existence of such request or demand and shall provide the other a reasonable opportunity to seek an appropriate protective order or other remedy, which both parties will cooperate in seeking to obtain. In the event that such appropriate protective order or other remedy is not obtained, the party whose Confidential Information is required to be disclosed shall or shall cause the other party to furnish, or cause to be furnished, only that portion of the Confidential Information that is

legally required to be disclosed. As used in this Section 6.10, "Confidential Information" shall mean all proprietary, technical or operational information, data or material of one party which, prior to or following the Distribution Date, has been disclosed by CRG, Carrols or members of the CRG Group, on the one hand, or Fiesta Restaurant Group or members of the Fiesta Group, on the other hand, in written, oral (including by recording), electronic, or visual form to, or otherwise has come into the possession of, the other, including pursuant to the access provisions of Section 6.4 hereof or any other provision of this Agreement or by virtue of employees of the CRG Group becoming employees of the Fiesta Group as a result of the transactions contemplated hereby (except to the extent that such Information can be shown to have been (a) in the public domain through no fault of such party (or, in the case of CRG, Carrols, any other member of the CRG Group or, in the case of Fiesta Restaurant Group, any other member of the Fiesta Group) or (b) later lawfully acquired from other sources by the party (or, in the case of CRG or Carrols, such member of the CRG Group or, in the case of Fiesta Restaurant Group, such member of the Fiesta Group) to which it was furnished; *provided, however*, in the case of (b) that such sources did not provide such Information in breach of any confidentiality obligations).

(b) Notwithstanding anything to the contrary set forth herein, (i) CRG, Carrols and the other members of the CRG Group, on the one hand, and Fiesta Restaurant Group and the other members of the Fiesta Group, on the other hand, shall be deemed to have satisfied their obligations hereunder with respect to Confidential Information if they exercise the same degree of care (but no less than a reasonable degree of care) as they take to preserve confidentiality for their own similar Information and (ii) confidentiality obligations provided for in any agreement between CRG, Carrols or any other member of the CRG Group, or Fiesta Restaurant Group or any other members of the Fiesta Group, on the one hand, and any employee of CRG, Carrols or any other member of the CRG Group, or Fiesta Restaurant Group or any other members of the Fiesta Group, on the other hand, shall remain in full force and effect. Confidential Information of CRG, Carrols or any other member of the CRG Group, on the one hand, or Fiesta Restaurant Group or any other member of the Fiesta Group, on the other hand, in the possession of and used by the other as of the Distribution Date may continue to be used by such Person in possession of the Confidential Information in and only in the operation of the CRG Business or the Fiesta Business, as the case may be, and may be used only so long as the Confidential Information is maintained in confidence and not disclosed in violation of Section 6.10(a). Such continued right to use may not be transferred to any third party unless the third party purchases all or substantially all of the business and Assets of Fiesta Restaurant Group, or any Asset in which the relevant Confidential Information is used or employed, in one transaction or in a series of related transactions, provided that such prospective purchaser executes a written agreement with CRG or Carrols (which agreement shall be fully and directly enforceable by CRG or Carrols) in which such party agrees to be bound in perpetuity by the terms of this Section 6.10.

#### **6.11 Indemnification of Directors, Officers and Employees.**

(a) Without limiting any additional rights that any officer, director or employee may have under the Amended and Restated Certificate of Incorporation of CRG or the Amended and Restated Bylaws of CRG (or the charter documents of CRG's Subsidiaries), from the Distribution Date through the sixth anniversary of the Distribution Date, CRG shall, and shall cause the any of the

CRG Group to, indemnify and hold harmless each current (as of the Distribution Date) and former officer, director, employee or fiduciary of Fiesta Restaurant Group or its Subsidiaries (collectively, the “Indemnified Persons”), from and against any and all claims, losses, liabilities, damages, judgments, inquiries, fines and fees, costs and expenses, including actual attorneys’ fees and disbursements (collectively, “Costs”) incurred in connection with any Proceeding, whether civil, criminal, administrative or investigative, arising out of or pertaining to the fact that the Indemnified Person is or was an officer, director, employee or fiduciary of CRG or its Subsidiaries at or prior to the Distribution Date, whether asserted or claimed prior to, at or after the Distribution Date, to the fullest extent that CRG would be permitted under applicable Law and required under the Amended and Restated Certificate of Incorporation of CRG or the Amended and Restated Bylaws of CRG (or, as relevant, those of its applicable Subsidiary) as at the date hereof. In the event of any such Proceeding, each Indemnified Person shall be entitled to advancement of expenses incurred in the defense of any Proceeding from CRG or its Subsidiaries to the fullest extent that CRG or its Subsidiaries would be permitted under applicable Law and the Amended and Restated Certificate of Incorporation of CRG or the Amended and Restated Bylaws of CRG (or, as relevant, those of its applicable Subsidiary) as at the date hereof. Notwithstanding anything to the contrary herein (but subject to any superior rights contained in Amended and Restated Certificate of Incorporation of CRG or the Amended and Restated Bylaws of CRG (or, as relevant, those of its applicable Subsidiary)), prior to making any payment or advance in respect of the indemnification obligations set forth in this Section 6.11, the Person who is requesting such indemnification or advance shall agree to repay such payments or advances if it is ultimately determined that such Person is not entitled to indemnification. Subject to any superior rights contained in the Amended and Restated Certificate of Incorporation of CRG or the Amended and Restated Bylaws of CRG (or, as relevant, those of its applicable Subsidiary), no Indemnified Person shall settle, compromise or consent to the entry of any judgment in any threatened or actual Proceeding for which indemnification could be sought by an Indemnified Person hereunder unless CRG consents in writing to such settlement, compromise or consent (which consent shall not be unreasonably withheld, conditioned or delayed).

(b) Except as may be required by applicable Law, CRG and Carrols agree that for a period of six years from the Distribution Date, all rights to indemnification and exculpation from liabilities for acts or omissions occurring at or prior to the Distribution Date and rights to advancement of expenses relating thereto now existing in favor of any Indemnified Person as provided in the Amended and Restated Certificate of Incorporation of CRG or the Amended and Restated Bylaws of CRG (or, as relevant, those of its applicable Subsidiary) shall survive the Separation and Distribution and continue in full force and effect, and for a period of six years from the Distribution Date shall not be amended, repealed or otherwise modified in any manner that would adversely affect any right thereunder of any such Indemnified Person.

(c) Prior to the Distribution Date, CRG shall pay for and cause to be obtained, and to be effective at the Distribution Date, one or more prepaid “tail” insurance policies for the Persons who, as of the date hereof, are covered by CRG’s and its Subsidiaries’ existing directors’ and officers’ insurance policies (“D&O Insurance”), with a claims period of at least six years from the Distribution Date with terms and conditions (including scope and coverage amounts) that are,

taken as a whole, at least as favorable as CRG's and its Subsidiaries' existing D&O Insurance, for claims arising from facts or events that occurred at or prior to the Distribution Date, covering without limitation the transactions contemplated hereby.

(d) Notwithstanding anything herein to the contrary, if any Proceeding (whether arising before, at or after the Distribution Date) with respect to which an Indemnified Person is entitled to indemnification is instituted against any Indemnified Person on or prior to the sixth anniversary of the Distribution Date, then the provisions of this Section 6.11 shall continue in effect until the final disposition of such Proceeding.

(e) The indemnification provided for herein shall not be deemed exclusive of any other rights to which an Indemnified Person is entitled, whether pursuant to Law, Contract or otherwise. The provisions of this Section 6.11 shall survive the consummation of the Separation and Distribution and, notwithstanding any other provision of this Agreement that may be to the contrary, expressly are intended to benefit, and shall be enforceable by, each of the Indemnified Persons and their respective heirs and legal representatives.

(f) In the event that CRG or any of its successors or assigns (i) consolidates with or merges into any other Person and is not the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers or conveys all or substantially all of its properties and assets to any Person, then, and in each such case, proper provision shall be made so that the successors and assigns of CRG shall succeed to the obligations set forth in this Section 6.11.

#### **6.12 Other Insurance.**

(a) Except as may otherwise be expressly provided in this Article VI, the CRG Group shall not have any Liability whatsoever to the Fiesta Group in connection with the insurance policies and practices of CRG in effect at any time prior to the Distribution Date, including in connection with the level or scope of any such insurance, the creditworthiness of any insurance carrier, the terms and conditions of any policy and the adequacy or timeliness of any notice to any insurance carrier with respect to any claim or potential claim or otherwise.

(b) CRG or one or more members of the CRG Group shall continue to own all property damage and business interruption, and liability insurance policies and programs, including, without limitation, primary and excess general liability, executive liability, automobile, workers' compensation, property damage and business interruption, crime and surety insurance policies, in effect on or before the Distribution Date (collectively, the "CRG Policies"). Subject to the provisions of this Agreement, the CRG Group shall retain all of their respective rights, benefits and privileges, if any, under the CRG Policies. Nothing contained herein shall be construed to be an attempted transfer of or a change to any part of the ownership of the CRG Policies.

(c) Until the Distribution Date, the CRG Group will maintain in full force and effect its existing insurance to the extent that it applies to any member of the Fiesta Group, the Fiesta Business or the Fiesta Assets.



(d) Commencing on and as of the Distribution Date, Fiesta Restaurant Group shall be responsible for establishing and maintaining separate property damage, business interruption and liability insurance policies and programs (including primary and excess general liability, executive liability, automobile, workers' compensation, unemployment, property damage and business interruption, crime, surety and other insurance) for activities and claims involving any member of the Fiesta Group. Each member of the Fiesta Group, as appropriate, shall be responsible for all administrative and financial matters relating to insurance policies established and maintained by the members of the Fiesta Group for claims involving any member of the Fiesta Group.

(e) The provisions of this Section 6.12 relate solely to matters involving property damage and business interruption, and liability insurance policies and programs, including, without limitation, primary and excess general liability, executive liability, automobile, workers' compensation, property damage and business interruption, crime and surety insurance policies, and shall not be construed to affect any obligation of or impose any obligation on the parties with respect to any life, health and accident, dental or medical or any other insurance policies applicable to any of the officers, directors, employees or other representatives of the parties or their Affiliates.

**6.13 Tax Matters.** All matters relating to Taxes shall be governed exclusively by the Tax Matters Agreement, except as may be expressly stated herein or therein. In the event of any inconsistency with respect to such matters between the Tax Matters Agreement and this Agreement or any other Ancillary Agreement, the Tax Matters Agreement shall govern to the extent of the inconsistency.

**6.14 Employee Matters.** All matters relating to or arising out of any employee benefit, compensation or welfare arrangement in respect of any present and former employee of the CRG Group or the Fiesta Group shall be governed by the Employee Matters Agreement. In the event of any inconsistency with respect to such matters between the Employee Matters Agreement and this Agreement or any Ancillary Agreement, the Employee Matters Agreement shall govern to the extent of the inconsistency.

**6.15 Transition Services.** All matters relating to the provision of support and other services by the CRG Group to the Fiesta Group, or by the Fiesta Group to the CRG Group after the Distribution Time, covered by the Transition Services Agreement, shall be governed exclusively by the Transition Services Agreement, except as may be expressly stated herein or therein. In the event of any inconsistency with respect to such matters between the Transition Services Agreement and this Agreement or any other Ancillary Agreement, the Transition Services Agreement shall govern to the extent of the inconsistency.

**6.16 Voting Agreement.** CRG agrees not to amend the Voting Agreement dated as of July 27, 2011, by and among CRG, Jefferies Capital Partners IV L.P., a Delaware limited partnership, Jefferies Employee Partners IV LLC, and JCP Partners IV LLC, a Delaware limited liability company without the prior written consent of Fiesta Restaurant Group except as contemplated by the Asset Purchase Agreement dated as of March 26, 2012 among CRG, Carrols LLC and Burger King Corporation.

---

ARTICLE VII

MISCELLANEOUS

**7.1 Limitation of Liability.** EXCEPT TO THE EXTENT SPECIFICALLY PROVIDED IN ANY ANCILLARY AGREEMENT, IN NO EVENT SHALL ANY MEMBER OF THE CRG GROUP OR THE FIESTA GROUP OR THEIR RESPECTIVE DIRECTORS, OFFICERS AND EMPLOYEES BE LIABLE TO ANY OTHER MEMBER OF THE CRG GROUP OR THE FIESTA GROUP FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES OR LOST PROFITS, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE) ARISING IN ANY WAY OUT OF THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATIONS SHALL NOT LIMIT EACH PARTY'S INDEMNIFICATION OBLIGATIONS FOR LIABILITIES TO THIRD PARTIES AS SET FORTH IN THIS AGREEMENT OR ANY ANCILLARY AGREEMENT.

**7.2 Entire Agreement.** This Agreement, the Ancillary Agreements and the Schedules referenced or attached hereto and thereto, constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede all prior written and oral and all contemporaneous oral agreements and understandings with respect to the subject matter hereof.

**7.3 Governing Law.** This Agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws rules thereof to the extent such rules would require the application of the law of another jurisdiction.

**7.4 Termination.** This Agreement and all Ancillary Agreements may be terminated at any time prior to the Distribution Date by and in the sole discretion of CRG without the approval of Fiesta Restaurant Group. In the event of termination pursuant to this Section, neither party shall have any Liability of any kind to the other party.

**7.5 Notices.** Unless expressly provided herein, all notices, claims, certificates, requests, demands and other communications hereunder shall be in writing and shall be deemed to be duly given (i) when personally delivered or (ii) if mailed by registered or certified mail, postage prepaid, return receipt requested, on the date the return receipt is executed or the letter is refused by the addressee or its agent or (iii) if sent by overnight courier which delivers only upon the signed receipt of the addressee, on the date the receipt acknowledgment is executed or refused by the addressee or its agent or (iv) if sent by facsimile or electronic mail, on the date confirmation of transmission is received (provided that a copy of any notice delivered pursuant to this clause (iv) shall also be sent pursuant to clause (i), (ii) or (iii)), to the party at the address of its principal executive office as set forth below or to such other address or facsimile number for a party as it shall have specified by like notice:

If to CRG or Carrols:

Carrols Restaurant Group, Inc.  
968 James Street  
Syracuse, New York 13203  
Attention: Chief Executive Officer  
Telephone: (315) 424-0513  
Facsimile: (315) 475-9616  
email: daccordino@carrols.com

with a copy to:

Carrols Restaurant Group, Inc.  
968 James Street  
Syracuse, New York 13203  
Attention: General Counsel  
Telephone: (315) 424-0513  
Facsimile: (315) 475-9616  
email: wmyers@carrols.com

If to Fiesta Restaurant Group:

Fiesta Restaurant Group, Inc.  
7300 North Kendall Drive, 8<sup>th</sup> Floor  
Miami, Florida 33156  
Attention: Chief Executive Officer  
Telephone: (305) 670-7696  
Facsimile: (305) 670-6403  
email: ttaft@pollotropical.com

with a copy to:

Fiesta Restaurant Group, Inc.  
7300 North Kendall Drive, 8<sup>th</sup> Floor  
Miami, Florida 33156  
Attention: General Counsel  
Telephone: (305) 670-7696  
Facsimile: (305) 670-6403  
email: jzirkman@frgi.com

**7.6 Counterparts.** This Agreement, including the Schedules hereto and the other documents referred to herein, may be executed in counterparts, each of which shall be deemed to be an original but all of which together shall constitute one agreement binding on Fiesta Restaurant Group, CRG and Carrols.

**7.7 Binding Effect; Assignment.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives and successors, and nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Agreement. This Agreement may not be assigned by any party hereto.

**7.8 No Third Party Beneficiaries.** This Agreement is solely for the benefit of the parties hereto and their respective Subsidiaries and is not intended to confer upon any other Person except the parties hereto and their respective Subsidiaries any rights or remedies hereunder.

**7.9 Severability.** If any term or other provision of this Agreement or the Schedules attached hereto is determined by a nonappealable decision by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the court, administrative agency or arbitrator shall interpret this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the fullest extent possible. If any sentence in this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

**7.10 Failure or Indulgence Not Waiver; Remedies Cumulative.** No failure or delay on the part of either party hereto in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty or agreement herein, nor shall any single or partial exercise of any such right preclude other or further exercise thereof or of any other right. All rights and remedies existing under this Agreement or the Schedules attached hereto are cumulative to, and not exclusive of, any rights or remedies otherwise available.

**7.11 Amendment.** No change or amendment will be made to this Agreement except by an instrument in writing signed on behalf of each of the parties to this Agreement.

**7.12 Authority.** Each of the parties hereto represents to the other that (a) it has the corporate or other requisite power and authority to execute, deliver and perform this Agreement and the Ancillary Agreements, (b) the execution, delivery and performance of this Agreement and the Ancillary Agreements by it have been duly authorized by all necessary corporate or other actions, (c) it has duly and validly executed and delivered this Agreement and the Ancillary Agreements to be executed and delivered on or prior to the Distribution Date, and (d) this Agreement and such Ancillary Agreements are legal, valid and binding obligations, enforceable against it in accordance with their respective terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general equity principles.

**7.13 Construction.** This Agreement and the Ancillary Agreements shall be construed as if jointly drafted by Fiesta Restaurant Group, CRG and Carrols and no rule of construction or strict interpretation shall be applied against either party. The parties represent that this Agreement is entered into with full consideration of any and all rights which the parties may have. The parties have relied upon their own knowledge and judgment and upon the advice of the attorneys of their choosing. The parties have received independent legal advice, have conducted such investigations they and their counsel thought appropriate, and have consulted with such other independent advisors as they and their counsel deemed appropriate regarding this Agreement and their rights and asserted rights in connection therewith. The parties are not relying upon any representations or statements made by any other party, or such other party's employees, agents, representatives or attorneys, regarding this Agreement, except to the extent such representations are expressly incorporated in this Agreement. The parties are not relying upon a legal duty, if one exists, on the part of any other party (or such other party's employees, agents, representatives or attorneys) to disclose any information in connection with the execution of this Agreement or its preparation, it being expressly understood that no party shall ever assert any failure to disclose information on the part of the other party as a ground for challenging this Agreement.

7.14 **Interpretation.** The headings contained in this Agreement, in any Schedule hereto and in the table of contents to this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Any capitalized term used in any Schedule, but not otherwise defined therein, shall have the meaning assigned to such term in this Agreement. When a reference is made in this Agreement to an Article, Section or Schedule, such reference shall be to an Article or a Section of, or a Schedule to, this Agreement unless otherwise indicated. The word “including” and words of similar import when used in this Agreement will mean “including, without limitation,” unless otherwise specified.

7.15 **Conflicting Agreements.** In the event of conflict between this Agreement and any Ancillary Agreement executed in connection herewith, the provisions of such other agreement shall prevail.

[INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Separation and Distribution Agreement to be duly executed as of the date first set forth above.

CARROLS RESTAURANT GROUP, INC.

By: /s/ Paul Flanders  
Name: Paul Flanders  
Title: Vice President and Chief Financial Officer

CARROLS CORPORATION

By: /s/ Paul Flanders  
Name: Paul Flanders  
Title: Vice President and Chief Financial Officer

FIESTA RESTAURANT GROUP, INC.

By: /s/ Joseph Zirkman  
Name: Joseph Zirkman  
Title: Vice President

Agreed to solely with respect to Article III

CARROLS LLC

By: /s/ Paul Flanders  
Name: Paul Flanders  
Title: Vice President and Chief Financial Officer

---

Schedule A

Assumed Contracts

None

Schedule BLease Guarantee

|    |                   |            |    |     |              |
|----|-------------------|------------|----|-----|--------------|
| 1  | Jun-06            | 09/29/23   | PT | 16  | NOT RELEASED |
| 2  | Jun-06            | 09/29/23   | PT | 17  | NOT RELEASED |
| 3  | Jun-06            | 09/29/23   | PT | 20  | NOT RELEASED |
| 4  | Jun-06            | 09/29/23   | PT | 22  | NOT RELEASED |
| 5  | Jun-06            | 09/29/23   | PT | 35  | NOT RELEASED |
| 6  | Dec-08            | 12/22/18   | PT | 9   | NOT RELEASED |
| 7  | Dec-08            | 12/31/20   | TC | 102 | NOT RELEASED |
| 8  | Dec-08            | 12/31/20   | TC | 119 | NOT RELEASED |
| 9  | Dec-08            | 12/31/20   | TC | 122 | NOT RELEASED |
| 10 | Dec-08            | 12/31/20   | TC | 128 | NOT RELEASED |
| 11 | Dec-08            | 12/31/20   | TC | 130 | NOT RELEASED |
| 12 | Dec-08            | 12/31/20   | TC | 143 | NOT RELEASED |
| 13 | Dec-08            | 12/31/20   | TC | 144 | NOT RELEASED |
| 14 | Dec-08            | 12/31/20   | TC | 158 | NOT RELEASED |
| 15 | Dec-08            | 12/31/20   | TC | 159 | NOT RELEASED |
| 16 | Dec-08            | 12/31/20   | TC | 160 | NOT RELEASED |
| 17 | Dec-08            | 12/31/20   | TC | 172 | NOT RELEASED |
| 18 | Dec-08            | 12/31/20   | TC | 174 | NOT RELEASED |
| 19 | Dec-08            | 12/31/20   | TC | 176 | NOT RELEASED |
| 20 | Dec-08            | 12/31/20   | TC | 181 | NOT RELEASED |
| 21 | Dec-08            | 12/31/20   | TC | 195 | NOT RELEASED |
| 22 | Dec-08            | 12/31/20   | TC | 199 | NOT RELEASED |
| 23 | Dec-08            | 12/31/20   | TC | 236 | NOT RELEASED |
| 24 | Dec-08            | 12/31/20   | TC | 241 | NOT RELEASED |
| 25 | Dec-08            | 12/31/20   | TC | 248 | NOT RELEASED |
| 26 |                   | 2/28/2030  | TC | 326 | NOT RELEASED |
| 27 | 10/31/2002        | 10/30/2022 | TC | 239 | NOT RELEASED |
| 28 | 10/2/2008         | 9/30/2028  | TC | 240 | NOT RELEASED |
| 29 | 10/2/2008         | 9/30/2028  | PT | 6   | NOT RELEASED |
| 30 | Other - Sovereign | 6/29/2026  | PT | 8   | NOT RELEASED |
| 31 | Other - Sovereign | 6/29/2026  | PT | 15  | NOT RELEASED |



|    |                   |            |    |     |              |
|----|-------------------|------------|----|-----|--------------|
| 32 | Other - Sovereign | 6/29/2026  | PT | 23  | NOT RELEASED |
| 33 | Other - Sovereign | 6/29/2026  | PT | 24  | NOT RELEASED |
| 34 | Other             | 12/31/2022 | PT | 26  | NOT RELEASED |
| 35 | Other             | 12/22/2022 | PT | 53  | NOT RELEASED |
| 36 | Other             | 9/29/2018  | PT | 31  | NOT RELEASED |
| 37 | Other             | 9/21/2018  | PT | 30  | NOT RELEASED |
| 38 | Other - USRA      | 12/31/2019 | PT | 13  | NOT RELEASED |
| 39 | Other - USRA      | 12/31/2019 | PT | 27  | NOT RELEASED |
| 40 | Other - USRA      | 12/31/2019 | PT | 40  | NOT RELEASED |
| 41 | Other - USRA      | 12/31/2019 | PT | 43  | NOT RELEASED |
| 42 | Other - USRA      | 12/31/2019 | PT | 44  | NOT RELEASED |
| 43 |                   |            | TC | 107 | NOT RELEASED |
| 44 |                   |            | TC | 113 | NOT RELEASED |
| 45 |                   |            | TC | 136 | NOT RELEASED |
| 46 |                   |            | TC | 177 | NOT RELEASED |
| 47 |                   |            | TC | 197 | NOT RELEASED |

---

Schedule C

Intercompany Accounts, Related Liabilities and Other Materials

Certain intercompany charges between the CRG Group and the Fiesta Group which are settled in the normal course until the Distribution Date.

