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): July 9, 2015

THE ONE GROUP HOSPITALITY, INC.
(Exact name of registrant as specified in its charter)

Delaware	000-52651	14-1961545
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

411 W. 14th Street, 2nd Floor
New York, New York 10014
(Address of principal executive offices and zip code)

Registrant's telephone number, including area code: (646) 624-2400

(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 (*see* General Instruction A.2. below):

☐ 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 240.13e-4(c))

Item 1.01 Entry into a Material Definitive Agreement

Asset Purchase Agreement and Merger Agreements

On July 9, 2015, The ONE Group Hospitality, Inc. (the "Company") and certain of its subsidiaries entered into agreements with SBEEG Holdings, LLC ("SBEEG"), the holding company of the SLS, Redbury and Hyde hotel brands, and certain of SBEEG's affiliates to purchase the Katsuya and Cleo restaurant brands together with four restaurants currently operating under the Katsuya brand name for aggregate cash consideration of $75 million plus a warrant to purchase 200,000 shares of common stock of the Company for an exercise price of $5.00 per share, including:

- An Asset Purchase Agreement (the "Asset Purchase Agreement") among the Company, Wasabi Holdings, LLC ("Wasabi"), a newly formed indirect subsidiary of the Company, SBEEG, SBE Restaurant Group, LLC ("SBERG"), SBE/KATSUYA Middle East, LLC, and SBE Licensing, LLC (collectively, the "Sellers") providing for the acquisition of trademarks and other intellectual property related to the Katsuya and Cleo restaurant brands (the "Asset Purchase"). The Asset Purchase Agreement provides, among other things, that the parties will cause their affiliates to enter into a Brand License Agreement (the "BLA") prior to the closing of the Asset Purchase, under which affiliates of the Sellers will pay a license fee to Wasabi in connection with their continued use of (a) the Cleo brand names at restaurants operated by such affiliates in the SLS Las Vegas hotel, the Redbury Hollywood hotel, the Redbury South Beach hotel and possibly to be operated at the SLS Lux Baha Mar hotel (if completed) and (b) the Katsuya brand names at restaurants operated by such affiliates in the SLS Las Vegas hotel and the SLS South Beach hotel and possibly to be operated at the SLS Lux Baha Mar hotel (if completed) and the SLS Lux Brickell hotel. Pursuant to the BLA, Wasabi will receive a royalty on any fees received by entities managing such restaurants in consideration of the use of the Cleo and Katsuya brands. The Asset Purchase Agreement also provides that the Sellers will cause their affiliates to assign their interests in and to a licensing and development agreement with Alshaya Trading Company, W.L.L. ("Alshaya") for the Middle East which includes a royalty fee of up to 6% with respect to the three Katsuya restaurants in the Middle East and any additional Katsuya restaurants opened in such region, with a commitment by Alshaya to open an additional 14 locations in the region over the next five years. The Asset Purchase Agreement also provides that certain of the parties and/or their affiliates will enter into an agreement (the "Agreement Regarding Future Restaurants"), whereby the Company will pay to SB Restaurant Group, LLC or an affiliate (a) 40% of the EBITDA (calculated after deductions for any base management fees (but not incentive management fees) and/or centralized services fees (equal to 7% of the gross revenue of such restaurant in the aggregate) which is to be paid to the Company or its affiliates) of any Cleo restaurant owned by the Company and 40% of the management fees, excluding centralized services, marketing or similar fees, of any Cleo restaurant managed by the Company and (b) 33% of the EBITDA (calculated after deductions for any base management fees (but not incentive management fees) and/or centralized services fees (equal to 7% of the gross revenue of such restaurant in the aggregate) which is to be paid to the Company or its affiliates) of any non-Cleo restaurant (including any Katsuya or STK restaurant) owned by the Company and located in a hotel owned or managed by SBEEG and 33% of the management fees, excluding centralized services, marketing or similar fees, of any non-Cleo restaurant (including any Katsuya or STK restaurant) managed by the Company and located in a hotel owned or managed by SBEEG. The Asset Purchase Agreement also provides that certain of the parties and/or their affiliates will enter into a Transition Services Agreement (the "TSA" and together with the BLA and the Agreement Regarding Future Restaurants, the "Related Agreements"), whereby affiliates of the Sellers will continue to provide certain services to the Company and the acquired business.

- Four separate merger agreements (the "Merger Agreements"), each in substantially the same form, among the Company, SBEEG and each of (a) Wasabi Acquisition H&V, LLC, an indirect wholly-owned subsidiary of the Company ("Hollywood Merger Sub"), and Katsuya H&V, LLC (owner/operator of the Katsuya Hollywood restaurant) ("Hollywood Target"), (b) Wasabi Acquisition USA, LLC, an indirect wholly-owned subsidiary of the Company ("Brentwood Merger Sub"), and Katsu USA, LLC (owner/operator of the Katsuya Brentwood restaurant) ("Brentwood Target"), (c) Wasabi Acquisition Glendale, LLC, an indirect wholly-owned subsidiary of the Company ("Glendale Merger Sub"), and Katsuya-Glendale, LLC (owner/operator of the Katsuya Glendale restaurant) ("Glendale Target") and (d) Wasabi Acquisition Downtown, LLC, an indirect wholly-owned subsidiary of the Company ("Downtown Merger Sub," and together with Hollywood Merger Sub, Brentwood Merger Sub and Glendale Merger Sub, the "Merger Subs, and the Merger Subs together with Wasabi, the "Acquisition Entities"), and Katsuya Downtown L.A., LLC (owner/operator of the Katsuya LA Live restaurant) ("Downtown Target," and together with Hollywood Target, Brentwood Target and Glendale Target, the "Targets"), each of which provides for the merger of the applicable Merger Sub that is party to such Merger Agreement with and into the applicable Target that is party to such Merger Agreement, with the Target surviving the merger pursuant to such Merger Agreement (each, a "Merger" and collectively, the "Mergers"), as a subsidiary of Wasabi.

Completion of the Asset Purchase and the Mergers is subject to certain conditions, including customary closing conditions relating to the (i) absence of any order or laws prohibiting completion of the Merger, (ii) absence of a Business Material Adverse Effect, as defined in the Asset Purchase Agreement, and a Material Adverse Effect, as defined in the Merger Agreement, (iii) accuracy of each party's representations and warranties (subject to certain qualifications), (iv) material compliance by the parties with their respective covenants and agreements contained in the Asset Purchase Agreement and the Merger Agreement, (v) execution of an agreement relating to certain intellectual property rights licensed by Katsuya Uechi to SBEEG and assumed by the Company at the closing, (vi) assignment of certain leases with respect to the Merger Agreements and the release of certain guarantees relating thereto, and (vii) execution of the Related Agreements.

The Asset Purchase Agreement and Merger Agreements contain comprehensive representations, warranties and covenants by the Sellers as to their assets and business. The Asset Purchase Agreement also contains post-closing agreements by the Sellers, except as permitted by the BLA, not to compete with the Company, not to solicit or hire employees of the Company and its subsidiaries, and to hold in confidence the proprietary and confidential information of the Company. In addition, the Asset Purchase Agreement and the Merger Agreements contain a covenant that the Company shall use commercially reasonable efforts to take, or cause to be taken, all actions and do, or cause to be done, all things necessary, proper or advisable to arrange the financing necessary to close the transactions contemplated thereby at or prior to the Closing.

Under the Asset Purchase Agreement and the Merger Agreements, certain of the Sellers and holders of interests in the Targets prior to the consummation of the Mergers are required to indemnify the Company against losses resulting from breaches of representations and warranties contained in the Asset Purchase Agreement or a Merger Agreement, as the case may be, breaches of various covenants contained in the in the Asset Purchase Agreement or a Merger Agreement, as the case may be, and, with respect to the Asset Purchase Agreement, liabilities of the Sellers not explicitly assumed by the Company or Wasabi. The indemnification obligations relating to representations and warranties generally survive through the date that is 18 months after the closing of the Asset Purchase and the Mergers (the "Closing"), with certain exceptions, as to which longer survival periods apply. An escrow arrangement will be established under the Asset Purchase Agreement and the Merger Agreements for the benefit of the Company to provide for the withholding of $2,000,000 of the aggregate consideration as partial security for indemnification obligations through the date that is 18 months after the Closing, with up to half of such escrow (less the amount of any pending or resolved claims) to be released on the date that is 12 months after the Closing.

Under the Asset Purchase Agreement, the Company, Wasabi, Sellers and Targets each have certain termination rights, including if: (i) the Merger is not completed by August 31, 2015 (as may be extended, the "Outside Date"), (ii) any governmental authority of competent jurisdiction has issued a final, nonappealable order making the completion of the transactions contemplated by the Asset Purchase Agreement, illegal or otherwise prohibiting completion of the transactions contemplated by the Asset Purchase Agreement, or (iii) the other party has breached any of its representations, warranties or covenants in the Asset Purchase Agreement or Merger Agreement, subject to materiality qualifications and abilities to cure, such that the closing condition relating thereto cannot be satisfied, as further described below.

In addition, the Company or Wasabi, as the case may be, may terminate the Asset Purchase Agreement if neither the Company nor Wasabi is in material breach of any of its obligations under the Asset Purchase Agreement, neither the Company nor any Merger Sub is in material breach of any of its obligations under any Merger Agreement, and if any Seller or Target shall have breached in any material respect any of their respective representations or warranties or if any Seller or Target shall have failed to perform in any material respect any of their respective covenants or other agreements contained in the Asset Purchase Agreement or any Merger Agreement, which breach or failure to perform would render unsatisfied any mutual closing condition or condition to the obligations of the Company, Wasabi or any Merger Sub and (i) is incapable of being cured or (ii) if capable of being cured is not cured prior to the earlier of (A) the business day prior to the Outside Date or (B) the date that is twenty (20) days from the date that the Sellers and Targets are notified of such breach or failure to perform. In the event that any Seller or Target delivers written notice to the Company or Wasabi that it is terminating the Asset Purchase Agreement or the Merger Agreements other than as a result of the conditions to the obligations of the Company and Wasabi set forth in the Asset Purchase Agreement or the conditions to the obligations set forth in the Merger Agreements not having been met, SBERG shall pay to Company, as liquidated damages, $250,000 in cash by wire transfer of immediately available funds to an account designated in writing by the Company.

Further, Sellers or Targets, as the case may be, may terminate the Asset Purchase Agreement if such party is not in material breach of any its obligations under the Asset Purchase Agreement, and if the Company or Wasabi, as the case may be, shall have breached in any material respect any of their respective representations or warranties or if any the Company or Wasabi shall have failed to perform in any material respect any of their respective covenants or other agreements contained in the Asset Purchase Agreement, which breach or failure to perform would render unsatisfied any mutual closing condition or condition to the obligations of the Sellers or Targets and (i) is incapable of being cured or (ii) if capable of being cured is not cured prior to the earlier of (A) the business day prior to the Outside Date or (B) the date that is twenty (20) days from the date that the Company and Wasabi are notified of such breach or failure to perform. In the event that the Company or Wasabi (I) terminates the Asset Purchase Agreement or the Merger Agreements other than as a result of the conditions to the obligations of the Company or Wasabi set forth in the Asset Purchase Agreement or the conditions to the obligations of the Company or any Merger Sub set forth in the Merger Agreements not having been met or (II) fails to satisfy the conditions to the obligations of Sellers or Targets under the Asset Purchase Agreement or any Merger Agreement, the Company shall pay to SBERG, as liquidated damages, $250,000 in cash by wire transfer of immediately available funds to an account designated in writing by SBERG.

Under the Merger Agreements, the Company and SBEEG may terminate any such Agreement by the mutual written consent of the Company and SBEEG or upon termination of the Asset Purchase Agreement.

The foregoing description of the Asset Purchase Agreement and the Merger Agreements and the transactions contemplated thereby does not purport to be complete and is qualified in its entirety by the full text of the Asset Purchase Agreement and the Merger Agreements, which are attached as exhibits 2.1, 2.2, 2.3, 2.4 and 2.5, respectively, to this Current Report on Form 8-K, which are incorporated herein by reference.

The Asset Purchase Agreement and Merger Agreements have been included to provide investors with information regarding their terms. They are not intended to provide any other factual information about the parties to the Asset Purchase Agreement and Merger Agreements or the Company's business. Each of the Asset Purchase Agreement and Merger Agreements contains representations and warranties that the parties to such agreements made solely for the benefit of each other. The assertions embodied in such representations and warranties are qualified by information contained in confidential disclosure schedules that the parties exchanged in connection with signing the Asset Purchase Agreement and Merger Agreements. In addition, these representations and warranties (i) may be intended not as statements of fact, but rather as a way of allocating risk to one of the parties if those statements prove to be inaccurate, (ii) may apply materiality standards different from what may be viewed as material to investors, and (iii) were made only as of the date of the Asset Purchase Agreement and Merger Agreements or as of such other date or dates as may be specified in such agreements. Moreover, information concerning the subject matter of such representations and warranties may change after the date of the Asset Purchase Agreement and Merger Agreements, which subsequent information may or may not be fully reflected in the Company's public disclosures. Investors are urged not to rely on such representations and warranties as characterizations of the actual state of facts or circumstances at this time or any other time.

Item 3.02 Unregistered Sale of Equity Securities.

The information contained in Item 1.01 of this Current Report is incorporated by reference into this Item 3.02. The Company Warrant to be issued and sold pursuant to the Purchase Agreement will be issued and sold in reliance on an exemption provided by Section 4(a)(2) of the Securities Act.

Item 8.01 Other Events

Debt Engagement Letter

On July 9, 2015, the Company entered into an engagement letter (the "Engagement Letter") with KeyBanc Capital Markets Inc., KeyBank National Association and Jefferies Finance LLC (collectively, the "Joint Lead Arrangers") pursuant to which the Company engaged the Joint Lead Arrangers to assist it in structuring, arranging and syndicating (i) a $37,000,000 senior secured term loan facility (the "Term Loan Facility") and (ii) a $10,000,000 senior secured revolving credit facility (the "Revolving Credit Facility" and together with the Term Loan Facility, the "Credit Facilities"). The Joint Lead Arrangers have committed, upon the terms and subject to the conditions set forth in the Engagement Letter, to provide $30,000,000 of the Credit Facilities (of which up to $10,000,000 shall be with respect to the Revolving Credit Facility). The Joint Lead Arrangers and the Company will work together to syndicate the remaining amount of the Credit Facilities to one or more additional lenders. The proceeds of the Credit Facilities will be used (i) to finance a portion of the purchase price of the assets pursuant to the Asset Purchase Agreement and Merger Agreements, (ii) to refinance the Company's existing indebtedness, (iii) to pay fees, costs and expenses relating to the transactions described in this Current Report on Form 8-K and (iv) for other working capital and general corporate purposes of the Company and its subsidiaries. The Engagement Letter is subject to a number of customary conditions, including execution and delivery by the borrowers and the guarantors of definitive documentation consistent with requirements of the Engagement Letter and the documentation standards specified therein. The termination date for the Engagement Letter is the earlier of (i) September 30, 2015, (ii) the date of the consummation of the transactions contemplated by the Asset Purchase Agreement and Merger Agreements, (iii) the abandonment of the proposed equity issuance in connection with the transactions contemplated by the Asset Purchase Agreement and Merger Agreements, (iv) the termination of the Asset Purchase Agreement and Merger Agreements and (v) termination of the Engagement Letter in writing by the Company.

Cautionary Statements Regarding Forward-looking Statements

This Current Report on Form 8-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934 that involve risks and uncertainties, including, without limitation, statements regarding the timing and closing of the proposed acquisition (if at all), the terms of the Company's contemplated debt and equity financing, and the Company's ability to consummate any such debt and equity financing. Forward-looking statements may be identified by the use of words such as "anticipate", "believe", "expect", "estimate", "plan", "outlook", and "project" and other similar expressions that predict or indicate future events or trends or that are not statements of historical matters. A number of factors could cause actual results or outcomes to differ materially from those indicated by such forward-looking statements, including but not limited to, (1) the ability to recognize the anticipated benefits of the business combination, which may be affected by, among other things, competition, our ability to open new restaurants and food and beverage locations in current and additional markets, grow and manage growth profitably, maintain relationships with suppliers and obtain adequate supply of products and retain our key employees; (2) factors beyond our control that affect the number and timing of new restaurant openings, including weather conditions and factors under the control of landlords, contractors and regulatory and/or licensing authorities; (3) changes in applicable laws or regulations; (4) the possibility that the Company may be adversely affected by other economic, business, and/or competitive factors; and (5) other risks and uncertainties indicated from time to time in our filings with the SEC, including our Annual Report on Form 10-K/A filed on April 1, 2015. Investors are referred to the most recent reports filed with the SEC by the Company. Investors are cautioned not to place undue reliance upon any forward-looking statements, which speak only as of the date made, and we undertake no obligation to update or revise the forward-looking statements, whether as a result of new information, future events, or otherwise.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Description
2.1	Asset Purchase Agreement, dated as of July 9, 2015, among the Company, Wasabi Holdings, LLC, SBEEG Holdings, LLC, SBE Restaurant Group, LLC, SBE/KATSUYA Middle East, LLC, and SBE Licensing, LLC
2.2	Agreement and Plan of Merger, dated as of July 9, 2015, among the Company, SBEEG Holdings, LLC, Wasabi Acquisition H&V, LLC and Katsuya H&V, LLC
2.3	Agreement and Plan of Merger, dated as of July 9, 2015, among the Company, SBEEG Holdings, LLC, Wasabi Acquisition USA, LLC and Katsu USA, LLC
2.4	Agreement and Plan of Merger, dated as of July 9, 2015, among the Company, SBEEG Holdings, LLC, Wasabi Acquisition Glendale, LLC and Katsuya-Glendale, LLC
2.5	Agreement and Plan of Merger, dated as of July 9, 2015, among the Company, SBEEG Holdings, LLC, Wasabi Acquisition Downtown, LLC and Katsuya Downtown L.A., LLC

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.

Dated: July 9, 2015

THE ONE GROUP HOSPITALITY, INC.

By: /s/ Samuel Goldfinger
Name: Samuel Goldfinger
Title: Chief Financial Officer

Exhibit 2.1

Execution Version

ASSET PURCHASE AGREEMENT

BY AND AMONG

SBEEG HOLDINGS, LLC,

SBE RESTAURANT GROUP, LLC,

SBE/KATSUYA MIDDLE EAST, LLC

AND

SBE LICENSING, LLC

Collectively as Seller Entities

WASABI HOLDINGS, LLC

as Buyer

AND

THE ONE GROUP HOSPITALITY, INC.

as Parent

Dated as of July 9, 2015

TABLE OF CONTENTS

EXHIBITS AND SCHEDULES

EXHIBITS:

Exhibit A	Transition Services Agreement
Exhibit B	Form of Intellectual Property Assignment Agreement
Exhibit C	Form of Assignment Agreement
Exhibit D	Form of Assumption Agreement
Exhibit E	Form of Warrant
Exhibit F	Summary of Terms: Agreement Regarding Future Restaurants

SCHEDULES:

Schedule I	Index of Defined Terms; Table of Definitions
Schedule II	Individuals with Knowledge
Schedule III	Uechi Agreements
Schedule 1.1(a)	IP Assets
Schedule 1.1(c)	Assigned Contracts
Schedule 2.1(c)	Seller Entity Allocations
Schedule 7.2(c)	Certain Third Party Consents

Disclosure Schedule
Buyer Disclosure Schedule

Execution Version

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of July 9, 2015, is made by and among SBEEG HOLDINGS, LLC, a Delaware limited liability company ("SBEEG"), SBE RESTAURANT GROUP, LLC, a Nevada limited liability company (formerly a California limited liability company) ("SBERG"), SBE/KATSUYA MIDDLE EAST , LLC, a Delaware limited liability company ("East") and SBE LICENSING, LLC, a Delaware limited liability company ("SBE Licensing" and, together with SBEEG, Brentwood, SBERG and East, the "Seller Entities" and individually, a "Seller Entity"), WASABI HOLDINGS, LLC, a Delaware limited liability company ("Buyer") and THE ONE GROUP HOSPITALITY, INC., a Delaware corporation ("Parent").