---

Schedule DMaster Lease

|     | <u>Address</u>                                  | <u>FFCA Property No.</u> | <u>Carrols No.</u> |
|-----|-------------------------------------------------|--------------------------|--------------------|
| 1.  | 3196 Manchestor Road, Akron, OH 44319           | 8001-0185                | 580                |
| 2.  | 80-90 Campbell Road, Schenectady, NY 12306      | 8001-0186                | 584                |
| 3.  | 851 S.R. 97W, Bellville, OH 44813               | 8001-0187                | 585                |
| 4.  | 4620 S. Hurstborne Pkwy, Louisville, KY 40299   | 8001-0188                | 587                |
| 5.  | 3007 NYS Rte. 417 W, Olean, NY 14760            | 8001-0189                | 588                |
| 6.  | 311 Brenton Way, Sheperdsville, KY 40165        | 8001-0190                | 589                |
| 7.  | 499 SR 103, Bluffton, OH, 45817                 | 8001-0191                | 594                |
| 8.  | 7021 Wyoming Avenue, Dearborn, MI 48126         | 4938-0529                | 595                |
| 9.  | 8299 Pines Boulevard, Pembroke Pines, FL 33024  | 8001-0193                | 13                 |
| 10. | 11429 Pines Boulevard, Pembroke Pines, FL 33026 | 8001-0194                | 27                 |
| 11. | Wiles Road, Coral Springs, FL 33067             | 8001-0195                | 40                 |
| 12. | 2635 Weston Road, Weston, FL 33331              | 8001-0196                | 43                 |
| 13. | 10575 NW 41st Street, Miami, FL 33178           | 8001-0197                | 44                 |

**TAX MATTERS AGREEMENT**

**by and between**

**CARROLS RESTAURANT GROUP, INC.,**

**CARROLS CORPORATION**

**and**

**FIESTA RESTAURANT GROUP, INC.**

**Dated as of April 24, 2012**

## TAX MATTERS AGREEMENT

This TAX MATTERS AGREEMENT (this “**Agreement**”) is made as of April 24, 2012, by and between Carrols Restaurant Group, Inc., a Delaware corporation (“**CRG**”), Carrols Corporation, a Delaware corporation (“**Carrols**”) and Fiesta Restaurant Group, Inc., a Delaware corporation (“**Fiesta**”) and, as of the date hereof, an indirect wholly-owned subsidiary of CRG. CRG and Fiesta are referred to herein as “**Parties**” or each individually as a “**Party**.”

WHEREAS, CRG, through the Fiesta Subsidiaries (as defined herein), is engaged in the business of owning, operating, and franchising Pollo Tropical and Taco Cabana restaurants, as described more fully in the Form 10 Registration Statement (as defined herein) (the “**Transferred Business**”);

WHEREAS, the board of directors of CRG (the “**CRG Board**”) has determined that it would be advisable and in the best interests of CRG and its stockholders for CRG’s wholly-owned subsidiary, Carrols Corporation (“**Carrols**”), to transfer to Fiesta (i) 100% of the ownership interests of the Fiesta Subsidiaries (as defined herein) and (ii) the Transferred Business Assets (as defined herein) as further described in the Separation and Distribution Agreement by and between CRG and Fiesta (the “**Separation and Distribution Agreement**”), of even date herewith (such transfers described in (i) and (ii) referred to as the “**Contribution**”);

WHEREAS, the CRG Board has determined that it would be advisable and in the best interest of CRG and its stockholders for Carrols to distribute to CRG, without any consideration being paid by CRG, all of the outstanding shares of Fiesta common stock (“**Fiesta Shares**”) owned by Carrols (the “**Internal Distribution**”);

WHEREAS, the CRG Board has determined that it would be advisable and in the best interests of CRG and its stockholders for CRG, after the completion of the Internal Distribution, to distribute on a *pro rata* basis to the holders of shares of CRG’s common stock (“**CRG Shares**”), without any consideration being paid by the holders of such CRG Shares, all of the Fiesta Shares owned by CRG as of the Distribution Date (as defined herein) (such distribution, the “**External Distribution**”);

WHEREAS, for federal income tax purposes, the Contribution and Internal Distribution, together with the other actions described in the Separation and Distribution Agreement, are intended to qualify for tax-free treatment under Sections 355 and 368(a)(1)(D) of the Internal Revenue Code of 1986, as amended (the “**Code**”) (including, without limitation, Sections 355(d), 355(e), and 355(f) of the Code);

WHEREAS, for federal income tax purposes, the External Distribution (collectively with the Contribution and Internal Distribution, the “**Plan of Separation**”) is intended to qualify for tax-free treatment under Sections 355 of the Code (including, without limitation, Sections 355(d) and 355(e) of the Code);

WHEREAS, in connection with the Plan of Separation, the Parties desire to set forth their agreement with respect to tax matters for taxable periods prior to and including the Distribution Date, in line with the following: (i) Fiesta is responsible for and shall pay all taxes attributable to

the Fiesta Business and will indemnify CRG for these taxes, (ii) CRG is responsible for and shall pay all taxes to the extent such taxes are not attributable to the Fiesta Business and will indemnify Fiesta for these taxes, (iii) the Parties will cooperate to efficiently settle Audits, (iv) the Parties are restricted from taking certain actions that could cause the Internal Distribution, the External Distribution or certain internal transactions undertaken in anticipation of the Internal Distribution and External Distribution to fail to qualify for tax-free or tax-favored treatment, and each Party will be responsible for any taxes imposed as a result of the failure of the Internal Distribution, the External Distribution or the internal transactions to qualify for tax-favored treatment under the Code if such failure is attributable to certain post-distribution actions taken by that Party or in respect of that Party's shareholders, and (v) the Parties will cooperate fully and share information with respect to the tax matters covered herein.

NOW, THEREFORE, in consideration of the foregoing and the terms, conditions, covenants and provisions of this Agreement, each of the Parties mutually covenants and agrees as follows:

## ARTICLE I

### DEFINITIONS AND INTERPRETATION

**SECTION 1.1 Definitions.** As used in this Agreement, the following terms shall have the following meanings:

“**Acting Party**” has the meaning set forth in Section 5.3.

“**Active Business**” means the business conducted by each of the Active Business Entities (as defined herein) as of the Distribution Date.

“**Active Business Entities**” means the entities which conduct the active businesses described in the IRS Ruling, including the Burger King Business and the Hispanic Brands Business referred to therein.

“**Affiliate**” means, with respect to any Person, any other Person that, at the time of determination, directly or indirectly Controls, is Controlled by or is under common Control with such Person. After the Distribution, Fiesta and CRG shall not be deemed to be under common Control for purposes hereof due solely to the fact that Fiesta and CRG have common stockholders.

“**Agreement**” has the meaning set forth in the preamble hereto.

“**Allocable Portion**” means, with respect to CRG, the CRG Allocable Portion, and with respect to Fiesta, the Fiesta Allocable Portion.

“**Audit**” means any audit (including a determination of the status of qualified and non-qualified employee benefit plans), assessment of Taxes, other examination by or on behalf of any Taxing Authority (including notices), proceeding, or appeal of such a proceeding relating to Taxes, whether administrative or judicial, including proceedings relating to competent authority determinations initiated by a Party or any of its Subsidiaries.

**“Business Day”** means any day other than a Saturday, Sunday or a day on which banks are required to be closed in Syracuse, New York.

**“CRG”** has the meaning set forth in the first paragraph of this Agreement.

**“Code”** has the meaning set forth in the recitals to this Agreement.

**“Contribution”** has the meaning set forth in the recitals to this Agreement.

**“Control”** means, as to any Person, the direct or indirect power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; and the terms “Controlled by” and “under common Control” have correlative meanings.

**“Controlling Party”** means the Party controlling an Audit as provided in Section 9.2(a).

**“CRG Allocable Portion”** means the following:

(i) In the case of a subsequent net increase in Taxes due and payable with respect to a Tax Return for a Pre-Distribution Period for which Fiesta is the Responsible Party or is or would be the Controlling Party as a result of an amendment, Audit or Final Determination of said Tax Return, as applicable, the CRG Allocable Portion of the net increase in Taxes shall be the portion of said net increase attributable to CRG-Fiesta Entities. The determination of the amount of such net increase attributable to the CRG-Fiesta Entities shall be calculated on a “with and without basis,” by calculating the amount of the excess (if any) of (a) the net increase in Taxes, over (b) the net increase in Taxes if such net increase were recalculated excluding the CRG-Fiesta Entities. Available losses, deductions, allowances or credits of all Parties shall be taken into account for purposes of determining the amounts in clauses (a) and (b) above.

(ii) In the case of a subsequent increase in Taxes due and payable with respect to a Tax Return for a Pre-Distribution Period for which CRG is the Responsible Party or is or would be the Controlling Party as a result of an amendment, Audit or Final Determination of said Tax Return, as applicable, the CRG Allocable Portion of the net increase in Taxes shall be the remainder of the total amount of such net increase minus the Fiesta Allocable Portion of such increase, if any.

(iii) For the avoidance of doubt, in the case of Taxes payable in a jurisdiction by Fiesta-CRG Entities only because of nexus of CRG-Fiesta Entities in said jurisdiction, CRG’s Allocable Portion with respect to such Taxes shall be the entire amount of such Taxes.

**“CRG Board”** has the meaning set forth in the recitals to this Agreement.

**“CRG-Fiesta Entities”** mean each of the CRG Parties that has filed or is required to file, with respect to itself, its predecessor or any of its assets, any Tax Return on a consolidated, combined, unitary, group, or other basis with any Fiesta Party.

**“CRG Parties”** means CRG and its Subsidiaries (including those formed or acquired after the date hereof), other than the Fiesta Parties.

**“CRG Shares”** has the meaning set forth in the recitals to this Agreement.

**“CRG Tainting Act”** has the meaning set forth in Section 5.1(a) of this Agreement.

**“Distribution”** means the transactions contemplated by the Internal Distribution and the External Distribution.

**“Distribution Date”** means the date determined by the CRG Board in accordance with the Separation and Distribution Agreement as the date as of which the Distribution will be effected.

**“Distribution Taxes”** mean any and all Taxes (a) required to be paid by or imposed on a Party or any of its Subsidiaries resulting from, or directly arising in connection with, the failure of the Contribution and Internal Distribution, taken together, to qualify as a reorganization described in Sections 355(a) and 368(a)(1)(D) of the Code (or the failure to qualify under or the application of corresponding provisions of the Laws of other jurisdictions); (b) required to be paid by or imposed on a Party or any of its Subsidiaries resulting from, or directly arising in connection with, the failure of the External Distribution to qualify for tax-free treatment under Section 355(a) of the Code (or the failure to qualify under or the application of corresponding provisions of the Laws of other jurisdictions); (c) required to be paid by or imposed on a Party or any of its Subsidiaries resulting from, or directly arising in connection with, the failure of the stock distributed in the Internal Distribution or External Distribution to constitute “qualified property” for purposes of Sections 355(c)(2), 355(d), 355(e) and Section 361(c) of the Code (or any corresponding provision of the Laws of other jurisdictions); or (d) required to be paid by or imposed on a Party or any of its Subsidiaries resulting from, or directly arising in connection with, the failure of any transaction undertaken in connection with or pursuant to the Plan of Separation to qualify for Tax-Free Status, in whole or in part.

**“Distribution Tax-Related Losses”** shall mean (a) all Distribution Taxes imposed pursuant to any Final Determination; (b) all reasonable accounting, legal and other professional fees and court costs incurred in connection with such Distribution Taxes; and (c) all reasonable costs and expenses and all damages associated with shareholder litigation or controversies and any amount paid by any CRG Party or Fiesta Party in respect of the liability of shareholders, whether paid to shareholders or to the IRS or any other Taxing Authority, in each case, resulting from the failure of the Internal Distribution, External Distribution, or any other transaction contemplated by the IRS Ruling or any Tax Opinion to have Tax-Free Status.

**“Due Date”** means the date (taking into account all valid extensions) upon which a Tax Return is required to be filed with or Taxes are required to be paid to a Taxing Authority, whichever is applicable.

**“Distribution Time”** means the Distribution Time of the Distribution on the Distribution Date as provided in the Separation and Distribution Agreement

**“Employee Matters Agreement”** has the meaning given such term in the Separation and Distribution Agreement.

**“Estimated Tax Return”** has the meaning set forth in Section 2.1(c)(iv).

**“External Distribution”** has the meaning given such term in the recitals hereto.

**“Fiesta”** has the meaning set forth in the first paragraph of this Agreement.



**“Fiesta Allocable Portion”** means the following:

(i) In the case of a net increase in Taxes due and payable with respect to a Tax Return for a Pre-Distribution Period for which CRG is the Responsible Party or is or would be the Controlling Party as a result of an amendment, Audit or Final Determination of said Tax Return, as applicable, the Fiesta Allocable Portion of the net increase in Taxes shall be the portion of said net increase attributable to Fiesta-CRG Entities. The determination of the amount of such net increase attributable to the Fiesta-CRG Entities shall be calculated on a “with and without basis,” by calculating the amount of the excess (if any) of (a) the net increase in Taxes, over (b) the net increase in Taxes if such net increase were recalculated excluding the Fiesta-CRG Entities. Available losses, deductions, allowances or credits of all Parties shall be taken into account for purposes of determining the amounts in clauses (a) and (b) above.

(ii) In the case of a subsequent increase in Taxes due and payable with respect to a Tax Return for a Pre-Distribution Period for which Fiesta is the Responsible Party or is or would be the Controlling Party as a result of an amendment, Audit or Final Determination of said Tax Return, as applicable, the Fiesta Allocable Portion of the net increase in Taxes shall be the remainder of the total amount of such net increase minus the CRG Allocable Portion of such increase, if any.

(iii) For the avoidance of doubt, in the case of Taxes payable in a jurisdiction by CRG-Fiesta Entities only because of nexus of Fiesta-CRG Entities in said jurisdiction, Fiesta’s Allocable Portion with respect to such Taxes shall be the entire amount of such Taxes. Without limiting the foregoing, this clause (iii) applies to Arizona, Florida and Texas state Income Tax Returns for Pre-Distribution Periods and Straddle Periods, and the Fiesta Allocable Portion with respect to said Income Tax Returns is 100% of the Taxes relating thereto.

**“Fiesta Business”** means all businesses and operations of the Fiesta Parties, including any former businesses owned, in whole or in part, or operated, in whole or in part, by any of the Fiesta Parties.

**“Fiesta-CRG Entities”** mean each of the Fiesta Parties that has filed or is required to file, with respect to itself, its predecessor or any of its assets, any Tax Return on a consolidated, combined, unitary, group, or other basis with any CRG Party.

**“Fiesta Parties”** means Fiesta, the Fiesta Subsidiaries, and any other Subsidiary of Fiesta (including those formed or acquired after the date hereof).

**“Fiesta Shares”** has the meaning set forth in the recitals to this Agreement.

**“Fiesta Subsidiaries”** means, collectively, Pollo Franchise, Inc., Pollo Operations, Inc., Taco Cabana Inc., and each Subsidiary of any of the foregoing.

**“Fiesta Tainting Act”** has the meaning set forth in [Section 5.1\(b\)](#).

**“Final Determination”** means the final resolution of liability for any Tax for any taxable period, by or as a result of:

(a) a final decision, judgment, decree or other order by any court of competent jurisdiction that can no longer be appealed;

- (b) a final settlement with the IRS, a closing agreement or accepted offer in compromise under Sections 7121 or 7122 of the Code, or a comparable agreement under the Laws of other jurisdictions, which resolves the liability for the Taxes addressed in such agreement for any taxable period;
- (c) any allowance of a refund or credit in respect of an overpayment of Tax, but only after the expiration of all periods during which such refund may be recovered by the jurisdiction imposing the Tax; or
- (d) any other final disposition, including by reason of the expiration of the applicable statute of limitations.

**“Form 10 Registration Statement”** means the registration statement on Form 10 filed by Fiesta with the SEC to effect the registration of the Fiesta Shares under the Securities Exchange Act of 1934 (including all amendments or supplements thereto, in each case filed with the SEC prior to the Distribution Date).

**“Income Taxes”** mean:

- (a) all Taxes based upon, measured by, or calculated with respect to (i) net income or profits (including, any capital gains, minimum tax or any Tax on items of tax preference, but not including sales, use, real, or personal property, gross or net receipts, value added, excise, leasing, transfer or similar Taxes), or (ii) multiple bases (including, corporate franchise, doing business and occupation Taxes) if one or more bases upon which such Tax is determined is described in clause (a)(i) above; and
- (b) any related interest and any penalties, additions to such Tax or additional amounts imposed with respect thereto by any Taxing Authority.

**“Income Tax Returns”** mean all Tax Returns that relate to Income Taxes.

**“Indemnified Party”** means the Party which is or may be entitled pursuant to this Agreement to receive any payments (including reimbursement for Taxes or costs and expenses) from another Party.

**“Indemnifying Party”** means the Party which is or may be required pursuant to this Agreement to make indemnification or other payments (including reimbursement for Taxes and costs and expenses) to another.

**“Internal Distribution”** has the meaning given such term in the recitals hereto.

**“IRS”** means the United States Internal Revenue Service or any successor thereto, including its agents, representatives, and attorneys.

**“IRS Ruling”** means the requests submitted to the IRS for all private letter rulings to be obtained by CRG from the IRS in connection with the Plan of Separation, and any supplemental materials submitted to the IRS relating thereto, and the IRS private letter rulings received by CRG with respect to the Plan of Separation, including without limitation the private letter ruling dated February 3, 2012.

“**Law**” means any U.S. or non-U.S. federal, national, supranational, state, provincial, local or similar statute, law, ordinance, regulation, rule, code, administrative pronouncement, order, requirement or rule of law (including common law), or any income tax treaty.

“**Non-Acting Party**” has the meaning set forth in [Section 5.3](#).

“**Non-Controlling Party**” means, with respect to an Audit, the Party other than the Controlling Party.

“**Non-Income Tax Returns**” mean all Tax Returns other than Income Tax Returns.

“**Non-Responsible Party**” means, with respect to a Tax Return, the Party other than the Responsible Party.

“**Party**” has the meaning set forth in the first paragraph of this Agreement.

“**Person**” means any individual, corporation, partnership, joint venture, limited liability company, entity, association, joint-stock company, trust, unincorporated organization or governmental authority.

“**Plan of Separation**” has the meaning set forth in the recitals to this Agreement.

“**Post-Distribution Income Tax Returns**” mean, collectively, all Income Tax Returns required to be filed by a Party or any of its Subsidiaries for a Post-Distribution Tax Period.

“**Post-Distribution Ruling**” has the meaning set forth in [Section 5.3](#).

“**Post-Distribution Tax Period**” means a Tax year beginning and ending after the Distribution Date.

“**Pre-Distribution Income Tax Returns**” mean, collectively, all Income Tax Returns required to be filed by a Party or any of its Subsidiaries for a Pre-Distribution Tax Period.

“**Pre-Distribution Tax Period**” means a Tax year beginning and ending on or before the Distribution Date.

“**Pre-Distribution Tax Returns**” means, collectively, Tax Returns required to be filed by a Party for a Pre-Distribution Tax Period.

“**Pre-Distribution Tax Audit**” means any Audit of any Tax Return filed, or allegedly required to be filed, for any Pre-Distribution Tax Period or Straddle Tax Period.

“**Prime Rate**” means the rate that JPMorgan Chase Bank, N.A. (or any successor thereto or other major money center commercial bank agreed to by the parties hereto) announces from time to time as its prime lending rate, as in effect from time to time.

“**Proposed Acquisition Transaction**” means a transaction or series of transactions (or any agreement, understanding, arrangement, or substantial negotiations within the meaning of Section 355(e) of the Code and the Treasury Regulations promulgated thereunder, to enter into a

transaction or series of related transactions), as a result of which a Party (or any successor thereto) would merge or consolidate with any other Person, or as a result of which any Person or any group of Persons would (directly or indirectly) acquire, or have the right to acquire (through an option or otherwise), from any Party (or any successor thereto) or one or more holders of its stock, respectively, any amount of stock of the Party, as the case may be, that would, when combined with any other changes in ownership of the stock of the Party, comprise more than forty-five percent (45%) of (a) the value of all outstanding stock of the Party as of the date of such transaction, or in the case of a series of transactions, the date of the last transaction of such series, or (b) the total combined voting power of all outstanding stock of the Party as of the date of such transaction, or in the case of a series of transactions, the date of the last transaction of such series. For purposes of determining whether a transaction constitutes an indirect acquisition for purposes of the first sentence of this definition, any recapitalization or other action resulting in a shift of voting power or any redemption of shares of stock shall be treated as an indirect acquisition of shares of stock by the non-exchanging shareholders. This definition and the application thereof is intended to monitor compliance with Section 355(e) of the Code and the Treasury Regulations promulgated thereunder and shall be interpreted accordingly by the Parties in good faith.

**“Qualified Tax Counsel”** means any law firm or accounting firm of national reputation approved by CRG or Fiesta, as appropriate (i.e., approved by the Party not engaging such Qualified Tax Counsel), which approval shall not be unreasonably withheld.

**“Refund”** means any refund of Taxes (including any overpayment of Taxes that can be refunded or, alternatively, applied to future Taxes payable), including any interest paid on or with respect to such refund of Taxes; provided, however, the amount of the refund of Taxes shall be net of any Taxes imposed by any Taxing Authority on the receipt of the refund.

**“Responsible Party”** is the Party designated as the Responsible Party with respect to a Tax Return as provided in Section 2.1(a) or Section 2.2

**“Restricted Period”** means the period beginning at the Distribution Time and ending on the two-year anniversary of the day after the Distribution Date.

**“SEC”** means the United States Securities and Exchange Commission.

**“Separation and Distribution Agreement”** has the meaning set forth in the recitals to this Agreement.

**“Straddle Period Income Tax Returns”** mean, collectively, all Income Tax Returns required to be filed by a Party or any of its Subsidiaries for a Straddle Tax Period.

**“Straddle Period Tax Returns”** mean, collectively, all Tax Returns required to be filed by a Party or any of its Subsidiaries for a Straddle Tax Period.

**“Straddle Tax Period”** means a Tax year or period beginning before the Distribution Date and ending after the Distribution Date.

**“Subsidiary”** means, when used with reference to any Person, any corporation or other entity or organization, whether incorporated or unincorporated, of which at least a majority of the securities or interests having by the terms thereof ordinary voting power to elect at least a

majority of the board of directors or others performing similar functions with respect to such corporation or other entity or organization is directly or indirectly owned or Controlled by such Person; provided, however, that no corporation or other organization that is not directly or indirectly wholly-owned by any other Person shall be a Subsidiary of such other Person unless such other Person Controls, or has the right, power or ability to Control, that Person. After the Distribution, CRG and Fiesta shall not be deemed to be under common Control for purposes hereof due solely to the fact that CRG and Fiesta have common stockholders.

“**Tainting Act**” has the meaning set forth in Section 5.2.

“**Tax**” or “**Taxes**” whether used in the form of a noun or adjective, means taxes on or measured by income, franchise, gross receipts, sales, use, excise, payroll, personal property, real property, ad-valorem, value-added, leasing, leasing use, unclaimed property or other taxes, levies, imposts, duties, charges, or withholdings of any nature. Whenever the term “Tax” or “Taxes” is used it shall include penalties, fines, additions to tax and interest thereon.

“**Tax Attributes**” mean for U.S. federal, state, local, and non-U.S. Income Tax purposes, earnings and profits, tax basis, net operating and capital loss carryovers or carrybacks, alternative minimum Tax credit carryovers or carrybacks, general business credit carryovers or carrybacks, income tax credits or credits against income tax, disqualified interest and excess limitation carryovers or carrybacks, overall foreign losses, research and experimentation credit base periods, and all other items that are determined or computed on an affiliated group basis (as defined in Section 1504(a) of the Code determined without regard to the exclusion contained in Section 1504(b)(3) of the Code), or similar Tax items determined under applicable Tax law.

“**Tax Benefit**” means the reduction in Taxes resulting from the payment by a Party (or its Subsidiaries) of amounts that are indemnified by the other Party under this Agreement or the Separation and Distribution Agreement.

“**Tax-Free Status**” means the qualification of the Distribution or any other transaction contemplated by the IRS Ruling or any Tax Opinion as a transaction in which gain or loss is not recognized, in whole or in part, and no amount is included in income, including by reason of Distribution Taxes, for U.S. federal, state, and local income tax purposes (other than intercompany items, excess loss accounts or other items required to be taken into account pursuant to Treasury Regulations promulgated under Section 1502 of the Code).

“**Tax Opinions**” mean certain Tax opinions and supporting memoranda issued to CRG or any of its Subsidiaries by their Tax adviser in connection with the Plan of Separation.

“**Tax Package**” means:

- (a) a pro forma Tax Return relating to the operations of any Fiesta Party that is required to be included in an Income Tax Return that is required to be filed by any CRG Party; and
- (b) all information relating to the operations of the Fiesta Parties that is reasonably necessary to prepare and file such pro forma Tax Return consistent with past practices.

“**Tax Representation Letter**” means any letter containing certain representations and covenants issued by CRG or any of its Subsidiaries to their Tax adviser in connection with the Tax Opinions.

“**Tax Returns**” mean any return, report, certificate, form or similar statement or document (including any related or supporting information or schedule attached thereto and any information return, amended tax return, claim for refund, or declaration of estimated Tax) required to be supplied to, or filed with, a Taxing Authority in connection with the determination, assessment or collection of any Tax or the administration of any Laws relating to any Taxes.

“**Taxing Authority**” means any governmental authority or any subdivision, agency, commission, or authority thereof or any quasi-governmental or private body having jurisdiction over the assessment, determination, collection, or imposition of any Tax (including the IRS).