WHEREAS, SBERG, with its Affiliates, KATSU USA, LLC, a California limited liability company ("Brentwood"), Katsuya H&V, LLC ("H&V"); Katsuya – Glendale, LLC ("Glendale"); and Katsuya Downtown L.A., LLC ("Downtown"), and KBM Operating Company, Ltd., owns and operates certain restaurants (collectively, the "Restaurants") under the brand name "Katsuya" and "Cleo" (the "Business");

WHEREAS, as a condition and an inducement to the parties entering into this Agreement, and concurrently with the execution and delivery of this Agreement, Buyer is entering into merger agreements with each of Brentwood, H&V, Glendale and Downtown (collectively, the "Merger Entities"), each dated as of the date hereof (collectively, the ("Merger Agreements");

WHEREAS, Buyer desires to acquire certain assets used by the Seller Entities in the Business;

WHEREAS, Buyer, SBE Licensing and certain of its Affiliates wish to enter into a Brand License Agreement in the form agreed to by the Parties (the "BLA"), pursuant to which SBE Licensing or some of its Affiliates will be entitled to use the Katsuya and Cleo brand names (collectively, the "Brands") with respect to the ownership and operation of the certain restaurants other than the Restaurants;

WHEREAS, at Closing (as defined herein), Buyer and an Affiliate of the Seller Entities will enter into, execute and deliver (i) the Transition Services Agreement and (ii) a definitive agreement regarding future restaurants to be owned, operated or managed by Buyer or its Affiliates under the Cleo or Katsuya brands on the basic terms and conditions as set forth on Exhibit F and on such other terms and conditions as mutually agreed to by the parties in good faith and which are customary for similar transactions (the "Agreement Regarding Future Restaurants");

WHEREAS, subject to the terms and conditions set forth in this Agreement, the Seller Entities wish to sell, assign and transfer to Buyer, and Buyer wishes to purchase from the Seller Entities, the Acquired Assets (defined below), and Buyer is willing to assume from the Seller Entities the Assumed Liabilities, all as set forth herein;

WHEREAS, capitalized terms used and not otherwise defined herein shall have the meanings set forth on Schedule II hereto.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements herein contained, and intending to be legally bound hereby, the parties hereby agree as follows:

ARTICLE I

PURCHASE AND SALE OF ASSETS

1.1 Purchase and Sale of Assets. Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, the Seller Entities shall, and shall cause their Affiliates to (as applicable), sell, transfer, assign and deliver to Buyer, free and clear of all Liens, all of the Seller Entities' and their Affiliates' right, title and interest in and to the Acquired Assets. As used in this Agreement, " Acquired Assets" means all of the assets, properties, rights, interests and goodwill of every kind and nature whatsoever, whether tangible or intangible, wherever located, owned, used or held for use in connection with the Restaurants and the Business, whether now owned, used or held for use or acquired prior to the Closing, including the following:

(a) all Intellectual Property set forth on Schedule 1.1(a) hereto (collectively, the "IP Assets"), and all goodwill associated therewith, licenses and sublicenses granted in respect thereto and rights thereunder, together with all claims against third parties for profits and all claims and Losses (including interest which may be imposed in connection therewith), court costs and reasonable fees and disbursements of counsel, consultants and expert witnesses incurred by reason of the past infringement, alleged infringement, unauthorized use or disclosure or alleged unauthorized use or disclosure of any IP Assets, together with the right to sue for, and collect the same, or to sue for injunctive relief, for Buyer's own use and benefit, and for the use and benefit of its successors, assigns or other legal representatives listed;

(b) all Intellectual Property disclosures with respect to the IP Assets and files relating to the IP Assets (including all applications, registrations, assignments, prosecution files, correspondence to and from the United States Patent and Trademark Office (the "USPTO") and any other foreign patent and trademark offices, dockets, workbooks, legal opinions, prior art searches, notes, memoranda and other related information);

(c) subject to the Seller Entities continuing rights in Section [___], all Customer Information organized or structured as collections of data used in the operation of the Business (the "Databases"); and

(d) all right, title and interest in, to and under the Alshaya Agreement, the Elmaleh Agreements, the Uechi Agreements, the PHS Agreement (solely relating to the "Katsuya" brand) (collectively, the " Assigned Contracts"); provided, however, that nothing in this Section 1.1(c) shall be in any way deemed or construed to mean that Buyer is assuming any Liabilities, obligations or responsibilities under any Assigned Contracts, it being agreed by the parties that Buyer will assume only the Assumed Liabilities as set forth in Section 1.3.

1.2 Excluded Assets. Notwithstanding anything herein to the contrary, the Acquired Assets will not include any assets, properties and rights of the Seller Entities or any of their Affiliates that are not listed in Section 1.1 above (collectively, the "Excluded Assets"). For the avoidance of doubt, each and every of the following assets, properties and rights of the Seller Entities shall be treated as Excluded Assets hereunder:

(a) all fixed and other tangible personal property and assets used in the Business, including all kitchen and office equipment, machinery, appliances, instruments, furniture, fixtures, equipment, computers, software, supplies, inventory, and other physical assets used in the Business;

(b) all inventory of the Seller Entities, including food, alcohol, beverages, consumables and other materials and supplies to be used or consumed in the operation of the Business;

(c) all rights, title and interest in and to the Intellectual Property of the Seller Entities, and goodwill associated therewith, other than the IP Assets and as set forth in Section 1.1(a) and (b);

(d) (i) all accounts receivable of the Restaurants, and all rights to credits, refunds, prepaid expenses, deferred charges, advance payments, security deposits and prepaid items relating to the Business; all right, title and interest in, to and under all Contracts to which any Seller Entity or any of their Affiliates is a party or by which any Seller Entity, any of their Affiliates or any of their respective assets or properties is otherwise subject to or bound other than the Assigned Contracts;

(e) all capital stock or other equity interest of any Seller Entity or Affiliate or other Person, and all options, warrants or other rights to acquire such capital stock or other equity, including, without limitation, any equity interest held by any Seller Entity;

(f) all right, title and interest to all insurance policies of the Seller Entities or their Affiliates;

(g) all minute books and member records of the Seller Entities or their Affiliates;

(h) all personnel records of all employees;

(i) all rights of the Seller Entities or their Affiliates under this Agreement, the Merger Agreements and the Related Agreements or arising from the consummation of the transactions contemplated hereby or thereby;

(j) all bank and brokerage accounts of the Seller Entities;

(k) all refunds (or rights thereto) arising from or attributable to Taxes imposed on the Acquired Assets or the Business for any Pre-Closing Tax Period; and

(l) all rights, claims or credits of the Seller Entities solely relating to any Excluded Asset or Excluded Liability.

1.3 Assumed Liabilities. Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, Buyer shall assume from the Seller Entities only the following Liabilities (collectively, the "Assumed Liabilities"), unless otherwise specifically excluded under Section 1.4 below:

(a) obligations of the Seller Entities under the Assigned Contracts as and to the extent transferred to Buyer under Section 1.1(c), but only to the extent such obligations (i) are to be performed in the first instance after the Closing; (ii) do not arise from or relate to any breach or default by any Seller Entity of any provision of any of such Assigned Contracts or any event, circumstance or condition occurring or existing on or prior to the Closing that, with notice or lapse of time, would constitute or result in a breach or default thereof; and (iii) do not arise from actions taken (or omitted from being taken) by any Seller Entity prior to the Closing; and

(b) all Liabilities arising out of or relating to the ownership or operation of the Acquired Assets on or after the Closing.

1.4 Excluded Liabilities. Except as expressly assumed pursuant to Section 1.3, Buyer is not assuming and shall not have any liability or obligation whatsoever for any Liabilities of the Seller Entities or any of their Affiliates (or any predecessors of the Seller Entities or any of their Affiliates) whatsoever, whether or not arising out of the ownership or operation of any Restaurant, the Business or the Acquired Assets, all of which will be retained and satisfied when due by any Seller Entity or any of their Affiliates, as applicable (collectively, the "Excluded Liabilities"), which Excluded Liabilities shall include the following:

(a) all Liabilities of the Seller Entities or any of their Affiliates arising under this Agreement, the Merger Agreements or the Related Agreements or from the consummation of the transactions contemplated hereby or thereby;

(b) all Liabilities of the Seller Entities or any of their Affiliates to any present or former director, officer, member, manager employee, consultant or independent contractor of the Seller Entities or any of their Affiliates (or any predecessor thereto), or any of their respective spouses, children, other dependents or beneficiaries, including any and all Liabilities arising under any federal, state, local or foreign Laws, Approvals or Orders;

(c) all Liabilities of the Seller Entities or any of their Affiliates (or any predecessor thereto) to any Affiliate or current or former equityholder, member, convertible debt holder, option or warrant holder or holder of other equity or debt interests (or any of their successors, assigns, heirs or legal representatives) of the Seller Entities or any of their Affiliates (or any predecessor thereto);

(d) all Liabilities of the Seller Entities or any of their Affiliates (or any predecessor thereto) in respect of any Indebtedness, accrued expenses or Transaction Expenses, including all intercompany payable balances owing by the Seller Entities or any of their Affiliates;

(e) all Liabilities (i) of the Seller Entities or any of their Affiliates (or any predecessors thereto) for or in respect of Taxes for any period (without regard to whether such period (or portion thereof) is a Pre-Closing Tax Period) and (ii) arising from or attributable to Taxes imposed on the Acquired Assets or the Business for any Pre-Closing Tax Period, including any Taxes resulting from or relating to the consummation of the transactions contemplated hereby (including any Taxes that may become due as a result of (or are identified by or otherwise concerning) any bulk sales or similar Law);

(f) all Liabilities arising under or relating to any written or oral Contract relating to the Restaurants or the Business to which any Seller Entity or any of their Affiliates is a party or by which any Seller Entity, any of their Affiliates or any of their respective assets or properties is otherwise subject or bound, other than Liabilities arising under the Assigned Contracts to the extent provided in Section 1.3(a);

(g) all Liabilities of the Seller Entities or any of their Affiliates (or any predecessor thereto) for any Actions against the Seller Entities or any of their Affiliates (or any predecessor thereto), including any Actions pending or threatened against the Seller Entities or any of their Affiliates (or any predecessor thereto) as of the Closing Date;

(h) all Liabilities of the Seller Entities or any of their Affiliates (or any predecessor thereto) arising out of or resulting from any violation of or non-compliance with any federal, state, local or foreign Approvals, Laws or Orders;

(i) all Liabilities of the Seller Entities or any of their Affiliates (or any predecessor thereto) arising out of, relating to or resulting from any obligation to indemnify any Person (other than pursuant to an Assigned Contract to the extent assumed pursuant to Section 1.3(a));

(j) all Liabilities relating to, based in whole or in substantial part on events or conditions occurring or existing in connection with, or arising out of, the employment of any employee of the Seller Entities or any of their Affiliates and with respect to the termination of any employee of the Seller Entities or any of their Affiliates;

(k) all Liabilities arising under any Employee Benefit Plan or any benefit, Tax or compensation Liability of any ERISA Affiliate;

(l) all Liabilities arising out of or relating to the ownership or operation of the Acquired Assets or the Business prior to the Closing; and

(m) all Liabilities arising out of or attributable in any manner to the Excluded Assets.

The disclosure of any Liability on any schedule to this Agreement shall not create an Assumed Liability or other Liability of Buyer, except where such disclosed Liability has been expressly assumed by Buyer as an Assumed Liability pursuant to Section 1.3.

1.5 Closing. Subject to the terms and conditions hereof, the closing of the transactions contemplated by this Agreement (the "Closing") will take place on the third (3^{rd}) Business Day following the date on which all of the conditions set forth in Article VIII have been satisfied or waived (other than any such conditions that by their terms cannot be satisfied until the Closing Date, which conditions shall be required to be so satisfied or waived on the Closing Date), unless another time and/or date is agreed to in writing by the Seller Entities, Parent and Buyer (the "Closing Date"). The Closing shall be held at the offices of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, Massachusetts, unless another place is agreed to in writing by the Seller Entities, Parent and Buyer (it being understood that the Closing may be effected by the delivery of documents via e-mail, facsimile and/or overnight courier). The consummation of the transactions contemplated by this Agreement to occur at the Closing shall be deemed to occur at 12:01 a.m. (EST) on the Closing Date. The closings of the transactions contemplated by the Merger Agreements shall occur concurrently with the Closing.

1.6 Transfer Documents. At the Closing, in addition to the other deliverables contemplated by Article VI, the parties shall execute and deliver to each other, or cause to be executed and delivered to each other, the following documents (collectively, the "Transfer Documents"):

(a) Each Seller Entity, as applicable, shall execute and deliver to Buyer and Parent one or more intellectual property assignments, in form and substance reasonably satisfactory to the Buyer, Parent and each Seller Entity (each, an "Intellectual Property Assignment"), pursuant to which the IP Assets will be transferred and assigned to Buyer;

(b) Each Seller Entity, and any of its Affiliates, as applicable, shall execute and deliver one or more contract assignment agreements, in form and substance reasonably satisfactory to the Buyer, Parent and each Seller Entity (each, an "Assignment Agreement"), pursuant to which the interests of such Persons in the Alshaya Agreement, the Emelah Agreement, the Uechi Agreements and the PHS Agreement will be assigned to Buyer;

(c) Buyer and Parent shall execute and deliver to the Seller Entities an assumption agreement, in form and substance reasonably satisfactory to the Buyer and each Seller Entity (each, an "Assumption Agreement"), pursuant to which Buyer will assume from the Seller Entities the Assumed Liabilities; and

(d) The Seller Entities, and any of their Affiliates, as applicable, will execute and deliver all such other bills of sale, assignments, endorsements, Intellectual Property right assignments, trade name assignments, domain name assignments, certificates of title, consents and other good and sufficient instruments and documents of conveyance and transfer in a form reasonably satisfactory to Buyer and Parent, as Buyer and Parent reasonably shall deem necessary or appropriate to vest in or confirm to Buyer full and complete right, title and interest in and to all of the Acquired Assets.

1.7 Consents of Third Parties. Notwithstanding anything in this Agreement or in any Related Agreement to the contrary, neither this Agreement nor any such Related Agreement shall constitute an agreement to assign or otherwise transfer, or require Buyer to assume any obligations under, any Assigned Contract if an attempted assignment or transfer thereof would, without the consent of a third party to such assignment or transfer, constitute a breach thereof, would be ineffective, would affect adversely the rights of Buyer thereunder or would violate any applicable Law. If any such consent has not been obtained as of the Closing Date and Buyer and Parent in their respective sole discretion nevertheless determines to proceed with the Closing, Buyer and Parent may waive the closing condition that such consent be delivered at the Closing, and the Seller Entities and their respective Affiliates shall use their respective commercially reasonable efforts to obtain such consent following the Closing, and Buyer and Parent shall provide commercially reasonable cooperation to the Seller Entities and their respective Affiliates in seeking to obtain any such consent. The Seller Entities shall pay and discharge any and all out-of-pocket costs or expenses of seeking to obtain or obtaining any such consent or approval whether before or after the Closing Date. If any Assigned Contract is not transferred to Buyer at the Closing pursuant to this Agreement, the Seller Entities and their respective Affiliates shall cooperate with Buyer and Parent in any reasonable arrangement designed to provide Buyer all of the benefits of such Assigned Contract until such consent has been obtained. Nothing in this Section 1.7 shall be deemed to modify in any respect any of the Seller Entities' representations or warranties set forth herein or the conditions to Buyer or Parent's obligations contained in Article VI, be deemed a waiver by Buyer or Parent of its right to have received on or before the Closing Date an effective assignment of all of the Acquired Assets or be deemed to constitute an agreement to exclude from the Acquired Assets any assets described under Section 1.1.

1.8 Further Assurances. At any time and from time to time after the Closing, at the request of Buyer or Parent and without further consideration, the Seller Entities and their respective Affiliates shall execute and deliver such other instruments of sale, transfer, conveyance, assignment and confirmation, and shall take such further action, as may be reasonably requested in order to more effectively transfer, convey and assign to Buyer, and to confirm Buyer's title in and to, the Acquired Assets, and each of the parties shall execute such other documents and take such further action as may be reasonably required or desirable to carry out the provisions of this Agreement and the Related Agreements and the transactions contemplated hereby and thereby.

1.9 Delivery of Acquired Assets.

(a) The Seller Entities, Parent and Buyer agree that any of the Acquired Assets of the type that can be transmitted to Buyer electronically will be so delivered to Buyer as soon as reasonably practicable following the Closing. Promptly following any electronic transmission, each Seller Entity as applicable, shall execute and deliver to Buyer a written certificate containing the following information: (i) the date of transmission, (ii) the name of the individual who made the transmission, (iii) the signature of such individual and (iv) a general description of the nature of the items transmitted sufficient to distinguish the transmission from other transmissions.

(b) To the extent that any party discovers any Acquired Asset that should have been transferred or assigned to Buyer but was not so transferred or assigned (each an "Optional Asset"), then such party will promptly provide written notice to the other parties identifying such Optional Asset. Within thirty (30) days after the date of such notice, Buyer will have the right to inspect such Optional Asset and all information relating thereto, and elect, in Buyer's sole discretion, whether to accept or reject the transfer of such Optional Asset. If Buyer rejects such Optional Asset, then such Optional Asset will be considered an Excluded Asset hereunder. If Buyer elects to accept the transfer of such Optional Asset, then the Seller Entities agree to, without further consideration, sell, transfer, convey, assign and deliver to Buyer, and Buyer shall purchase and accept from the Seller Entities, free and clear from any Liens, all right, title and interest of the Seller Entities or any of their respective Affiliates in and to such Optional Asset. The parties will cooperate and promptly execute and deliver any instruments of transfer or assignment reasonably requested by Buyer to effect such transfer and assignment to Buyer.

ARTICLE II

PURCHASE PRICE

2.1 Purchase Price.

(a) The aggregate purchase price (the "Purchase Price") payable by Parent, on behalf of Buyer, for the Acquired Assets shall be (i) Forty-Seven Million Four Hundred Thousand Dollars ($47,400,000), subject to adjustment pursuant to Section 2.2 (the "Cash Purchase Price"), minus (ii) the amount payable pursuant to the Merger Agreements allocated among the Merger Entities as set forth in Schedule 2.1(a), plus (ii) the issuance and delivery of the Warrant to SBEEG or SBERG, as designated by SBEEG in writing at least three (3) business days prior to the Closing Date (the "Warrant Holder").

(b) At the Closing, Parent, on behalf of Buyer, shall pay the Cash Purchase Price, allocated among the Seller Entities as set forth in Section 2.1(c), the Cash Purchase Price shall be paid by Parent, on behalf of Buyer, to the Seller Entities in cash by wire transfer of immediately available funds, payable to and allocated among the Seller Entities in accordance with Section 2.1(c) below.

(c) The Cash Purchase Price shall be allocated among the Seller Entities as set forth in Schedule 2.1(c), which the Seller Entities shall provide to Buyer and Parent, together with wire information for each Seller Entity to receive a portion of the Cash Purchase Price and certified by the manager of each Seller Entity, at least three (3) Business Days prior to Closing, and shall be attached to this Agreement.

2.2 Tax Withholding. Buyer, Parent, their respective Affiliates, or any other applicable withholding agent shall be entitled, after providing notice to the Seller Entities and engaging in good faith discussion as to the appropriateness of any withholding, to deduct and withhold from any amounts otherwise payable pursuant to this Agreement such amounts as are required to be deducted and withheld with respect to the making of such payments under the provisions of any applicable Laws. Any such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

2.3 Allocation of Purchase Price. The Purchase Price allocated to each Seller Entity in accordance with Schedule 2.1(c) shall be further allocated among the Acquired Assets transferred and sold by such Seller Entity as determined by Parent in accordance with Code Section 1060 (and any similar provisions of state or local Law, as appropriate) and shall be set forth in a schedule delivered by the Parent to the Seller Entities within one hundred twenty (120) days following the Closing Date (the "Proposed Allocation Schedule"). The Seller Entities shall have an opportunity to review the Proposed Allocation Schedule for a period of thirty (30) days after the receipt of the Proposed Allocation Schedule. If the Seller Entities disagree with any aspect of the Proposed Allocation Schedule, the Seller Entities shall notify the Parent, in writing, prior to the end of such thirty (30)-day period (an "Allocation Dispute Notice"), setting forth Seller Entities' proposed allocation of the Purchase Price. If the Seller Entities do not deliver to the Parent an Allocation Dispute Notice within such thirty (30)-day period, the Parent's Proposed Allocation Schedule shall be final and binding on the parties. If the Seller Entities deliver an Allocation Dispute Notice to the Parent, Parent and the Seller Entities shall negotiate in good faith to resolve any such dispute; provided, however, that if Parent and the Seller Entities are unable to resolve any such dispute within thirty (30) days following the delivery of the Allocation Dispute Notice, then such dispute shall be resolved by an independent public accounting firm mutually agreeable to Parent, on the one hand, and the Seller Entities, on the other hand (the "Dispute Accounting Firm"). The fees and expenses of the Dispute Accounting Firm shall be borne equally by the Seller Entities and Parent. Buyer, Parent, the Seller Entities and their respective Affiliates shall file all Tax Returns (including IRS Form 8594) consistent with the final allocation of the Purchase Price determined hereunder (as reasonably adjusted to account for events occurring after the determination of the final allocation of the Purchase Price) and none of Buyer, Parent, the Seller Entities or their respective Affiliates shall take any Tax position inconsistent with the final allocation of the Purchase Price determined hereunder unless required to do so by a change in applicable Laws or a good faith resolution of a Tax contest.

2.4 Purchase Price Adjustments. Any amount paid as an indemnification payment pursuant to the terms of this Agreement shall be treated as an adjustment to the purchase price of the Acquired Assets. Any amounts paid pursuant to any Related Agreement, Merger Agreement or other agreement between the parties or their Affiliates shall not be treated as an adjustment to the purchase price of the Acquired Assets unless specifically provided for in such agreement.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE SELLER ENTITIES

Except as disclosed by the Seller Entities in the disclosure schedule, dated as of the date of this Agreement and delivered by the Seller Entities to Buyer and Parent (the "Disclosure Schedule"), each Seller Entity, jointly and severally, hereby represent and warrant to Buyer and Parent that the representations and warranties contained in this Article III are true, complete and correct as of the date hereof and as of the Closing Date.

3.1 Organization, Good Standing and Qualification of the Seller Entities. Section 3.1 of the Disclosure Schedule contains a complete and accurate list of each Seller Entity's jurisdiction of formation. Each Seller Entity is validly existing and in good standing under the Laws of the state of its formation. Each Seller Entity is duly qualified or licensed as a foreign corporation to do business and is in good standing under the Laws of each jurisdiction where the character of the Acquired Assets or the nature of the operation of the Business makes such qualification or licensing necessary, which jurisdictions are set forth in Section 3.1 of the Disclosure Schedule. Each Seller Entity and their Affiliates have all requisite power and authority, and are in possession of all Approvals necessary, to own, lease and operate the Acquired Assets and to carry on the Business as it is now being conducted and currently proposed to be conducted.

3.2 [Intentionally omitted].

3.3 Authorization; Binding Obligation. Each Seller Entity (and, if applicable, one or more of their Affiliates) has all necessary power and authority to execute and deliver this Agreement, each Related Agreement and each other instrument or document required to be executed and delivered by it pursuant to this Agreement or any Related Agreement, and to perform each of its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by each Seller Entity (and, if applicable, one or more of its Affiliates) of this Agreement and each Related Agreement, the performance of its obligations hereunder and thereunder, and the consummation by such Seller Entity (and, if applicable, one or more of its Affiliates) of the transactions contemplated hereby and thereby, have been duly and validly authorized by all requisite action on the part of such Seller Entity (and, if applicable, one or more of its Affiliates), and no other corporate proceedings on such Seller Entity's (or, if applicable, one or more of its Affiliates') part is necessary to authorize this Agreement or any Related Agreement or to consummate the transactions so contemplated herein and therein. This Agreement has been duly and validly executed and delivered by each Seller Entity (and, if applicable, one or more of their Affiliates), and each Related Agreement, when executed and delivered by such Seller Entity (and, if applicable, one or more of its Affiliates), is or will be duly and validly executed and delivered by such Seller Entity (and, if applicable, one or more of its Affiliates) and this Agreement and each Related Agreement constitutes or will constitute, a legal, valid and binding obligation of such Seller Entity (and, if applicable, one or more of its Affiliates), enforceable against such Seller Entity (and, if applicable, one or more of its Affiliates) in accordance with its respective terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other Laws of general application affecting enforcement of creditors' rights generally, and (ii) as limited by Laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

3.4 Consents and Approvals. Except as set forth in Section 3.4 of the Disclosure Schedule, the execution and delivery by each Seller Entity (and, if applicable, one or more of its Affiliates) of this Agreement, the Related Agreements or any other instrument or document required by this Agreement or any Related Agreement to be executed and delivered by such Seller Entity (and, if applicable, one or more of its Affiliates) do not, and the performance of this Agreement, the Related Agreements and any other instrument or document required by this Agreement or any Related Agreement to be executed and delivered by such Seller Entity (and, if applicable, one or more of its Affiliates) shall not require such Seller Entity (or, if applicable, one or more of its Affiliates) to provide notice to, obtain any consent of or take any other action in respect of any Person or obtain Approval of, observe any waiting period imposed by, make any filing with or notification to, or take any other action in respect of any Governmental Authority; provided that Seller is relying on the representation of Buyer and Parent set forth in the last sentence of Section 4.3 below in making the representations and warranties set forth in this Section 3.4.

3.5 No Violation. Except as set forth in Section 3.5 of the Disclosure Schedule, the execution and delivery by each Seller Entity (and, if applicable, one or more of its Affiliates) of this Agreement, the Related Agreements or any other instrument or document required by this Agreement or any Related Agreement to be executed and delivered by such Seller Entity (and, if applicable, one or more of its Affiliates) do not, and the performance of this Agreement, the Related Agreements or any other instrument or document required by this Agreement and/or any Related Agreement to be executed and delivered by such Seller Entity (and, if applicable, one or more of its Affiliates) will not, (a) conflict with, violate or breach the Organizational Documents of such Seller Entity (or, if applicable, one or more of its Affiliates), (b) conflict with or violate any Law or Order applicable to such Seller Entity (or, if applicable, one or more of its Affiliates) or by which it or any of the Acquired Assets, any Restaurant or the Business is bound or affected or (c) conflict with or result in any breach or violation of or constitute a default (or an event that with notice or lapse of time or both would become a breach, violation or default) under, or impair the rights of such Seller Entity (or, if applicable, one or more of its Affiliates) or alter the rights or obligations of any third party under, or result in or give to others any rights of termination, amendment, modification, acceleration or cancellation of, or result in the creation of a Lien on any of the Acquired Assets pursuant to, any Contract or other instrument or obligation to which such Seller Entity (or, if applicable, one or more of its Affiliates) is a party or is otherwise bound, or any Approval to which such Seller Entity (or, if applicable, one or more of its Affiliates) is a party or by which such Seller Entity (or, if applicable, one or more of its Affiliates), the Acquired Assets, any Restaurant, the Business or any of Seller's (or, if applicable, one or more of its Affiliates') properties are bound or affected.

3.6 Licenses and Permits. Each Seller Entity or its Affiliates have, and have had at all relevant times, all Approvals and Orders that are or were necessary in order to own and operate the Acquired Assets and which are listed in Section 3.6 of the Disclosure Schedule.

3.7 Legal Proceedings. There is no Action pending or, to the knowledge of the Seller Entities, threatened by or against or affecting any Seller Entity or Acquired Asset that would (a) give any Person the right to enjoin or rescind the transactions contemplated by this Agreement or (b) otherwise prevent any Seller Entity from (i) executing and delivering this Agreement or the Related Agreements to which any Seller Entity is a party or (ii) performing such Seller Entity's obligations pursuant to, or observing any of the terms and provisions of, this Agreement or the Related Agreements to which such Seller Entity is a party. There are no outstanding Orders against, involving or affecting the Business or the Acquired Assets, and no Seller Entity is in default with respect to any such Order of which it has knowledge or was served upon it.

3.8 Compliance with Laws. Each Seller Entity and its Affiliates have complied and are in compliance with all Laws applicable to the Acquired Assets, and such Seller Entity's ownership, use or operation thereof except where such failure to be in compliance could have a Business Material Adverse Effect. No Seller Entity and none any of their respective Affiliates has received any written notice to the effect that, or otherwise been advised that, such Seller Entity or any of its Affiliates is not in compliance with any such Laws, and each Seller Entity has no reason to anticipate that any existing circumstances is likely to result in an Action or a violation of any such Law. No investigation or review by any Governmental Authority with respect to the Acquired Assets is pending or, to the knowledge of the Seller Entities, threatened, nor has any Governmental Authority indicated an intention to conduct the same.

3.9 Taxes.

(a) All Taxes payable by each Seller Entity or any of its Affiliates (or any affiliated, consolidated, combined unitary or similar group of which Seller is or was a member), including but not limited to in respect of the Acquired Assets, have been timely paid, including but not limited to any Taxes the non-payment of which would result in a Lien on any Acquired Asset or as would otherwise adversely affect the Acquired Assets or would result in Buyer or Parent becoming liable or responsible therefor.

(b) All federal income Tax and other material Tax Returns required to be filed by or on behalf of each Seller Entity or any of its Affiliates (or any affiliated, consolidated, combined unitary or similar group of which Seller is or was a member), including with respect to the Acquired Assets, have been timely filed, and all such Tax Returns are true, complete and correct in all material respects and have been filed in accordance within all applicable Law; no Seller Entity nor any of its Affiliates has been informed in writing by any jurisdiction that such jurisdiction believes that such Seller Entity or any of its Affiliates is or was required to file any Tax Return in respect of the Business or the Acquired Assets.

(c) All Taxes that any Seller Entity or any of its respective Affiliates is or was required by Law to have withheld, including in connection with the Acquired Assets, to any employee, independent contractor, creditor, stockholder, or other third party have been duly withheld or collected and timely paid to the proper Governmental Authority, and such Seller Entity and its Affiliates have complied with all reporting and recordkeeping requirements. Each Seller Entity has properly classified all personnel as either employees or independent contractors.

(d) No unpaid Tax deficiency has been asserted against or with respect to the Acquired Assets or the Business in writing and no Seller Entity nor any of its respective Affiliates has received written notice of any such assertion.

(e) No Seller Entity is or has been a partnership the disposition of an interest in which would be subject to withholding under Code Section 1445(e)(5) or Code Section 897(g) and no withholding pursuant to Code Section 1445 will be required in connection with this Agreement or the transactions contemplated hereby.

(f) Neither the Buyer nor Parent will be required to include any amount in taxable income for any taxable period or portion thereof ending after the Closing Date with respect to any (i) cash or cash equivalents received on or prior to the Closing Date or (ii) income economically accrued on or prior to the Closing Date.

(g) No Seller Entity (or its Affiliates) is or has been required to make any adjustment to any Tax accounting method used with respect to the Acquired Assets or the Business and there is no application pending with any Governmental Authority requesting permission for any changes in any of its accounting methods for Tax purposes currently nor has there been in the past four (4) years. No Governmental Authority has proposed in writing any such adjustment or change in accounting method of, or that is being used with respect to, the Acquired Assets or the Business.

(h) No Seller Entity (i) has never been a member of any "affiliated group" within the meaning of Code Section 1504(a) filing a consolidated federal income Tax Return or any other consolidated, combined, or unitary group for federal, state, local or foreign Tax purposes; (ii) is a party to any contractual obligation relating to Tax sharing, Tax allocation or any similar arrangement; or (iii) has any liability for the Taxes of any person under Treasury Regulation Section 1.1502-6 (or any similar or analogous law or administrative provision of federal, state, local or foreign Tax law), as a transferee or successor, or by contract or otherwise.

(i) There are no Liens with respect to Taxes upon any of the Acquired Assets.

(j) No Tax Return in respect of any Acquired Assets is currently being audited by any Governmental Authority and no examination or audit of any such Tax Return is currently threatened in writing by any Governmental Authority.

(k) There is no pending or threatened Action in writing concerning any Tax Liability of any Seller Entity, any of its respective Affiliates, or otherwise concerning the Acquired Assets or the Business. No assessment or deficiency for any Tax or adjustment to any Tax item has been proposed or threatened in writing against a Seller Entity. Each Seller Entity has delivered to Buyer and Parent accurate and complete copies of all Tax Returns, examination reports and statements of deficiencies filed, assessed against or agreed to by each Seller Entity or any of its Affiliates since June 30, 2012.

(1) No Seller Entity and none of its respective Affiliates has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency. No Seller Entity and none of its respective Affiliates has executed any power of attorney with respect to any Tax, other than powers of attorney that are no longer in force. No closing agreements, private letter rulings, technical advice memoranda or similar agreements or rulings relating to Taxes have been entered into or issued by any Governmental Authority with or in respect of any Seller Entity or any of its respective Affiliates.

(m) No Seller Entity has engaged in or promoted any "listed transaction" (within the meaning of Code Section 6707A(c)(2) or Treasury Regulation 1.6011-4(b)(2)).

3.10 Assigned Contracts.

(a) No Seller Entity and none of its respective Affiliates is in breach or default under the terms of any Assigned Contract and there exists no event, condition or occurrence that (with or without due notice or lapse of time, or both) would constitute such a breach or default, nor has such Seller Entity received any notice of any breach or default or alleged breach or default under any Assigned Contract. To the knowledge of the Seller Entities, no other party to any Assigned Contract is in breach or default under the terms thereof, and, to the knowledge of Seller Entities, there exists no event, condition or occurrence that (with or without due notice or lapse of time, or both) would constitute such a breach or default by any such party, nor has any Seller Entity received any notice of any breach or default by any such party.

(b) The Assigned Contracts are in full force and effect and are valid and binding obligations of each Seller Entity or an Affiliate thereof and, to the knowledge of the Seller Entities, the other parties thereto. No Seller Entity has received any notice from any other party to an Assigned Contract of the termination or threatened termination thereof, or of any claim, dispute or controversy with respect thereto, nor is there any basis therefor.

(c) No consent of, or notice to, any third party is required under any Assigned Contract as a result of or in connection with, and neither the enforceability nor any of the terms or provisions of any Assigned Contract will be affected in any manner by, the execution, delivery and performance of this Agreement or any Related Agreement, or the transactions contemplated hereby or thereby.

(d) The Assigned Contracts together with all Contracts and assets of the Merger Entities constitute all of the Contracts and assets necessary for the use of the Acquired Assets and operation of the Business in substantially the same manner as conducted by the Seller Entities prior to the Closing.

3.11 Intellectual Property.

(a) Section 3.11(a) of the Disclosure Schedule sets forth a complete and accurate list of all registered and applied for Trademarks and Internet domain names comprising the IP Assets and used in the operation of the Business, indicating for each, the applicable jurisdiction, registration number (or application number), and date issued (or date filed). There are no United States or foreign Patents or registered Copyrights used, or held for use, by any Seller Entity or any of its respective Affiliates in connection with the Business. Except as set forth on Section 3.11(a) of the Disclosure Schedule, all registered and applied for Trademarks included in the IP Assets that are currently pending are in compliance with all legal requirements (including the timely filing of responses, statements or affidavits of use and incontestability and renewal applications and required fees), are valid and enforceable, and are not subject to any fees, responses or actions falling due within ninety (90) days after the Closing Date. Except as set forth on Section 3.11(a) of the Disclosure Schedule, no such Trademark has been or is now involved in any opposition or cancellation proceeding before the USPTO or any similar foreign authority and, to the knowledge of the Seller Entities, no such Action is threatened with respect to any of such Trademarks. No copyrightable work included in the IP Assets has been or is now involved in any litigation. Except as set forth in Section 3.11(a) of the Disclosure Schedule, to the knowledge of the Seller Entities, there are no Trademarks of any third party potentially conflicting with the Trademarks included in the IP Assets.

(b) Section 3.11(b) of the Disclosure Schedule sets forth a complete and accurate list of all agreements relating to IP Assets, including, without limitation, all license agreements granting any right to use or practice any rights under any IP Assets ("Licensed Intellectual Property"), whether or not any Seller Entity or any of its respective Affiliates is the licensee or licensor thereunder, and any assignments, consents, forbearances to sue, judgments, Orders, settlements, indemnification or similar obligations relating to any Licensed Intellectual Property to which such Seller Entity or any of its Affiliates is a party or otherwise bound (collectively, the "IP Agreements"), indicating for each the title, the parties, the date executed, whether or not it is exclusive and the Licensed Intellectual Property covered thereby. The Seller Entities have delivered to Buyer and Parent complete and accurate copies of all Assigned Contracts and all Contracts listed in Section 3.11(b) of the Disclosure Schedule, including all amendments and other changes thereto. Except as set forth in Section 3.11(b) of the Disclosure Schedule, all of the agreements listed thereon are Assigned Contracts.

(c) Except as set forth in Section 3.11(c) of the Disclosure Schedule, the Seller Entities (or, if applicable, an Affiliate thereof) are the sole and exclusive owners of the entire and unencumbered right, title, and interest in and to the IP Assets and the IP Assets are free and clear of any covenants not to sue, liens, pledges, joint ownership obligations and duties, security interests, judgments, Orders, or any determination of an arbiter placed by the Seller Entities (or, if applicable, an Affiliate thereof) or placed upon Seller Entities' interest (or, if applicable, the interest of an Affiliate thereof). The IP Assets constitute all of the Intellectual Property used in or necessary for the operation of the Business and use of the Acquired Assets as currently conducted and, assuming that Parent operates the Business and uses the Acquired Assets in substantially the same manner as proposed to be conducted by the Seller Entities prior to the Closing, as proposed to be conducted, including all Intellectual Property necessary to make use of, the Brands.

(d) Except as set forth in Section 3.11(d) of the Disclosure Schedule, no royalties, honoraria or other fees are payable to any third parties for the use of or right to use any IP Assets. Except as set forth in Section 3.11(d) of the Disclosure Schedule, all inventions, discoveries, Trade Secrets, ideas and works, whether or not patented or patentable or otherwise protectable under Law, created, prepared, developed or conceived by employees of a Seller Entity or its respective Affiliates are the exclusive property of such Seller Entity or its Affiliates and were either created, prepared, developed or conceived by (i) employees within the scope of their employment or (ii) by independent contractors who have duly assigned their rights to such Seller Entity or any of its Affiliates pursuant to enforceable written agreements.

(e) Except as set forth in Section 3.11(e) of the Disclosure Schedule, the operation of the Business and/or services of the Seller Entities or any of their Affiliates, and the use of the IP Assets in connection therewith has not, does not and will not, when conducted in substantially the same manner following the Closing, infringe upon, violate, misappropriate or make unlawful use of any Intellectual Property or other rights of any other Person or constitute unfair trade practices. No Seller Entity and none of its respective Affiliates has received notice of any allegation that the use of any of the IP Assets or operation of the Business as currently conducted or proposed to be conducted would infringe upon, violate, misappropriate or make unlawful use of any Intellectual Property or other rights of any other Person, nor are the Seller Entities aware of any basis for such a claim. Except as set forth in Section 3.11(e) of the Disclosure Schedule, to the knowledge of the Seller Entities, no Person is misappropriating, infringing, violating or making unlawful use of any IP Assets, nor are the Seller Entities aware of any basis for such a claim. There is no Action pending or, to the knowledge of the Seller Entities, threatened alleging that the operation of the Business or IP Assets infringe upon, violate or constitute the unauthorized use of the Intellectual Property or other rights of any other Person, nor are the Seller Entities aware of any basis for such a claim.

(f) Except as set forth on Section 3.11(f) of the Disclosure Schedule, the consummation of the transactions contemplated hereby will not require such Seller Entity or any of its Affiliates to grant to any third party any right to any IP Assets or obligate such Seller Entity or any of its Affiliates to pay any royalties or other amounts to any third party in excess of any amounts payable to such third parties prior to the Closing, nor will the consummation of the transactions contemplated hereby require the approval or consent of any Governmental Authority or other Person in respect of any IP Assets.

(g) There is no Software which constitutes, or is incorporated into, the IP Assets.

(h) Reserved.

(i) Except pursuant to enforceable confidentiality obligations in favor of the Seller Entities, there has been no disclosure to any third party of any confidential information or Trade Secrets included in the IP Assets, and no current or former employee, consultant, contractor or potential partner or investor of any Seller Entity or any of its respective Affiliates is in unauthorized possession of any of the confidential information, Trade Secrets or Software included in the IP Assets.

(j) Following the Closing, the Databases will have at least the same information and functionality as exists prior to the Closing. To the knowledge of the Seller Entities, each Seller Entity and its Affiliates have complied and are in compliance with all applicable privacy Laws, and all information contained in the Databases has been collected, used and maintained in accordance with all applicable privacy Laws. Each Seller Entity has the right to sell and assign all of its rights in and to, or provide shared access to, the Databases and all information contained therein in the United States, and any such sale and assignment or provision of shared access will not violate any privacy policy applicable to the information contained therein at the time it was collected provided that such Seller Entity and each other party with shared access uses all information contained in the Databases in accordance with the terms of the privacy policy under which such information was collected.

3.12 Absence of Restrictions on Business Activities. There is no Contract or Order binding upon any of the Acquired Assets that has had or could reasonably be expected to have the effect of prohibiting or impairing any business practice of Buyer or Parent, any acquisition of property (tangible or intangible) by Buyer or Parent, the operation of the Business by Buyer or otherwise limiting the freedom of Buyer or Parent to engage in any line of business or to compete with any Person.