“**Timing Item**” has the meaning set forth in Section 4.1(b) of this Agreement.

“**Transaction Agreements**” means this Agreement, the Separation and Distribution Agreement, the Transition Services Agreement, the Employee Matters Agreement.

“**Transferred Business**” has the meaning set forth in the recitals to this Agreement

“**Transferred Business Assets**” means the assets (other than stock of the Fiesta Subsidiaries) that are used in, or in connection with, the Transferred Business transferred or to be transferred to Fiesta as part of the Plan of Separation.

“**Transition Services Agreement**” has the meaning given such term in the Separation and Distribution Agreement.

“**Treasury Regulations**” mean the final and temporary (but not proposed) income tax and administrative regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

“**Unqualified Tax Opinion**” means an unqualified reasoned “will” opinion of Qualified Tax Counsel, which opinion is reasonably acceptable to CRG or Fiesta, as applicable (i.e., acceptable to the Party not seeking such Unqualified Tax Opinion), and upon which each of the Parties may rely to confirm that a transaction (or transactions) will not result in Distribution Taxes, including confirmation in accordance with Circular 230 or otherwise that may be provided for purposes of avoiding any applicable penalties or additions to Tax for purposes of this definition. For purposes hereof, an opinion is “reasoned” if it describes the reasons for the conclusions, including the facts and analysis supporting the conclusions.

“**U.S.**” means the United States.

#### **SECTION 1.2 Interpretation.**

(a) For purposes of this Agreement:

- (i) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation;”

(ii) the word “or” is not exclusive;

(iii) the words “herein,” “hereunder,” “hereof,” “hereby,” “hereto” and words of similar import shall be deemed to be references to this Agreement as a whole and not to any particular Section or other provision hereof; and

(iv) relative to the determination of any period of time, “from” means “from and including,” “to” means “to but excluding” and “through” means “through and including.”

(b) In this Agreement, unless the context clearly indicates otherwise:

(i) words used in the singular include the plural and words used in the plural include the singular;

(ii) reference to any Person includes such Person’s successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement;

(iii) reference to any Person’s “Affiliates” shall be deemed to mean such Person’s Affiliates following the Distribution;

(iv) reference to any gender includes the other gender;

(v) reference to any Article, Section, means such Article or Section of this Agreement, as the case may be;

(vi) reference to any agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and by this Agreement;

(vii) reference to any Law means such Law (including all rules and regulations promulgated thereunder) as amended, modified, codified or reenacted, in whole or in part, and in effect at the time of determining compliance or applicability;

(viii) accounting terms used herein shall have the meanings ascribed to them by CRG and its Subsidiaries, including Fiesta, in its and their internal accounting and financial policies and procedures in effect immediately prior to the date of this Agreement;

(ix) if there is any conflict between the provisions of this Agreement and the Separation and Distribution Agreement or any of the other Transaction Agreements, the provisions of this Agreement shall control with respect to all matters related to Taxes or Tax Returns of the CRG Parties or the Fiesta Parties unless explicitly stated otherwise herein or therein;

(x) any portion of this Agreement obligating a Party to take any action or refrain from taking any action, as the case may be, shall mean that such Party shall also be obligated to cause its relevant Subsidiaries to take such action or refrain from taking such action, as the case may be; and

(xi) unless otherwise specified in this Agreement, all references to dollar amounts herein shall be in respect of lawful currency of the United States.

(c) The titles to Articles and headings of Sections contained in this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of or to affect the meaning or interpretation of this Agreement, and this Agreement and the Transaction Agreements shall be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted.

## ARTICLE II

### PREPARATION AND FILING OF TAX RETURNS

#### SECTION 2.1 Responsibility of Parties to Prepare and File Pre-Distribution Income Tax Returns and Straddle Period Income Tax Returns.

(a) General. (i) To the extent not previously filed and subject to the rights and obligations of each of the Parties set forth herein, the Parties that are responsible for preparing or causing to be prepared all Pre-Distribution Income Tax Returns and Straddle Period Income Tax Returns (each, a “**Responsible Party**”) as follows: (1) in the case of U.S. federal Income Tax Returns and state combined/consolidated/unitary Income Tax Returns that include both CRG Parties and Fiesta Parties, the Responsible Party is CRG; and (2) in the case of separate state Income Tax Returns the Responsible Party is the Party required to file such Income Tax Return pursuant to applicable Law.

(ii) Unless otherwise provided in this Agreement, the Responsible Party is responsible for the costs and expenses associated with such preparation. The Party responsible, or whose Affiliate is responsible, for filing a Pre-Distribution Tax Return or Straddle Period Tax Return under applicable Law shall timely file or cause to be timely filed such Tax Returns with the applicable Taxing Authority. Pre-Distribution Tax Returns and Straddle Period Tax Returns shall be prepared and filed in a manner (1) consistent with the past practice of the Parties and their Subsidiaries unless otherwise modified by a Final Determination or required by applicable Law; and (2) consistent with (and the Parties and their Subsidiaries shall not take any position inconsistent with) the IRS Ruling, the Tax Representation Letters, and the Tax Opinions. No Parties shall take any actions inconsistent with the assumptions (including items of income, gain, deduction, loss and credit) made in determining all estimated or advance payments of Taxes on or prior to the Distribution Date.

(b) Tax Package. To the extent not previously provided, the Non-Responsible Party shall (at its own cost and expense), to the extent that a Pre-Distribution Tax Return or Straddle Period Tax Return includes items of the Non-Responsible Party or its Subsidiaries, prepare and provide or cause to be prepared and provided to the Responsible Party a Tax Package relating to the applicable Tax Return. Such Tax Package shall be provided in a timely manner consistent with the past practices of the Parties and their Subsidiaries. In the event a Party does not fulfill its obligations pursuant to this Section 2.1(b), the Responsible Party shall be entitled, at the sole cost and expense of the first Party, to prepare or cause to be prepared the information required to be included in the Tax Package for purposes of preparing any such Tax Return.

(c) Procedures Relating to the Review and Filing of Pre-Distribution Tax Returns and Straddle Period Tax Returns.



(i) In the case of Pre-Distribution Tax Returns and Straddle Period Tax Returns, to the extent not previously filed, no later than 30 days prior to the Due Date of each such Tax Return, the Responsible Party shall make available or cause to be made available drafts of such Tax Returns (together with all related work papers) to the Non-Responsible Party. The Non-Responsible Party shall have access to any and all data and information necessary for the preparation of all such Pre-Distribution Tax Returns and Straddle Period Tax Returns and the Parties shall cooperate fully in the preparation and review of such Tax Returns. Subject to the preceding sentence, no later than 15 days after receipt of such Pre-Distribution Tax Returns and Straddle Period Tax Returns, the Non-Responsible Party shall have a right to object to such Pre-Distribution Tax Return or Straddle Period Tax Return (or items with respect thereto) by written notice to the Responsible Party; such written notice shall contain such disputed item (or items) and the basis for its objection.

(ii) With respect to a Pre-Distribution Tax Return or Straddle Period Tax Return submitted by the Responsible Party to the Non-Responsible Party pursuant to Section 2.1(c)(i), if the Non-Responsible Party does not object by proper written notice described in Section 2.1(c)(i), such Pre-Distribution Tax Return or Straddle Period Tax Return shall be deemed to have been accepted and agreed upon, and to be final and conclusive, for purposes of this Section 2.1(c)(ii). If a Party does object by proper written notice described in Section 2.1(c)(i), the Parties shall act in good faith to resolve any such dispute as promptly as practicable; provided, however, that, notwithstanding anything to the contrary contained herein, if the Parties have not resolved the disputed item or items by the day 5 days prior to the Due Date of such Pre-Distribution Tax Return or Straddle Period Tax Return, such Tax Return shall be filed as prepared pursuant to this Section 2.1 (revised to reflect all initially disputed items that the Parties have agreed upon prior to such date).

(iii) In the event that a Pre-Distribution Tax Return or Straddle Period Tax Return is filed that includes any disputed item for which proper notice was given pursuant to this Section 2.1(c) that was not finally resolved and agreed upon, such disputed item (or items) shall be resolved in accordance with Section 12.2. In the event that the resolution of such disputed item (or items) in accordance with Section 12.2 with respect to a Pre-Distribution Tax Return or a Straddle Period Tax Return is inconsistent with such Pre-Distribution Tax Return or Straddle Period Tax Return as filed, the Responsible Party (with cooperation from the Non-Responsible Party) shall, as promptly as practicable, amend such Tax Return to properly reflect the final resolution of the disputed item (or items). In the event that the amount of Taxes shown to be due and owing on a Pre-Distribution Tax Return or Straddle Period Tax Return is adjusted as a result of a resolution pursuant to Section 12.2, proper adjustment shall be made to the amounts previously paid or required to be paid in accordance with Article III in a manner that reflects such resolution.

(iv) Notwithstanding anything to the contrary in this Section 2.1, in the case of any Tax Return for estimated Taxes (“**Estimated Tax Return**”) for a Pre-Distribution Tax Period, to the extent not previously filed, as soon as practicable prior to the Due Date of each such Estimated Tax Return, the Responsible Party shall make available or cause to be made available drafts of such Estimated Tax Return (together with all related work papers) to the Non-Responsible Party. The Non-Responsible Party shall have access to any and all data and information necessary for the preparation of such Estimated Tax Returns and the Parties shall cooperate fully in the preparation and review of such Estimated Tax Returns in a manner

consistent with past practice. Subject to the preceding sentence, a Non-Responsible Party shall have a right to object by written notice to the Responsible Party (and such written notice shall contain such disputed item (or items) and the basis for the objection) and the principles of Section 2.1(c)(ii) shall apply to such Estimated Tax Return.

(v) For the avoidance of doubt, Section 2.1(c) shall only apply to Pre-Distribution Tax Returns and Straddle Period Tax Returns which could reasonably result in the Non-Responsible Party becoming responsible for a payment of Taxes pursuant to Article III or a payment to the Responsible Party pursuant to Section 9.3.

**SECTION 2.2 Responsibility of Parties to Prepare and File Post-Distribution Income Tax Returns and Non-Income Tax Returns.** The Party or its Subsidiary responsible under applicable Law for filing a Post-Distribution Income Tax Return, Non-Income Tax Return or any other Tax Return not otherwise covered in Section 2.1 shall prepare and timely file or cause to be prepared and timely filed that Tax Return (at that Party's own cost and expense).

**SECTION 2.3 Time of Filing Tax Returns; Manner of Tax Return Preparation.** Unless otherwise required by a Taxing Authority pursuant to a Final Determination, the Parties shall prepare and file or cause to be prepared and filed all Tax Returns and take all other actions in a manner consistent with (and shall not take any position inconsistent with) any assumptions, representations, warranties, covenants, and conclusions provided by the Parties (or any of their Subsidiaries) in connection with the Plan of Separation, the IRS Ruling, the Tax Representation Letter and the Tax Opinions.

**SECTION 2.4 Coordination with Transition Services Agreement.** The provision of services by CRG to Fiesta relating to Tax preparation in connection with the Transition Services Agreement shall not affect Fiesta's designation under this Agreement as Responsible Party for filing Tax Returns or amendments, or as Controlling Party for audits.

### ARTICLE III

#### RESPONSIBILITY FOR PAYMENT OF TAXES

**SECTION 3.1 Previously Filed Returns.** All Taxes relating to Tax Returns which have been filed as of the date of this Agreement have been paid, and no amounts are due among the Parties with respect to such Taxes, except as provided for elsewhere in this Agreement with respect to additional amounts which may become payable subsequently as a result of amendments or audits.

**SECTION 3.2 Responsibility of CRG for Taxes.** Except as otherwise provided in this Agreement, with respect to Tax Returns which have not been filed as of the date of this Agreement, CRG shall be liable for and shall pay or cause to be paid the following Taxes to the applicable Taxing Authorities:

(a) all federal Income Taxes relating to federal Income Tax Returns for Pre-Distribution Tax Periods and any Straddle Tax Period;

(b) all Taxes relating to Tax Returns which CRG is required to file under applicable Law for Pre-Distribution Tax Periods and any Straddle Tax Period which do not include any

items of Fiesta Parties (for the avoidance of doubt, CRG is not liable for payment of Taxes relating to Arizona, Florida and Texas state Income Tax Returns for Pre-Distribution Periods and any Straddle Tax Period);

(c) all Taxes relating to Maine, Massachusetts, Michigan and Vermont state Income Tax Returns for Pre-Distribution Tax Periods and any Straddle Tax Period; and

(d) all Taxes relating to Tax Returns for Post-Distribution Tax Periods which CRG is required to file under applicable Law.

**SECTION 3.3 Responsibility of Fiesta for Taxes.** Except as otherwise provided in this Agreement, with respect to Tax Returns which have not been filed as of the date of this Agreement, Fiesta shall be liable for and shall pay or cause to be paid the following Taxes to the applicable Taxing Authorities:

(a) all Taxes relating to all Tax Returns which Fiesta is required to file under applicable Law for Pre-Distribution Tax Periods and any Straddle Tax Period which do not include any items of CRG Parties (for the avoidance of doubt, Fiesta is not liable for payment of Taxes relating to federal Income Tax Returns for Pre-Distribution Tax Periods and any Straddle Tax Period in which Fiesta is included in the consolidated group of CRG);

(b) all Taxes relating to Arizona, Florida and Texas state Income Tax Returns for Pre-Distribution Tax Periods and any Straddle Tax Period, including without limitation Income Tax Returns in said jurisdictions that CRG is required to file under applicable Law;

(c) all Taxes relating to Tax Returns for Post-Distribution Tax Periods which Fiesta is required to file under applicable Law.

**SECTION 3.4 Other Taxes.** In the event there are any Taxes relating to Tax Returns which include items of both CRG Parties and Fiesta Parties and the liability for Taxes thereunder is not otherwise allocated among the Parties under this Article III, such Taxes shall be treated in the same manner as a net increase in Taxes for a Pre-Distribution Period and the liability of each Party for such Taxes shall be equal to the Party's Allocable Portion of said Taxes. Such Taxes shall be paid by the Parties to the applicable Taxing Authority on a timely basis.

**SECTION 3.5 Timing of Payments of Taxes.** All Taxes required to be paid or caused to be paid by a Party to a Taxing Authority pursuant to this Article III shall be paid or caused to be paid by such Party on or prior to the Due Date of such Taxes.

## ARTICLE IV

### REFUNDS, CARRYBACKS AND AMENDED TAX RETURNS

#### SECTION 4.1 Refunds.

(a) Each Party (and its Subsidiaries) (the "Claiming Party") shall be entitled to Refunds that relate to Taxes for which it (or its Subsidiaries) is liable for hereunder.

(b) Any Refund or portion thereof to which a Claiming Party is entitled pursuant to this Section 4.1 that is received or deemed to have been received as described herein by the other

Party (or its Subsidiaries) shall be paid by such other Party to the Claiming Party in immediately available funds in accordance with Article VIII. To the extent a Party (or its Subsidiaries) applies or causes to be applied an overpayment of Taxes as a credit toward or a reduction in Taxes otherwise payable (or a Taxing Authority requires such application in lieu of a Refund) and such Refund, if received, would have been payable by such Party to the Claiming Party pursuant to this Section 4.1, such Party shall be deemed to have actually received a Refund to the extent thereof on the date on which the overpayment is applied to reduce Taxes otherwise payable.

**SECTION 4.2 Carrybacks.** Each of the Parties shall be permitted (but not required) to carryback (or to cause its Subsidiaries to carryback) a Tax Attribute realized in a Post-Distribution Tax Period or a Straddle Tax Period to a Pre-Distribution Tax Period or a Straddle Tax Period only if such carryback cannot reasonably result in the other Party (or its Subsidiaries) being liable for additional Taxes. If a carryback could reasonably result in the other Party (or its Subsidiaries) being liable for additional Taxes, such carryback shall be permitted only if such Party consents to such carryback. Notwithstanding anything to the contrary in this Agreement, any Party that has claimed (or caused one or more of its Subsidiaries to claim) a Tax Attribute carryback shall be liable for any Taxes that become due and payable as a result of the subsequent adjustment, if any, to the carryback claim.

**SECTION 4.3 Amended Tax Returns.**

(a) Notwithstanding Section 2.1, any CRG Party or Fiesta Party that is entitled to file an amended Tax Return for a Pre-Distribution Tax Period or a Straddle Tax Period shall be permitted to prepare and file such amended Tax Return at its own cost and expense; provided, however, that such amended Tax Return shall be prepared in a manner (i) consistent with the past practice of the Parties (and their Subsidiaries) unless otherwise modified by a Final Determination or required by applicable Law; and (ii) consistent with (and the Parties and their Subsidiaries shall not take any position inconsistent with) the IRS Ruling, the Tax Representation Letter, and the Tax Opinions. Notwithstanding anything to contrary contained herein, if such amended Tax Return could reasonably result in the other Party becoming responsible for a payment of Taxes or a payment to a Party pursuant to Section 9.3, then such amended Tax Return shall be permitted only if the consent of such other Party is obtained. In the event that a Party (or its Subsidiary) is required to file an amended Tax Return as a result of an Audit adjustment that arose in accordance with Article IX, the consent of the other Party shall be deemed to have been obtained.

(b) A Party (or its Subsidiary) that is entitled to file an amended Tax Return for a Post-Distribution Tax Period shall be permitted to do so without the consent of the other Party.

(c) A Party that is permitted (or whose Subsidiary is permitted) to file an amended Tax Return shall not be relieved of any liability for payments pursuant to this Agreement notwithstanding that the other Party consented to the filing of such amended Tax Return giving rise to such liability.

## ARTICLE V

### DISTRIBUTION TAXES

**SECTION 5.1 Liability for Distribution Taxes.** In the event that Distribution Taxes become due and payable to a Taxing Authority pursuant to a Final Determination, then, notwithstanding anything to the contrary in this Agreement:

(a) if such Distribution Taxes are attributable to a Tainting Act, as defined in Section 5.2, of, or permitted to occur by, any CRG Party (a “**CRG Tainting Act**”), then CRG shall be responsible for any Distribution Tax-Related Losses;

(b) if such Distribution Taxes are attributable to a Tainting Act, as defined in Section 5.2, of, or permitted to occur by, any Fiesta Party (a “**Fiesta Tainting Act**”), then Fiesta shall be responsible for any Distribution Tax-Related Losses;

(c) if such Distribution Taxes are attributable to both a CRG Tainting Act and a Fiesta Tainting Act, then (i) CRG shall be responsible for any Distribution Tax-Related Losses if the CRG Tainting Act occurs prior to the Fiesta Tainting Act and (ii) Fiesta shall be responsible for any Distribution Tax-Related Losses if the Fiesta Tainting Act occurs prior to the CRG Tainting Act; and

(d) if such Distribution Taxes are not attributable to a CRG Tainting Act or a Fiesta Tainting Act, then CRG shall be responsible for fifty percent (50%) of any Distribution Tax-Related Losses and Fiesta shall be responsible for fifty percent (50%) of any Distribution Tax-Related Losses.

(e) Notwithstanding any other provision of this Agreement, if Taxes are incurred in connection with the Distribution with respect to the gain contemplated by ruling (2) on page 15 of the IRS private letter ruling issued to CRG on February 3, 2012 (relating to gain recognized in the amount by which the Controlled Distribution referred to therein exceeds the adjusted bases of contributed assets referred to therein), then CRG shall be responsible for fifty percent (50%) of such Taxes and Fiesta shall be responsible for fifty percent (50%) of such Taxes.

**SECTION 5.2 Definition of Tainting Act. For purposes of this Agreement, a Tainting Act is:**

(a) any act, or failure or omission to act, by a CRG Party or a Fiesta Party following the Distribution that results in any Distribution Taxes being imposed on any CRG Party pursuant to a Final Determination, regardless of whether such act or failure to act (i) is covered by a Post-Distribution Ruling or Unqualified Tax Opinion, or (ii) occurs during or after the Restricted Period; or

(b) the direct or indirect acquisition of all or a portion of the stock of any Party (or any transaction or series of related transactions that is deemed to be such an acquisition for purposes of Section 355(e) of the Code and the Treasury Regulations promulgated thereunder) by any means whatsoever by any Person including pursuant to an issuance of stock by any Party.

**SECTION 5.3 Limits on Proposed Acquisition Transactions and Other Transactions During Restricted Period.** During the Restricted Period, neither CRG nor Fiesta shall:

(a) enter into, or permit to be entered into on its behalf, any agreement, understanding, arrangement, or substantial negotiations (within the meaning of Section 355(e) of the Code and the Treasury Regulations promulgated thereunder) regarding a Proposed Acquisition Transaction;

(b) enter into any Proposed Acquisition Transaction, approve any Proposed Acquisition Transaction for any purpose, or allow any Proposed Acquisition Transaction to occur with respect to CRG or Fiesta;

(c) merge or consolidate with any other Person or liquidate or partially liquidate; or approve or allow any merger, consolidation, liquidation, or partial liquidation of any of the Active Business Entities;

(d) approve or allow the discontinuance, cessation, or sale or other transfer (to an Affiliate or otherwise) of, or a material change in, any Active Business;

(e) approve or allow the sale, issuance, or other disposition (to an Affiliate or otherwise), directly or indirectly, of any share of, or other equity interest or an instrument convertible into an equity interest in, any of the Active Business Entities;

(f) sell or otherwise dispose of assets in manner which would adversely affect Tax-Free Status;

(g) purchase, directly or through any Affiliate, any of its outstanding stock after the Distribution, other than through stock purchases meeting the requirements of Section 4.05(1)(b) of Revenue Procedure 96-30 (without regard to the effect of Revenue Procedure 2003-48 on Revenue Procedure 96-30);

(h) take any action or fail to take any action, or permit any other CRG Party or Fiesta Party to take any action or fail to take any action, that is inconsistent with any representation or covenant made in the IRS Ruling or in any Tax Representation Letter, or that is inconsistent with any ruling or opinion in the IRS Ruling or any Tax Opinion; or

(i) take any action or permit any other CRG Party or Fiesta Party to take any action (including any transactions with a third-party or any transaction with any Fiesta Party) that, individually or in the aggregate (taking into account other transactions described in this Section 5.3) would be reasonably likely to jeopardize Tax-Free Status;

provided, however, that CRG and Fiesta shall be permitted to take such action or one or more actions set forth in the foregoing clauses (a) through (i) if, prior to taking any such actions, the Party taking the action (the “**Acting Party**”) set forth in the foregoing clauses (a) through (k) shall (1) have received a favorable private letter ruling from the IRS, or a ruling from another Taxing Authority that confirms that such action or actions will not result in Distribution Taxes, taking into account such actions and any other relevant transactions in the aggregate (a “**Post-Distribution Ruling**”), in form and substance satisfactory to the other Party (the “**Non-Acting Party**”) in its discretion, which discretion shall be reasonably exercised in good faith solely to prevent the imposition on the Non-Acting Party, or responsibility for payment by the Non-Acting Party, of Distribution Taxes or (2) have received an Unqualified Tax Opinion that confirms that such action or actions will not result in Distribution Taxes, taking into account such actions and any other relevant transactions in the aggregate, in form and substance satisfactory to the Non-Acting Party, acting reasonably and in good faith solely to prevent the imposition on the Non-Acting

Party, or responsibility for payment by the Non-Acting Party, of Distribution Taxes. The Acting Party shall provide a copy of the Post-Distribution Ruling or the Unqualified Tax Opinion described in this paragraph to the Non-Acting Party as soon as practicable prior to taking or failing to take any action set forth in the foregoing clause (a) through (i). The Non-Acting Party's evaluation of a Post-Distribution Ruling or Unqualified Tax Opinion may consider, among other factors, the appropriateness of any underlying assumptions, representations, and covenants made in connection with such Post-Distribution Ruling or Unqualified Tax Opinion. The Acting Party shall bear all costs and expenses of securing any such Post-Distribution Ruling or Unqualified Tax Opinion and shall reimburse the Non-Acting Party for all reasonable out-of-pocket costs and expenses that the Non-Acting Party may incur in good faith in seeking to obtain or evaluate any such Post-Distribution Ruling or Unqualified Tax Opinion.

**SECTION 5.4 IRS Ruling, Tax Representation Letters, and Tax Opinions; Consistency.** Each Party represents that the information and representations furnished by it (or its Subsidiaries) in or with respect to the IRS Ruling, the Tax Representation Letters, or the Tax Opinions are accurate and complete as of the Distribution Time. Each Party covenants (1) to use its best efforts, and to cause its Subsidiaries to use their best efforts, to verify that such information and representations are accurate and complete as of the Distribution Time; and (2) if, after the Distribution Time, any CRG Party or Fiesta Party obtains information indicating, or otherwise becomes aware, that any such information or representations is or may be inaccurate or incomplete, to promptly inform the other Party. Except in accordance with Section 5.3, no CRG Party or Fiesta Party shall take any action or fail to take any action, or permit any other CRG Party or Fiesta Party to take any action or fail to take any action, that is or is reasonably likely to be inconsistent with the IRS Ruling, the Tax Representation Letters, or the Tax Opinions.