3.13 No Brokers. Except as set forth in Section 3.13 of the Disclosure Schedule, no Seller Entity and none of its respective Affiliates nor any of their respective Representatives has employed or engaged, either directly or indirectly, or incurred or will incur any Liability to or is subject to any claim of, any broker, finder, investment banker or other agent or intermediary in connection with the transactions contemplated by this Agreement.

3.14 8-K Information. The information to be supplied by each Seller Entity for inclusion in each 8-K shall not at the time such 8-K is filed with the Securities and Exchange Commission (the "SEC") contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading.

3.15 Disclosure. Neither this Agreement (including the exhibits and schedules hereto) nor any other agreement, document or certificate delivered or to be delivered to Buyer or Parent by or on behalf of Seller pursuant to the terms of this Agreement, including the Disclosure Schedule, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary, with respect to the Acquired Assets, in order to make the statements contained herein or therein not misleading in light of the circumstances under which they were made. There is no fact within the knowledge of the Seller Entities that has not been disclosed in this Agreement and that could have a Business Material Adverse Effect.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF BUYER AND PARENT

Except as disclosed by Buyer or Parent in the disclosure schedule, dated as of the date of this Agreement and delivered by Buyer to the Seller Entities (the "Buyer Disclosure Schedule"), Buyer and Parent, on a joint and several basis, hereby represent and warrant to the Seller Entities that the representations and warranties contained in this Article VI are true, complete and correct as of the date hereof and the Closing Date.

4.1 Organization and Good Standing. Buyer is a limited liability company, duly organized, validly existing and in good standing under the Laws of the State of Delaware. Parent is a corporation, duly incorporated, validly existing and in good standing under the Laws of the State of Delaware.

4.2 Authorization; Binding Obligation. Each of Buyer and Parent has all necessary corporate power and authority to execute and deliver this Agreement and each Related Agreement to which it is a party and each other instrument or document required to be executed and delivered by it pursuant to this Agreement or any such Related Agreement, to issue the Warrant and to perform all of its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by each of Buyer and Parent of this Agreement and each Related Agreement to which it is a party, the performance of its obligations hereunder and thereunder and the consummation by each of Buyer and Parent of the transactions contemplated hereby and thereby have been duly and validly authorized by all requisite action on the part of each of Buyer and Parent, respectively, and no other corporate proceedings on the part of Buyer or Parent are necessary to authorize this Agreement or any Related Agreement to which it is, or will become, a party or to consummate the transactions so contemplated herein and therein. This Agreement has been duly and validly executed and delivered by each of Buyer and Parent, and each Related Agreement to which Buyer or Parent is a party, when executed and delivered by such party, is or will be duly and validly executed and delivered by such party, and this Agreement constitutes, and each Related Agreement to which Buyer or Parent is or will become a party when executed and delivered by such party constitutes or will constitute, a legal, valid and binding obligation of such party enforceable against such party in accordance with its respective terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other Laws of general application affecting enforcement of creditors' rights generally and (b) as limited by Laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

4.3 Consents and Approvals. Except as set forth in Section 6.3 of the Buyer Disclosure Schedule, the execution and delivery by each of Buyer and Parent of this Agreement, the Related Agreements to which Buyer or Parent is a party or any other instrument or document required by this Agreement or any Related Agreement to be executed and delivered by Buyer or Parent do not, and the performance of this Agreement, the Related Agreements to which Buyer or Parent is a party and any other instrument or document required by this Agreement or any Related Agreement to be executed and delivered by Buyer or Parent shall not, require Buyer or Parent to provide notice to, obtain any consent of or take any other action in respect of any Person or obtain Approval of, observe any waiting period imposed by, make any filing with or notification to, or take any other action in respect of any Governmental Authority except for (i) any filings as may be required under applicable state and federal securities Laws in connection with the issuance of the Warrant, (ii) any filings required with the Financial Industry Regulatory Authority, Inc. ("FINRA"), or (iii) applicable requirements, if any, of the Securities Exchange Act of 1934, as amended the ("Exchange Act"). Parent represents that it has determined in good faith that the aggregate value of the transactions contemplated in this Agreement and the Merger Agreements as determined under the HSR Act and related rules does not exceed the current threshold of $76.3 million under Section 18a(a)(2)(B)(i) of the Clayton Act. This valuation is based in whole or in part on Parent's good faith determination of the fair market valuation of the non-exempt voting securities, non-corporate interests and/or assets to be held as a result of the transactions contemplated in this Agreement and the Merger Agreements.

4.4 No Violation. The execution and delivery by each of Buyer and Parent of this Agreement, the Related Agreements to which Buyer or Parent is a party or any other instrument or document required by this Agreement or any Related Agreement to be executed and delivered by Buyer or Parent do not, and the performance of this Agreement, the Related Agreements to which Buyer or Parent is a party or any other instrument or document required by this Agreement or any Related Agreement to be executed and delivered by Buyer or Parent will not, (a) conflict with or violate the Organizational Documents of such party, (b) conflict with or violate any Law or Order applicable to such party or (c) result in a breach or violation of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, any material Contract to which such party is a party, in any case, except where such conflict or breach would not reasonably be likely to have a material adverse effect on such party's ability to consummate the transactions contemplated hereby.

4.5 Legal Proceedings. There is no Action pending or, to the knowledge of Buyer, threatened by or against or affecting Buyer or Parent that would (a) give any Person the right to enjoin or rescind the transactions contemplated by this Agreement or (b) otherwise prevent Buyer or Parent from (i) executing and delivering this Agreement or the Related Agreements to which it is a party or (ii) performing such party's obligations pursuant to, or observing any of the terms and provisions of, this Agreement or the Related Agreements to which it is a party.

4.6 Valid Issuance of Warrant. Assuming the accuracy of the representations and warranties made by the Warrant Holder in the Warrant, the Warrant being issued to the Warrant Holder hereunder, when issued, sold and delivered in accordance with the terms of this Agreement for the consideration expressed herein, will be duly and validly issued, fully paid, and nonassessable, and will be free of restrictions on transfer other than restrictions on transfer under applicable state and federal securities laws or Liens created by or imposed by the Warrant Holder. The shares of Common Stock issuable upon exercise of the Warrant will be as of the Closing Date duly and validly reserved for issuance and, upon issuance in accordance with the terms of the Warrant will be duly and validly issued, fully paid, and nonassessable and will be free of restrictions on transfer other than restrictions on transfer under applicable state and federal securities laws.

4.7 SEC Filings.

(a) Since October 16, 2013, Parent has timely filed (including any extension permitted under the SEC's rules) or otherwise furnished (as applicable) all registration statements, prospectuses, forms, reports, definitive proxy statements, schedules, statements and documents required to be filed or furnished by it under the means the Securities Act of 1933, as amended (the "Securities Act") or the Exchange Act, as the case may be, together with all certifications required pursuant to the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") such documents and any other documents filed by Parent with the SEC, as have been supplemented, modified or amended since the time of filing, collectively, the "Parent SEC Documents"). As of their respective filing dates, the Parent SEC Documents (i) did not (or with respect to Parent SEC Documents filed after the date hereof, will not) contain any untrue statement of any material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading and (ii) complied in all material respects with the applicable requirements of the Exchange Act or the Securities Act, as the case may be, the Sarbanes-Oxley Act and the applicable rules and regulations of the SEC thereunder.

(b) All of the audited consolidated financial statements and unaudited consolidated interim financial statements of Parent included in the Parent SEC Documents (i) have been or will be, as the case may be, prepared from, are in accordance with, and accurately reflect the books and records of Parent in all material respects as of the times and for the periods referred to therein, (ii) have been or will be, as the case may be, prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto or, in the case of interim financial statements, for normal and recurring year-end adjustments that are not material in amount or nature and as may be permitted by the SEC on Form 10-Q, Form 8-K or any successor or like form under the Exchange Act) and (iii) fairly present in all material respects the consolidated financial position and the consolidated results of operations, cash flows and changes in stockholders' equity of the Parent as of the dates and for the periods referred to therein. Without limiting the generality of the foregoing, (i) no independent public accountant of Parent has resigned or been dismissed as independent public accountant of Parent as a result of or in connection with any disagreement with Parent on a matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure, (ii) no executive officer of Parent has failed in any respect to make, without qualification, the certifications required of him or her under Section 302 or 906 of the Sarbanes-Oxley Act with respect to any form, report or schedule filed by Parent with the SEC since the enactment of the Sarbanes-Oxley Act and (iii) no enforcement action has been initiated or, to the knowledge of Parent, threatened against Parent by the SEC relating to disclosures contained in any Parent SEC Document.

ARTICLE V

COVENANTS

5.1 Conduct of Business Pending Closing.

(a) Each Seller Entity covenants and agrees that, between the date hereof and the Closing Date, or the earlier termination of this Agreement, except as Parent shall otherwise consent in writing, such Seller Entity shall (and shall cause its Affiliates, as applicable, to):

(i) Conduct operation of the Business only in, and shall not take any action except in, the ordinary course of business and in a manner consistent with past practice;

(ii) preserve intact the Acquired Assets in the ordinary course of business and in a manner consistent with past practice; and

(iii) use its commercially reasonable efforts to maintain in effect the Assigned Contracts.

(b) Each Seller Entity covenants and agrees that, between the date hereof and the Closing Date, or the earlier termination of this Agreement, except as Buyer shall otherwise consent in writing, such Seller Entity shall not (and shall not permit any of its Affiliates, as applicable, to):

(i) sell, transfer, lease, license, sublicense, grant or otherwise dispose of any Acquired Asset, other than sales of Inventory in the ordinary course of business;

(ii) amend or modify in any material way, or terminate, any Assigned Contract;

(iii) create, incur, suffer to exist or assume any Lien on any of the Acquired Assets;

(iv) sell, transfer, lease, license, sublicense, mortgage, pledge, encumber, grant or otherwise dispose of any of the Acquired Assets, or any rights to the Acquired Assets, omit to take any action the consequence of which adversely affects or could adversely affect any rights of such Seller Entity or any of its Affiliates to any of the Acquired Assets, amend or modify in any material way any existing agreements with respect to any of the Acquired Assets, disclose trade secrets to a third party or abandon or permit to lapse any rights of such Seller Entity or any of its Affiliates to any of the Acquired Assets;

(v) fail to maintain in full force and effect all insurance currently in effect with respect to the Acquired Assets;

(vi) adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization; or

(vii) in each case as it concerns the Acquired Assets, (1) make, revoke, or modify any Tax election; (2) change any Tax accounting period or method; (3) file any amended Tax Return; (4) enter into any closing agreement with respect to Taxes; (5) settle any material Tax claim or assessment; or (6) consent to any extension or waiver of the limitations period for the assessment of any Tax;

(viii) take any action or fail to take any action that would result in any of the representations and warranties set forth in Article III becoming false or inaccurate, that would, individually or in the aggregate, have a Business Material Adverse Effect, or that would impair the ability of such Seller Entity to consummate the transactions contemplated hereby in accordance with the terms hereof or delay such consummation.

(c) SBEEG and each Assigning Entity covenants and agrees that, between the date hereof and the Closing Date, or the earlier termination of this Agreement, except as Parent shall otherwise consent in writing, SBEEG and such Assigning Entity shall (and shall cause its Affiliates, as applicable, to):

(i) preserve intact any Acquired Assets owned or controlled by SBEEG or such Assigning Entity in the ordinary course of business and in a manner consistent with past practice;

(ii) cause all ownership interests in any IP Assets or Assigned Contract, including, without limitation, each of the Alshaya Agreement, the Emelah Agreement, the Uechi Agreements and the PHS Agreement, to the extent the same is not currently owned entirely be the Seller Entities to be assigned to the Seller Entities; and

(iii) use its commercially reasonable efforts to maintain in effect the Assigned Contracts.

5.2 Cooperation; Approvals, Filings and Consents.

(a) Upon the terms and subject to the conditions set forth in this Agreement, each party hereto shall use commercially reasonable efforts to take, or cause to be taken, all actions, and do, or cause to be done, and to assist and cooperate with the other party or parties in doing, all things necessary, proper or advisable to consummate the transactions contemplated hereby and to satisfy or cause to be satisfied all of the conditions precedent that are set forth in Article VI, as applicable to each of them.

(b) The Seller Entities, Buyer and Parent shall, as promptly as practicable, use commercially reasonable efforts to obtain all necessary Approvals from Governmental Authorities and make all other necessary registrations and filings under applicable Law required to be obtained or made by each of them in connection with the authorization, execution and delivery of this Agreement, the Merger Agreements and the Related Agreements and the consummation of the transactions contemplated hereby and thereby, if any.

(c) Each Seller Entity shall use its best efforts to obtain as promptly as practicable all other consents and novations from third parties and Governmental Authorities that, in the reasonable discretion of Parent, are necessary or desirable for the consummation of the transactions contemplated by this Agreement ("Third Party Consents"), including those Third Party Consents set forth on Schedule 7.2(c).

5 . 3 Access to Information. Prior to the Closing Date and upon reasonable notice, each Seller Entity shall afford to the Representatives of Buyer reasonable access during normal working hours to all of its properties, books, Contracts and records relating to the Acquired Assets, and the Seller Entities shall furnish promptly to Parent and Buyer all information concerning its properties, books, Contracts, records and personnel which relate to the Acquired Assets, as Parent or Buyer may reasonably request. Seller shall make available to the Representatives of Buyer or Parent upon the reasonable request of Buyer or Parent and during normal working hours all officers, employees, accountants, counsel and other Representatives of the Seller Entities as Buyer or Parent may reasonably request. Each Seller Entity shall use its best efforts to make available to the Representatives of Buyer or Parent, upon the reasonable request of Buyer or Parent, such suppliers of the Business or other Persons with whom such Seller Entity or any of its Affiliates maintains a similar business or commercial relationship with respect to the Acquired Assets or the Business. No investigation pursuant to this Section 5.3 or otherwise shall affect any representations, warranties, covenants or agreements of the Seller Entities set forth herein.

5.4 Notice of Certain Events.

(a) During the period from the date hereof until the Closing or the earlier termination of this Agreement, the Seller Entities shall promptly notify Parent and Buyer in writing of (i) the discovery by the Seller Entities of any event, condition, fact or circumstance that occurred or existed on or prior to the date of this Agreement and that caused or constitutes an inaccuracy in or breach of any representation or warranty made by the Seller Entities in this Agreement, (ii) any Action, event, condition, fact or circumstance that occurs, arises or exists after the date of this Agreement and that causes or constitutes, or could reasonably be expected to cause or constitute, an inaccuracy in or breach of any representation or warranty made by the Seller Entities in this Agreement if (A) such representation or warranty had been made as of the time of the occurrence, existence or discovery of such Action, event, condition, fact or circumstance or (B) such Action, event, condition, fact or circumstance had occurred, arisen or existed on or prior to the date of this Agreement, (iii) the occurrence or non-occurrence of any event the occurrence or non-occurrence of which has caused or may reasonably be expected to cause any condition to the obligations of any party hereto to effect the transactions contemplated by this Agreement to not be satisfied and (iv) any breach of any covenant or obligation of the Seller Entities. If any event, condition, fact or circumstance that is required to be disclosed pursuant to this Section 5.4 requires any change in the Disclosure Schedule, the Seller Entities shall promptly deliver to Buyer an update to the Disclosure Schedule specifying such change.

(b) Without limiting the provisions of Section 5.4(a), prior to the Closing Date or the earlier termination of this Agreement, the Seller Entities shall give prompt written notice to Parent and Buyer of (i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the consummation of the transactions contemplated by this Agreement, (ii) any notice or other communication from any Governmental Authority in connection with any Approval regarding the transactions contemplated by this Agreement, (iii) any Action commenced or threatened relating to or involving or otherwise affecting any Acquired Assets or the transactions contemplated by this Agreement, (iv) the occurrence of a breach or default or event that, with notice or lapse of time or both, would or would reasonably be expected to constitute a breach or default under any Assigned Contract or (v) any change, event or circumstance that would reasonably be expected to materially delay or impede the ability of the Seller Entities to consummate the transactions contemplated by this Agreement or to fulfill its or his obligations set forth herein or that could reasonably be expected to have, individually or in the aggregate, a Business Material Adverse Effect.

5.5 Public Announcements. Promptly following each of the signing of this Agreement and the Closing, Parent and the Seller Entities shall jointly issue a press release, in a form reasonably agreed to by Parent and the Seller Entities, with respect to the transactions contemplated hereby and by the Merger Agreements. No party shall issue or permit any of its respective Affiliates to issue any press release or other public announcement with respect to this Agreement or the Merger Agreements or the transactions contemplated hereby or thereby without the prior consent of the other parties hereto, such consent not to be unreasonably withheld, delayed or conditioned. Notwithstanding anything to the contrary in this Section 5.5 or Section 5.8, none of Parent or any Seller Entities or any of their respective Affiliates shall be prohibited from making any disclosure (a) required by applicable Laws (in which case the party required to make the release or statement shall allow the other parties reasonable time to comment on such release or statement in advance of such issuance to the extent permitted by applicable Laws) or (b) made in connection with the enforcement of any rights or remedies relating to this Agreement or the transactions contemplated hereby.

5.6 Use of Names. From and after the Closing, except to the extent otherwise provided in the BLA, no Seller Entity or any of their respective Affiliates shall use or permit to be used any names or other Trademarks included in the Acquired Assets or any derivations thereof. Within thirty (30) days after the Closing Date, the Seller Entities shall legally change the entity names of each Seller Entity and all other Affiliates of any such entity containing the word “Katsuya,” “Katsu,” “Cleo” or derivation thereof to a name not containing any such word or derivation thereof, and shall deliver written evidence of such change to Parent within ten (10) days after receipt of such evidence from the secretary of state of the state of organization of such entity.

5.7 Certain Tax Matters.

(a) All Taxes imposed or levied by reason of, in connection with or attributable to the sale, assignment and transfer of the Acquired Assets contemplated hereunder, including any assignment contemplated by the Transfer Documents (collectively, “Transfer Taxes”) shall be borne equally by Buyer, on the one hand, and the Seller Entities, on the other hand.

(b) Parent, Buyer, the Seller Entities and their Affiliates shall provide each other with such assistance as may reasonably be requested in connection with the preparation of any Tax Return, application for exemption or refund, audit or other examination by any Governmental Authority or action, suit, proceeding, claim, arbitration or investigation relating to Liability for Taxes in connection with the Acquired Assets.

5.8 Non-Competition, Non-Solicitation and Confidentiality.

(a) For a period of forty-two (42) months from and after the Closing Date (the "Restricted Period") and except to the extent otherwise provided in the BLA, no Seller Entity shall, nor shall any Seller Entity permit, cause or encourage any of their respective Affiliates to, engage or participate in, directly or indirectly, or otherwise advise, consult with, invest in, lend money to or have any other financial interest in, directly or indirectly, anywhere in the world, any (i) high end or fine dining Japanese restaurant concept or (ii) a restaurant concept which is substantially similar to the Seller Entities' "Cleo" restaurant concept as the same exists as of the Effective Date anywhere in the world (a "Competitive Business"). For the avoidance of doubt, Competitive Business shall not include any "fast casual" restaurants.

(b) For a period of (i) eighteen (18) months from and after the Closing Date, with respect to any general manager or chef of any Restaurant, and (ii) twelve (12) months from and after the Closing Date, for all other employees referred to in this Section 5.8(b), no Seller Entity shall, nor shall any Seller Entity permit, cause or encourage any of their respective Affiliates to, recruit, solicit, offer employment to, employ or engage as a consultant, any employee of the Restaurants who accepts employment or engagement with Buyer or any of its Affiliates (including any Merger Entity) at any time following the Closing; provided, however, that the foregoing shall not prevent any Seller Entity or any of their respective Affiliates from hiring, offering to hire or otherwise engaging any such employee who responds to a general solicitation or advertisement.