**SECTION 5.5 Timing of Payment of Distribution Tax-Related Losses.** All amounts required to be paid by one Party to the other Party pursuant to this Article V shall be paid or caused to be paid by one Party to the other Party in accordance with Article VIII.

## ARTICLE VI

### EMPLOYEE BENEFIT MATTERS

#### **SECTION 6.1 Income Tax Deductions in Respect of Certain Equity Awards and Incentive Compensation.**

(a) Entitlement to Deduction. For all Post-Distribution Tax Periods, solely the Party (or its Subsidiary) that then currently employs the relevant individual or, if such individual is not then currently employed by a Party (or its Subsidiary), the Party (or its Subsidiary) that most recently employed such individual, at the time of the vesting, exercise, disqualifying disposition, payment or other relevant taxable event, as appropriate, in respect of the equity awards and other incentive compensation shall be entitled to claim any Income Tax deduction arising after the Distribution Date in respect of such equity awards and other incentive compensation on its respective Tax Return.

(b) Withholding and Reporting. The Party (or its Subsidiary) that claims the deduction described in Section 6.1(a) shall be responsible for all applicable Taxes (including withholding

and excise taxes) and shall satisfy, or shall cause to be satisfied, all applicable Tax reporting obligations in respect of the equity awards and other incentive compensation that gives rise to the deduction. The Parties shall cooperate (and shall cause their Subsidiaries to cooperate) so as to permit the Party (or Subsidiary thereof) claiming such deduction described in Section 6.1(a) to discharge any applicable Tax withholding and Tax reporting obligations, including the appointment of the Party claiming the deduction (or its Subsidiary) as the withholding and reporting agent if that Party (or any of its Subsidiaries) is not otherwise required or permitted to withhold and report under applicable Law.

## ARTICLE VII

### INDEMNIFICATION

**SECTION 7.1 Indemnification Obligations of CRG.** CRG shall indemnify each of the Fiesta Parties and hold them harmless from and against:

(a) all Taxes and other amounts for which CRG is responsible or liable under this Agreement; and

(b) all Taxes and reasonable out-of-pocket costs for advisors and other expenses attributable to a breach of any representation, covenant or obligation of CRG under this Agreement.

**SECTION 7.2 Indemnification Obligations of Fiesta.** Fiesta shall indemnify each of the CRG Parties and hold them harmless from and against:

(a) all Taxes and other amounts for which Fiesta is responsible or liable under this Agreement; and

(b) all Taxes and reasonable out-of-pocket costs for advisors and other expenses attributable to a breach of any representation, covenant or obligation of Fiesta under this Agreement.

**SECTION 7.3 No Indemnities for Tax Attributes.** For the avoidance of doubt, no indemnities or payments are triggered, due or payable under this Agreement as a result of the use, absorption, reduction or any other adjustment of the Tax Attributes of a Party. Accordingly, if a Tax would be payable to the IRS or other taxing authority but for the use of Tax Attributes of a Party, no amounts are payable under this Agreement by a Party to the Party whose Tax Attributes are so used on account of the use of said Tax Attributes.

## ARTICLE VIII

### PAYMENTS

**SECTION 8.1 Payments**

(a) General. Unless otherwise provided in this Agreement, in the event that an Indemnifying Party is required to make a payment to an Indemnified Party pursuant to this



Agreement, the Indemnified Party shall deliver written notice to the Indemnifying Party in accordance with Section 12.11, and the Indemnifying Party shall be required to make payment to the Indemnified Party within 10 Business Days after notice of such payment obligation is delivered to the Indemnifying Party.

(b) Procedural Matters. The written notice delivered to the Indemnifying Party in accordance with Section 12.11 shall show the amount due and owing together with a schedule calculating in reasonable detail such amount (and shall include any relevant Tax Return, statement, bill or invoice related to Taxes, costs, expenses or other amounts due and owing). All payments required to be made by one Party to the other Party pursuant to this Section 8.1 shall be made by electronic, same day wire transfer. Payments shall be deemed made when received. If the Indemnifying Party fails to make a payment to the Indemnified Party within the time period set forth in Section 8.1(a), such Indemnifying Party shall be considered to be in breach of its covenants and obligations established in this Section 8.1 and the Indemnifying Party shall pay to the Indemnified Party (i) interest that accrues (at a rate equal to the Prime Rate) on the amount of such payment from the time that such payment was due to the Indemnified Party until the date that payment is actually made to the Indemnified Party; and (ii) any costs or expenses (other than consequential damages) incurred by the Indemnified Party to secure such payment or to satisfy the Indemnifying Party's portion of the obligation giving rise to the indemnification payment.

(c) Right of Setoff. It is expressly understood that an Indemnifying Party is hereby authorized to set off and apply any and all amounts required to be paid to an Indemnified Party pursuant to this Section 8.1 against any and all of the obligations of the Indemnified Party to the Indemnifying Party arising under Section 8.1 of this Agreement that are then either due and payable or past due, irrespective of whether such Indemnifying Party has made any demand for payment with respect to such obligations.

**SECTION 8.2 Treatment of Payments under this Agreement and the Separation and Distribution Agreement**. In the absence of any change in Tax treatment under the Code or other applicable Tax Law, any payments made by a Party under this Agreement or the Separation and Distribution Agreement shall be reported for Tax purposes by the payor and the recipient as distributions or capital contributions, as appropriate, occurring immediately before the Distribution (but only to the extent the payment does not relate to a Tax allocated to the payor in accordance with Section 1552 of the Code or the regulations thereunder or Treasury Regulation Section 1.1502-33(d) (or under corresponding principles of other applicable Tax Laws)) or as payments of assumed or retained liabilities, as appropriate.

**SECTION 8.3 Tax Gross Up**. If, notwithstanding the manner in which payments were reported, there is an Income Tax incurred by a Party as a result of its receipt of a payment pursuant to this Agreement, such payment shall be appropriately adjusted so that the amount of such payment, reduced by the amount of Income Taxes payable with respect to the receipt thereof (but taking into account all Tax Benefits resulting from the payment of such Income Taxes), shall equal the amount of the payment that the Party receiving such payment would otherwise be entitled to receive pursuant to this Agreement.

**SECTION 8.4 Interest or Expenses**. Anything herein to the contrary notwithstanding, to the extent the Indemnifying Party makes a payment of interest or other expense reimbursement to the Indemnified Party under this Agreement or the Separation and Distribution Agreement, the

interest payment shall be treated as an expense under Section 162 or Section 163 of the Code, as applicable, to the Indemnifying Party (deductible to the extent provided by Law) and as income by the Indemnified Party (includible in income to the extent provided by Law). The amount of the payment of interest or other expense reimbursement shall not be adjusted under Section 8.3 to take into account any associated Tax Benefit to the Indemnifying Party or Tax detriment to the Indemnified Party.

**SECTION 8.5 Payments Net of Tax Benefits.** If not otherwise provided in this Agreement, the amounts payable under this Agreement or the Separation and Distribution Agreement by one Party to another Party shall be reduced by the amount of any Tax Benefit obtained by the Party receiving such payment.

## ARTICLE IX

### AUDITS

**SECTION 9.1 Notice.** Within 10 Business Days after a Party or any of its Affiliates receives a written notice from a Taxing Authority of the existence of an Audit that may require indemnification pursuant to this Agreement, that Party shall notify the other Party of such receipt and send such notice to the other Party in accordance with Section 12.11. The failure of one Party to notify the other Party of an Audit shall not relieve such other Party of any liability or obligation that it may have under this Agreement, except to the extent that the Indemnifying Party's rights under this Agreement are materially prejudiced by such failure.

#### **SECTION 9.2 Audit Administration.**

(a) Administering Party. Subject to Sections 9.2(b) and 9.2(c):

(i) CRG and its Subsidiaries shall administer and control all Pre-Distribution U.S. Income Tax Audits.

(ii) Audits other than Pre-Distribution U.S. Income Tax Audits shall be administered and controlled by the Party or Subsidiary thereof that is primarily liable under applicable Law to pay to the applicable Taxing Authority the Taxes resulting from such Audits.

(b) Administration and Control. The Controlling Party shall have sole responsibility for administration and control (including settlement authority) over said Audit; provided, that the Non-Controlling Party shall have the right to participate in such Audit pursuant to Section 9.2(c) and as otherwise contemplated by this Section 9.2(b), but only to the extent that such Audit relates to Taxes for which such other Party would be liable under Section 9.3(a)(ii). In the case of an issue in which a Party has the right to participate pursuant to the preceding sentence, the other Party shall not accept or enter into a settlement without the consent of the first Party (which shall not be unreasonably withheld).

(c) Participation Rights; Information Sharing.

(i) The Parties shall arrange for a meeting or conference call to be held on a regular basis in order to facilitate regular communication on the status of any Pre-Distribution Tax Audit that could affect the Non-Controlling Party. The Parties may determine from time to time to have separate special meetings to discuss significant issues relating to the Audit.

(ii) Upon the reasonable request of a Party, each Party and its respective Subsidiaries shall make available relevant personnel to meet with representatives of the other Party, including its independent auditor, in order to review the status of any Pre-Distribution Tax.

(iii) Each Party shall have access to any written documentation in the possession of the other Party that pertains to any Pre-Distribution Tax Audit or any Audit (including any written summaries of issues that any Party has developed in the context of evaluating financial reporting matters) and each Party shall make such documentation available to the other Party in the offices of CRG. Such access shall be provided at such times and in such manner as the Parties agree, but no less frequently than monthly. Copies of the documentation will be made available to the other Party at the sole cost and expense of the requesting Party.

(iv) With respect to any Audit over which a Non-Controlling Party has a consent right under Section 9.2(b) above, the Non-Controlling Party's participation rights shall include, but not be limited to, the right to attend all conferences and participate in all conversations with the Taxing Authority. The Controlling Party shall provide on a timely basis to the Non-Controlling Party copies of all documents, including but not limited to all correspondence with the Taxing Authority. In addition, the Controlling Party shall provide said Non-Controlling Party all submissions to the Taxing Authority at least 2 Business Days in advance of submitting to the Taxing Authority to allow said Non-Controlling Party the opportunity to review and comment on the proposed submission.

(d) Costs and Expenses. The Parties shall use reasonable best efforts to separate issues which arise in any Audit and assign them to either CRG or Fiesta. Such issues shall be assigned to the Party to which the item on the applicable Tax Return relates. To the extent a Party is responsible for Taxes incurred with respect to such issue pursuant to this Agreement, responsibility for costs and expenses incurred in connection with the issue shall be assigned to such Party. Each Party (or its Subsidiaries) shall be responsible for the out-of-pocket costs and expenses incurred in connection with the issues assigned to it, even if the other Party is the Controlling Party. If an issue in any Audit arises which is assignable to both Parties under the foregoing principles, each Party shall be responsible for the out-of-pocket costs and expenses incurred in connection with said issue in the proportion which the amount of the item assignable to said Party bears to the total amount of such items for all Parties, or in such other reasonable proportion to which the Parties may agree. To the extent a Party incurs out-of-pocket costs and expenses for which the other Party is responsible, the responsible Party shall reimburse the first Party promptly upon written demand for reimbursement by the first Party. Any such demand shall include an accounting of costs and expenses with reasonable supporting details. Out-of-pocket costs and expenses allocable among the Parties hereunder include without limitation all costs and expenses of calculating Taxes and other amounts payable and any reporting obligations that arise out of an Audit, such as the reporting of any Audit adjustments to the various U.S. states.

### **SECTION 9.3 Payment of Audit Amounts.**

(a) Payment of Allocable Portions. In connection with any Final Determination, each Party shall pay or cause to be paid to the applicable Taxing Authority its Allocable Portion of the additional Taxes due and payable as a result of such Final Determination.

(b) Adjustments to Refunds. Notwithstanding Section 9.3(a) or 9.2(a), if a Final Determination with respect to an Audit includes an adjustment to a Refund previously received by a Party (or its Subsidiary) in accordance with Section 4.1, such Party shall pay any Taxes that become due and payable as a result of such adjustment.

(c) Payment Procedures.

(i) Preliminary Determination. In connection with any Final Determination with respect to an Audit that results in an amount to be paid pursuant to Section 9.3(a), the Controlling Party shall, within 30 Business Days following a final resolution of such Audit, submit in writing to the Non-Controlling Party a preliminary determination (calculated and explained in detail reasonably sufficient to enable the Non-Controlling Party to fully understand the basis for such determination and to permit the Non-Controlling Party to satisfy its financial reporting requirements) of the portion of such amount to be paid by each of the Parties pursuant to Section 9.3(a), as applicable.

(ii) Access to Data. the Controlling Party shall have access to all data and information necessary to calculate such amounts and the Non-Controlling Party shall cooperate fully in the determination of such amounts.

(iii) Objection Rights. Within 20 Business Days following the receipt by the Non-Controlling Party of the information described in Section 9.3(c)(i), the Non-Controlling Party shall have the right to object only to the calculation of the amount of the payment (but not the basis for the payment) by written notice to the Controlling Party; such written notice shall contain such disputed item or items and the basis for the objection. If the Non-Controlling Party does not object by proper written notice to the Controlling Party within such 20 day period, the calculation of the amounts due and owing from the Non-Controlling Party shall be deemed to have been accepted and agreed upon, and final and conclusive, for purposes of Section 9.3(c). If the Non-Controlling Party objects by proper written notice to the Controlling Party within such time period, the Parties shall act in good faith to resolve any such dispute as promptly as practicable, and if any such dispute is not resolved within 30 days, such dispute shall be deemed not to have been resolved pursuant to Section 12.2(a) and shall be resolved in accordance with Section 12.2(b). Notwithstanding any pending dispute with respect to the Non-Controlling Party's Allocable Portion, the Controlling Party is responsible for paying to the applicable Taxing Authority under applicable Law amounts owed pursuant to a Final Determination and shall make such payments to such Taxing Authority prior to the due date for such payments. the Non-Controlling Party shall reimburse the Controlling Party in accordance with Article VIII for the portion of such payments for which the Non-Controlling Party is liable (including interest thereon determined pursuant to Section 8.1(b)) commencing from the date the Controlling Party made the payment described in the preceding sentence), if any, pursuant to this Section 9.3.

## ARTICLE X

### COOPERATION AND EXCHANGE OF INFORMATION

**SECTION 10.1 Cooperation and Exchange of Information.** The Parties shall each cooperate fully (and each shall cause its respective Subsidiaries to cooperate fully) and in a timely manner (considering the other Party's normal internal processing or reporting requirements) with all reasonable requests from the other Party, or from an agent, representative, or advisor to the other Party, in connection with the preparation and filing of Tax Returns, claims for Refund, Audits, determinations of Tax Attributes and the calculation of Taxes or other amounts required to be paid hereunder, and any applicable financial reporting requirements of a Party or any Subsidiary thereof, in each case, related or attributable to or arising in connection with Taxes or Tax Attributes of either Party or Subsidiary thereof. Such cooperation shall include:

(a) the retention until the expiration of the applicable statute of limitations or, if later, until the expiration of all relevant Tax Attributes (in each case taking into account all waivers and extensions), and the provision upon request, of copies of Tax Returns of the Parties and their respective Subsidiaries for periods up to and including the Distribution Date, books, records (including information regarding ownership and Tax basis of property), documentation, and other information relating to such Tax Returns, including accompanying schedules, related work papers, and documents relating to rulings or other determinations by Taxing Authorities;

(b) the execution of any document that may be necessary or reasonably helpful in connection with any Audit of either of the Parties or their respective Subsidiaries, or the filing of a Tax Return or Refund claim of the Parties or any of their respective Subsidiaries (including the signature of an officer of a Party or any Subsidiary thereof);

(c) at the other Party's sole cost and expense, the use of the Party's reasonable best efforts to obtain any documentation and provide additional facts, insights or views as requested by the other Party that may be necessary or reasonably helpful in connection with any of the foregoing (including any information contained in Tax or other financial information databases); and

(d) at the other Party's sole cost and expense, the use of the Party's reasonable best efforts to obtain any Tax Returns (including accompanying schedules, related work papers, and documents), documents, books, records, or other information that may be necessary or helpful in connection with any Tax Returns of any of the other Party or any Subsidiary thereof.

Each Party shall make its and its Subsidiaries' employees and facilities available on a reasonable and mutually convenient basis in connection with the foregoing matters. Except as explicitly provided in this Agreement or in the Transition Services Agreement, no reimbursement shall be made for costs and expenses incurred by the Parties as a result of cooperating pursuant to this Section 10.1.

**SECTION 10.2 Retention of Records.** Subject to Section 10.1, if either of the Parties or their respective Subsidiaries intends to dispose of any documentation (including documentation that is being retained pursuant to IRS guidelines) relating to the Taxes of the Parties or their respective Subsidiaries for which the other Party may be responsible pursuant to the terms of this Agreement (including Tax Returns, books, records, documentation, and other information, accompanying schedules, related work papers, and documents relating to rulings or other

determinations by Taxing Authorities), such Party shall or shall cause written notice to the other Party describing the documentation to be destroyed or disposed of 60 days prior to taking such action. The other Party may arrange to take delivery of the documentation described in the notice at its expense during the succeeding 60 day period.

**SECTION 10.3 Confidentiality.** For the avoidance of doubt, to the extent applicable, the obligations imposed pursuant to the Separation and Distribution Agreement with respect to confidentiality shall apply with respect to any information relating to Tax matters.

## ARTICLE XI

### ALLOCATION OF TAX ATTRIBUTES AND OTHER TAX MATTERS

**SECTION 11.1 Allocation of Tax Attributes.** To the maximum extent permitted by applicable law, all employment-related credits generated in Pre-Closing Tax Periods and Straddle Periods (including work opportunity tax credits and credits under the Hiring Incentives to Restore Employment (HIRE) Act shall be allocated to Carrols, and all foreign tax credits generated in Pre-Closing Tax Periods and Straddle Periods shall be allocated to Fiesta. Other Tax Attributes that relate to the activities of a Party shall be allocated to said Party. With respect to other Tax Attributes that do not relate to the activities of a Party, said Tax Attributes shall be allocated in a manner that is (a) reasonably consistent with the past practices of the Parties; (b) in accordance with the rules prescribed by applicable Law, including the Code and the Treasury Regulations; (c) consistent with the IRS Ruling, the Tax Representation Letters, and the Tax Opinions; and (d) reasonably determined to minimize the aggregate cash Tax liability of the Parties for all Pre-Distribution Tax Periods and the portion of all Straddle Tax Periods ending on the Distribution Date. Each Party agrees to provide the other Party with all of the information supporting the Tax Attribute determinations made by that Party pursuant to this Section 11.1.

#### **SECTION 11.2 Third Party Tax Indemnities and Benefits.**

(a) Notwithstanding anything to the contrary in this Agreement, to the extent that pursuant to any agreement to which any Fiesta Party is a party, any Fiesta Party has the right to indemnification by any Person (other than any Fiesta Party or CRG Party) with respect to Taxes that arise or are attributable to a period (or portion thereof) ending on or prior to the Distribution Date, Fiesta shall be responsible for such Taxes and shall be entitled to receive all Tax indemnities related thereto.

(b) Notwithstanding anything to the contrary in this Agreement, to the extent that pursuant to any agreement to which any CRG Party is a party, any CRG Party has the right to indemnification by any Person (other than any Fiesta Party or CRG Party) with respect to Taxes that arise or are attributable to a period (or portion thereof) ending on or prior to the Distribution Date, CRG shall be responsible for such Taxes and shall be entitled to receive all Tax indemnities related thereto.

**SECTION 11.3 Allocation of Tax Items.** All determinations (whether for purposes of preparing Tax Returns or for purposes of determining a Party's responsibility for Taxes under this Agreement) regarding the allocation of Tax items between the portion of a Straddle Tax Period that ends on the Distribution Date and the portion of such Straddle Tax Period that begins the day after the Distribution Date shall be made pursuant to the principles of Treasury

Regulations Section 1.1502-76(b) or of a corresponding provision under the Laws of the applicable taxing jurisdiction; provided, however, that Tax items may be ratably allocated to the extent provided by and pursuant to the principles of Treasury Regulations Section 1.1502-76(b)(2)(ii). Any such allocation of Tax items shall initially be determined by CRG. To the extent that Fiesta disagrees with such determination, the dispute shall be resolved pursuant to the provisions of Section 12.2.

## ARTICLE XII

### MISCELLANEOUS

**SECTION 12.1 Entire Agreement; Exclusivity.** This Agreement, the Separation and Distribution Agreement, the Transition Services Agreement and the Employee Matters Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof and shall supersede all prior written and oral and all contemporaneous oral agreements and understandings between any of the CRG Parties, on the one hand, and any of the Fiesta Parties, on the other hand, with respect to all matters related to Taxes or Tax Returns of the CRG Parties or the Fiesta Parties. Except as specifically set forth in the Separation and Distribution Agreement or any other Transaction Agreement, all matters related to Taxes or Tax Returns of any of the CRG Parties or the Fiesta Parties shall be governed exclusively by this Agreement.

**SECTION 12.2 Dispute Resolution.** The resolution of any disputes, controversies or claims in connection with this Agreement or matters covered hereunder shall be governed by Article V of the Separation and Distribution Agreement, and all provisions contained in said Article V are applicable to this Agreement.

**SECTION 12.3 Governing Law.** This Agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws rules thereof to the extent such rules would require the application of the law of another jurisdiction.

**SECTION 12.5 Amendment.** No change or amendment will be made to this Agreement except by an instrument in writing signed on behalf of each of the parties to this Agreement.

**SECTION 12.6 Severability.** If any term or other provision of this Agreement is determined by a nonappealable decision by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the court, administrative agency or arbitrator shall interpret this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the fullest extent possible. If any sentence in this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

**SECTION 12.7 Partial Invalidity.** Wherever possible, each provision hereof shall be construed in a manner as to be effective and valid under applicable Law, but in case any one or

more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provision hereof, unless such a construction would be unreasonable.

**SECTION 12.8 Execution in Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement binding on the Parties.

**SECTION 12.9 Binding Effect; Assignment.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives and successors, and nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Agreement. This Agreement may not be assigned by any party hereto.

**SECTION 12.10 Third-Party Beneficiaries.** This Agreement is solely for the benefit of the Parties and their respective Subsidiaries, Affiliates, successors and permitted assigns, and nothing herein express or implied shall give or be construed to give to any other Person any legal or equitable rights hereunder.

**SECTION 12.11 Notices.** Unless expressly provided herein, all notices, claims, certificates, requests, demands and other communications hereunder shall be in writing and shall be deemed to be duly given (i) when personally delivered or (ii) if mailed by registered or certified mail, postage prepaid, return receipt requested, on the date the return receipt is executed or the letter is refused by the addressee or its agent or (iii) if sent by overnight courier which delivers only upon the signed receipt of the addressee, on the date the receipt acknowledgment is executed or refused by the addressee or its agent or (iv) if sent by facsimile or electronic mail, on the date confirmation of transmission is received (provided that a copy of any notice delivered pursuant to this clause (iv) shall also be sent pursuant to clause (i), (ii) or (iii)), to the party at the address of its principal executive office as set forth below or to such other address or facsimile number for a party as it shall have specified by like notice:

If to CRG or Carrols:

Carrols Restaurant Group, Inc.  
968 James Street  
Syracuse, New York 13203  
Attention: Chief Executive Officer  
Telephone: (315) 424-0513  
Facsimile: (315) 475-9616  
email: daccordino@carrols.com

with a copy to:

Carrols Restaurant Group, Inc.  
968 James Street  
Syracuse, New York 13203  
Attention: General Counsel  
Telephone: (315) 424-0513  
Facsimile: (315) 475-9616  
email: wmyers@carrols.com

If to Fiesta Restaurant Group:

Fiesta Restaurant Group, Inc.  
7300 North Kendall Drive, 8<sup>th</sup> Floor  
Miami, Florida 33156  
Attention: Chief Executive Officer  
Telephone: (305) 670-7696  
Facsimile: (305) 670-6403  
email: ttaft@pollotropical.com

with a copy to:

Fiesta Restaurant Group, Inc.  
7300 North Kendall Drive, 8<sup>th</sup> Floor  
Miami, Florida 33156  
Attention: General Counsel  
Telephone: (305) 670-7696  
Facsimile: (305) 670-6403  
email: jzirkman@frgi.com



---

**SECTION 12.12 Performance Guarantees; Specific Performance.**

(a) Each of the Parties and their Subsidiaries are bound by and subject to this Agreement. CRG will cause to be performed and hereby guarantees the performance of all actions, agreements and obligations set forth herein to be performed by any CRG Party. Fiesta will cause to be performed and hereby guarantees the performance of all actions, agreements and obligations set forth herein to be performed by any Fiesta Party.

(b) The Parties hereto agree that irreparable damage would occur if any of the provisions of this Agreement were not performed in accordance with its specific terms or were otherwise breached and that money damages are an inadequate remedy for breach of this Agreement. Accordingly, notwithstanding any other provision of this Agreement, the Parties shall be entitled, without posting of a bond, to an injunction or injunctions to restrain, enjoin or prevent breaches of this Agreement or to enforce specifically the performance of the terms and provision hereof in addition to any other remedy to which they are entitled at law or in equity. Without limiting the foregoing, the Parties agree that any such injunction may be sought in the state or federal courts located in New York, New York.

**SECTION 12.13 Force Majeure.** No party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations under this Agreement results from any cause beyond its reasonable control and without its fault or negligence, including acts of God, acts of civil or military authority, embargoes, acts of terrorism, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, unusually severe weather conditions, labor problems or unavailability of parts, or, in the case of computer systems, any failure in electrical or air conditioning equipment. In the event of any such excused delay, the time for performance shall be extended for a period equal to the time lost by reason of the delay.

**SECTION 12.14 Termination.** Notwithstanding anything to the contrary contained herein, this Agreement may be terminated at any time prior to the Distribution by and in the sole discretion of the CRG Board without the prior approval of any Person. In the event of such termination, this Agreement shall forthwith become void, and no Party shall have any liability to any Person by reason of this Agreement.

**SECTION 12.15 Limited Liability.** Notwithstanding any other provision of this Agreement, no individual who is a stockholder, director, employee, officer, agent or representative of Fiesta or CRG, in such individual's capacity as such, shall have any liability in respect of or relating to the covenants or obligations of Fiesta or CRG, as applicable, under this Agreement and, to the fullest extent legally permissible, each of Fiesta and CRG, for itself and its stockholders, directors, employees, officers and Affiliates, waives and agrees not to seek to assert or enforce any such liability that any such individual otherwise might have pursuant to applicable Law.

**SECTION 12.16 Survival.** Except as otherwise expressly provided herein, all covenants, conditions and agreements of the Parties contained in this Agreement shall remain in full force and effect and shall survive the Distribution Date.

**SECTION 12.17 No Circumvention.** Each Party agrees not to directly or indirectly take any actions, act in concert with any Person who takes any action, or cause or allow any of its Subsidiaries to take any actions (including the failure to take any reasonable action) such that the resulting effect is to materially undermine the effectiveness of any of the provisions of this Agreement (including adversely affecting the rights or ability of any Party to successfully pursue indemnification or payment pursuant to the provisions of this Agreement).

**SECTION 12.18 Changes in Law.** If, due to any change in applicable Law or regulations or their interpretation by any governmental authority having jurisdiction subsequent to the date hereof, performance of any provision of this Agreement or any transaction contemplated hereby shall become impracticable or impossible, the Parties shall use their commercially reasonable best efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such provision.

**SECTION 12.19 Authority.** Each of the Parties represents to the other Party that (a) it has the corporate power or other requisite power and authority to execute, deliver and perform this Agreement, (b) the execution, delivery and performance of this Agreement by it have been duly authorized by all necessary corporate or other actions, (c) it has duly and validly executed and delivered this Agreement on or prior to the Distribution Date, and (d) this Agreement is a legal, valid, and binding obligation, enforceable against it in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium, or other similar Laws affecting creditors' rights generally and general equity principles.

**SECTION 12.20 Tax Allocation Agreements.** All Tax sharing, indemnification and similar agreements, written or unwritten, as between any of the CRG Parties, on the one hand, and any of the Fiesta Parties, on the other hand (other than this Agreement or in any other Transaction Agreement), shall automatically terminate as of the Distribution Date and, after the Distribution Date, no Party to any such Tax sharing, indemnification or similar agreement shall have any further rights or obligations under any such agreement.

**SECTION 12.21 No Duplication; No Double Recovery.** Nothing in this Agreement is intended to confer or impose upon any Party a duplicative right, entitlement, obligation, or recovery with respect to any matter arising out of the same facts and circumstances.

**SECTION 12.22 Time.** Time is of the essence with respect to this Agreement.

**SECTION 12.23 Construction.** This Agreement shall be construed as if jointly drafted by Fiesta, CRG and Carrols and no rule of construction or strict interpretation shall be applied against either party. The parties represent that this Agreement is entered into with full consideration of any and all rights which the parties may have. The parties have relied upon their own knowledge and judgment and upon the advice of the attorneys of their choosing. The parties have received independent legal advice, have conducted such investigations they and their counsel thought appropriate, and have consulted with such other independent advisors as they and their counsel deemed appropriate regarding this Agreement and their rights and asserted rights in connection therewith. The parties are not relying upon any representations or statements made by any other party, or such other party's employees, agents, representatives or attorneys, regarding this Agreement, except to the extent such representations are expressly incorporated in this Agreement. The parties are not relying upon a legal duty, if one exists, on the part of any

other party (or such other party’s employees, agents, representatives or attorneys) to disclose any information in connection with the execution of this Agreement or its preparation, it being expressly understood that no party shall ever assert any failure to disclose information on the part of the other party as a ground for challenging this Agreement.

**SECTION 12.24 Interpretation.** The headings contained in this Agreement, in any Schedule hereto and in the table of contents to this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Any capitalized term used in any Schedule, but not otherwise defined therein, shall have the meaning assigned to such term in this Agreement. When a reference is made in this Agreement to an Article, Section or Schedule, such reference shall be to an Article or a Section of, or a Schedule to, this Agreement unless otherwise indicated. The word “including” and words of similar import when used in this Agreement will mean “including, without limitation,” unless otherwise specified.

**SECTION 12.25 Carrols LLC.** Carrols LLC, a Delaware limited liability company and a wholly-owned subsidiary of Carrols, shall be a Party to this Agreement with respect to any obligation of a CRG Party for reimbursement, indemnification and payment owed, accrued or required to be paid or reimbursed to a Fiesta Party pursuant to this Agreement.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their authorized representatives as of the date first written above.

CARROLS RESTAURANT GROUP, INC.

By: /s/ Paul Flanders  
Name: Paul Flanders  
Title: Vice President and Chief Financial Officer

CARROLS CORPORATION

By: /s/ Paul Flanders  
Name: Paul Flanders  
Title: Vice President and Chief Financial Officer

FIESTA RESTAURANT GROUP, INC.

By: /s/ Joseph Zirkman  
Name: Joseph Zirkman  
Title: Vice President

Agreed to solely with respect to Section 12.25:

CARROLS LLC

By: /s/ Paul Flanders  
Name: Paul Flanders  
Title: Vice President and Chief Financial Officer

**EMPLOYEE MATTERS AGREEMENT**

**by and between**

**CARROLS RESTAURANT GROUP, INC.,**

**CARROLS CORPORATION**

**and**

**FIESTA RESTAURANT GROUP, INC.**

**Dated as of April 24, 2012**

## EMPLOYEE MATTERS AGREEMENT

This EMPLOYEE MATTERS AGREEMENT (this “**Agreement**”) is made as of April 24, 2012 by and between Carrols Restaurant Group, Inc., a Delaware corporation (“**CRG**”), Carrols Corporation, a Delaware corporation (“**Carrols**”) and Fiesta Restaurant Group, Inc., a Delaware corporation (“**Fiesta**”) and, as of the date hereof, an indirect wholly-owned subsidiary of CRG. CRG and Fiesta are referred to herein as “**Parties**” or each individually as a “**Party**.”

WHEREAS, CRG, through the Fiesta Subsidiaries (as defined herein), is engaged in the business of owning, operating, and franchising Pollo Tropical and Taco Cabana restaurants, as described more fully in the Form 10 Registration Statement (as defined herein) (the “**Transferred Business**”);

WHEREAS, the board of directors of CRG (the “**CRG Board**”) has determined that it would be advisable and in the best interests of CRG and its stockholders for CRG’s wholly-owned subsidiary, Carrols to transfer to Fiesta (i) 100% of the ownership interests of the Fiesta Subsidiaries (as defined herein) and (ii) the Transferred Business Assets (as defined herein) as further described in the Separation and Distribution Agreement by and between CRG and Fiesta (the “**Separation and Distribution Agreement**”), of even date herewith;

WHEREAS, the CRG Board has determined that it would be advisable and in the best interest of CRG and its stockholders for CRG Subsidiary to distribute to CRG, without any consideration being paid by CRG, all of the outstanding shares of Fiesta common stock (“**Fiesta Shares**”) owned by CRG Subsidiary (the “**Internal Distribution**”);

WHEREAS, the CRG Board has determined that it would be advisable and in the best interests of CRG and its stockholders for CRG, after the completion of the Internal Distribution, to distribute on a *pro rata* basis to the holders of shares of CRG’s common stock (“**CRG Shares**”), without any consideration being paid by the holders of such CRG Shares, all of the Fiesta Shares owned by CRG as of the Distribution Date (as defined herein) (such distribution, the “**External Distribution**”);

WHEREAS, in connection with the Distribution (as defined herein), the Parties desire to enter into this Employee Matters Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and in the Separation and Distribution Agreement, the parties hereto agree as follows:

### ARTICLE I DEFINITIONS

**1.01 Definitions.** Unless otherwise defined herein, each capitalized term shall have the meaning specified for such term in the Separation and Distribution Agreement. As used in this Agreement:

“**Account Transfer Date**” has the meaning set forth in Section 3.01(c) of this Agreement.

**“Affiliate”** means, with respect to any Person, any other Person that, at the time of determination, directly or indirectly Controls, is Controlled by or is under common Control with such Person. After the Distribution, Fiesta and CRG shall not be deemed to be under common Control for purposes hereof due solely to the fact that Fiesta and CRG have common stockholders.

**“Agreement”** means this Employee Matters Agreement together with those parts of the Separation and Distribution Agreement referenced herein and all schedules hereto and all amendments, modifications and changes hereto and thereto.

**“Carrols”** has the meaning set forth in the recitals of this Agreement.

**“Carrols 401(k) Plan”** means the Carrols Corporation Retirement Savings Plan.

**“Carrols Deferred Compensation Plan”** has the meaning set forth in Section 3.02(b) of this Agreement.

**“Carrols Employee”** means a person who is employed by a CRG Party immediately following the Distribution Date.

**“Carrols FSA”** has the meaning set forth in Section 4.06 of this Agreement.

**“Carrols Non-ERISA Benefit Arrangement”** means any Non-ERISA Benefit Arrangement sponsored or maintained by a CRG Party.

**“Carrols Options”** means stock options granted under the Carrols Stock Incentive Plan.

**“Carrols Parties”** means Carrols and its Subsidiaries (including those formed or acquired after the date hereof), other than the Fiesta Parties.

**“Carrols Plan”** means any Pension Plan or Welfare Plan sponsored or maintained by a CRG Party.

**“Carrols Restricted Stock”** has the meaning set forth in Section 6.01 of this Agreement.

**“Carrols Short Term Disability Plan”** means a short-term disability plan sponsored or maintained by a CRG Party.

**“Carrols Stock Incentive Plan”** means the Carrols Restaurant Group Inc. 2006 Stock Incentive Plan, as amended.

**“Carrols Welfare Plans”** means a Welfare Plan sponsored or maintained by a CRG Party.

**“COBRA”** has the meaning set forth in Section 4.04 of this Agreement.

**“Code”** means the Internal Revenue Code of 1986.

**“Control”** means, as to any Person, the direct or indirect power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; and the terms “Controlled by” and “under common Control” have correlative meanings.

**“CRG”** has the meaning set forth in the recitals of this Agreement.

**“CRG Board”** has the meaning set forth in the recitals of this Agreement.

**“CRG Parties”** means CRG and its Subsidiaries (including those formed or acquired after the date hereof), other than the Fiesta Parties.

**“CRG Shares”** has the meaning set forth in the recitals of this Agreement.

**“Distribution”** means the transactions contemplated by the Internal Distribution and the External Distribution.

**“Distribution Date”** means the date determined by the CRG Board in accordance with the Separation and Distribution Agreement as the date as of which the Distribution will be effected.

**“ERISA”** means the Employee Retirement Income Security Act of 1974.

**“Executive”** means an executive of either Party prior to the Distribution Date.

**“External Distribution”** has the meaning given such term in the recitals hereto.

**“Fiesta”** has the meaning set forth in the recitals of this Agreement.

**“Fiesta 2012 Bonus Plan”** has the meaning set forth in Section 5.03 of this Agreement.

**“Fiesta Deferred Compensation Plan”** has the meaning set forth in Section 3.02(a) of this Agreement.

**“Fiesta Employee”** means (i) each individual who immediately prior to the Distribution Date is employed by a Fiesta Party, including each Transferred Employee, and (ii) each former employee of a CRG Party or a Fiesta Party whose last employment with any of such parties prior to termination was with a Fiesta Party.

**“Fiesta FSA”** has the meaning set forth in Section 4.06 of this Agreement.

**“Fiesta Participant”** means a participant in a Fiesta Plan who, at the relevant time, is (i) a Fiesta Employee, (ii) a former Fiesta Employee who is not a Carrols Employee, or (iii) a beneficiary, dependent or alternate payee of any of the foregoing.

**“Fiesta Party” or “Fiesta Parties”** means Fiesta, the Fiesta Subsidiaries, and any other Subsidiary of Fiesta (including those formed or acquired after the date hereof).



**“Fiesta Plan”** means any Pension Plan or Welfare Plan sponsored or maintained by a Fiesta Party.

**“Fiesta Pre-Distribution Employee”** means each individual who immediately prior to the Distribution Date is employed by a Fiesta Party and is not a Transferred Employee, and (ii) each former employee of a CRG Party or a Fiesta Party before the Distribution Date whose last employment with any of such parties prior to termination was with a Fiesta Party.

**“Fiesta Restricted Stock”** has the meaning set forth in Section 6.02 of this Agreement.

**“Fiesta Shares”** has the meaning set forth in the recitals of this Agreement.

**“Fiesta Short Term Disability Plan”** means a short-term disability plan sponsored or maintained by a Fiesta Party.

**“Fiesta Spin-off 401(k) Plan”** has the meaning set forth in Section 3.01(b) of this Agreement.

**“Fiesta Subsidiaries”** means, collectively, Pollo Franchise, Inc., Pollo Operations, Inc., Taco Cabana Inc., and each Subsidiary of any of the foregoing.

**“Fiesta Welfare Plan”** means a Welfare Plan sponsored or maintained by a Fiesta Party.

**“Form 10 Registration Statement”** means the registration statement on Form 10 filed by Fiesta (File No. 001-35373) with the SEC to effect the registration of the Fiesta Shares under the Securities Exchange Act of 1934 (including all amendments or supplements thereto, in each case filed with the SEC prior to the Distribution Date).

**“FSA Spin-off”** has the meaning set forth in Section 4.06 of this Agreement.

**“HIPAA”** has the meaning set forth in Section 4.04 of this Agreement.

**“Internal Distribution”** has the meaning set forth in the recitals of this Agreement.

**“IRS”** means the Internal Revenue Service.

**“Non-ERISA Benefit Arrangement”** means any contract, agreement, policy, practice, program, plan, trust or arrangement, other than a Pension Plan or Welfare Plan, providing for benefits, perquisites or compensation of any nature to any Fiesta Employee, or to any family member, dependent or beneficiary of any such Fiesta Employee, including tuition reimbursement, supplemental unemployment, vacation, sick, personal or bereavement days, holidays, retirement, deferred compensation, profit sharing, bonus, stock-based compensation or other forms of incentive compensation.

**“Party” or “Parties”** has the meaning set forth in the recitals of this Agreement.

**“Pension Plan”** means any pension plan as defined in Section 3(2) of ERISA, without regard to Section 4(b)(4) or 4(b)(5) of ERISA.

**“Person”** means any individual, corporation, partnership, joint venture, limited liability company, entity, association, joint-stock company, trust, unincorporated organization or governmental authority.

**“QDRO”** has the meaning set forth in Section 3.01(c) of this Agreement.

**“SEC”** means the United States Securities and Exchange Commission.

**“Separation and Distribution Agreement”** has the meaning set forth in the recitals of this Agreement.

**“Subsidiary”** means, when used with reference to any Person, any corporation or other entity or organization, whether incorporated or unincorporated, of which at least a majority of the securities or interests having by the terms thereof ordinary voting power to elect at least a majority of the board of directors or others performing similar functions with respect to such corporation or other entity or organization is directly or indirectly owned or Controlled by such Person; provided, however, that no corporation or other organization that is not directly or indirectly wholly-owned by any other Person shall be a Subsidiary of such other Person unless such other Person Controls, or has the right, power or ability to Control, that Person. After the Distribution, CRG and Fiesta shall not be deemed to be under common Control for purposes hereof due solely to the fact that CRG and Fiesta have common stockholders.

**“Tax Matters Agreement”** means the Tax Matters Agreement by and between CRG, Carrols and Fiesta dated as of the date hereof.

**“Transferred Business”** has the meaning set forth in the recitals to this Agreement

**“Transferred Business Assets”** means the assets (other than stock of the Fiesta Subsidiaries) that are used in, or in connection with, the Transferred Business transferred or to be transferred to Fiesta as part of the Plan of Separation.

**“Transferred Deferred Compensation Balance”** has the meaning set forth in Section 3.02(c) of this Agreement.

**“Transferred Employee”** means each employee of a CRG Party (other than Fiesta or any Fiesta Party) listed on Exhibit A hereto whose employment shall be transferred to a Fiesta Party within 30 days of, or immediately prior to, the Distribution.

**“Transferred Executive”** means a Transferred Employee who was an executive of a CRG Party immediately before the Distribution Date.

**“Transition Services Agreement”** means the Transition Services Agreement by and between CRG, Carrols and Fiesta dated as of the date hereof.

**“Welfare Plan”** means any employee welfare plan as defined in Section 3(1) of ERISA, without regard to Section 4(b)(4) or 4(b)(5) of ERISA.

## 1.02 Rules of Construction.

(a) In this Agreement, unless the context clearly indicates otherwise:

- (i) words used in the singular include the plural and words used in the plural include the singular;
- (ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement;
- (iii) reference to any Person's "Subsidiaries" shall be deemed to mean such Person's Subsidiaries following the Distribution;
- (iv) reference to any gender includes the other gender;
- (v) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation;"
- (vi) references to any Article, Section or schedule means such Article or Section of, or such schedule to, this Agreement, as the case may be;
- (vii) the words "herein," "hereunder," "hereof," "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Section or other provision hereof;
- (viii) reference to any agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and by this Agreement;
- (ix) reference to any law (including statutes and ordinances) means such law (including all rules and regulations promulgated thereunder) as amended, modified, codified or reenacted, in whole or in part, and in effect at the time of determining compliance or applicability;
- (x) relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding" and "through" means "through and including;"
- (xi) accounting terms used herein shall have the meanings ascribed to them by CRG and its Subsidiaries, including Fiesta, in its and their internal accounting and financial policies and procedures in effect immediately prior to the date of this Agreement;
- (xii) if there is any conflict between the provisions of the Separation and Distribution Agreement and this Agreement, the provisions of this Agreement shall control with respect to the subject matter hereof; if there is any conflict between the provisions of the body of this Agreement and any schedule hereto, the provisions of the body of this Agreement shall control unless explicitly stated otherwise in such schedule;

(xiii) titles to Articles and headings of Sections contained in this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of or to affect the meaning or interpretation of this Agreement;

(xiv) any portion of this Agreement obligating a Party to take any action or refrain from taking any action, as the case may be, shall mean that such Party shall also be obligated to cause its relevant Subsidiaries to take such action or refrain from taking such action, as the case may be; and

(xv) unless otherwise specified in this Agreement, all references to dollar amounts herein shall be in respect of lawful currency of the United States.

(b) The titles to Articles and headings of Sections contained in this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of or to affect the meaning or interpretation of this Agreement, and this Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

## **ARTICLE II**

### **TRANSFER OF EMPLOYEES**

**2.01** Prior to the Distribution Date, to the extent not previously transferred, all Carrols Employees that are or as of the Distribution Date are expected to be, primarily employed by Fiesta Parties, shall be transferred to the Fiesta Party. Such transfer shall not be treated as a separation from service for purposes of any Carrols Plan or any agreement (or any benefit thereunder) which is subject to the provisions of Section 409A of the Code. Notwithstanding anything to the contrary contained herein, nothing in this Agreement shall create any obligation on the part of any Fiesta Party to continue the employment of any employee for any definite period following the Distribution Date or to change the employment status of any employee from “at will.”

## **ARTICLE III**

### **DEFINED CONTRIBUTION PLANS AND DEFERRED COMPENSATION PLANS**

#### **3.01 Defined Contribution Plans.**

(a) Carrols 401(k) Plan. Except as provided in Section 3.01(c) below, following the Distribution Date the CRG Parties shall retain all obligations and liabilities under, or with respect to, the Carrols 401(k) Plan.

(b) Fiesta Spin-off 401(k) Plan. Effective as of the Distribution, Fiesta shall establish a qualified defined contribution retirement plan and trust (the “**Fiesta Spin-off 401(k) Plan**”). Fiesta shall be responsible for taking all necessary, reasonable and appropriate action to maintain and administer the Fiesta Spin-off 401(k) Plan so that it is qualified under Code Section 401(a) and the trust thereunder is and continues to be exempt under Code Section 501(a). Fiesta

shall be responsible for any and all liabilities and other obligations with respect to the Fiesta Spin-off 401(k) Plan. As of the date of the establishment of the Fiesta Spin-off 401(k) Plan and through the Distribution Date, the Fiesta Spin-off 401(k) Plan shall initially include terms that are substantially identical to the terms of the Carrols 401(k) Plan such that (for avoidance of doubt) the Carrols 401(k) Plan is substantially replicated by the Fiesta Spin-off 401(k) Plan.

(c) Spin-Off of Carrols 401(k) Plan Assets. Within a reasonable period of time after the Distribution Date (the “**Account Transfer Date**”), CRG shall cause the accounts and underlying assets and liabilities (including any outstanding loan balances and any qualified domestic relations orders (“**QDROs**”)) in the Carrols 401(k) Plan attributable to Fiesta Employees who are employed by Fiesta as of the Distribution Date and all of the assets in the Carrols 401(k) Plan trust related thereto to be spun-off to the Fiesta Spin-off 401(k) Plan, and Fiesta shall cause the Fiesta Spin-off 401(k) Plan and trust to accept such spin-off of accounts and underlying assets, liabilities, loans and QDROs. Effective as of the date of such spin-off, Fiesta shall cause the Fiesta Spin-off 401(k) Plan to assume and to fully perform, pay and discharge all obligations of the Carrols 401(k) Plan relating to the accounts of Fiesta Participants as of the Account Transfer Date, to the extent the assets, liabilities, loans and QDROs related to those accounts are actually spun-off from the Carrols 401(k) Plan to the Fiesta Spin-off 401(k) Plan, and the Fiesta Spin-off 401(k) Plan shall satisfy all protected benefit requirements under the Code, ERISA and applicable law with respect to the spun-off accounts. The transfer of assets in the spin-off shall be conducted in accordance with Code Section 414(l), Treasury Regulation Section 1.414(1)-1, and ERISA Section 208.

(d) Continuation of Elections. The Fiesta Spin-off 401(k) Plan shall recognize and maintain Carrols 401(k) Plan elections or designations, including participant deferral elections, investment elections, beneficiary designations, and the rights of alternate payees under QDROs with respect to Fiesta Participants, to the extent such elections or designations are available under the Fiesta Spin-off 401(k) Plan and continued pursuant to procedures adopted under the Fiesta Spin-off 401(k) Plan.

### **3.02 Nonqualified Deferred Compensation Plan.**

(a) Continuation of Fiesta Deferred Compensation Plan. Following the Distribution Date, the Fiesta Parties shall be the plan sponsors of the Fiesta Restaurant Group, Inc. and Subsidiaries Deferred Compensation Plan (the “**Fiesta Deferred Compensation Plan**”). Following the Distribution Date, the CRG Parties shall have no liability or obligation with respect to such Fiesta Deferred Compensation Plan or any participants or former participants in such plan with respect to their participation therein.

(b) Fiesta Deferred Compensation Plan. Each Fiesta Employee who participated in the Amended and Restated Carrols Corporation and Subsidiaries Deferred Compensation Plan (the “**Carrols Deferred Compensation Plan**”) prior to the Distribution Date shall become eligible to participate in the Fiesta Deferred Compensation, subject to the terms of such plan.

(c) Transfer of Carrols Deferred Compensation Account Balances. Effective as of the Distribution Date, the Fiesta Deferred Compensation Plan shall assume the

accounts balances of any Fiesta Employee who participates in the Carrols Deferred Compensation Plan (the “**Transferred Deferred Compensation Balances**”). Subject to Section 3.02(d) below, the Fiesta Parties shall assume the liabilities and obligations of the Transferred Deferred Compensation Balances. The Fiesta Parties shall be solely responsible to pay and discharge all obligations, when such obligations become due, under the Fiesta Deferred Compensation Plan.