(c) Each Seller Entity acknowledges and agrees that Buyer and Parent are acquiring from the Seller Entities and their respective Affiliates certain trade secrets and other confidential and proprietary information relating to, or used in connection with, the Acquired Assets, including confidential information included in the IP Assets (collectively, the " Confidential Information"), and that Buyer and Parent expect each Seller Entity and their respective Affiliates to protect the confidentiality of the Confidential Information. Accordingly, each Seller Entity covenants and agrees that, from and after the date hereof, they shall, and shall cause their respective Affiliates to, hold the Confidential Information in the strictest confidence and shall not use or disclose to any Person, directly or indirectly, any Confidential Information for any purpose whatsoever; provided, however, that a Seller Entity may disclose Confidential Information (i) as is required by Law or by legal, judicial or regulatory process; or (ii) that has become available to the public generally other than by acts by any Seller Entity, any of their respective Affiliates or any of their respective Representatives in violation of this Agreement or any other obligation of confidentiality; provided that, prior to making any such disclosure in the case of the foregoing clause (i), it shall provide reasonable advance notice to Buyer and Parent and reasonable assistance to Buyer and Parent in attempting to obtain a protective Order or other appropriate remedy concerning such disclosure. Each Seller Entity agrees that it shall be responsible for any breach or violation of the provisions of this Section 5.8 by any of its respective Affiliates or its respective Affiliates' Representatives.

(d) Each Seller Entity acknowledges that the covenants contained in this Section 5.8 are a material and substantial part of the transaction contemplated by this Agreement and are entered into in connection with and as an inducement to the acquisition by Buyer of the Acquired Assets and the other transactions contemplated by this Agreement, without which Buyer and Parent would be unwilling to enter into this Agreement or consummate the transactions contemplated hereby.

(e) Each Seller Entity acknowledges and agrees that (i) the provisions of this Section 5.8 are necessary and reasonable to protect the Confidential Information and the goodwill being acquired by Buyer pursuant to this Agreement; (ii) the specific time, geography and scope of the provisions set forth in this Section 5.8 are reasonable and necessary to protect the business interests of Buyer, Parent and their respective Affiliates as they relate to the Business; and (iii) in the event of a breach of any agreement set forth in this Section 5.8, Buyer and Parent would suffer substantial irreparable harm and would not have an adequate remedy at law for such breach. In recognition of the foregoing, each Seller Entity agrees that in the event of a breach or threatened breach of any of the provisions set forth in this Section 5.8, in addition to such other remedies as Buyer or Parent may have at Law, without posting any bond or security or requirement for proof of actual damages, Buyer or Parent shall be entitled to seek equitable relief, in the form of specific performance, or temporary, preliminary or permanent injunctive relief, or any other equitable remedy which then may be available. The seeking of such injunction or Order shall not affect Buyer or Parent's right to seek and obtain damages or other equitable relief on account of any such actual or threatened breach.

(f) If any provision of this Section 5.8 is held by a Court to be overly broad in duration, geographical coverage, substantive scope, or otherwise, that provision will be narrowed to the broadest term permitted by applicable Law and enforced as so narrowed, and such Court is hereby given express authority by the undersigned to modify the offending provisions hereof without the signature or prior consent of any Seller Entity to the extent necessary to make them enforceable to the fullest extent permitted under applicable Law. Each provision of this Section 5.8 restricting the activities of any Seller Entity in any way is intended to be separate from and enforceable separately from each such other provision.

5.9 No Solicitation of Other Proposals.

(a) From the date of this Agreement until the Closing or the earlier termination of this Agreement pursuant to Article VII, the Seller Entities shall not directly or indirectly (a) solicit, initiate, encourage, negotiate or discuss any inquiries, proposals, discussions or offers from or with any Person (other than Parent or Buyer) or enter into any agreement with any such Person (other than Parent or Buyer) relating to, or consummate any Acquisition Proposal or (b) participate in any discussions or negotiations that any of them or any of their respective Representatives have been having with any Person (other than Parent or Buyer) that relate to such matters (it being understood that any such discussions or negotiations shall immediately terminate on the date hereof) and shall not provide any such Person any additional information related to such matters or otherwise assist or participate in, or facilitate in any other manner, any effort or attempt by any Person to do or seek any of the foregoing. Additionally, the Seller Entities will notify Buyer as soon as practicable if any Person makes any proposal, offer, inquiry to or contact with the Seller Entities which constitutes, or that would reasonably be expected to lead to, an Acquisition Proposal together with the material terms and conditions of such proposal, offer, inquiry or contact. For purposes of this Agreement, the term "Acquisition Proposal" shall mean any inquiry, proposal or offer from any Person (other than Parent, Buyer and their respective Affiliates and Representatives) relating to the acquisition, merger, recapitalization or share exchange of any Merger Entity, or any acquisition or license of any material portion of the assets of any Merger Entity or the Acquired Assets, or any purchase of any equity securities or interests (or instruments convertible into equity securities or interests) of any Merger Entity, or any other transaction, the consummation of which would reasonably be expected to impede, interfere with, prevent or materially delay the consummation of the transactions contemplated hereby.

(b) Notwithstanding anything herein to the contrary, this Section 5.9 shall not limit the ability of any Seller Entity to enter into a transaction relating to the acquisition, merger, recapitalization or share exchange of any Seller Entity, or any acquisition or license of any material portion of the assets of any Seller Entity other than the Acquired Assets or the equity interests of the Merger Entities held by such Seller Entity, or any purchase of any equity securities or interests (or instruments convertible into equity securities or interests) of any Seller Entity, provided, however, that any such transaction shall not otherwise limit, conflict or otherwise affect the Seller Entities obligations hereunder or the obligations of the Merger Entities under the Merger Agreements.

5.10 Mutual Cooperation. From and after the Closing Date, the Seller Entities, on the one hand, and Buyer and Parent, on the other hand, shall use their respective reasonable efforts to provide to the other party(ies) (the "requesting party") such books, records and information and make available to the requesting party such personnel (such party(ies) providing such books, records or information or making available such personnel to the requesting party, the "providing party"), in each case as may be reasonably requested in writing by the requesting party, for the purpose of reasonably assisting the requesting party in responding to Governmental Authority or professional inquiries, making required Governmental Authority filings (including Tax filings) or defending or prosecuting any Action relating to or arising out of the Acquired Assets or the Assumed Liabilities prior to or after the Closing Date; provided that subject to the provisions of Article VII hereof, the requesting party shall promptly reimburse the providing party for any reasonable out-of-pocket expenses incurred by the providing party in connection with the provision of any such assistance (including reasonable legal fees and disbursements), but the requesting party shall not be required to reimburse the providing party for such party's time spent in such cooperation or the salaries or costs of fringe benefits or other similar expenses paid by the providing party to its Affiliates or related Persons or their respective Representatives while such Persons are providing any such assistance.

5.11 Insurance. Buyer and Parent acknowledges and agrees that, from and after the Closing Date, the Acquired Assets shall cease to be insured by any insurance policies or any self-insured programs of the Seller Entities or their Affiliates. Notwithstanding the foregoing, to the extent that, following the Closing, (a)(i) there are insurance policies maintained by the Seller Entities or any of their Affiliates (the "Seller Insurance Policies") insuring against any loss, liability, damage or expense relating to the Acquired Assets ("Business Liabilities") relating to or arising out of acts or omissions occurring or existing on or prior to the Closing and (ii) the Seller Insurance Policies permit claims to be made with respect to such Business Liabilities relating to or arising out of acts or omissions occurring or existing on or prior to the Closing (such claims, the "Business Claims") and (B)(i) any such Business Claim is assignable, the Seller Entities shall assign such Business Claim to Buyer and (ii) any such Business Claim is not assignable, the Seller Entities shall, and shall cause such Affiliates to, submit and administer the collection of payment in respect of such Business Claim on behalf of Buyer under the Seller Insurance Policies.

5.12 Parent SEC Filings. Each Seller Entity shall, and shall cause the Merger Entities to, promptly furnish to Parent all financial statements and other information concerning the Acquired Assets or the transactions contemplated by this Agreement and the Merger Agreements that may be required by applicable securities laws or reasonably requested by Parent for inclusion in each Current Report on Form 8-K required to be filed with the SEC by Parent in connection with the signing and Closing of this Agreement (each, an "8-K"), including, without limitation, any financial statements of the Merger Entities and relating to the Acquired Assets (including all required consents). After the Closing Date, each Seller Entity shall, upon Parent's request and at Parent's expense, promptly furnish to Parent in writing all information concerning the Acquired Assets that may be required by applicable securities laws or reasonably requested by Parent for inclusion in any Parent SEC Document, including, without limitation, as necessary in connection with a public offering by Parent. Each of the parties hereto agrees to promptly correct any information provided by it for use in any Parent SEC Document, if and to the extent that it shall have become false or misleading in any material respect or as otherwise required by applicable law. The Seller Entities and their counsel shall be given a reasonable opportunity to review any Parent SEC Document relating to the transactions contemplated by this Agreement before it is filed with the SEC, and Parent shall give due consideration to the reasonable additions, deletions or changes suggested thereto by the Seller Entities and their counsel. In addition, Parent shall provide the Seller Entities and their counsel with copies of any written comments, and shall inform them of any oral comments, that Parent or its counsel may receive from time to time from the SEC or its staff with respect to any Parent SEC Document relating to the transactions contemplated by this Agreement promptly after receipt of such comments, and any written or oral responses thereto. The Seller Entities and their counsel shall be given a reasonable opportunity to review any such written responses and Parent shall give due consideration to the reasonable additions, deletions or changes suggested thereto by the Seller Entities and their counsel. Simultaneously with each of the signing of this Agreement and the Closing, Parent shall file an 8-K with the SEC and distribute the related Press Release.

5.13 Financing and Other Cooperation. From the date of this Agreement until the Closing or the earlier termination of this Agreement pursuant to Article VII, each Seller Entity shall permit, the Parent and its Affiliates and lenders and its and their Representatives to have reasonable access (at reasonable times following reasonable notice) to the Seller Entities' premises, properties, books, records and personnel, and provide to the foregoing Persons (a) such contracts, financial and operating data and other information and documents of, or pertaining to, the Seller Entities, the Acquired Assets or the Business, as the Parent, any prospective providers of debt financing or their respective Representatives may reasonably request from time to time and (b) such cooperation in connection with the arrangement of any debt financing as may be reasonably requested by the Parent and Buyer; provided, that in the cases of clauses (a) and (b) such access shall not unreasonably interfere with the conduct by any Seller Entity of its businesses in the ordinary course of business. Each Seller Entity shall make available to the Representatives of Parent upon the reasonable request of Parent and during normal working hours all officers, employees, accountants, counsel and other Representatives of such Seller Entity and its Affiliates as Parent may reasonably request. Each Seller Entity shall use its best efforts to make available to the Representatives of Parent, upon the reasonable request of Parent, such suppliers of the Business and such Seller Entity's or other Persons with whom such Seller Entity or any of its Affiliates maintains a similar business or commercial relationship with respect to such Seller Entity or the Business.

5.14 Parent Financing. The Parent shall use commercially reasonable efforts to take, or cause to be taken, all actions and do, or cause to be done, all thing necessary, proper or advisable to arrange the financing necessary to close the transactions contemplated hereby, including, without limitation, using all commercially reasonable efforts to consummate the financing necessary to consummate the transactions contemplated herein at or prior to the Closing.

5.15 Customer Information. The Seller Entities shall jointly own any and all Customer Information which is included in the Acquired Assets, including the Databases. Each Party shall at all times comply in all material respects with all Applicable Law concerning (a) the privacy and use of the Databases which are included in the Acquired Assets and the sharing of such information and data with third parties (including, without limitation, any restrictions with respect to Parent, Buyer or any third party's ability to use, transfer, store, sell or share such information and data); and (b) the establishment of adequate security measures to protect the Customer Information.

ARTICLE VI

CONDITIONS PRECEDENT TO CLOSING

6.1 Conditions to Obligation of Each Party. The respective obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing of the following conditions:

(a) Governmental Approvals. All necessary notifications, declarations and filings with and Approvals from Governmental Authorities, if any, shall have been obtained or made and any applicable waiting periods shall have expired.

(b) No Injunctions or Restraints; Illegality. No temporary restraining order, preliminary or permanent injunction or other Order (whether temporary, preliminary or permanent) issued by any Court of competent jurisdiction or other legal restraint or prohibition shall be in effect that prevents the consummation of the transactions contemplated hereby, nor shall any Action brought by any Governmental Authority or any other Person seeking any of the foregoing be pending, and there shall not be any action taken, or any Law or Order enacted, entered, enforced or deemed applicable to the transactions contemplated hereby, that makes the consummation of such transactions as contemplated herein illegal.

6.2 Additional Conditions to Obligations of Buyer and Parent. The obligations of each of Buyer and Parent to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing of the following additional conditions, unless waived in writing by Buyer and Parent:

(a) Representations and Warranties. Each of the representations and warranties of each Seller Entity set forth in Article III that is qualified by "materiality," "Business Material Adverse Effect" or a similar qualifier shall be true and correct in all respects, and each of such representations and warranties that is not so qualified shall be true and correct in all material respects, in each case, as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (except for representations and warranties made as of a specified date, the accuracy of which will be determined only as of the specified date), in all cases after giving effect to any update to the Disclosure Schedule pursuant to Section 5.4(a).

(b) Agreements and Covenants. Each Seller Entity shall have performed or complied in all respects with each obligation, agreement and covenant to be performed or complied with by such Seller Entity under this Agreement on or prior to the Closing Date.

(c) No Business Material Adverse Effect. From and including the date hereof, there shall not have occurred or arisen any events, changes, facts, conditions circumstances, nor will there exist any events, changes, facts, conditions or circumstances, that individually or in the aggregate have resulted in or could reasonably be expected to result in a Business Material Adverse Effect.

(d) Officer's Certificate. Each Seller Entity shall have delivered to Buyer and Parent a certificate of an executive officer, dated as of the Closing Date, in form and substance reasonably satisfactory to Buyer and Parent, certifying that the conditions set forth in Sections 8.2(a), 8.2(b) and 8.2(c) have been satisfied.

(e) Good Standing Certificate. Each Seller Entity shall have delivered to Buyer and Parent a certificate of good standing with respect to such Seller Entity from the Secretary of State of such Seller Entity's jurisdiction of organization, which certificate shall be dated within five (5) days before the Closing Date.

(f) Consents and Approvals. All Third Party Consents, and all other Approvals from any Persons, that, in the reasonable discretion of Buyer and Parent, are necessary for the consummation of the transactions contemplated hereby on the terms, and conferring upon Buyer all of the rights and benefits, as contemplated herein, shall have been received in form and substance satisfactory to Buyer and Parent.

(g) FIRPTA Certificate. Each Seller Entity shall have delivered to Buyer certificates of non-foreign status that complies with Treasury Regulations promulgated under Section 1445 of the Code to eliminate withholding responsibility for Buyer under Section 1445 of the Code on the transactions contemplated hereunder (such certificates to be in a form reasonably satisfactory to Buyer).

(h) Related Agreements. Each Seller Entity shall have executed and delivered, or cause its Affiliate, as applicable, to execute and deliver, to Buyer and Parent each of the Related Agreements to which such Seller Entity is a party and the actions required to be taken under the Related Agreements by such Seller Entity at or prior to the Closing shall have been taken.

(i) Indebtedness and Liens. All Indebtedness (including capital lease obligations) with respect to the Acquired Assets and Liens on any of the Acquired Assets shall have been fully released and discharged pursuant to such documents in form and substance reasonably satisfactory to Buyer and Parent, and the Seller Entities shall have made all necessary filings and taken all other action necessary to effect such releases and discharges, including filing all necessary UCC termination statements in all applicable jurisdictions.

(j) 8-K. Parent shall have received all information required in preparing and filing each 8-K, including, but not limited to, all required audited and pro forma financial statements as is required to be filed with the SEC, and such 8-K shall be in a form reasonably acceptable for filing to Parent and the Seller Entities.

(k) Merger Agreements. All of the conditions set forth in Section 4.01 of each Merger Agreement have been satisfied or waived (other than any such conditions that by their terms cannot be satisfied until the "Closing Date" set forth in the applicable Merger Agreement, which conditions shall be required to be so satisfied or waived on the "Closing Date" set forth in the applicable Merger Agreement).

(l) Material Adverse Change. Since the date of this Agreement, there shall not have occurred a Material Adverse Change, it being acknowledged that any disclosure of a matter in the Disclosure Schedule indicating that a matter might have a Material Adverse Change shall not limit the Buyer's ability to assert that such matter has had a Material Adverse Change for purposes of this Section 6.2(l).

(m) Assignment of IP Assets and Assigned Contracts. All ownership interests in any IP Assets or Assigned Contract, including, without limitation, each of the Alshaya Agreement, the Emelah Agreement, the Uechi Agreements and the PHS Agreement, to the extent the same is not owned entirely be the Seller Entities as of the date hereof shall have been assigned to the Seller Entities.

(n) Uechi Letter. Each of Katsuya Uechi and SBE Restaurant Group, LLC shall have executed and delivered a side letter in a form agreed to by the Parties (the "Uechi Letter").

(o) Minimum EBITDA. The consolidated EBITDA (determined in accordance with GAAP) for the Business (including the Restaurants) shall be at least $7,100,000 for the twelve (12) month period ended as of June 30, 2015, inclusive of (I) licensing fees and (II) management fees earned from the management of restaurants which are part of the Business from managed units consistent with how the parties have calculated "EBITDAM" and such fees consistent with past practice.

6.3 Additional Conditions to Obligations of the Seller Entities. The obligations of the Seller Entities to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing of the following additional conditions, unless waived in writing by the Seller Entities:

(a) Representations and Warranties. Each of the representations and warranties of Buyer and Parent set forth in Article IV that is qualified by "materiality" or a similar qualifier shall be true and correct in all respects, and each of such representations and warranties that is not so qualified shall be true and correct in all material respects, in each case, as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (except for representations and warranties made as of a specified date, the accuracy of which will be determined only as of the specified date).

(b) Agreements and Covenants. Buyer and Parent shall have performed or complied in all respects with each obligation, agreement and covenant to be performed or complied with by it under this Agreement on or prior to the Closing Date.

(c) Officer's Certificate. Each of Buyer and Parent shall have delivered to the Seller Entities a certificate of an officer of Buyer or Parent, as applicable, dated as of the Closing Date, certifying that the conditions set forth in Sections 6.3(a) and 6.3(b) have been satisfied.

(d) Related Agreements. Buyer and Parent shall have executed and delivered to the Seller Entities each of the Related Agreements to which it is a party and the actions required to be taken thereunder by Buyer at or prior to the Closing thereunder shall have been taken.

(e) Merger Agreements. All of the conditions set forth in Section 4.02 of each Merger Agreement have been satisfied or waived (other than any such conditions that by their terms cannot be satisfied until the "Closing Date" set forth in the applicable Merger Agreement, which conditions shall be required to be so satisfied or waived on the "Closing Date" set forth in the applicable Merger Agreement).

ARTICLE VII

SURVIVAL; INDEMNIFICATION

7.1 Survival. Subject to the provisions of this Article IX, each of the representations and warranties contained in this Agreement, any Related Agreement or any exhibit or certificate delivered by or on behalf of the Seller Entities, Parent or Buyer pursuant to this Agreement shall survive the Closing for a period of eighteen (18) months after the Closing Date; provided, however, that the Fundamental Representations shall remain in full force and effect indefinitely. The date upon which any representation or warranty shall terminate is referred to herein as the "Survival Date." Unless otherwise expressly set forth in this Agreement, the covenants and agreements set forth in this Agreement shall survive the Closing and remain in effect indefinitely.

7.2 Indemnification by the Seller Entities.

(a) Subject to the other terms and conditions of this Article VII, from and after the Closing, the Seller Entities, jointly and severally, shall indemnify, defend and hold harmless Parent, Buyer, its respective Affiliates and their respective successors and assigns and the respective Representatives of each of the foregoing (the "Buyer Indemnified Persons") from and against any and all Losses of every kind, nature or description asserted against, or sustained, incurred, suffered or accrued directly or indirectly by, such Buyer Indemnified Person that arise out of, relate to or result from or as a consequence of any of the following:

(i) Without giving effect to any supplement to the Disclosure Schedule provided to Buyer and Parent pursuant to Section 5.4(a), the breach or inaccuracy of any representation or warranty of the Seller Entities contained in this Agreement, any Related Agreement or any exhibit or certificate delivered hereunder;

(ii) the breach or non-fulfillment of, or non-compliance with, any agreement, obligation or covenant of the Seller Entities or any of their respective Affiliates contained in this Agreement or in any Related Agreement;

(iii) any Excluded Liability;

(iv) any Taxes of any kind relating to or arising in connection with the transfer of the Acquired Assets to Buyer;

(v) the ownership of the Acquired Assets prior to the Closing, except with respect to any Liabilities assumed pursuant to Section 1.3(b); or

(vi) any claim by any Seller Entity, Merger Entity or the members of any such Merger Entity relating to the allocation of the aggregate purchase price or other consideration payable by Buyer to such parties among such parties pursuant to this Agreement or any Merger Agreement.