(d) CRG Obligations with Respect to Transferred Employees. Within 30 days of any Transferred Employee becoming a Fiesta Employee, Carrols shall transfer to Fiesta funds in an amount equal to such Transferred Employee’s Transferred Deferred Compensation Balance.

(e) No Distributions on Separation. The CRG Parties and Fiesta Parties acknowledge that neither the Distribution nor any of the other transactions contemplated by this Agreement, the Separation and Distribution Agreement or the other ancillary agreements will trigger a payment or distribution of compensation under either the Carrols Deferred Compensation Plan or the Fiesta Deferred Compensation Plan for any Fiesta Participant and, consequently, that the payment or distribution of any compensation to which any Fiesta Participant is entitled under the Fiesta Deferred Compensation Plan will occur upon such Fiesta Participant’s separation from service from the Fiesta Party or at such other time as provided in such Fiesta Deferred Compensation Plan or such Fiesta Participant’s deferral election.

(f) Continuation of Elections. The Fiesta Deferred Compensation Plan shall recognize and maintain Carrols Deferred Compensation Plan elections or designations, including participant deferral elections, investment elections, beneficiary designations, and the rights of alternate payees with respect to Fiesta Participants, to the extent such elections or designations are available under the Fiesta Deferred Compensation Plan and continued pursuant to procedures adopted under the Fiesta Deferred Compensation Plan.

#### **ARTICLE IV** **WELFARE PLANS**

**4.01 Continuation of Fiesta Welfare Plans.** Following the Distribution Date, the Fiesta Parties shall continue to be the plan sponsors of the Fiesta Welfare Plans. Following the Distribution Date, the CRG Parties shall have no liability or obligation with respect to such Fiesta Welfare Plans or any participants or former participants in such plans with respect to their participation therein.

**4.02 Coverage of Transferred Employees.** On the first day of the month following the date the Transferred Employee became a Fiesta Employee, such Transferred Employee (and any applicable dependent) shall become eligible to participate in the Fiesta Welfare Plans established by Fiesta prior to the Distribution Date for their participation, subject to the terms of such plans. To the extent applicable to any Fiesta Welfare Plans in which Transferred Employees become eligible, Fiesta shall cause such Fiesta Welfare Plans to recognize all coverage and contribution elections made by the Transferred Employees under the Carrols Welfare Plans in effect for the period immediately prior to the Distribution Date and shall apply such elections under the Fiesta Welfare Plans for the remainder of the period or periods for which such

elections are by their terms applicable, in each case to the extent practicable. All beneficiary designations made by Transferred Employees under the Carrols Welfare Plans shall, to the extent applicable, be transferred to, and be in full force and effect under, the Fiesta Welfare Plans until such beneficiary designations are replaced or revoked by the Transferred Employee who made the beneficiary designation.

#### **4.03 Welfare Plan Liabilities.**

(a) Fiesta Liabilities. Fiesta and the Fiesta Welfare Plans, as applicable, shall retain and be responsible for all claims for welfare benefits (and for any liabilities arising as a result of such claims) incurred with respect to any Fiesta Employee (or any eligible dependents of such Fiesta Employee) on or after the Distribution Date under the Fiesta Welfare Plans, and none of the CRG Parties or the Carrols Welfare Plans shall assume or retain any such liabilities.

(b) Certain Health Claims Assumed By Fiesta. Any unpaid claims (including claims incurred but not yet reported) for health benefits under a Carrols Welfare Plan incurred prior to the Distribution Date by any Fiesta Pre-Distribution Employees (or any eligible dependents of such Fiesta Pre-Distribution Employee) shall be charged to Fiesta and Fiesta or a Fiesta Welfare Plan shall reimburse any Carrols Welfare Plan to the extent it pays such claim after the Distribution Date. Notwithstanding the foregoing, to the extent any claim for health benefits is covered by an insurance policy issued by a third party insurance company, such insurance policy shall remain obligated to pay such claim.

**4.04 COBRA and HIPAA Liabilities.** Subject to CRG's agreement to provide certain administrative services as specified in the Transition Services Agreement, effective as of the Distribution Date, Fiesta shall assume, or shall cause the Fiesta Welfare Plans to assume, responsibility for the continuation coverage requirements under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("**COBRA**"), and the portability requirements under the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**") with respect to all Fiesta Employees (including Transferred Employees) and their qualified beneficiaries. Neither the Distribution nor any transfers of employment that occur as of the Distribution Date shall constitute a COBRA qualifying event for purposes of COBRA.

**4.05 Claims Experience.** The Parties shall take any action necessary to ensure that any claims experience under the Carrols Welfare Plans attributable to Fiesta Participants shall be allocated to the Fiesta Welfare Plans.

**4.06 Flexible Spending Accounts.** Effective as of January 1, 2012, Fiesta established the Fiesta Flexible Spending Account Plan (the "**Fiesta FSA**") for the benefit of the Fiesta Employees. The Parties agree to spin-off any flexible accounts of Transferred Employees under the flexible spending account plan maintained by Carrols (the "**Carrols FSA**") to the Fiesta FSA (the "**FSA Spin-off**") and Fiesta agrees to honor and continue any elections by such Transferred Employees that are in effect at the time of the spin-off until December 31, 2012. Following the FSA Spin-off, the Fiesta FSA shall assume and be responsible for all claims by Transferred Employees under the Carrols FSA that have not been paid at the time of the FSA Spin-off.

**4.07 Short-Term Disability.** Fiesta shall retain and be responsible for all claims for short-term benefits (and for any liabilities arising as a result of such claims) incurred with respect to any Fiesta Employee on or after the Distribution Date under the Fiesta Short-Term Disability Plan, and none of the CRG Parties shall assume or retain any such liabilities. Fiesta shall assume the responsibility for all claims for short-term benefits (and for any liabilities arising as a result of such claims) incurred, but not yet reported, by Fiesta Pre-Distribution Employees under any Carrols Short-Term Disability Plan prior to the Distribution Date.

## **ARTICLE V**

### **NON-ERISA BENEFIT ARRANGEMENTS**

**5.01 Fiesta Non-ERISA Benefit Arrangements.** Following the Distribution Date, the Fiesta Parties shall continue to be the plan sponsor of each Non-ERISA Benefit Arrangement maintained for the benefit of the Fiesta Employees. Following the Distribution Date, the CRG Parties shall have no liability or obligation with respect to such arrangements or any participants or former participants in such arrangements with respect to their participation therein.

## **ARTICLE VI**

### **EQUITY COMPENSATION PLANS**

**6.01 Stock Options.** On March 5, 2012, all outstanding vested stock options under the Carrols Stock Incentive Plan ("**Carrols Options**") were converted into unrestricted CRG Shares using a conversion formula to preserve the intrinsic value of each option to the holder. In addition, outstanding unvested stock options under the Carrols Stock Incentive Plan were converted into restricted CRG Shares ("**Carrols Restricted Stock**") using a conversion formula to preserve the intrinsic value of each option to the holder.

#### **6.02 Restricted Stock.**

(a) **Adjustment.** On the Distribution Date persons who hold shares of Carrols Restricted Stock issued under the Carrols Stock Incentive Plan will receive restricted Fiesta Shares ("**Fiesta Restricted Stock**") subject to the same vesting requirements and terms and conditions applicable to the Carrols Restricted Stock, including, but not limited to, the time period remaining on the restrictions on transfer and forfeiture provisions. The Fiesta Restricted Stock received on the Distribution Date will continue to be governed by the terms of the Carrols Stock Incentive Plan and any dividends issued shall be issued pursuant to the Carrols Stock Incentive Plan. Each holder of Carrols Restricted Stock will receive a distribution of one share of Fiesta Restricted Stock for each one share of Carrols Restricted Stock.

(b) **Fiesta Employee Forfeiture of Restricted Stock.** If a Fiesta Employee forfeits his shares of Fiesta Restricted Stock, the forfeited Fiesta Restricted Stock shall be returned to Fiesta. If a Fiesta Employee forfeits his shares of Carrols Restricted Stock, such forfeited Carrols Restricted Stock shall be returned to CRG.

(c) **Carrols Employee Forfeiture of Restricted Stock.** If a Carrols Employee forfeits his shares of Fiesta Restricted Stock, the forfeited Fiesta Restricted Stock shall be returned to Fiesta. If a Carrols Employee forfeits his shares of Carrols Restricted Stock, such forfeited Carrols Restricted Stock shall be returned to CRG.



(d) Restricted Stock Agreement Terms. The Parties agree that: (i) with respect to the Carrols Restricted Stock, issued on or before the Distribution, individuals who are Fiesta Employees as of the Distribution Date shall be treated while so employed as employees of a CRG Party for purposes of continued vesting in the Carrols Restricted Stock; and (ii) with respect to the Fiesta Restricted Stock, issued on the Distribution Date, individuals who are Carrols Employees as of the Distribution Date shall be treated while so employed as employees of a Fiesta Party for purposes of continued vesting in the Fiesta Restricted Stock.

**6.03 No Change in Control.** The Distribution will not constitute a “change in control” for purposes of Carrols Restricted Stock that are outstanding as of the Distribution Date.

**6.04 Tax Deductions.** The rights of the Parties to take deductions for Non-ERISA Benefit Arrangements shall be determined in accordance with Section 6.1 of the Tax Matters Agreement.

**ARTICLE VII**  
**COMPENSATION MATTERS**  
**AND GENERAL BENEFIT MATTERS**

**7.01 Cessation of Participation in Carrols Plans and Non-ERISA Benefit Arrangements.** Except as otherwise provided in this Agreement or as required by the terms of any Carrols Plan or Carrols Non-ERISA Benefit Arrangement, or by applicable law, the Carrols Parties and Fiesta Parties shall take any and all action as shall be necessary or appropriate so that participation in Carrols Plans and Carrols Non-ERISA Benefit Arrangements by all Fiesta Employees shall terminate as of the close of business on the Distribution Date and the Fiesta Parties shall cease to be participating employers under the terms of such Carrols Plans and Carrols Non-ERISA Benefit Arrangements as of such time.

**7.02 Assumption of Certain Employee Related Obligations.** Except as otherwise provided in this Agreement and the Transition Services Agreement, effective as of the close of business on the Distribution Date, Fiesta shall assume, and no CRG Party shall have any further liability for, the following agreements, obligations and liabilities, and Fiesta shall indemnify, defend and hold harmless each of the CRG Parties from and against any and all expenses or losses incurred or suffered by one or more of the CRG Parties in connection with, relating to, arising out of or due to, directly or indirectly, any of the following:

- (a) all wages, salary and incentive compensation payable to Fiesta Pre-Distribution Employees on or after the Distribution Date, without regard to when such wages, salary or incentive compensation are or may have been earned;
- (b) all moving expenses and obligations related to relocation, repatriation, transfers or similar items incurred by or owed to any Fiesta Pre-Distribution Employees;
- (c) all immigration-related, visa, work application or similar rights, obligations and liabilities to the extent they are related to any Fiesta Employees; and
- (d) all liabilities and obligations whatsoever with respect to claims made by or with respect to Fiesta Pre-Distribution Employees, relating to any employee benefit plan,

program or policy not otherwise retained or assumed by the CRG Parties pursuant to this Agreement, including such liabilities relating to actions or omissions of or by the Fiesta Parties or any officer, director, employee or agent thereof prior to the Distribution Date.

**7.03 Restrictive Covenants in Employment and Other Agreements.** To the extent permitted under applicable law, following the Distribution, the Fiesta Parties shall be considered to be successors to the CRG Parties for purposes of all agreements containing restrictive covenants (including confidentiality and non-competition provisions) between any CRG Party and any Fiesta Employee executed prior to the Distribution Date such that each CRG Party and each Fiesta Party shall all enjoy the rights and benefits under such agreements, with respect to their respective business operations; provided, however, that (a) in no event shall any CRG Party be permitted to enforce the restrictive covenant agreements against any Fiesta Employees in their capacity as employees of any Fiesta Party, and (b) in no event shall any Fiesta Party be permitted to enforce the restrictive covenant agreements against any Carrols Employees in their capacity as employees of any CRG Party.

**7.04 Past Service Credit.** With respect to all Fiesta Employees, as of the Distribution Date, the Fiesta Parties shall recognize all service recognized under the comparable Carrols Plans and Carrols Non-ERISA Benefit Arrangements for purposes of determining eligibility, participation, vesting and calculation of benefits under comparable plans and programs maintained by the Fiesta Parties, provided that there shall be no duplication of benefits for Fiesta Employees under such Fiesta Party plans and programs. Subject to the Transition Services Agreement, Carrols will provide to Fiesta copies of any records available to Carrols to document such service, plan participation and membership and cooperate with Fiesta to resolve any discrepancies or obtain any missing data for purposes of determining benefit eligibility, participation, vesting and calculation of benefits with respect to the Fiesta Employees. With respect to retaining, destroying, transferring, sharing, copying and permitting access to all such information, The Carrols Parties and Fiesta Parties shall each comply with all applicable laws, regulations and internal policies and each party shall indemnify and hold harmless the other party from and against any and all liability, claims, actions and damages that arise from a failure (by the indemnifying party) to so comply with all applicable laws, regulations and internal policies applicable to such information.

**7.05 Accrued Vacation Days Off.** Effective as of the Distribution Date, the Fiesta Parties shall recognize and assume all liability for all vacation, holiday, sick leave, flex days and personal days off, including banked vacation, accrued by Fiesta Employees as of the Distribution Date, and the Fiesta Parties shall credit each Fiesta Employee with such days off accrual.

**7.06 Leaves of Absence.** The Fiesta Parties shall continue to apply all leave of absence policies as in effect immediately prior to the Distribution to inactive Fiesta Employees who are on an approved leave of absence as of the Distribution Date. Leaves of absence taken by Fiesta Employees prior to the Distribution Date shall be deemed to have been taken as employees of Fiesta.

**7.07 CRG Assets.** Except as otherwise set forth herein, the CRG Parties shall retain all reserves, bank accounts, trust funds or other balances maintained with respect to Carrols Non-ERISA Benefit Arrangements.

**7.08 Further Cooperation; Personnel Records; Data Sharing.** Subject to the Transition Services Agreement, the parties shall provide each other such records and information as reasonably necessary or appropriate to carry out their obligations under law, this Agreement, or for the purposes of administering their respective plans and policies, including without limitation information relating to the vesting, exercise and employment status of persons holding equity compensation awards in the common stock of the other party. Each party shall be responsible for the accuracy of records and information provided to the other party pursuant to this Section 7.08, and shall indemnify such other party for any losses caused by inaccurate information that it has provided. Subject to applicable law, all information and records regarding employment and personnel matters of Fiesta Employees shall be accessed, retained, held, used, copied and transmitted after the Distribution Date by Fiesta in accordance with all laws and policies relating to the collection, storage, retention, use, transmittal, disclosure and destruction of such records. Access to such records after the Distribution Date will be provided to Carrols in accordance with Section 2.4 of the Transition Services Agreement. Notwithstanding the foregoing, Carrols shall retain reasonable access to those records necessary for Carrols' continued administration of any plans or programs on behalf of Fiesta Employees after the Distribution Date, and Fiesta shall retain reasonable access to those records necessary for Fiesta's administration of any equity award or other compensation or benefit payable or administered by the Fiesta Parties after the Distribution Date, provided that such access shall be limited to individuals who have a job-related need to access such records. Carrols shall also retain copies of all confidentiality and non-compete agreements with any Fiesta Employee in which Carrols has a valid business interest. With respect to retaining, destroying, transferring, sharing, copying and permitting access to all such information, The Carrols Parties and Fiesta Parties shall each comply with all applicable laws, regulations and internal policies, and each party shall indemnify and hold harmless the other party from and against any and all liability, claims, actions, and damages that arise from a failure (by the indemnifying party) to so comply with all applicable laws, regulations and internal policies applicable to such information.

## **ARTICLE VIII**

### **GENERAL PROVISIONS**

**8.01 Employment and Plan Rights.** Notwithstanding anything to the contrary in this Agreement, the Parties expressly acknowledge and agree that (a) this Agreement is not intended to create an employment-related contract between any of the CRG Parties or the Fiesta Parties, on the one hand, and any employee or service provider, on the other, nor may any current or former employee or service provider rely on this Agreement as the basis for any breach of any employment-related contract claim against any of the CRG Parties or Fiesta Parties, (b) nothing in this Agreement shall be deemed or construed to require any of the CRG Parties or Fiesta Parties to continue to employ any particular employee or service provider for any period before or after the Distribution Date, (c) nothing in this Agreement shall be deemed or construed to limit the right of the CRG Parties or Fiesta Parties to terminate the employment of any employee or service provider at any time before or after the Distribution Date and (d) nothing in this Agreement shall be construed as establishing or amending any Pension Plan, Welfare Plan or Non-ERISA Benefit Arrangement, or any other plan, policy, agreement or arrangement for the benefit of any employee or any other person.

**8.02 Confidentiality.** Each Party agrees that any information conveyed or otherwise received by or on behalf of a Party in conjunction herewith is confidential and is subject to the terms of the confidentiality provisions set forth in Section 6.10 of the Separation and Distribution Agreement.

**8.03 Administrative Complaints/Litigation.** Except as otherwise provided in this Agreement and the Transition Services Agreement, following the Distribution Date, the Fiesta Parties shall assume, and be solely liable for, the handling, administration, investigation and defense of actions, including ERISA, occupational safety and health, employment standards, union grievances, wrongful dismissal, discrimination or human rights and unemployment compensation claims, asserted at any time against the Carrols Parties or Fiesta Parties by any Fiesta Employee (including any dependent or beneficiary of any Fiesta Employee), or any other person to the extent such actions or claims arise out of or relate to employment or the provision of services (whether as an employee, contractor, consultant or otherwise) to a Fiesta Party. Any losses arising from such actions shall be deemed Assumed Actions under the Separation and Distribution Agreement.

**8.04 Reimbursement and Indemnification.** Subject to the terms of the Transition Services Agreement as applicable, the parties hereto agree to reimburse each other, within 15 days of receipt from the other party of appropriate verification, for all costs and expenses which each may incur on behalf of the other as a result of any of the Welfare Plans, Pension Plans and Non-ERISA Benefit Arrangements. All liabilities retained, assumed or indemnified against by the Fiesta Parties pursuant to this Agreement, and all liabilities retained, assumed or indemnified against by the Carrols Parties pursuant to this Agreement, shall in each case be subject to the indemnification procedures set forth in Article III of the Separation and Distribution Agreement.

**8.05 Code Section 409A.** Notwithstanding anything in this Agreement to the contrary, the Parties agree to negotiate in good faith regarding the need for any treatment different from that otherwise provided herein to comply with, to the extent permissible under applicable law, Section 409A of the Code such that nothing in this Agreement causes the imposition of a tax under Section 409A of the Code.

**8.06 Entire Agreement.** This Agreement, including any schedules hereto and the sections of the Separation and Distribution Agreement, the Tax Matters Agreement and the Transition Services Agreement referenced herein, constitutes the entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior agreements, negotiations, discussions, understandings, writings and commitments between the Parties with respect to such subject matter.

**8.07 Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws rules thereof to the extent such rules would require application of the law of another jurisdiction.

**8.08 Amendment.** No change or amendment will be made to this Agreement except by an instrument in writing signed on behalf of each of the Parties.

**8.09 Failure or Indulgence Not Waiver; Remedies Cumulative.** No failure or delay on the part of any Party hereto in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty or agreement herein, nor shall any single or partial exercise of any such right preclude other or further exercise thereof or of any other right. All rights and remedies existing under this Agreement or any schedules attached hereto are cumulative to, and not exclusive of, any rights or remedies otherwise available.

**8.10 Severability.** If any term or other provision of this Agreement or any schedules hereto is determined by a nonappealable decision by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the court, administrative agency or arbitrator shall interpret this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the fullest extent possible. If any sentence in this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

**8.11 Counterparts.** This Agreement, including any schedules hereto and the other documents referred to herein, may be executed in counterparts, each of which shall be deemed to be an original but all of which together shall constitute one agreement binding on the Parties.

**8.12 Binding Effect; Assignment.** This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective legal representatives and successors, and nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Agreement. This Agreement may not be assigned by any Party hereto.

**8.13 Notices.** All notices or other communications under this Agreement shall be in writing and shall be deemed to be duly given when delivered or mailed in accordance with the terms of Section 7.5 of the Separation and Distribution Agreement.

**8.14 Performance.** Each Party shall cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth herein to be performed by any Subsidiary of such Party.

**8.15 Carrols LLC.** Carrols LLC, a Delaware limited liability company and a wholly-owned subsidiary of Carrols, shall be a Party to this Agreement with respect to any obligation of a CRG Party for reimbursement, indemnification and payment owed, accrued or required to be paid or reimbursed to a Fiesta Party pursuant to this Agreement.

**8.16 Limited Liability.** Notwithstanding any other provision of this Agreement, no individual who is a stockholder, director, employee, officer, agent or representative of a Fiesta Party or a CRG Party, in its capacity as such, shall have any liability in respect of or relating to the covenants or obligations of such Party under this Agreement, and, to the fullest extent legally permissible, each of the Parties, for itself and its respective stockholders, directors, employees, officers and Subsidiaries, waives and agrees not to seek to assert or enforce any such liability that any such Person otherwise might have pursuant to applicable law.

**8.17 Construction.** This Agreement shall be construed as if jointly drafted by the Parties and no rule of construction or strict interpretation shall be applied against any Party. The Parties represent that this Agreement is entered into with full consideration of any and all rights which the Parties may have. The Parties have relied upon their own knowledge and judgment and upon the advice of the attorneys of their choosing. The Parties have received independent legal advice, have conducted such investigations they and their counsel thought appropriate, and have consulted with such other independent advisors as they and their counsel deemed appropriate regarding this Agreement and their rights and asserted rights in connection therewith. The Parties are not relying upon any representations or statements made by any other Party, or such other Party's employees, agents, representatives or attorneys, regarding this Agreement, except to the extent such representations are expressly incorporated in this Agreement. The Parties are not relying upon a legal duty, if one exists, on the part of any other Party (or such other Party's employees, agents, representatives or attorneys) to disclose any information in connection with the execution of this Agreement or its preparation, it being expressly understood that no Party shall ever assert any failure to disclose information on the part of the other Party as a ground for challenging this Agreement.

**8.18 Dispute Resolution.** The Parties agree that any dispute, controversy or claim between them with respect to the matters covered hereby shall be governed by and resolved in accordance with the procedures set forth in Article V of the Separation and Distribution Agreement.

**8.19 No Third-Party Beneficiaries.** No Fiesta Employee or other current or former employee of the CRG Parties or Fiesta Parties (or his/her spouse, dependent or beneficiary), or any other person not a party to this Agreement, shall be entitled to assert any claim hereunder. The provisions of this Agreement are solely for the benefit of the Parties and their respective Subsidiaries, successors and permitted assigns and shall not confer upon any third Person any remedy, claim, liability, reimbursement or other right in excess of those existing without reference to this Agreement.

**8.20 Effect if Distribution Does Not Occur.** Notwithstanding anything in this Agreement to the contrary, if the Separation and Distribution Agreement is terminated prior to the Distribution Date, this Agreement shall be of no further force and effect.

**[Signature Page Follows]**

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed in their names by a duly authorized officer as of the date first written above.

**CARROLS RESTAURANT GROUP, INC.**

By: /s/ Paul Flanders  
Name: Paul Flanders  
Title: Vice President and Chief Financial Officer

**CARROLS CORPORATION**

By: /s/ Paul Flanders  
Name: Paul Flanders  
Title: Vice President and Chief Financial Officer

**FIESTA RESTAURANT GROUP, INC.**

By: /s/ Joseph Zirkman  
Name: Joseph Zirkman  
Title: Vice President

**Agreed to solely with respect to Section 8.15**

**CARROLS LLC**

By: /s/ Paul Flanders  
Name: Paul Flanders  
Title: Vice President and Chief Financial Officer

TRANSITION SERVICES AGREEMENT

BY AND AMONG

FIESTA RESTAURANT GROUP, INC.,

CARROLS RESTAURANT GROUP, INC.

AND

CARROLS CORPORATION

DATED AS OF APRIL 24, 2012



## TRANSITION SERVICES AGREEMENT

THIS TRANSITION SERVICES AGREEMENT, dated as of April 24, 2012 (this “Agreement”), is entered into by and among Fiesta Restaurant Group, Inc., a Delaware corporation (“Fiesta”), Carrols Restaurant Group, Inc., a Delaware corporation (“CRG”), and Carrols Corporation, a Delaware corporation (“Carrols Corporation” and together with CRG, “Carrols”)

### WITNESSETH:

WHEREAS, CRG, Carrols Corporation and Fiesta have entered into a Separation and Distribution Agreement, dated as of the date hereof (the “Distribution Agreement”), providing for, among other things, the distribution by CRG of its entire equity ownership interest in Fiesta through a pro-rata distribution of all of the outstanding shares of Fiesta Common Stock on the Distribution Date to the holders of CRG Common Stock pursuant to the terms and subject to the conditions of the Distribution Agreement (the “Distribution”);

WHEREAS, it is the intention of Carrols and Fiesta for Carrols to provide certain services and support to Fiesta for such time period as is necessary for Fiesta to develop its own infrastructure to provide such services and support for itself; and to a lesser extent, for Fiesta to provide certain services and support to Carrols for such time period as is necessary for Carrols to provide such services and support for itself;

WHEREAS, Carrols and Fiesta agree that the purpose and goal of this Agreement is for Carrols to provide, and Fiesta to receive, the services in the most efficient and cost effective manner possible; and

WHEREAS, Carrols and Fiesta desire to enter into this Agreement to set forth the roles and responsibilities with regard to services to be provided by Carrols to Fiesta and by Fiesta to Carrols for certain transition periods specified herein following the Distribution.

NOW, THEREFORE, the parties agree as follows:

### **ARTICLE I** **DEFINITIONS**

“Affiliate” means with respect to any specified Person, a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For this purpose “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Person controlled, whether through ownership of voting securities, by contract or otherwise.

“Agreement” has the meaning set forth in the preamble.

“Business Day” means any day other than a Saturday, a Sunday or a day on which banking institutions located in the State of New York are authorized or obligated by Law or executive order to close.

---

“Carrols” has the meaning set forth in the preamble.

“Carrols Corporation” has the meaning set forth in the preamble.

“Carrols Group” means CRG and the Subsidiaries of CRG after the Distribution.

“Carrols LLC” means Carrols LLC, a Delaware limited liability company and a Wholly-owned Subsidiary of Carrols Corporation.

“Carrols Party” has the meaning set forth in [Section 9.1\(a\)](#).

“Confidential Information” has the meaning in [Section 7.1](#) hereof.

“CRG” has the meaning set forth in the preamble.

“CRG Common Stock” has the meaning set forth in the Distribution Agreement.

“Dispute” has the meaning set forth in [Section 10.2\(a\)](#).

“Distribution” has the meaning set forth in the recitals.

“Distribution Agreement” has the meaning set forth in the recitals.

“Distribution Date” has the meaning set forth in the Distribution Agreement.

“Escalation Notice” has the meaning set forth in [Section 10.2\(c\)](#).

“Exhibits” has the meaning set forth in [Section 2.1\(a\)](#).

“Expenses” has the meaning set forth in [Section 3.2](#).

“Fees” has the meaning set forth in [Section 3.1](#).

“Fiesta” has the meaning set forth in the preamble.

“Fiesta Common Stock” has the meaning set forth in the Distribution Agreement.

“Fiesta Group” means Fiesta and the Subsidiaries of Fiesta.

“Fiesta Party” has the meaning set forth in [Section 9.1\(a\)](#).

“Governmental Authority” means any U.S. federal, state, local or non-U.S. court, government, department, commission, board, bureau, agency, official or other regulatory, administrative or governmental authority.

---

“Initial Service Levels” has the meaning set forth in [Section 2.3\(b\)](#).

“Law” means any law, statute, ordinance, rule, regulation, order, writ, judgment, injunction or decree of any Governmental Authority.

“Liabilities” means any and all claims, debts, Losses, liabilities, assessments, guarantees, assurances, commitments and obligations, of any kind, character or description (whether absolute, contingent, matured, not matured, liquidated, un-liquidated, accrued, known, unknown, direct, indirect, derivative or otherwise or whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute, or otherwise) whenever arising, including, but not limited to, those arising under or in connection with any Law, and those arising under any contract, guarantee, commitment or undertaking.

“Losses” means with respect to any Person, all losses, damages (whether compensatory, punitive, consequential, multiple or other), judgments, settlements, equitable or injunctive relief or disgorgements, including, where applicable, all punitive damages and criminal and civil fines and penalties, but excluding damages in respect of actual or alleged lost profits, suffered by such Person, and including all costs, expenses and interest relating thereto (including, but not limited to, all expenses of investigation, all reasonable accountant or attorneys’ fees and all other out-of-pocket expenses), regardless of whether any such losses, damages, judgments, settlements, costs, expenses, fines and penalties relate to or arise out of such Person’s own alleged or actual negligent, grossly negligent, reckless or intentional misconduct.

“Parties” means Fiesta and Carrols.

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

“Representative” has the meaning set forth in [Section 4.1](#).

“Senior Executives” has the meaning set forth in [Section 10.2\(c\)](#).

“Services” has the meaning set forth in [Section 2.1\(a\)](#).

“Subsidiary” means any Person means any corporation or other organization whether incorporated or unincorporated of which at least a majority of the securities or interests having by the terms thereof ordinary voting power to elect at least a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such Person or by any one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries.

“Suspension Notice” has the meaning set forth in [Section 3.3\(b\)](#).

“Term” has the meaning set forth in [Section 8.1](#).

“Wholly-owned Subsidiary” means a Subsidiary of a Party substantially all of whose voting securities and outstanding equity interest are owned either directly or indirectly by such Party or one or more of its Subsidiaries or by such Party and one or more of its Subsidiaries.

## **ARTICLE II**

### **SERVICES TO BE PROVIDED**

#### **2.1. Services & Charges.**

(a) Exhibits 1 through 5 (collectively, the “Exhibits”) attached to and made a part of this Agreement describe the services to be provided by Carrols to the Fiesta Group and by Fiesta to the Carrols Group (the “Services”). The Parties have previously mutually agreed in writing to the allocation methodology for the individual Services. The Parties have made a good faith effort as of the date hereof to identify each Service and to complete the content of the Exhibits accurately. It is anticipated that the Parties will modify the Services from time to time by written agreement among the Parties. In that case or to the extent that any Exhibit is incomplete, the Parties will use good faith efforts to modify the Exhibits.

(b) The Parties may also identify additional Services that they wish to incorporate into this Agreement. The Parties will agree in writing to additional Exhibits setting forth the description of such Services, the Fees for such Services and any other applicable terms in accordance with Section 11.1 of this Agreement.

**2.2. Independent Contractors.** The Parties will provide the Services either through their own resources, through the resources of its Subsidiaries or Affiliates, or by contracting with independent contractors as agreed hereunder. To the extent that Carrols or Fiesta decides to provide a Service through an independent contractor in the future, Carrols or Fiesta, as the case may be, shall consult with and obtain the prior written approval of each other, which approval shall not be unreasonably withheld or delayed.

#### **2.3. Standard of Care; Service Level.**

(a) In providing the Services hereunder, the Parties will exercise at least the same degree of care as they have historically exercised in providing and performing such Services, including (i) at least with the same level of quality, responsiveness and timeliness and (ii) utilizing individuals of such experience, training and skill.

(b) Each of Fiesta and Carrols shall provide Services to the Carrols Group and the Fiesta Group, respectively, at the Service level (the “Initial Service Levels”) consistent with past practice prior to the Distribution.

(c) In the performance of its duties and obligations under this Agreement, each Party shall comply with all applicable Laws. The Parties shall cooperate fully in obtaining and maintaining in effect all permits and licenses that may be required for the performance of the Services.

#### **2.4. Records; Audit Right; Access.**

(a) The Parties shall maintain books and records in reasonable and customary detail pertaining to the provision of Services pursuant to this Agreement. Each of Carrols and Fiesta shall make such books and records available for inspection by the other or its authorized representatives during normal business hours, upon reasonable notice to Carrols or Fiesta, as the case may be, and shall retain such books and records for periods consistent with the retention policies in effect immediately prior to the Distribution.

(b) Upon thirty (30) days' advance written notice a Party may audit (or cause an independent third party auditor to audit), during regular business hours and in a manner that complies with the building and security requirements of the other Party, the books, records and facilities of the other Party pertaining to the provision of Services pursuant to this Agreement to the extent necessary to determine the other Party's compliance with this Agreement. For any given Service, a Party shall have the right to audit such books, records and facilities of the other Party once for each twelve month period during which payment obligations are due. Any audit under this Section 2.4(b) shall not interfere unreasonably with the operations of a Party. The Party requesting an audit pursuant to this Section 2.4(b) shall pay the costs of conducting such audit.

(c) During the Term and for so long as any Services are being provided hereunder, each of Carrols and Fiesta will provide the other and its authorized representatives, during regular business hours and upon reasonable prior written notice, reasonable access to its respective employees, representatives, facilities and books and records as it or its representatives may reasonably be required in order to perform the Services.

### **ARTICLE III**

#### **FEES**

**3.1. General.** The fees for each Service are set forth in the attached Exhibits (collectively, the "Fees").

**3.2. Expenses.** The Parties shall be entitled to charge reasonable documented, out-of-pocket costs and expenses incurred in providing the Services (the "Expenses").

**3.3. Payments.**

(a) A Party will deliver to the other, no later than fifteen (15) days following the last day of each month, an invoice that includes in reasonable detail, including a calculation, of the aggregate Fees and Expenses incurred for that month. Payments of invoices shall be made by wire transfer of immediately available funds to one or more accounts specified in writing by the Parties. A Party will pay to the other monthly, no later than the 15th day of the following month, the aggregate Fees incurred during the previous month. All amounts payable hereunder shall be paid without setoff, deduction, abatement or counterclaim.

(b) If either Carrols or Fiesta fails to make any payment of a material invoice within sixty (60) days from the date of such payment was due, the other shall have the right, in its sole discretion, upon ten (10) Business Days prior written notice (the "Suspension Notice"), to suspend performance of the Services until payment shall have been received.

**ARTICLE IV**  
**REPRESENTATIVES**

**4.1. Representative.** Tim Taft, the Chief Executive Officer of Fiesta, and Daniel T. Accordino, the Chief Executive Officer of CRG and Carrols Corporation, will serve as administrative representatives ("Representative") of Fiesta and Carrols, respectively, to facilitate day-to-day communications and performance under this Agreement. Each Party may treat an act of a Representative of the other Party as being authorized by such other Party. Each Party may replace its Representative by giving prior written notice of the replacement to the other Party.

**ARTICLE V**  
**AUTHORITY AS AGENT**

**5.1. Authority as Agent.**

(a) Fiesta is hereby authorized to act as agent for each of the entities comprising the Carrols Group for the purpose of performing Services hereunder and as is necessary or desirable to perform such Services. Carrols will execute and deliver or cause the appropriate member of the Carrols Group to execute and deliver to Fiesta any document or other evidence which may be reasonably required by Fiesta to demonstrate to third parties the authority of Fiesta described in this Article V.

(b) Carrols is hereby authorized to act as agent for each of the entities comprising the Fiesta Group for the purpose of performing Services hereunder and as is necessary or desirable to perform such Services. Fiesta will execute and deliver or cause the appropriate member of the Fiesta Group to execute and deliver to Carrols any document or other evidence which may be reasonably required by Carrols to demonstrate to third parties the authority of Carrols described in this Article V.

**ARTICLE VI**  
**AUTHORITY;**  
**INFORMATION;**  
**COOPERATION; CONSENTS**

**6.1. Authority.** Each Party represents to the other that:

- (a) it has the requisite corporate authority to enter into and perform this Agreement;
- (b) its execution, delivery and performance of this Agreement have been duly authorized by all requisite corporate action on its behalf;
- (c) this Agreement is enforceable against it; and
- (d) it has obtained all consents or approvals of Governmental Authorities and other Persons that are conditions to its entering into this Agreement.

**6.2. Information Regarding Services.** Each Party shall make available to the other Party any information required or reasonably requested by that other Party regarding the performance of any Service and shall be responsible for providing that information on a timely basis and for ensuring the accuracy and completeness of that information; provided, however, that a Party shall not be liable for not providing any information that is subject to a confidentiality obligation owed by it to a Person other than an Affiliate of it or the other Party.

**6.3. Cooperation.** The Parties will use best efforts to cooperate with each other in all matters relating to the provision and receipt of Services. Such good faith cooperation will include providing electronic access to systems used in connection with Services and using commercially reasonable efforts to obtain all consents, licenses, sublicenses or approvals necessary to permit each Party to perform its obligations. The Parties will cooperate with each other in making such information available as needed in the event of any and all internal or external audits. If this Agreement is terminated in whole or in part, the Parties will cooperate with each other in all reasonable respects in order to effect an efficient transition and to minimize the disruption to the business of both Parties, including the assignment or transfer of the rights and obligations under any contracts.

**6.4. Further Assurances.** Each Party shall take such actions, upon request of the other Party and in addition to the actions specified in this Agreement, as may be necessary or reasonably appropriate to implement or give effect to this Agreement.

**6.5. Force Majeure.** Neither Party shall be held liable for any delay or failure in performance of any part of this Agreement by reason of any cause beyond its reasonable control, including, but not limited to, acts of God, acts of civil or military authority, government regulations, embargoes, epidemics, war, terrorist acts, riots, fires, explosions, earthquakes, nuclear accidents, floods, hurricanes, tornadoes, major storms, strikes, power blackouts affecting facilities, inability to secure products or services of other persons or transportation facilities, or acts or omissions of transportation common carriers, provided that the Party so affected shall use reasonable commercial efforts to remove such causes of non-performance. Upon the occurrence of any event of force majeure, the Party whose performance is prevented shall promptly give written notice to the other Party and the Parties shall promptly confer in good faith to agree upon reasonable action to minimize the impact of such event on the Parties.

## **ARTICLE VII** **CONFIDENTIAL INFORMATION**

**7.1. Definition.** For the purposes of this Agreement, “Confidential Information” means non-public information about the disclosing Party’s or any of its Affiliates’ business or activities that is proprietary and confidential, which shall include, without limitation, all business, financial, legal, technical and other information, including software (source and object code) and programming code, of a Party or its Affiliates marked or designated “confidential” or “proprietary” or by its nature or the circumstances surrounding its disclosure should reasonably be regarded as confidential. Confidential Information includes not only written or other tangible information, but also information transferred orally, visually or electronically or by any other means. Confidential Information will not include information that (i) is in or enters the public domain without breach of this Agreement, or (ii) the receiving Party lawfully receives from a third party without restriction on disclosure and, to the receiving Party’s knowledge without breach of a nondisclosure obligation.

**7.2. Nondisclosure.** Each of Fiesta and Carrols agree that (i) it will not disclose to any third party or use any Confidential Information disclosed to it by the other except as expressly permitted in this Agreement, and (ii) it will take all reasonable measures to maintain the confidentiality of all Confidential Information of the other Party in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of similar type and importance.

**7.3. Permitted Disclosure.** Notwithstanding the foregoing, each Party may disclose Confidential Information (i) to the extent required by a court of competent jurisdiction or other Governmental Authority or otherwise as required by Law, including without limitation disclosure obligations imposed under the federal securities laws, provided that such Party has given the other Party prior written notice of such requirement when legally permissible to permit the other Party to take such legal action to prevent the disclosure as it deems reasonable, appropriate or necessary, or (ii) on a “need-to-know” basis under an obligation of confidentiality to its consultants, legal counsel, Affiliates, accountants, banks and other financing sources and their advisors.

**7.4. Ownership of Confidential Information.** All Confidential Information supplied or developed by either Party shall be and remain the sole and exclusive property of the Party who supplied or developed it.

**7.5. Injunctive Relief.** Each Party acknowledges and agrees that it would be difficult to measure the damages that might result from any actual or threatened breach of this Article VII and that such actual or threatened breach by it may result in immediate, irreparable and continuing injury to the other Party and that a remedy at law for any such actual or threatened breach may be inadequate. Accordingly, the Parties agree that the non-breaching Party, in its sole discretion and in addition to any other remedies it may have at law or in equity, shall be entitled to seek temporary, preliminary and permanent injunctive relief or other equitable relief, issued by a court of competent jurisdiction, in case of any such actual or threatened breach (without the necessity of actual injury being proved and with the necessity of posting bond).

## **ARTICLE VIII**

### **TERM AND TERMINATION**

**8.1. Term.** Subject to termination in accordance with Section 8.2 hereof, this Agreement shall terminate on the third anniversary of the Distribution Date (the “Term”), provided that the Term this Agreement shall be extended for one (1) additional year upon ninety (90) days prior written notice from the date of the end of the Term by Fiesta to Carrols, provided further that at any time and from time to time Fiesta may terminate this Agreement with respect to one or more Services under this Agreement by providing ninety (90) days prior written notice to Carrols whereupon Fiesta would no longer be responsible for payment for such terminated Service.



**8.2. Termination.** This Agreement may be terminated:

(a) by written agreement by the Parties;

(b) by either Party in the event an unpaid invoice resulting in delivery to the other of a Suspension Notice under Section 3.3(b) is not satisfied within sixty (60) days of the date of delivery of such notice unless such failure is the subject of a good faith dispute and the non-paying party has initiated and is pursuing resolution of such dispute pursuant to Article X herein;

(c) by either Party upon a material breach (other than non-payment of Fees or Expenses) by the other Party that is not cured within thirty (30) days after prior written notice of such breach from the non-breaching Party, except that where such breach is not capable of being cured within thirty (30) days, the breaching Party shall be accorded thirty (30) additional days to cure such breach if it demonstrates that it is capable of curing such breach within such additional period; or

(d) upon thirty (30) days' advance written notice by either Party to the other where one Party: (i) commences a voluntary case or other proceeding seeking liquidation, reorganization, or similar relief or seeks the appointment of a trustee, receiver, liquidator or other similar official of it or the taking of possession by any such official in any involuntary case or other proceeding commenced against it, or makes a general assignment for the benefit of creditors, or fails generally to pay its debts as they become due; or (ii) has an involuntary case or other proceeding commenced against it seeking liquidation, reorganization or other relief with respect to it or substantially all of its debts, or seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official for such Party or any substantial part of its property, and such involuntary case or other proceeding remains undismissed for a period of sixty (60) days.

**8.3. Termination Assistance Services.** The Parties agree that, upon termination of this Agreement or any of the Services set forth in the Exhibits, they will cooperate in good faith with each other to provide reasonable assistance to make an orderly transition to another supplier of the Services and return all Confidential Information related to a Service.

**ARTICLE IX**  
**LIMITATION OF LIABILITY;**  
**INDEMNIFICATION**

**9.1. Limitation of Liability.**

(a) Except as may be provided in Section 9.2 below Fiesta and its Affiliates (each, a "Fiesta Party") shall not be liable to any member of Carrols and its Affiliates (each, a "Carrols Party") and each Carrols Party shall not be liable to any Fiesta Party, in each case, for any Liabilities of any Carrols Party or any Fiesta Party, respectively, arising in connection with this Agreement and the Services provided hereunder.

(b) The Parties acknowledge and agree that the indemnification provisions contained in Article IX shall be the sole and exclusive remedy for Liabilities arising out of or caused by a breach of this Agreement or incurred by the Parties as set forth in Section 9.2.

## **9.2. Indemnification.**

(a) Fiesta shall indemnify, defend and hold harmless each Carrols Party from and against all Liabilities, of any kind or nature, (i) caused by or arising out of a breach of this Agreement by a Fiesta Party or (ii) (1) incurred by a Carrols Party or (2) of third parties unrelated to any Carrols Party, in the case of (1) and (2) caused by or arising in connection with the gross negligence or willful misconduct of any employee of a Fiesta Party in connection with Fiesta's performance under this Agreement, except to the extent that the Liabilities were caused directly or indirectly by acts or omissions of a Carrols Party.

(b) Each of CRG, Carrols Corporation and Carrols LLC shall jointly and severally indemnify, defend and hold harmless each Fiesta Party from and against all Liabilities, of any kind or nature, (i) caused by or arising out of a breach of this Agreement by a Carrols Party or (ii) (1) incurred by a Fiesta Party or (2) of third parties unrelated to any Fiesta Party, in the case of (1) and (2) caused by or arising in connection with the gross negligence or willful misconduct of any employee of a Carrols Party in connection with Carrols' performance under this Agreement, except to the extent that the Liabilities were caused directly or indirectly by acts or omissions of a Fiesta Party.

(c) IN NO EVENT SHALL ANY PARTY BE LIABLE TO ANY OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, COLLATERAL, INCIDENTAL OR PUNITIVE DAMAGES OR LOST PROFITS, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE) ARISING IN ANY WAY OUT OF THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES; PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATIONS SHALL NOT LIMIT EITHER PARTY'S INDEMNIFICATION OBLIGATIONS FOR LIABILITIES WITH RESPECT TO THIRD PARTY CLAIMS, AS SET FORTH IN ARTICLE IX.

**9.3. Indemnification Procedures.** Indemnification of any claim hereunder shall be governed by the definitions and procedures set forth in Sections 3.7 and 3.8 of the Distribution Agreement. Payment shall be made in accordance with the provision of Article III of the Distribution Agreement.

## **ARTICLE X**

### **GOVERNING LAW AND DISPUTE RESOLUTION**

**10.1. Governing Law.** This Agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws rules thereof to the extent such rules would require the application of the law of another jurisdiction.

## **10.2. Dispute Resolution.**

(a) The procedures for discussion and negotiation set forth in this Section 10.2 shall apply to all disputes, controversies or claims (whether arising in contract, tort or otherwise) (each, a "Dispute") that may arise out of or relate to, or arise under or in connection with this Agreement or the transactions contemplated hereby.

(b) It is the intent of the Parties to use their respective reasonable best efforts to resolve expeditiously any Dispute between them with respect to the matters covered hereby that may arise from time to time on a mutually acceptable negotiated basis. In furtherance of the foregoing, if a Dispute arises, the each Party's Representative shall consider the Dispute for up to seven (7) Business Days following receipt of a prior written notice from a Party specifying the nature of the Dispute, during which time each Party's Representative shall meet in person at least once, and attempt to resolve the Dispute.

(c) If the Dispute is not resolved by the end of the seven (7) Business Day period or if the Parties' Representatives agree that the Dispute cannot be resolved by them, either Party may deliver a prior written notice (an "Escalation Notice") demanding an in-person meeting involving appropriate representatives of the Parties at a senior level of management of the Parties (or if the Parties agree, of the appropriate strategic business unit or division within such entity) (collectively, "Senior Executives"). Thereupon, each of the Parties' Representatives shall promptly prepare a memorandum stating (i) the issues in Dispute and each Party's position thereon, (ii) a summary of the evidence and arguments supporting each Party's positions (attaching all relevant documents), (iii) a summary of the negotiations that have taken place to date, and (iv) the name and title of the Senior Executive who shall represent each Party. Each Party's Representative shall each deliver such memorandum to its Senior Executive promptly upon receipt of such memorandum from the other Party's Representative. The Senior Executives shall meet for negotiations (which may be held telephonically) at a mutually agreed time and place within ten (10) days of the Escalation Notice, and thereafter as often as the Senior Executives deem reasonably necessary to resolve the Dispute.

(d) In the event that the Parties, after complying with the provisions set forth in Sections 10.2(a) and 10.2(b), are unable to resolve a Dispute that arises out of or relates to, arises under or in connection with this Agreement or the transactions contemplated hereby, the Parties shall resolve such Dispute in accordance with the provisions set forth in Section 5.3 of the Distribution Agreement relating to arbitration (but not the 90 day period specified therein).

## **ARTICLE XI**

### **MISCELLANEOUS**

**11.1. Amendments.** No additional Exhibits or schedules, modifications to existing Exhibits or schedules, or amendments to this Agreement shall be effective unless and until executed by the Representatives of each of Fiesta and Carrols.

**11.2. Notices.** Unless expressly provided herein, all notices, claims, certificates, requests, demands and other communications hereunder shall be in writing and shall be deemed to be duly given (i) when personally delivered or (ii) if mailed by registered or certified mail, postage prepaid, return receipt requested, on the date the return receipt is executed or the letter is refused by the addressee or its agent or (iii) if sent by overnight courier which delivers only upon the signed receipt of the addressee, on the date the receipt acknowledgment is executed or refused by the addressee or its agent or (iv) if sent by

facsimile or electronic mail, on the date confirmation of transmission is received (provided that a copy of any notice delivered pursuant to this clause (iv) shall also be sent pursuant to clause (i), (ii) or (iii)), to the party at the address of its principal executive office as set forth below or to such other address or facsimile number for a party as it shall have specified by like notice:

If to Fiesta:

Fiesta Restaurant Group, Inc.  
7300 North Kendall Drive, 8th Floor  
Miami, Florida 33156  
Attention: Tim Taft  
Telephone: (305) 670-7696  
Facsimile: (305) 670-6403  
Email: ttaft@pollotropical.com

with a copy to:

Fiesta Restaurant Group, Inc.  
7300 North Kendall Drive, 8th Floor  
Miami, Florida 33156  
Attention: General Counsel  
Telephone: (305) 670-7696  
Facsimile: (305) 670-6403  
Email: jzirkman@frgi.com

If to Carrols:

Carrols Restaurant Group, Inc.  
968 James Street  
Syracuse, New York 13203  
Attn: Daniel T. Accordino  
Telephone: (315) 424-0513  
Facsimile: (315) 475-9616  
Email: daccordino@carrols.com

with a copy to:

Carrols Restaurant Group, Inc.  
968 James Street  
Syracuse, New York 13203  
Attention: General Counsel  
Telephone: (315) 424-0513  
Facsimile: (315) 475-9616  
Email: wmyers@carrols.com

### **11.3. Waiver.**

(a) Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the Party or the Parties entitled to the benefit thereof. Any such waiver shall be validly and sufficiently given for the purposes of this Agreement if, as to any Party, it is in writing signed by the Representative of such Party.