(b) Any Losses that a Buyer Indemnified Person is entitled to recover pursuant to Section 7.2(a) may be satisfied, at Parent's election, by setting off any amounts owed (or to become due and owing) by Parent, Buyer or any of their respective Affiliates to the Seller Entities pursuant to this Agreement or any Related Agreement. Any Losses that become payable to a Buyer Indemnified Person pursuant to Section 7.2(a) that are not satisfied in accordance with the preceding sentence shall be payable by the Seller Entities, jointly and severally, upon demand, by wire transfer of immediately available funds to an account designated in writing by such Buyer Indemnified Person.

7.3 Indemnification by Buyer and Parent.

(a) Subject to the other terms and conditions of this Article VII, from and after the Closing, Parent and Buyer shall on a joint and several basis indemnify, defend and hold harmless the Seller Entities, their respective Affiliates, successors and assigns and the respective Representatives of each of the foregoing (the "Seller Indemnified Persons") from and against any and all Losses of every kind, nature or description asserted against, or sustained, incurred, suffered or accrued directly or indirectly by, such Seller Indemnified Person which arise out of, relate to or result from or as a consequence of any of the following:

(i) the breach or inaccuracy of any representation or warranty of Buyer contained in this Agreement, any Related Agreement or any certificate delivered by Buyer hereunder;

(ii) the breach or non-fulfillment of, or non-compliance with, any agreement, obligation or covenant of Parent, Buyer or any of their respective Affiliates contained in this Agreement or in any Related Agreement; or

(iii) any Assumed Liability.

(b) Any Losses that a Seller Indemnified Person is entitled to recover pursuant to Section 7.3(a) shall be payable by Parent, upon demand, by wire transfer of immediately available funds to an account designated in writing by such Seller Indemnified Person.

7.4 Limitations on Indemnification by the Seller Entities. Subject to the provisions of Section 7.8:

(a) no indemnification shall be payable to a Buyer Indemnified Person as a result of any Losses arising under Section 7.2(a)(i) until the aggregate amount of all Losses incurred by all Buyer Indemnified Persons, the calculation of which will include all Losses paid pursuant to the Merger Agreements (as Losses is defined therein), exceeds Three Hundred Thousand Dollars ($300,000) (the "Deductible"), whereupon Buyer Indemnified Persons shall be entitled to receive the amount of all Losses in excess of the Deductible; provided, however, that the foregoing shall not apply to any Losses resulting from or arising out of any breach or inaccuracy of any Fundamental Representation;

(b) the maximum aggregate liability of the Seller Entities for all Losses arising under Section 7.2(a)(i) (other than claims arising out of any breach or inaccuracy of any Fundamental Representation), the calculation of which will include all Losses paid pursuant to the Merger Agreements (as Losses is defined therein), shall not exceed Seven Million Five Hundred Thousand Dollars ($7,500,000);

(c) each Buyer Indemnified Person shall take all commercially reasonable steps to mitigate such Buyer Indemnified Person's Losses (other than with respect to matters concerning Tax) upon and after becoming aware of any event or condition that would reasonably be expected to give rise to any Losses that are indemnifiable hereunder, provided, however, that, for the avoidance of doubt, in no event shall any Buyer Indemnified Person be required to bring an action against the provider of any party, including any insurance provider, for such recovery; and

(d) all Losses hereunder will be determined net of any amounts actually recovered by Buyer Indemnified Person under any insurance policies in effect prior to or after the Closing in connection with the facts giving rise to the right of indemnification (net of any deductible amounts) paid within ninety (90) days of the submission of a claim relating thereto.

7.5 Limitations on Indemnification by Buyer. Subject to the provisions of Section 9.8:

(a) no indemnification shall be payable to a Seller Indemnified Person as a result of any Losses arising under Section 7.3(a)(i) until the aggregate amount of all Losses incurred by all Seller Indemnified Persons exceeds the Deductible, whereupon Seller Indemnified Persons shall be entitled to receive the amount of all Losses in excess of the Deductible; provided, however, that the foregoing shall not apply to any Losses resulting from or arising out of any breach or inaccuracy of any Fundamental Representation; and

(b) the maximum aggregate liability of Buyer for all Losses arising under Section 7.3(a)(i) (other than claims arising out of any breach or inaccuracy of any Fundamental Representation) shall not exceed Seven Million Five Hundred Thousand Dollars ($7,500,000).

7.6 Indemnification Process.

(a) Any Buyer Indemnified Person or Seller Indemnified Person (an "Indemnified Person") seeking indemnification under this Article IX shall give each party from whom indemnification is being sought (each, an "Indemnifying Person") notice of any matter (a "Notice of Claim") which such Indemnified Person has determined has given rise to or would reasonably be expected to give rise to a right of indemnification under this Agreement, stating the amount of the Loss, if known (a "Loss Estimate"), describing the breach or inaccuracy and other material facts and circumstances upon which such claim is based and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed or arises as promptly as practicable after becoming aware of such matter; provided, however, that the failure so to provide such Notice of Claim or any defect in such Notice of Claim will not affect the rights of any Indemnified Persons to obtain indemnification hereunder, except to the extent such failure to include information actually and materially prejudices such Indemnifying Person. Notwithstanding the foregoing, no claim shall be brought under this Article VII with respect to an event of indemnification described in Section 7.2(a)(i) or 7.3(a)(i) unless the Indemnified Person, at any time prior to the applicable Survival Date, gives the Indemnifying Person(s) a Notice of Claim with respect to such claim. If a Notice of Claim has been given on or prior to the applicable Survival Date, the relevant representations and warranties shall survive as to such claim until the claim has been finally resolved.

(b) Except as provided below, the Indemnifying Person may elect to assume the defense of any Claims for indemnification hereunder resulting from the assertion of liability by third parties (each, a "Third Party Claim") with counsel reasonably satisfactory to the Indemnified Person by (i) giving notice to the Indemnified Person of its election to assume the defense of the Third Party Claim and (ii) giving the Indemnified Person evidence acceptable to the Indemnified Person that the Indemnifying Person has adequate financial resources to defend against the Third Party Claim and fulfill its obligations under this Article VII, in each case no later than ten (10) days after the Indemnified Person gives notice of the assertion of a Third Party Claim. If the Indemnifying Person elects to assume the defense of a Third Party Claim:

(i) it shall diligently conduct the defense and shall not be liable to the Indemnified Person for any Indemnified Person's fees or expenses subsequently incurred in connection with the defense of the Third Party Claim other than reasonable costs of investigation;

(ii) the election will conclusively establish for purposes of this Agreement that the Indemnified Person is entitled to relief under this Agreement for any Loss arising from or in connection with the Third Party Claim (subject to the provisions of this Article VII);

(iii) no compromise or settlement of such Third Party Claim may be effected by the Indemnifying Person without the Indemnified Person's consent unless (A) there is no finding or admission of any violation by the Indemnified Person of any Law or any rights of any Person, (B) the Indemnified Person receives a full release of and from any other claims that may be made against the Indemnified Person by the third party bringing the Third Party Claim, and (C) the sole relief provided is monetary damages that are paid in full by the Indemnifying Person; and

(iv) the Indemnifying Person shall have no liability with respect to any compromise or settlement of such claims effected without its consent.

(c) If the Indemnifying Person does not assume the defense of a Third Party Claim in the manner and within the period provided above, the Indemnified Person may conduct the defense of the Third Party Claim at the expense of the Indemnifying Person. The Indemnifying Person will be bound by any determination resulting from such Third Party Claim or, upon the consent of the Indemnifying Person, which consent shall not be unreasonably withheld, conditioned or delayed, any compromise or settlement effected by the Indemnified Person.

(d) With respect to any Third Party Claim subject to this Article VII:

(i) any Indemnified Person and any Indemnifying Person, as the case may be, shall keep the other Person fully informed of the status of such Third Party Claim and any related Action at all stages thereof where such Person is not represented by its own counsel; and

(ii) both the Indemnified Person and the Indemnifying Person, as the case may be, shall render to each other such assistance as they may reasonably require of each other and shall cooperate in good faith with each other in order to ensure the proper and adequate defense of any Third Party Claim.

(e) With respect to any Third Party Claim subject to this Article VII, the parties shall cooperate in a manner to preserve in full (to the extent possible) the confidentiality of all confidential information and the attorney-client and work-product privileges, including making reasonable best efforts to comply with the provisions of Section 9.13. In connection therewith, each party agrees that:

(i) it will use its best efforts, in respect of any Third Party Claim in which it has assumed or participated in the defense, to avoid production of Confidential Information (consistent with applicable Law and rules of procedure); and

(ii) all communications between any party and counsel responsible for or participating in the defense of any Third Party Claim shall, to the extent possible, be made so as to preserve any applicable attorney-client or work-product privilege.

7.7 Fraud and Related Claims; Characterization of Payments. Notwithstanding any provision of this Agreement to the contrary, nothing contained in this Agreement shall in any way limit, impair, modify or otherwise affect the rights of an Indemnified Person to bring any claim, demand, suit or cause of action otherwise available to such Indemnified Person based upon, or to seek or recover any Losses arising from or related to, nor shall any of the limitations set forth in Sections 7.1, 7.4 and 7.5 apply with respect to, an allegation or allegations of fraud or intentional misrepresentation in connection with this Agreement or any Related Agreement. The parties agree that any payment pursuant to an indemnification obligation under this Article VII shall be treated for Tax purposes as an adjustment to the Purchase Price, unless otherwise required by Law. If, notwithstanding the treatment required by the preceding sentence, any indemnification payment under this Article VII is determined to be taxable to an Indemnified Person, Indemnifying Party shall also indemnify the Indemnified Person for any Taxes incurred by reason of the receipt of such payment and any Losses incurred by the Indemnified Person in connection with such Taxes (or any asserted deficiency, claim, demand, action, suit, proceeding, judgment or assessment, including the defense or settlement thereof, relating to such Taxes).

7.8 Knowledge and Investigation. The right of any Indemnified Person to indemnification pursuant to this Article VII will not be affected by any investigation conducted or knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing, with respect to the accuracy of any representations or warranty, or performance of or compliance with any covenant or agreement hereunder. The waiver of any condition contained in this Agreement or in any Related Agreement based on the breach of any such representation or warranty, or on the performance of or compliance with any such covenant or agreement, will not affect the right of any Indemnified Person to indemnification pursuant to this Article VII based on such representation, warranty, covenant or agreement.

7.9 Remedies Cumulative; Exclusivity. The rights of each Indemnified Person under this Article VII are cumulative, and each Indemnified Person shall have the right in any particular circumstance, in its sole discretion, to enforce any provision of this Article VII without regard to the availability of a remedy under any other provision of this Article VII. The remedies set forth in this Article VII and in the Merger Agreements shall be the sole and exclusive remedies of each of Parent, Buyer and the Seller Entities with respect to the matters set forth herein and therein. For the avoidance of doubt and subject to the rights of Parent under the terms of any debt commitment letters with any lender, none of the parties hereto, nor or any of their respective Affiliates, solely in their respective capacities as parties to this Agreement, shall have any rights or claims against any such lender or any Affiliate thereof (collectively, the "Debt Financing Sources"), solely in their respective capacities as lenders or arrangers in connection with the transactions contemplated by this Agreement including any related financing.

ARTICLE VIII

TERMINATION, AMENDMENT, WAIVER AND EXPENSES

8.1 Termination. This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing:

(a) By written consent of Buyer and Parent, on the one hand, and the Seller Entities, on the other hand;

(b) By either Buyer and Parent, on the one hand, or the Seller Entities, on the other hand, if the Closing shall not have occurred on or before August 31, 2015 which date may be extended from time to time by mutual written consent of Buyer and Parent, on the one hand, and the Seller Entities, on the other hand (the "Outside Date"); provided, however, that the right to terminate this Agreement under this Section 10.1(b) shall not be available to any party (including Affiliates of such party) whose failure to fulfill any obligation, including the satisfaction of any closing condition, under this Agreement or any Merger Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before such date;

(c) By either Buyer and Parent, on the one hand, or the Seller Entities, on the other hand, if a Court or Governmental Authority shall have issued an Order or taken any other action, in each case, which has become final and non-appealable and which permanently restrains, enjoins or otherwise prohibits the Closing;

(d) By Parent or Buyer, if (I) neither Buyer nor Parent is in material breach of any its obligations under this Agreement, (II) neither Parent nor any Merger Sub (as defined in each Merger Agreement) is in material breach of any of its obligations under any Merger Agreement,(III) any Seller Entity or Merger Entity shall have breached in any material respect any of their respective representations or warranties or if any Seller Entity or Merger Entity shall have failed to perform in any material respect any of their respective covenants or other agreements contained in this Agreement or the Merger Agreement to which such Merger Entity is party, respectively, which breach or failure to perform would render unsatisfied any condition contained in Section 6.1 or 6.2 of this Agreement or Section 4.01 of the Merger Agreement, respectively, and (i) is incapable of being cured or (ii) if capable of being cured is not cured prior to the earlier of (A) the Business Day prior to the Outside Date or (B) the date that is twenty (20) days from the date that the Seller Entities or such Merger Entity, as applicable, are notified of such breach or failure to perform; or

(e) By the Seller Entities, if (I) no Seller Entity is in material breach of any of their respective obligations, including the satisfaction of any closing condition, under this Agreement, (II) no Merger Entity is in material breach of any of its obligations under the Merger Agreement to which it is party and (III) Buyer, Parent or any Merger Sub shall have breached in any material respect any of its representations or warranties or failed to perform in any material respect any of its covenants or other agreements contained in this Agreement or the Merger Agreement to which Parent and such Merger Sub is party, respectively, which breach or failure to perform would render unsatisfied any condition contained in Section 6.1 or 6.3 of this Agreement or Section 4.02 of the Merger Agreement, respectively, and (i) is incapable of being cured or (ii) if capable of being cured is not cured prior to the earlier of (A) the Business Day prior to the Outside Date or (B) the date that is twenty (20) days from the date that Buyer and Parent or such Merger Sub, as applicable, are notified of such breach.

8.2 Procedure of Termination. Termination of this Agreement by any party shall be by delivery of a written notice to the other parties (a "Notice of Termination"). A Notice of Termination shall state the termination provision in this Agreement that such terminating party is claiming provides a basis for termination of this Agreement. Termination of this Agreement pursuant to the provisions of Section 8.1 shall be effective upon and as of the date of delivery of a Notice of Termination as determined pursuant to Section 9.8.

8.3 Effect of Termination. In the event of the termination of this Agreement pursuant to Section 8.1, this Agreement (other than this Article VIII and Article IX, which shall survive such termination) will forthwith become void, and there will be no Liability on the part of any party hereto or any of their respective officers, managers or directors to the other and all rights and obligations of any party hereto will cease. Notwithstanding the foregoing: (a) nothing herein will relieve any party from any Losses arising out of, resulting from or relating to any breach, prior to termination of this Agreement in accordance with its terms, of any representation, warranty, covenant or agreement contained in this Agreement or any Related Agreement; (b) in the event that any Seller Entity, on the one hand, and Buyer or Parent, on the other hand (as applicable, and, with respect to the Merger Agreement, including any Merger Entity or Merger Sub, the "Walking Party"), (i) terminates this Agreement or any Merger Agreement other than as a result of the conditions to such Walking Party's obligations set forth in Article VI of this Agreement or Article IV of the Merger Agreement having not be met, or (ii) fails to satisfy the conditions to the obligations of the other party set forth in Article VI of this Agreement or Article IV of the Merger Agreement by the Outside Date, then SBERG, if the Walking Party is a Seller Entity or a Merger Entity, or Parent, if the Walking Party is Buyer, Parent or Merger Sub, shall pay to the other, as liquidated damages, $250,000 in cash by wire transfer of immediately available funds to an account designated by the receiving party. The payment of any fee pursuant to this Section 8.3 shall be each of Buyer, Parent, the Merger Subs, the Merger Entities and the Seller Entities sole and exclusive remedy upon termination of this Agreement.

8.4 Expenses. All fees, costs and expenses incurred by such party to third parties in connection with this Agreement and the transactions contemplated hereby including legal, accounting and broker's fees and any bonuses, option cancellation payments or any similar obligations (and, in all the foregoing cases including any Taxes arising therefrom) (collectively, "Transaction Expenses"), shall be paid by the party incurring such Transaction Expenses, whether or not the Closing occurs. Notwithstanding the foregoing, in the event that a party institutes an Action to enforce its rights under this Agreement or any Related Agreement, the prevailing party in such Action shall be entitled to recover its reasonable costs and expenses (including reasonable attorneys' fees) incurred in connection with such Action from the losing party.

8.5 Amendment and Waiver. This Agreement may be amended only by an instrument in writing specifically amending this Agreement signed by duly authorized Representatives of Parent, Buyer and the Seller Entities. At any time prior to the Closing Date, any party hereto may extend the time for the performance of any of the obligations or other acts required hereunder, waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and waive compliance with any of the agreements or conditions contained herein. Any such extension or waiver shall be valid if set forth in an instrument in writing specifically waiving such inaccuracies or compliance under this Agreement signed by the party or parties to be bound thereby. No waiver by any party of any breach or violation of, default under or inaccuracy in any representation, warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent breach or violation of, default under, or inaccuracy in, any such representation, warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence. No delay or omission on the part of any party in exercising any right, power or remedy under this Agreement will operate as a waiver thereof. Notwithstanding the foregoing, Section 7.9, Section 8.5, Section 9.2, Section 9.10, Section 9.11 and Section 9.12 may not be amended in any manner that would be adverse to a Debt Financing Source without such party's written consent.

ARTICLE IX

MISCELLANEOUS

9.1 Entire Agreement. This Agreement, together with the schedules and exhibits hereto, the Related Agreements, the Merger Agreements and all other ancillary agreements, documents and instruments to be delivered in connection herewith contain the entire understanding of the parties hereto with respect to the subject matter hereof and supersede all prior discussions, negotiations, proposals, undertakings, understanding and agreements, either oral or written, with respect thereto; provided, however, that the Confidentiality Agreement shall survive the execution of this Agreement until the consummation of the transactions contemplated hereby, at which time it shall terminate.

9.2 Assignment. No Seller Entity may assign, delegate or otherwise transfer this Agreement or any of such party's rights, interests or obligations hereunder, without the prior written consent of Parent and Buyer, and any attempt to do so will be null and void *ab initio*. Neither Buyer nor Parent may assign, delegate or otherwise transfer this Agreement or any of such party's rights, interests or obligations hereunder, without the prior written consent of each Debt Financing Source, and any attempt to do so will be null and void *ab initio*, provided, however, that Buyer or Parent may, without the approval of any other party to this Agreement, but with prior notice to SBEEG, make a collateral assignment of this Agreement to its Debt Financing Source. If either Buyer or Parent assigns this Agreement or any of its rights, interests or obligations hereunder, Buyer and Parent shall remain liable for all obligations of Buyer and Parent pursuant to this Agreement. Upon any such permitted assignment, the references in this Agreement to Parent shall refer to such assignee unless the context otherwise requires. Subject to this Section 9.2, this Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon the parties hereto, and each party's successors, heirs, estates, executors, administrators and permitted assigns.

9.3 Counterparts. This Agreement may be executed in any number of counterparts, any one of which need not contain the signatures of all parties, but all of which counterparts when taken together will constitute one and the same agreement. This Agreement shall become effective when duly executed and delivered by each party hereto. Counterpart signature pages to this Agreement may be delivered by facsimile or electronic delivery, including by email of a PDF signature page, and each such counterpart signature page will constitute an original for all purposes.

9.4 Governing Law; Jurisdiction; Venue; Service of Process.

(a) This Agreement shall be governed by the Laws of the State of Delaware without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause application of the Laws of any jurisdiction other than the State of Delaware.

(b) All Actions arising out of or relating to this Agreement shall be heard and determined in any state or federal Court sitting in the State of New York. Each of the parties to this Agreement irrevocably submits to the exclusive jurisdiction of the state Courts of New York and to the jurisdiction of the United States District Court for the Southern District of New York, for the purpose of any Action arising out of or relating to this Agreement and each of the parties to this Agreement irrevocably agrees that all claims in respect of such Action may be heard and determined exclusively in any New York state or federal Court sitting in the State of New York. Each of the parties to this Agreement consents to service of process by delivery pursuant to Section 9.8 and agrees that a final judgment in any Action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

9.5 Specific Performance. The rights and remedies of the parties hereto shall be cumulative. The transactions contemplated by this Agreement are unique transactions and any failure on the part of any party to complete the transactions contemplated by this Agreement on the terms of this Agreement will not be fully compensable in damages and the breach or threatened breach of the provisions of this Agreement would cause the other parties hereto irreparable harm. Accordingly, in addition to and not in limitation of any other remedies available to the parties hereto for a breach or threatened breach of this Agreement, the parties shall be entitled to seek specific performance of this Agreement and seek an injunction restraining any such party from such breach or threatened breach. Each party further agrees that, in the event of any action for specific performance in respect of such breach or violation, it will not assert as the defense that a remedy at law would be adequate. Notwithstanding the foregoing and for the avoidance of doubt, in no event shall the Parent or Buyer have any obligation (a) to seek or consummate a financing transaction in connection with the transactions contemplated by this Agreement or (b) to enforce any rights such party may have against any Debt Financing Source.

9.6 Interpretation. The schedules and exhibits attached hereto are an integral part of this Agreement. All schedules and exhibits attached to this Agreement are incorporated herein by this reference and all references herein to this "Agreement" shall mean this Agreement together with all such schedules and exhibits. When a reference is made in this Agreement to Sections, subsections, schedules or exhibits, such reference shall be to a Section, subsection, schedule or exhibit to this Agreement unless otherwise indicated. The words "include," "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation." The word "herein" and similar references mean, except where a specific Section or Article reference is expressly indicated, the entire Agreement rather than any specific Section or Article. The table of contents and the headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The term "$" shall mean Dollars of the United States of America. As used herein, all pronouns shall include the masculine, feminine, neuter, singular and plural thereof whenever the context and facts require such construction.

9.7 Severability. If any term or other provision of this Agreement is 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 adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify 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 extent possible.

9.8 Notices. All notices or other communications which are required or permitted hereunder shall be in writing and sufficient if delivered personally or sent by nationally-recognized overnight courier or by registered or certified mail, postage prepaid, return receipt requested or by facsimile, with confirmation as provided above addressed as follows:

If to Buyer or Parent:

The ONE Group Hospitality, Inc.
411 West 14th Street
New York, New York 10014
Fax: (212) 255-9715
Attention: Jonathan Segal
Sam Goldfinger
Sonia Low

with copies to (which shall not constitute notice):

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111
Fax: (617) 542-2241
Attention: Sahir Surmeli, Esq.

If to the Seller Entities:

SBEEG Holdings, LLC
5900 Wilshire Blvd., 31st Floor
Los Angeles, CA 90036
Fax: 323 655-8001
Attention: Legal Department

with copies to (which shall not constitute notice):

Venable LLP
505 Montgomery Street, Suite 1400
San Francisco, CA 94111
Facsimile: (415) 653-3755
Attention: Brandt U. Mori

Venable LLP
750 East Pratt Street, Suite 900
Baltimore, MD 21202
Facsimile: (410) 244-7742
Attention: W. Bryan Rakes

or to such other address as the party to whom notice is to be given may have furnished to the other party in writing in accordance herewith. All such notices or communications shall be deemed to be received (a) in the case of personal delivery, on the date of such delivery, (b) in the case of nationally-recognized overnight courier, on the next Business Day after the date when sent, (c) in the case of facsimile transmission, upon confirmed receipt, and (d) in the case of mailing, on the second Business Day following the date on which the piece of mail containing such communication was posted. Rejection or other refusal to accept or the inability to deliver a notice, request, demand, claim or other communication hereunder because of a changed address or changed facsimile number (if a facsimile number had been given) of which no notice was given as herein required shall be deemed to be receipt of the notice, request, demand, claim or other communication sent.

9.9 Representation by Counsel. Each party hereto acknowledges that it has been or has had an opportunity to be advised by legal counsel retained by such party in its sole discretion. Each party acknowledges that such party has had a full opportunity to review this Agreement and all related exhibits, schedules and ancillary agreements and to negotiate any and all such documents in its sole discretion, without any undue influence by any other party hereto or any third party.

9.10 Construction. The parties have participated jointly in the negotiation and drafting of this Agreement and in the event of any ambiguity or question of intent or interpretation, no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

9.11 Third Party Beneficiaries. Except as otherwise provided in Section 7.9, Section 8.5 and Section 9.2, nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any Person other than the parties hereto and their respective successors and permitted assigns, any rights, remedies, obligations or liabilities whatsoever, except to the extent that such third person is an Indemnified Person in respect of the indemnification provided in accordance with Article VII. The representations and warranties contained in this Agreement are for the sole benefit of the parties hereto and no other Person may rely on such representations and warranties for any purpose whatsoever.

9.12 Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, THE RELATED AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE, TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW THAT CANNOT BE WAIVED, IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUR OF OR RELATING TO THIS AGREEMENT, THE RELATED AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

9.13 Attorney-Client Privilege; Continued Representation. The parties hereto hereby acknowledge that Venable LLP has acted as counsel to the Seller Entities from time to time prior to the transactions contemplated by this Agreement as well as with respect thereto. The following provisions in this Section 9.13 apply to the attorney-client relationship the Seller Entities and Venable LLP prior to and following the Closing. Each of the parties hereto agrees that: (i) it will not seek to disqualify Venable LLP, based solely on its prior representation of the Seller Entities or any Seller Entity, from acting and continuing to act as counsel to the Seller Entities or any Seller Entity either in the event of a dispute hereunder or in the course of the defense or prosecution of any claim relating to the transactions contemplated by this Agreement; (ii) Seller Entities have a reasonable expectation of privacy with respect to their communications with Venable LLP prior to Closing to the extent that such communications concern the transactions contemplated herein and were confidential between the Seller Entities or any Seller Entity and Venable LLP; and (iii) the Seller Entities or any Seller Entity (and, following the Closing, not Buyer, Parent or any of its Affiliates) shall have access to all such privileged communications.

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

NOW THEREFORE, the parties hereto have executed, or caused this Asset Purchase Agreement to be executed by their duly authorized representatives, as of the date first written above.

BUYER:

WASABI HOLDINGS, LLC

By: The ONE Group, LLC, its sole member

By: The ONE Group Hospitality, Inc.
(f/k/a Committed Capital Acquisition Corporation), its sole member

By: /s/ Jonathan Segal
Name: Jonathan Segal
Title: Chief Executive Officer

PARENT:

THE ONE GROUP HOSPITALITY, INC.

By: /s/ Jonathan Segal
Name: Jonathan Segal
Title: Chief Executive Officer

SELLER ENTITIES:

SBEEG HOLDINGS, LLC

By: /s/ Sam Nazarian
Name: Sam Nazarian
Title: Authorized Person

SBE RESTAURANT GROUP, LLC

By: /s/ Sam Nazarian
Name: Sam Nazarian
Title: Authorized Person

SBE/KATSUYA MIDDLE EAST, LLC

By: /s/ Sam Nazarian
Name: Sam Nazarian
Title: Authorized Person

SBE LICENSING, LLC

By: /s/ Sam Nazarian
Name: Sam Nazarian
Title: Authorized Person

INDEX OF DEFINED TERMS

Indemnified Person	Section 7.6(a)
Indemnifying Person	Section7.6(a)
Intellectual Property Assignment	Section 1.6(a)
Interim Balance Sheet	Section 3.8(a)(i)
Interim Financial Statements	Section 3.8(a)(i)
IP Agreements	Section 3.13(b)
IP Assets	Section 1.1(a)
Katsu	Section 5.6
Katsuya	Section 5.6
Licensed Intellectual Property	Section 3.13(b)
Loss Estimate	Section 7.6(a)
Materiality	Section 6.2(a)
Merger Agreements	Preamble
Notice of Claim	Section 7.6(a)
Notice of Termination	Section 8.2
Optional Asset	Section 1.9(c)
Outside Date	Section 10.1(b)
Prior Actions	Section 3.9(b)
Providing Party	Section 7.10
Purchase Price	Section 2.1(a)
Requesting Party	Section 7.10
Restaurants	Preamble
Restricted Period	Section 5.8(a)
Sarbanes-Oxley Act	Section 6.7(a)
SBE Licensing	Preamble
SBEEG	Preamble
SBERG	Preamble
SEC	Section 3.16
Securities Act	Section 6.7(a)
Seller Entities	Preamble
Seller Entity	Preamble
Seller Indemnified Persons	Section 7.3(a)
Seller Insurance Policies	Section 5.10
Survival Date	Section 7.1
Third Party Claim	Section 7.6(b)
Third Party Consents	Section 7.2(c)
Transaction Expenses	Section 10.4
Transfer Documents	Section 1.6
Transfer Taxes	Section 5.7(a)
Transition Services Agreement	Preamble
USPTO	Section 1.1(d)
Warrant Holder	Section 2.1(a)
Without Limitation	Section 9.6

TABLE OF DEFINITIONS

"Action" means any suit, action, arbitration, cause of action, claim, complaint, prosecution, audit, inquiry, investigation, governmental or other proceeding, whether civil, criminal, administrative, investigative or informal, at law or at equity, before or by any Court, Governmental Authority, arbitrator or other tribunal.

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the first mentioned Person, including any partnership or joint venture in which one Person (either alone, or through or together with any other Subsidiary) has, directly or indirectly, an interest of ten percent (10%), or more; and "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of stock or other securities, as trustee or executor, by contract or credit arrangement or otherwise. For the avoidance of doubt and except to the extent otherwise provided herein, each of the Seller Entities are Affiliates of each other.

"Approval" means any transferable license, permit, consent, approval, authorization, registration, filing, waiver, exemption, clearance, qualification or certification, including all pending applications therefor or renewals or amendments thereof, issued by, made available by or filed with any Government Authority.

"Alshaya Agreement" means that certain Development Agreement, dated as of July 30, 2012, by and between East and Alshaya Trading Company, W.L.L.

"Business" means the ownership, operation, promotion and development of the Restaurants, the Brands, and the development of additional restaurants under such Brands.

"Business Day" means any day other than a Saturday, Sunday or day on which banks are permitted to close in the State of Delaware.

"Business Employee" means any employee of any Seller Entity or any of their Affiliates who provided or currently provides services to the Business.

"Business Intellectual Property" means all Intellectual Property owned, licensed, used or held by the Seller Entities or any of its Affiliates (including, without limitation, SBE Licensing, LLC), belonging to, used in, intended to be used in or necessary to the Business, including, without limitation, all goodwill, trademark and other Intellectual Property Rights relating to the Restaurant Brands.

"Business Material Adverse Effect" means a material adverse effect on the Acquired Assets, condition (financial or otherwise), properties, prospects, operations or results of operations of the Business or any Seller Entity's ability to perform its obligations as contemplated in this Agreement or any Related Agreement.

"Code" means the Internal Revenue Code of 1986, as amended, and all Regulations promulgated thereunder.

"Confidentiality Agreement" means that certain Nondisclosure Agreement, dated March 27, 2015, by and between Parent and SBERG.

"Contract" means any loan agreement, indenture, letter of credit (including related letter of credit applications and reimbursement obligations), mortgage, security agreement, pledge agreement, deed of trust, bond, note, guarantee, surety obligation, warranty, license, franchise, permit, power of attorney, invoice, quotation, purchase order, sales order, lease, endorsement agreement, and any other agreement, contract, instrument, obligation, offer, commitment, plan, arrangement, understanding or undertaking, written or oral, express or implied, to which a Person is a party or by which any of its properties, assets or Intellectual Property may be bound or affected, in each case as amended, supplemented, waived or otherwise modified.

"Court" means any court or arbitration tribunal of any country or territory, or any state, province or other subdivision thereof.

"Customer Information" means customer lists and other information collected, purchased or otherwise acquired by the Selling Entities in connection with the operation of the Business.

"Elmaleh Agreements" means, collectively, (i) that certain Consulting and License Agreement between SBERG and Elmaleh Brothers ("Consultant"), dated August 19, 2014, as amended by each of Addendum No. 1 entered into as of August 19, 2014, Addendum No. 2 entered into as of May 8, 2015 and Addendum No. 3 entered into as of May 8, 2015; and (ii) that certain Non-Exclusive Intellectual Property License, by and between SBERG and Consultant, dated August 19, 2014.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and all Regulations promulgated thereunder.

"ERISA Affiliate" means any person, trade, business or other entity treated as a single employer with Seller under Code Section 414 or Section 4001(a)(14) of ERISA.

"Fundamental Representations" means the representations and warranties set forth in Sections 3.1 (Organization, Good Standing and Qualification of Seller), 3.3 (Authorization; Binding Obligation); 3.4 (Consents and Approvals), 3.5 (No Violation), 3.9 (Taxes), 3.11 (Intellectual Property), and 3.17 (No Brokers).

"GAAP" means generally accepted accounting principles in the United States.

"Governmental Authority" means: (i) any nation, state, county, city, town, municipality, district, territory or other jurisdiction of any nature; (ii) any federal, state, municipal or local governmental or quasi-governmental entity or authority of any nature; (iii) any Court exercising or entitled to exercise judicial authority or power of any nature; (iv) any multinational organization or body exercising any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature; (v) any department or subdivision of any of the foregoing, including any commission, branch, board, bureau, agency, official or other instrumentality exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature and (vi) any stock exchange, listing service or similar quasi-governmental entity.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Indebtedness" means Liabilities (including Liabilities for principal, accrued interest, penalties, fees and premiums) (i) for borrowed money, or with respect to deposits or advances of any kind, (ii) evidenced by bonds, debentures, notes or similar instruments, (iii) upon which interest charges are customarily paid, (iv) under conditional sale or other title retention agreements, (v) issued or assumed as the deferred purchase price of property or services (other than accounts payable to suppliers incurred in the ordinary course of the Business and paid when due), (vi) of others secured by (or for which the holder of such Liabilities has an existing right, contingent or otherwise, to be secured by) any Lien or security interest on property owned or acquired by the Person in question whether or not the obligations secured thereby have been assumed, and (vii) under leases required to be accounted for as capital leases under GAAP.

"Intellectual Property" means (i) worldwide trademarks, service marks, trade names, trade dress, designs, logos, slogans and other designations of origin, together with all goodwill related to the foregoing (whether registered or not, but including any registrations and applications for any of the foregoing) (collectively, "Trademarks"); (ii) patents (including the ideas, inventions and discoveries described therein, any pending applications, any registrations, patents or patent applications based on applications that are continuations, continuations-in-part, divisional, reexamination, reissues, renewals of any of the foregoing and applications and patents granted on applications that claim the benefit of priority to any of the foregoing) (collectively, "Patents"); (iii) works of authorship or copyrights (including any registrations, applications and renewals for any of the foregoing) and other rights of authorship (collectively, "Copyrights"); (iv) trade secrets and other confidential or proprietary information, know-how, confidential or proprietary technology, processes, work flows, formulae, algorithms, models, user interfaces, customer, supplier, vendor, distributor and user lists, databases, pricing and marketing information, inventions, marketing materials, inventions and discoveries (whether patentable or not) (collectively, "Trade Secrets"); (v) rights in, or associated with a person's name, voice, signature, photograph or likeness, including rights of personality, privacy and publicity; (vi) Internet domain names and applications therefor (and all interest therein), adwords, and online key word associations; (vii) rights of attribution and integrity and other moral rights; and (viii)(a) all copies and tangible embodiments of any or all of the foregoing (in whatever form or medium, including electronic media) and (b) all rights to sue for and any and all remedies for past, present and future infringements of any or all of the foregoing and rights of priority and protection of interests therein under the Laws of any jurisdiction.

"knowledge of Seller Entities" (and similar terms and phrases) means the actual knowledge of any individual listed on Schedule II hereto after reasonable inquiry.

"Laws" means all laws, statutes, codes, written policies, licensing requirements, ordinances and Regulations of any Governmental Authority including all Orders having the effect of law in each such jurisdiction.

"Liabilities" means any debts, liabilities, obligations, claims, charges, Taxes, damages, demands and assessments of any kind, including those with respect to any Governmental Authority, whether accrued or not, known or unknown, disclosed or undisclosed, fixed or contingent, asserted or unasserted, liquidated or unliquidated, whenever or however arising (including, those arising out of any Contract or tort based on negligence or strict liability) and whether or not the same would be required by GAAP to be reflected in financial statements or disclosed in the notes thereto.

"Lien" means any mortgage, easement, right of way, charge, claim, community property interest, condition, equitable interest, lien, option, pledge, security interest, right of first refusal, or restriction or adverse claim of any kind, including any restriction on use, voting, transfer, receipt of income, or exercise of any other attribute of ownership, or any other encumbrance or exception to title of any kind.

"Losses" means any loss, damage, Liability, encumbrance, Tax, fine, penalty, cost or expense, including but not limited to the costs and expenses of any investigation, defense or settlement of an Action or claim, the costs and expenses associated with the enforcement of this Agreement or any Related Agreement and any reasonable, actual and documented fees or expenses of attorneys, accountants or other experts or consultants retained in connection with any such Action or claim or the enforcement of this Agreement; provided, that Losses shall not include any punitive damages, consequential damages, exemplary damages or special damages or damages for loss of business reputation, lost profit or diminution in value except to the extent that such damages are (i) reasonably foreseeable and (ii) incurred as a result of a Third Party Claim.

"Material Adverse Change" means an event, change or effect, that has or would be reasonably likely to have a material adverse effect or a material adverse change to (a) the financial condition, business, results of operations, assets or liabilities of the Merger Entities on a combined basis, or (b) the ability of the Seller Entities or Merger Entities to consummate the transactions contemplated by this Agreement or any Merger Agreement or to perform any of its respective obligations under this Agreement or any Merger Agreement; provided, however, that any adverse effects attributable to any of the following shall not be deemed to constitute, and the following shall not be taken into account in determining whether there has been or will be, a Material Adverse Change: (i) conditions affecting the industries in which the Seller Entities and Merger Entities participate or the U.S. economy as a whole (other than those that disproportionately affect the Seller Entities and Merger Entities); (ii) actions taken by the Seller Entities and Merger Entities at Buyer or Parent's express written direction or with Buyer or Parent's express written consent; (iii) the announcement of this Agreement or any Merger Agreement; (iv) compliance with the provisions of this Agreement or any Merger Agreement; (v) conditions resulting from the outbreak or escalation of hostilities, including acts of war or terrorism (other than those that disproportionately affect Seller Entities and Merger Entities); (vi) conditions resulting from any breach by Buyer or Parent of any provisions of this Agreement or any Merger Agreement; and (vii) change in GAAP.

"Order" means any judgment, order, writ, injunction, ruling, decision or decree of, or any settlement under the jurisdiction of any Court or Governmental Authority.

"Organizational Documents" means, with respect to each Seller Entity, those instruments that at the time constitute its charter as filed or recorded under the Laws of the jurisdiction of its formation, including the articles or certificate of formation, organization or association, and its operating agreement or limited liability company agreement, in each case including all amendments thereto, as the same may have been restated.

"Person" means an individual, corporation, partnership, association, trust, unincorporated organization, limited liability company or other legal entity.

"Pre-Closing Tax Period" means any taxable period or portion thereof ending on or before the Closing Date.

"PHS Agreement" means that certain General Exclusivity Restaurant Design Agreement, dated as of December 20, 2004, by and between [SBEEG] and PHS General Design SA (as successor in interest to PHS General Design Services VB), solely as the same relates to the Katsuya brand of restaurants, as supplemented or amended from time to time with the consent of Buyer and Parent.

"Regulation" means any rule or regulation of any Governmental Authority.

"Regulatory Authority" means any Governmental Authority or regulator, including the FDA or any successor agency thereto, with jurisdiction over the Business or any Restaurant or otherwise exercising authority with respect to the operation of the Business or any Restaurant.

"Related Agreements" means the Transfer Documents, the Warrant and the Transition Services Agreement, the Uechi Letter, the Agreement Regarding Future Restaurants and the BLA.

"Representative" means, with respect to any specified Person, such Person's officers, directors, managers, employees, accountants, counsel and other representatives or agents.

"Software" means computer programs, known by any name, including all versions thereof, and all related documentation, training manuals and materials, user manuals, technical and support documentation, source code and object code, code libraries, debugging files, linking files, program files, data files, computer and related data, field and date definitions and relationships, data definition specifications, data models, program and system logic, interfaces, program modules, routines, sub-routines, algorithms, macros, scripts, compiler directives, program architecture, design concepts, system designs, program structure, sequence and organizations, screen displays and report layouts and all other material related to any such computer programs.

"Subsidiary" means, with respect to any Person, any corporation, partnership, joint venture, limited liability company, trust or other legal entity of which such Person (either alone or through or together with any other Subsidiary) owns, directly or indirectly, at least fifty percent (50%) of the stock or other equity interests in such entity.