(b) Waiver by any Party of any default by the other Party of any provision of this Agreement shall not be construed to be a waiver by the waiving party of any subsequent or other default, nor shall it in any way affect the validity of this Agreement or any Party or prejudice the rights of the other Party thereafter to enforce each such provision. No failure or delay on the part of either party hereto in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty or agreement herein, nor shall any single or partial exercise of any such right preclude other or further exercise thereof or of any other right. All rights and remedies existing under this Agreement or the Exhibits and schedules attached hereto are cumulative to, and not exclusive of, any rights or remedies otherwise available.

**11.4. Binding Effect; Assignment.** This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective legal representatives and successors, and nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Agreement.; provided, however, that no Party may assign, delegate or transfer (by merger, operation of law or otherwise) its respective rights or delegate its respective obligations under this

Agreement without the express prior written consent of the other Party. Notwithstanding the foregoing, either Party may assign its rights and obligations under this Agreement to any Wholly-owned Subsidiary; provided, however, that each Party shall at all times remain liable for the performance of its obligations under this Agreement by any such Wholly-owned Subsidiary. Any attempted assignment or delegation in violation of this Section 11.4 shall be void.

**11.5. Third Parties.** Except for the indemnification rights under this Agreement of any Party in their respective capacities as such, this Agreement is solely for the benefit of the Parties hereto and their respective Subsidiaries and is not intended to confer upon any other Person except the Parties hereto and their respective Subsidiaries any rights or remedies hereunder.

**11.6. Severability.** If any term or other provision of this Agreement or the Exhibits and schedules attached hereto is determined by a nonappealable decision by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the court, administrative agency or arbitrator shall interpret this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the fullest extent possible. If any sentence in this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

**11.7. Entire Agreement.** This Agreement, the Distribution Agreement and the Exhibits and schedules referenced or attached hereto and thereto, constitute the entire agreement between the Parties with respect to the subject matter hereof and shall supersede all prior written and oral and all contemporaneous oral agreements and understandings with respect to the subject matter hereof.

**11.8. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES.** EXCEPT FOR THE REPRESENTATIONS, WARRANTIES AND COVENANTS EXPRESSLY MADE IN THIS AGREEMENT, THE PARTIES HAVE NOT MADE AND DO NOT HEREBY MAKE ANY EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES OR COVENANTS, STATUTORY OR OTHERWISE, OF ANY NATURE, INCLUDING WITH RESPECT TO THE WARRANTIES OF MERCHANTABILITY, QUALITY, QUANTITY, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR THE RESULTS OBTAINED OF THE CONTINUING BUSINESS. ALL OTHER REPRESENTATIONS, WARRANTIES, AND COVENANTS, EXPRESS OR IMPLIED, STATUTORY, COMMON LAW OR OTHERWISE, OF ANY NATURE, INCLUDING WITH RESPECT TO THE WARRANTIES OF MERCHANTABILITY, QUALITY, QUANTITY, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR THE RESULTS OBTAINED OF THE CONTINUING BUSINESS ARE HEREBY DISCLAIMED BY THE PARTIES.

**11.9. Construction.** This Agreement shall be construed as if jointly drafted by Fiesta and Carrols and no rule of construction or strict interpretation shall be applied against either Party. The Parties represent that this Agreement is entered into with full consideration of any and all rights which the Parties may have. The Parties have relied upon their own knowledge and judgment and upon the advice of the attorneys of their choosing. The Parties have received independent legal advice, have conducted such investigations they and their counsel thought appropriate, and have consulted with such other independent advisors as they and their counsel deemed appropriate regarding this Agreement and their rights and asserted rights in connection therewith. The Parties are not relying upon any representations or statements made by any other Party, or such other Party's employees, agents, representatives or attorneys, regarding this Agreement, except to the extent such representations are expressly incorporated in this Agreement. The Parties are not relying upon a legal duty, if one exists, on the part of any other Party (or such other Party's employees, agents, representatives or attorneys) to disclose any information in connection with the execution of this Agreement or its preparation, it being expressly understood that no Party shall ever assert any failure to disclose information on the part of the other Party as a ground for challenging this Agreement.

**11.10. Interpretation.** The headings contained in this Agreement and in any Exhibit hereto are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Any capitalized term used in any Exhibit, but not otherwise defined therein, shall have the meaning assigned to such term in this Agreement. When a reference is made in this Agreement to an Article, Section or Schedule, such reference shall be to an Article or a Section of, or a Schedule to, this Agreement unless otherwise indicated. The word "including" and words of similar import when used in this Agreement will mean "including, without limitation," unless otherwise specified.

**11.11. Counterparts.** This Agreement may be executed in one or more counterparts, each of which when so executed and delivered or transmitted by facsimile, e-mail or other electronic means, shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument. A facsimile or electronic signature is deemed an original signature for all purposes under this Agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties have signed this Agreement on the date first set forth above.

FIESTA RESTAURANT GROUP, INC.

By: /s/ Joseph Zirkman  
Name: Joseph Zirkman  
Title: Vice President

CARROLS RESTAURANT GROUP, INC.

By: /s/ Paul Flanders  
Name: Paul Flanders  
Title: Vice President and Chief Financial Officer

CARROLS CORPORATION

By: /s/ Paul Flanders  
Name: Paul Flanders  
Title: Vice President and Chief Financial Officer

AGREED to solely with respect to Section 9.2(b)

CARROLS LLC

By: /s/ Paul Flanders  
Name: Paul Flanders  
Title: Vice President and Chief Financial Officer

**FINANCIAL SERVICES****(To be provided by Carrols to the Fiesta Group)****I. SPECIFIC TRANSITION SERVICES****Accounting Services**

- Bookkeeping and maintenance of general ledger records for all individual restaurant and cost centers including related expense accrual accounting and analysis
- Maintenance of all system hierarchies and tree structure in support of organizational rollups, sub consolidations and entity-level consolidations
- Payroll processing, withholdings and related payroll tax filings. Payment administration including check processing, direct deposit and pay cards.
- Accounts payable and cash disbursements for all store-related expenses, inventory purchases, capital expenditures and Fiesta corporate expenses.
- Sales accounting and sales audit
- Inventory, cost of sales and rebate accounting including maintenance of standard costs and PeopleSoft recipe database.
- Fixed asset accounting including related interfaces with project accounting modules
- Other assets and intangibles accounting
- Lease accounting including GAAP compliance review with respect to all leasing transactions
- Insurance accounting and reserve analysis
- Maintenance of PeopleSoft and other underlying sub-systems to support the above activities including maintaining vendor related files, recipe files, general ledger structure, employee record maintenance, fixed asset records (book and tax) and landlord rent records.

**Treasury Services**

- Administration of bank and depository accounts
- Cash management including daily cash sweeps and cash consolidation for all restaurant-level cash accounts
- Cash over/short follow-up and reporting
- Bank reconciliation for all Fiesta restaurant and corporate bank accounts
- Execution of wire transfers and ACH payments
- Reconciliation of credit card sales transactions and related receivables
- Compliance with escheatment regulations
- Cash balance forecasting
- Management and oversight of armored car services including deposit reconciliation



### Tax Accounting

- General tax accounting advice and consultation in the areas of federal and state tax planning
- Tax compliance including Federal and state income tax filings
- Management of open tax audits
- Sales and use tax filings
- Personal property tax filings
- Handling of all federal, state and local sales tax and income tax audits
- Tax accounting required for external financial reporting
- Compliance with estimated tax payment requirements

### Internal Audit

- SOX 404 audit work and coordination with independent auditors in support of required Section 404 executive officer certifications for Fiesta
- Monitor Fiesta restaurant audits and other audit analysis in connection with SOX 404 work in order to facilitate required reporting to the Audit Committee
- Special audit situations arising from time to time
- Support for external auditor work

### Financial Reporting, Analysis and Other

- Maintain internal management reporting including all store-related P&L's, cost center reports, balance sheets, entity rollups and consolidations.
- Preparation of consolidated and separate entity financial statements as required for SEC and lenders
- Preparation and filing of periodic SEC compliance including EDGAR and XBRL requirements (10Q, 10K, 8K, etc.)
- Coordination with outside auditors in connection with annual and quarterly audit work.
- Quarterly and annual lender compliance activities including supporting analysis and lender reporting
- Investor and Bondholder relations
- Banker relationship management

## **II. SERVICE FEES**

| <u>Description</u>              | <u>Charge</u> |
|---------------------------------|---------------|
| Payroll                         | \$ 363,000    |
| Accounts payable                | 348,000       |
| Sales and inventory accounting  | 270,000       |
| Fixed asset accounting          | 155,000       |
| General accounting and related  | 386,000       |
| Treasury management             | 202,000       |
| Tax accounting                  | 171,000       |
| Financial reporting and related | 227,000       |
| Budgeting systems support       | 35,000        |
| Internal audit                  | 285,000       |
| Total Financial Services        | 2,442,000     |

---

Excluded Costs:

- Certain costs will be separately billable to Fiesta including, but not limited to, professional fees (such as outside audit and tax services), Fiesta specific banking fees, postage and shipping.
- Efforts in support of SEC or other filings not of a compliance nature (i.e., registration statements, offering documents in conjunction with financings or equity capitalizations, etc.) will be separately billable as may be agreed to between the Parties.
- Costs or efforts required in conjunction with transition of services to Fiesta including, but not limited to, development of transition plans, database or data conversion, documentation, and training.

**INFORMATION TECHNOLOGY SERVICES**  
**(To be provided by Carrols to the Fiesta Group)**

**I. SPECIFIC TRANSITION SERVICES**

**Restaurant Systems Services**

|                 |                                                                                              |
|-----------------|----------------------------------------------------------------------------------------------|
| Help Desk       | 7 X 24 X 363 help desk to assist restaurants; reports on incidents and access to ITSM system |
| Depot           | Repair and maintenance of POS, PC, OCU, SOS timer, electronic payment terminals, KVS         |
| POS maintenance | Price and product configuration & maintenance; POS application configuration & maintenance   |

**ERP and Corporate Systems**

|                                     |                                                                                                   |
|-------------------------------------|---------------------------------------------------------------------------------------------------|
| General ledger                      | PeopleSoft G/L                                                                                    |
| Accounts payable                    | PeopleSoft AP                                                                                     |
| Asset management                    | Depreciation calculation, AP interface                                                            |
| Purchasing                          | Used by Construction with Project management & costing apps                                       |
| Project costing                     | Construction, repair & maintenance; each brand has unique work breakdown structure                |
| Manufacturing & order management    | Houses items, menu prices, recipes, theoretical food cost                                         |
| Restaurant accounting - Sales Audit | Store data capture & validation; operational reporting, gift & credit card reconciliation         |
| Restaurant accounting - Inventory   | Inventory, transfers, ending inventory accruals                                                   |
| Restaurant accounting - Finance     | Cash management, sales tax reporting, performance reporting, standard costs                       |
| Human capital management            | PeopleSoft Human Resources                                                                        |
| Benefits                            | Vacation calculation, provider interfaces                                                         |
| Payroll                             | Weekly payroll, executive payroll, tax interfaces, direct deposit                                 |
| Labor management                    | Labor violations, allowed hours, labor rate extracts, turnover reporting                          |
| WebCEMS                             | Store -level HR actions, PAF approval, time corrections & payroll approval                        |
| Financial planning                  | Used for budget preparation and forecasting                                                       |
| Electronic journal                  | POS transaction details for analysis and loss prevention                                          |
| Data warehouse                      | Audited sales, cost of sales, comp sales, product mix, daily sales, weekly labor, interval sales  |
| Lease management                    | Lease management, AP interface, custom rents, custom property taxes                               |
| Cash management                     | Bank and extract reporting                                                                        |
| Workers comp & general liability    | Capture workers comp and general liability claims                                                 |
| Cash Link reconciliation            | Reconcile store reported deposits against Cash Link and bank deposits                             |
| Intranet portal                     | Team sites, HR PAF approval, HR audits, DS audits; operational real estate & construction reports |

**Technical Infrastructure**

|                    |                                                                              |
|--------------------|------------------------------------------------------------------------------|
| Email              | Microsoft Exchange server, Outlook client, OWA web interface, spam filtering |
| Telecommunications | NEC PBX, telephone billing, cellular billing, voice mail                     |
| Video conferencing | Tanberg video conferencing equipment in Syracuse, Miami and San Antonio      |

|                              |                                                                                           |
|------------------------------|-------------------------------------------------------------------------------------------|
| Security administration      | Network ID's and passwords, RSA security devices, intrusion detection                     |
| PCI certification            | Quarterly scans and intrusion testing, annual report of compliance                        |
| Data communications          | Routers, switches, circuits, firewalls to Miami, San Antonio & Syracuse                   |
| Software maintenance         | Annual maintenance for Oracle (PeopleSoft), Microsoft and other licenses applications     |
| Hardware maintenance         | Annual maintenance for servers, storage and network devices                               |
| Level 2 Help Desk support    | Escalation from help desk for system and network issues                                   |
| <b>Project Related Costs</b> | <b>Estimated labor costs to execute projects (blended rate applied to hours expended)</b> |

Conceptualization  
Specific Defined Projects  
Discretionary maintenance

|                                   |                                                                                         |
|-----------------------------------|-----------------------------------------------------------------------------------------|
| <b>Restaurant Systems Related</b> | <b>All related costs billed directly to Fiesta</b>                                      |
| Point-of-sale hardware            | NCR 7402                                                                                |
| Point-of-sale software            | XPIENT                                                                                  |
| Kitchen video system              | Monitors, controllers, bump bars                                                        |
| Electronic payment terminals      | Vivotech                                                                                |
| Order confirmation units          | Texas Digital                                                                           |
| Digital signage                   | 11Giraffes and Nextep                                                                   |
| Table management system           | Long Range Systems                                                                      |
| Back-office software              | IMS, Remacs, Microsoft Windows, Microsoft Office, email                                 |
| PC                                | Dell                                                                                    |
| Printer / scanner / fax           | Brother 7340, HP4315                                                                    |
| Data communications equipment     | Router, switch, cabling                                                                 |
| Food cost controls                | Series of reports attached to Restaurant Accounting systems                             |
| Labor cost controls               | Series of reports attached to Restaurant Accounting systems                             |
| Network                           | Internet connection to stores, VPN connection to corporate office, LAN within the store |
| WIFI                              | Wireless internet access for restaurant guests                                          |
| Muzak                             | In-store music                                                                          |
| On-line ordering                  | Ability for guests to order ahead via the internet, mobile application or by telephone  |
| eCRM                              | Distribute offers to guests via email, text and social media                            |
| Loyalty                           | Track guest transactions and tailor offers to increases frequency of visits             |

## II. SERVICE FEES

|     | <u>Description</u>                                                                                                                                                        | <u>Charge</u> |
|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
|     | Help desk                                                                                                                                                                 | \$ 434,000    |
|     | Depot maintenance                                                                                                                                                         | 645,000       |
|     | POS and inventory database maintenance including menu and price management                                                                                                | 211,000       |
|     | ERP and corporate applications systems                                                                                                                                    | 448,000       |
|     | Network management and technical infrastructure                                                                                                                           | 1,202,000     |
|     | Applications maintenance and small projects                                                                                                                               | 269,000       |
|     | Project related development (a)                                                                                                                                           | 395,000       |
|     | Total Information Technology                                                                                                                                              | 3,604,000     |
| (a) | Project related activities will be tracked and this amount will be periodically adjusted to reflect actual project activities and related support attributable to Fiesta. |               |

---

Excluded Costs:

- Costs or efforts required in conjunction with transition of services to Fiesta including, but not limited to, development of transition plans, database or data conversion, documentation, and training.

**HUMAN RESOURCE/INSURANCE & RISK SERVICES**  
**(To be provided by Carrols to the Fiesta Group)**

**I. SPECIFIC TRANSITION SERVICES**

- Insurance and Risk Management  
 Oversight of broker selection, insurance contract bids, monitoring of insurers/underwriters, communications with brokers and underwriters, and oversee administration of insurance programs including property, general liability, workers' compensation, etal.
- Benefits Administration (Health and Benefit Plans)
  - Maintenance and administration of employee benefit and welfare plans including medical, dental, vision, prescription drug, life insurance, disability, flexible spending and EAP. Includes bill payments, national medical support orders and annual open enrollment.
  - General advice and consultation in the areas of benefits consultant/broker selection, review of bids, selection and monitoring of vendors, communications with consultants and vendors, claims management and reporting, health and benefit plan administration.
  - Approval and administration of Family Medical Leave Act (FMLA). Administer Leave of Absence policy as it pertains to employee benefits. Preparation of annual benefit statements.
  - Maintenance and administration of 401(k) plan including advice and consultation in the areas of plan design, ERISA compliance, vendor management, communication of plans, and associated auditing and compliance reporting. Provided transitional support to Fiesta Investment Committee.
- Compensation Arrangements Oversight and coordination of all employee compensation plans and arrangements, including, without limitation, salary administration, bonus plans, equity plans and deferred compensation plans. Maintenance and administration of the monthly and annual vacation accrual processes.
- Human Resources
  - Oversight of HR system maintenance including but not limited to Security, new store openings, closed Stores, Store District and Region Realignment, plan hourly rates, reports, training and support for Fiesta system users.
  - Management and administration of the Fiesta Hourly Team Member exit Interview system – Fiestacares.com
  - Filing of required EEO-1 Annual Report
  - Management and administration of Fiesta Intranet relating to HR, Benefits, and Risk Management
  - Management and administration of the Fiesta Human Resources audit site
  - Management and administration of the Fiesta EthicsPoint product

- Management and administration of the Fiesta Batrus Hollweg Quick Select Assessment System
- Oversight of the electronic job boards - Monster, CareerBuilder and Snag-A-Job
- Management and administration of the Dollars for Doers Program and Food Bank Matching Gift Programs
- Administration and management of the Air Travel and Car Rental Programs
- Administration of the Unemployment Insurance Program
- Management of WOTC and similar incentive programs and plans (both internally and vendors)
- Training
  - Management and administration of the E-Learning website
  - Provide support and training for the use of the E-Learning software product
  - Create and maintain technical training of E-Learning modules
  - For major rollouts (ie: POS, in-store applications, etc.) - provide the technical training process, plan and schedule rollout from a training perspective, train the trainers and provide project support through completion
- Other Administration and management of FedEx account. Management and administration of wireless services including cellular phones, PDA's and computer aircards.

## II. SERVICE FEES

| <u>Description</u>            | <u>Charge</u> |
|-------------------------------|---------------|
| Human resources               | \$ 86,000     |
| Insurance and risk management | 77,000        |
| Benefits administration       | 134,000       |
| Training                      | 244,000       |
| Total HR, Risk & Training     | 541,000       |

### Excluded Costs:

- Costs or efforts required in conjunction with transition of services to Fiesta including, but not limited to, development of transition plans, database or data conversion, documentation, and training.

**LEGAL SERVICES**  
**(To be provided by Carrols to the Fiesta Group)**

**I. SPECIFIC TRANSITION SERVICES**

- Assistance as needed and requested by Fiesta in real estate matters and transactions, contract negotiations and contract management, franchising matters, corporate governance.

**II. SERVICE FEES**

Fee for these services shall be based upon the following hourly rates:

| <u>Service level</u> | <u>Rate</u> |
|----------------------|-------------|
| General Counsel      | \$125/hr    |
| Staff Atty           | \$100/hr    |
| Paralegal/Admin      | \$ 50/hr    |

**LEGAL SERVICES**  
**(To be provided by the Fiesta Group to Carrols)**

**I. SPECIFIC TRANSITION SERVICE**

- General legal advice and services in the areas of general corporate, corporate governance, securities law and compliance, employment and employee benefits, litigation management, contract negotiations and employment matter management.

**II. SERVICE FEES**

Fee for these services shall be based upon the following hourly rates:

| <u>Service level</u> | <u>Rate</u> |
|----------------------|-------------|
| General Counsel      | \$175/hr    |
| Associate Counsel    | \$125/hr    |
| Paralegal/Admin      | \$ 50/hr    |

Excluded Costs:

- Costs or efforts required in conjunction with transition of services to Fiesta including, but not limited to, development of transition plans, database or data conversion, documentation, and training.



---

**EXHIBIT 5**

**PROPERTY MANAGEMENT SERVICES**  
**(To be provided by Carrols to the Fiesta Group)**

**I. SPECIFIC TRANSITION SERVICES**

- Oversight of real estate development for new properties
- Property management
- Lease and property administration including maintenance of property management databases

**II. SERVICE FEES: \$108,000**

**FOR IMMEDIATE RELEASE****Investor Relations:****800-348-1074, ext. 3333**

**Carrols Restaurant Group, Inc. Board Gives Final Approval to Spin-Off of  
Fiesta Restaurant Group, Inc.  
*Declares Record Date of April 26, 2012 and Share Distribution Date of May 7, 2012***

**Syracuse, New York — (Businesswire) – April 25, 2012** — Carrols Restaurant Group, Inc. (Nasdaq: TAST or “Carrols”) today announced that its Board of Directors has given final approval to the spin-off of Fiesta Restaurant Group, Inc. (“Fiesta”), an indirect wholly-owned subsidiary that operates the Pollo Tropical® and Taco Cabana® restaurant businesses. The spin-off will be completed through a tax-free dividend of the common stock of Fiesta to Carrols’ stockholders.

The distribution of the Fiesta common stock is expected to occur on May 7, 2012, with each Carrols’ stockholder receiving one share of Fiesta common stock for every share of Carrols common stock held of record at the close of business on April 26, 2012, the record date of the distribution.

The spin-off is subject to satisfaction or waiver of customary conditions set forth in a separation and distribution agreement as filed with the Securities and Exchange Commission by Fiesta and Carrols. Immediately following the distribution, Carrols Restaurant Group’s stockholders will own 100% of the outstanding common stock of Fiesta Restaurant Group.

Carrols Restaurant Group has received a private letter ruling from the Internal Revenue Service with respect to the tax-free status of the distribution. Fiesta Restaurant Group’s registration statement on Form 10 was declared effective by the Securities and Exchange Commission on April 25, 2012.

The common stock of Fiesta Restaurant Group will begin trading on a “when issued” basis on The NASDAQ Global Select Market on April 26, 2012 under the symbol “FRGI” and will begin trading on a “regular way” basis on May 8, 2012. Carrols Restaurant Group common stock will continue to trade on The NASDAQ Global Market under the symbol “TAST.”

**About Carrols Restaurant Group, Inc.**

Carrols Restaurant Group, Inc. is Burger King Corporation’s largest franchisee with 297 Burger King® restaurants as of April 1, 2012 and has operated Burger King restaurants since 1976. For more information on Carrols, please visit the company’s website at [www.carrols.com](http://www.carrols.com).

**About Fiesta Restaurant Group, Inc.**

Fiesta Restaurant Group, Inc. owns and operates the Pollo Tropical and Taco Cabana restaurant businesses with 243 company-owned and operated restaurants at April 1, 2012 and 38 franchised restaurants in the United States, Puerto Rico, Ecuador, Honduras, Trinidad, the Bahamas, Venezuela and Costa Rica. For more information on Fiesta, please visit the company’s website at [www.frgi.com](http://www.frgi.com).

---

## Forward-Looking Statements

Except for the historical information contained in this news release, the matters addressed are forward-looking statements. Forward-looking statements, written, oral or otherwise made, represent the Company’s expectation or belief concerning future events. Without limiting the foregoing, these statements are often identified by the words “may,” “might,” “believes,” “thinks,” “anticipates,” “plans,” “expects”, “intends” or similar expressions. In addition, expressions of our strategies, intentions or plans, (including, without limitation, the Company’s spin-off transaction) are also forward-looking statements. Such statements reflect management’s current views with respect to future events and are subject to risks and uncertainties, both known and unknown. You are cautioned not to place undue reliance on these forward-looking statements as there are important factors that could cause actual results to differ materially from those in forward-looking statements, many of which are beyond our control. Investors are referred to the full discussion of risks and uncertainties as included in the Company’s and Fiesta Restaurant Group’s filings with the Securities and Exchange Commission.