"Tax Returns" means any and all returns, declarations, reports, claims for refunds and information returns or statements relating to Taxes, including all schedules or attachments thereto and including any amendment thereof, required to be filed with any Governmental Authority, including consolidated, combined and unitary tax returns.

"Taxes" means all taxes and governmental impositions of any kind in the nature of (or similar to) taxes, however denominated, the imposition of which is imposed by Law, contractual agreement or otherwise, payable to any Governmental Authority, including those on or measured by or referred to as income, franchise, profits, gross receipts, capital, *ad valorem,* custom duties, alternative or add-on minimum taxes, estimated, environmental, disability, registration, value added, sales, use, service, real or personal property, capital stock, license, payroll, withholding, employment, social security, workers' compensation, unclaimed property or escheat, unemployment compensation, health insurance, utility, severance, production, excise (including but not limited to the Medical Device excise tax under Code Section 4191), stamp, occupation, premiums, windfall profits, transfer and gains taxes, and interest, penalties and additions to tax imposed with respect thereto.

"Transition Services Agreement" means a Transition Services Agreement by and among Buyer and an Affiliate of the Seller Entities in the form attached hereto as Exhibit A (the "Transition Services Agreement"), pursuant to which an Affiliate of the Seller Entities will provide substantially the same services to the Restaurants as provided to the Restaurants prior to Closing by the service providers affiliated with the Seller Entities unless otherwise mutually agreed upon by the parties.

"Uechi Agreements" means those certain consulting and license agreements set forth on Schedule III, by and between Licensor and the party set forth in such schedule.

"Warrant" means that certain warrant to purchase up to 200,000 shares of the Parent's Common Stock, in the form attached hereto as Exhibit E (the "Warrant").

EXHIBIT A

TRANSITION SERVICES AGREEMENT

THIS TRANSITION SERVICES AGREEMENT (this "Agreement") is made, entered into and effective as of the ____ day of _____, 2015 (the "Effective Date") by and among Katsuya Glendale, LLC, Katsuya H&V, LLC, Katsuya Downtown L.A., LLC and Katsu USA, LLC ("Targets") and SBEEG Holdings, LLC ("SBE").

WHEREAS, simultaneously with the execution of this Agreement, The ONE Group Hospitality, Inc., Wasabi Acquisition Glendale, LLC, Wasabi Acquisition H&V, LLC, Wasabi Acquisition Downtown, LLC and Wasabi Acquisition USA, LLC (collectively, the "Acquirors") and Targets consummated the transactions contemplated by Agreements and Plans of Merger each dated as of even date herewith (collectively, the "Plans of Merger"). Capitalized terms not defined herein shall have the meanings assigned to them in the Plans of Merger;

WHEREAS, pursuant to the Plans of Merger, Acquirors and Targets consummated business combination transactions pursuant to which the Acquirors merged with and into the Targets, with Targets continuing as the surviving companies (the "Merger");

WHEREAS, there are certain critical services performed on behalf of Targets by certain business personnel of former Affiliates of Targets or certain other third parties on behalf of or at the direction of former Affiliates of Targets (collectively, " Service Providers"), however, Service Providers or the services provided by such Service Providers, as the case may be, will not transition to the surviving companies in connection with the Merger;

WHEREAS, a condition precedent to the consummation of the transactions contemplated by the Plans of Merger is for certain parties to enter into a transition services agreement; and

WHEREAS, the parties hereto (the "Parties") desire to set forth herein the terms and conditions regarding the transition services to be provided by Service Providers to Targets in connection with the Merger.

NOW, THEREFORE, in consideration of the foregoing and the agreements herein set forth, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1 . Engagement. Targets hereby engage SBE, as an independent contractor, to provide, or to cause its Affiliates to provide, the services described herein, and the Targets hereby accept such engagement.

2 . Term; Termination. The term of this Agreement (the "Term") shall commence on the Effective Date and will remain in effect through the earlier to occur of: (a) one hundred twenty (120) days after the Effective Date; or (b) the last transition date noted for each Service (as defined below) on Exhibit A attached hereto. The Term may be extended with respect to any Service or Services as agreed in writing by the Parties. Notwithstanding the foregoing, Targets shall have the right to terminate this Agreement or any specific Service to be provided hereunder prior to the expiration of the Term by giving at least 30 days advance written notice thereof to SBE, which termination shall be effective upon the later of (i) the date specified in such notice or (ii) 30 days following delivery of such notice. Upon expiration or termination of this Agreement, the Parties shall have no further rights or obligations hereunder, except as provided in Section 4 below.

3 . Services. During the Term, SBE shall cause Service Providers to perform and provide the services to Targets set forth on Exhibit A attached hereto (collectively, the "Services). SBE shall cause Service Providers to use their best efforts to perform the Services in the same manner and with the same care, quality and service levels as the Services were performed on behalf of Targets immediately prior to the Effective Date. Except as may otherwise be set forth on Exhibit A, no compensation of any kind shall be required to be paid by Targets to SBE for Service Providers' performance of the Services. Targets acknowledge that SBE and Service Providers are not engaged in the business of providing Services of the type provided hereunder to third parties. Targets further acknowledge that Service Providers will be providing similar services, and/or services that involve the same resources as those used to provide to Targets and to SBE and its Affiliates. Targets acknowledge that, in connection with providing the Services, Service Providers will not be required to use their own funds for any third-party provided service or payment obligation owed specifically on behalf of Targets. During the Term, the Targets may from time to time request that Service Providers provide special services or projects in addition to the Services, and Service Providers shall make commercially reasonable efforts to provide such additional services or projects. If Service Providers agree to provide such additional services or projects, the Parties shall negotiate in good faith to establish the terms (including, without limitation, price) for providing such additional services or projects. If Service Providers are unable, or elect not, to provide such additional services or projects, Service Providers will promptly inform the Targets and shall use its commercially reasonable efforts to work with the Targets in finding an equivalent replacement for such additional services or projects. During the Term, Service Providers shall comply with all applicable laws with respect to the performance of the Services.

4. Indemnification.

a. Targets agree to indemnify, defend and hold harmless each Seller Indemnified Person from and against any and all Losses that any such Seller Indemnified Person may suffer or incur to the extent resulting from: (a) any breach of this Agreement by Targets; or (b) the Services, except to the extent that such Losses were caused by any act or omission of Service Provider while providing the Services hereunder. The process for indemnification hereunder shall be as set forth in Article X of the Plans of Merger. In no event shall Targets be liable for any incidental, indirect, special, consequential, opportunity cost, punitive, exemplary or similar Losses or the loss of anticipated or future business or profits unless and to the extent that any of such Losses are required to be paid to a third party. The foregoing limitations of liability shall apply regardless of the form of action in which such liability is asserted, whether in contract, tort or otherwise.

b. SBE agrees to indemnify, defend and hold harmless each Parent Indemnified Person from and against any and all Losses that any such Parent Indemnified Person may suffer or incur to the extent resulting from: (a) any breach of this Agreement by SBE or Service Providers; or (b) any act or omission of Service Providers' while performing the Services hereunder. The process for indemnification hereunder shall be as set forth in Article X of the Plans of Merger. In no event shall SBE be liable for any incidental, indirect, special, consequential, opportunity cost, punitive, exemplary or similar Losses or the loss of anticipated or future business or profits unless and to the extent that any of such Losses are required to be paid to a third party. The foregoing limitations of liability shall apply regardless of the form of action in which such liability is asserted, whether in contract, tort or otherwise.

5 . Relationship of the Parties. Nothing in this Agreement shall be deemed or construed by the Parties, or by any third party, to create the relationship of a partnership, joint venture or similar relationship between the Parties hereto, and no Party shall be deemed to be the agent of the other Party, it being understood that no provision contained herein shall be deemed to create any relationship between the Parties hereto other than the relationship of independent parties contracting for services. No Party has, nor shall it hold itself out as having, any authority to enter into any contract or create any obligation or liability on behalf of, in the name of, or binding upon any other Party.

6 . Further Assurances. Each Party, at the request of the other Party, shall do and perform such other acts and things as may be reasonably necessary or desirable to facilitate the provision of the Services.

7 . Burden and Benefit. The terms and provisions of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended to confer upon any Person not a Party to this Agreement any rights or remedies of any nature whatsoever under or by reason of this Agreement.

8 . Assignment. Neither this Agreement nor any of the Parties' rights hereunder shall be assignable by any party hereto without the prior written consent of the other Party, except that Targets shall be permitted to assign their rights, interests and obligations to any Affiliate of Targets without obtaining any consent from SBE, provided that Targets are not relieved of its obligations under this Agreement. Any purported assignment, unless so consented to or permitted as provided herein, shall be void and without effect.

9 . Headings. The descriptive headings contained in this Agreement are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

1 0 . Entire Agreement; Amendments. This Agreement (including any Exhibits attached hereto) constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral and written, among the Parties with respect to the subject matter hereof. This Agreement shall not be supplemented, amended or modified in any manner whatsoever except by written agreement of the Parties.

11. Notices. All notices, requests, claims, demands or other communications that are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been duly given as set forth in Section 12.04 of the Plans of Merger.

12. Governing Law. This Agreement and the legal relations among the parties hereto shall be governed by and construed in accordance with the laws of the State of Delaware.

13. Dispute Resolution Venue.

a. This Agreement shall be governed by the Laws of the State of Delaware without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause application of the Laws of any jurisdiction other than the State of Delaware.

b. All Actions arising out of or relating to this Agreement shall be heard and determined in any state or federal Court sitting in the State of New York. Each of the parties to this Agreement irrevocably submits to the exclusive jurisdiction of the state Courts of New York and to the jurisdiction of the United States District Court for the Southern District of New York, for the purpose of any Action arising out of or relating to this Agreement and each of the parties to this Agreement irrevocably agrees that all claims in respect of such Action may be heard and determined exclusively in any New York state or federal Court sitting in the State of New York. Each of the parties to this Agreement consents to service of process by delivery pursuant to Section 11 of this Agreement and agrees that a final judgment in any Action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

14. Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF ANY PARTY HERETO IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

15. Severability. If any provision of this Agreement for any reason shall be held to be illegal, invalid or unenforceable, such illegality shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such illegal, invalid or unenforceable provision had never been included herein.

16. Waiver. The provisions hereof may be waived only in writing signed by the Party or Parties making such waiver or sought to be bound thereby. No delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party of any such right, power or privilege, nor any single or partial exercise of any such right, power or privilege, preclude any further exercise thereof or the exercise of any other such right, power or privilege.

17. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

SBE:

SBEEG HOLDINGS, LLC

By: _____
Name: _____
Title: _____

TARGETS:

KATSUYA GLENDALE, LLC

By: _____
Name: _____
Title: _____

KATSUYA H&V, LLC

By: _____
Name: _____
Title: _____

KATSUYA DOWNTOWN L.A., LLC

By: _____
Name: _____
Title: _____

KATSU USA, LLC

By: _____
Name: _____
Title: _____

EXHIBIT A

Description of Services

[To be provided]

EXHIBIT E

THIS WARRANT AND THE SHARES OF COMMON STOCK ISSUED UPON ANY EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), OR ANY APPLICABLE STATE SECURITIES LAWS AND MAY NOT BE SOLD OR OTHERWISE TRANSFERRED TO ANY PERSON, INCLUDING A PLEDGEE, UNLESS (i) EITHER (A) A REGISTRATION STATEMENT WITH RESPECT THERETO SHALL BE EFFECTIVE UNDER THE SECURITIES ACT, OR (B) THE COMPANY SHALL HAVE RECEIVED AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT IS AVAILABLE, AND (ii) THERE SHALL HAVE BEEN COMPLIANCE WITH ALL APPLICABLE STATE SECURITIES OR "BLUE-SKY" LAWS.

No. ____

For the Purchase of up to 200,000 shares of Common Stock

WARRANT TO PURCHASE

COMMON STOCK

OF

THE ONE GROUP HOSPITALITY, INC.

(A DELAWARE CORPORATION)

_____, 2015

The ONE Group Hospitality, Inc., a Delaware corporation (the "**Company**"), for value received, the sufficiency of which is hereby acknowledged, certifies that [_____], or its permitted assigns (the "**Holder**"), is entitled, subject to the terms set forth below, to purchase from the Company, at any time or from time to time at or before the earlier of 5:00 p.m. New York City local time on [_____], 2025 (the "**Expiration Date**") and the termination of this Warrant to Purchase Common Stock (this "**Warrant**") as provided in Section 7 hereof, up to 200,000 shares of common stock, par value $[____] per share, of the Company ("**Common Stock**"), at a purchase price per share equal to $5.00per share (the "**Purchase Price**"), as adjusted upon the occurrence of certain events as set forth in Section 2 of this Warrant. The shares of Common Stock issuable upon exercise of this Warrant are hereinafter referred to as "**Warrant Stock**." This Warrant is being issued pursuant to that certain [_____], dated _____, 2015, by and among the Company, [_____], and certain other parties thereto.

1. Exercise.

1.1 Manner of Exercise; Payment. This Warrant may be exercised by the Holder, in whole or in part, by surrendering this Warrant, with the purchase form appended hereto as **Exhibit A** duly executed by the Holder, at the principal office of the Company, or at such other place as the Company may designate, accompanied by payment in full of the Purchase Price payable in respect of the number of shares of Warrant Stock purchased upon such exercise. Payment of the Purchase Price shall be in cash, by wire transfer of immediately available funds, or by certified or official bank check payable to the order of the Company.

1.2 Effectiveness. Each exercise of this Warrant shall be deemed to have been effected immediately prior to the close of business on the day on which this Warrant shall have been surrendered to the Company as provided in Section 1.1 above (such time, the "**Effective Time**"). At the Effective Time, the person or persons in whose name or names any certificates for Warrant Stock shall be issuable upon such exercise as provided in Section 1.3 below shall be deemed to have become the holder or holders of record of the Warrant Stock represented by such certificates.

1 . 3 Delivery of Certificate(s). As soon as practicable after the exercise of this Warrant in full or in part, and in any event within three (3) business days after the Effective Time, the Company, at its sole expense, will cause to be issued in the name of, and delivered to, the Holder, or, subject to the terms and conditions hereof, as such Holder (upon payment by such Holder of any applicable transfer taxes) may direct:

(a) A certificate or certificates for the number of full shares of Warrant Stock to which such Holder shall be entitled upon such exercise, plus, in lieu of any fractional share to which such Holder would otherwise be entitled, cash in an amount determined pursuant to Section 1.4 hereof, and

(b) In case such exercise is in part only, a new warrant or warrants (dated the date hereof) of like tenor, calling in the aggregate on the face or faces thereof for the number of shares of Warrant Stock (without giving effect to any adjustment therein) equal to the number of such shares called for on the face of this Warrant minus the number of such shares purchased by the Holder upon such exercise as provided in Section 1.1 above.

1 . 4 Fractional Shares. The Company shall not be required upon the exercise of this Warrant to issue any fractional shares, but shall make an adjustment therefor in cash on the basis of the fair market value of the Warrant Stock at the Effective Time. For purposes of Section 1.4, "**fair market value**" of a share of Warrant Stock as of the Effective Time shall be determined in accordance with Section 1.5(c).

1.5 Right to Convert Warrant into Stock; Net Issuance.

(a) Right to Convert. Subject to Section 7, in addition to and without limiting the rights of the Holder under the terms of this Warrant, the Holder shall have the right to convert this Warrant or any portion thereof (the "**Conversion Right**") into shares of Warrant Stock as provided in this Section 1.5 at any time or from time to time during the term of this Warrant. Upon exercise of the Conversion Right with respect to a particular number of shares subject to this Warrant (the "**Converted Warrant Shares**"), the Company shall deliver to the Holder (without payment by the Holder of any Purchase Price or any cash or other consideration) that number of shares of fully paid and nonassessable Warrant Stock equal to the quotient obtained by dividing (X) the value of this Warrant (or the specified portion hereof) on the Conversion Date (as defined in subsection (b) hereof), which value shall be determined by subtracting (A) the aggregate Purchase Price of the Converted Warrant Shares immediately prior to the exercise of the Conversion Right from (B) the aggregate fair market value of the Converted Warrant Shares issuable upon exercise of this Warrant (or the specified portion hereof) on the Conversion Date by (Y) the fair market value of one share of Warrant Stock on the Conversion Date.

Expressed as a formula, such conversion shall be computed as follows:

$$N = \frac{B-A}{Y}$$

where: N = the number of shares of Warrant Stock that may be issued to Holder

Y = the fair market value (FMV) of one share of Warrant Stock

A = the aggregate Warrant Price (Converted Warrant Shares x Purchase Price)

B = the aggregate FMV (i.e., FMV x Converted Warrant Shares)

No fractional shares shall be issuable upon exercise of the Conversion Right, and, if the number of shares to be issued determined in accordance with the foregoing formula is other than a whole number, the Company shall pay to the Holder an amount in cash equal to the fair market value of the resulting fractional share of the Conversation Date.

(b) Method of Exercise. The Conversion Right may be exercised by the Holder by the surrender of this Warrant at the principal office of the Company together with the Subscription Form in the form attached hereto, duly completed and executed and indicating the number of shares subject to this Warrant which are being surrendered (referred to in Section 1.5(a) hereof as the Converted Warrant Shares) in exercise of the Conversion Right. Such conversion shall be effective upon receipt by the Company of this Warrant, together with the aforesaid written statement, or on such later date as is specified therein (the "**Conversion Date**"), and, at the election of the Holder hereof, may be made contingent upon the occurrence of any of the events specified in Section 7. Certificates for the shares issuable upon exercise of the Conversion Right and, if applicable, a new warrant (dated the date hereof) evidencing the balance of the shares remaining subject to this Warrant, shall be issued as of the Conversion Date and shall be delivered to the Holder within thirty (30) days following the Conversion Date.

(c) Determination of Fair Market Value. For purposes of this Section 1.5, "**fair market value**" of a share of Warrant Stock as of a particular date (the "**Determination Date**") shall mean:

(1) If the Company's Common Stock is traded on an exchange or is quoted on the Nasdaq Global or Capital Market, then the closing price on the day before the Determination Date;

(2) If the Company's Common Stock is not traded on an exchange or on the Nasdaq Global or Capital Market but is traded on the over-the-counter market, then the closing price on the day before the Determination Date;

(3) In the event that the Determination Date is the date of a liquidation, dissolution or winding up, or any event deemed to be a liquidation, dissolution or winding up with respect to the Warrant Stock under the Company's Certificate of Incorporation, then the fair market value per share of the Warrant Stock shall be determined by aggregating all amounts to be payable per share to holders of the Warrant Stock in the event of such liquidation, dissolution or winding up; or

(4) In all other cases, the fair market value per share of the Warrant Stock shall be determined in good faith by the Company's Board of Directors upon review of relevant factors.

2 . Certain Adjustments. The Purchase Price and the number of shares of Warrant Stock deliverable upon exercise of the Warrant shall be subject to adjustment from time to time as follows:

2 . 1 Subdivision, Reclassification or Change in Common Stock. In the event of any subdivision, reclassification or change of the Common Stock into a greater number or different class or classes of stock, the number of shares of Warrant Stock deliverable upon exercise of this Warrant shall be determined in accordance with the terms of the Certificate of Incorporation, and the Purchase Price for such Warrant Stock shall be proportionately reduced.

2 . 2 Consolidation, Reclassification or Change in Common Stock. In the event of any consolidation, reclassification or change of the Common Stock into a lesser number or different class or classes of stock, the number of shares of Warrant Stock deliverable upon exercise of this Warrant shall be determined in accordance with the terms of the Certificate of Incorporation, and the Purchase Price for such Warrant Stock shall be proportionately increased.

2 . 3 Reorganizations. If there shall occur any capital reorganization of the Common Stock (other than a subdivision, combination, reclassification or change in par value), then, as part of any such reorganization, lawful provision shall be made so that the Holder shall have the right thereafter to receive upon the exercise of this Warrant the kind and amount of shares of stock or other securities or property which such Holder would have been entitled to receive if, immediately prior to any such reorganization, such Holder had held the number of shares of Common Stock which were then purchasable upon the exercise of this Warrant. In any such case, appropriate adjustment (as reasonably determined by the Board of Directors of the Company) shall be made in the application of the provisions set forth herein with respect to the rights and interests thereafter of the Holder such that the provisions set forth in this Section 2 (including provisions with respect to adjustment of the Purchase Price) shall thereafter be applicable, as nearly as is reasonably practicable, in relation to any shares of stock or other securities or property thereafter deliverable upon the exercise of this Warrant.

2.4 Merger, Consolidation or Sale of Assets. Subject to the provisions of Section 7, if there shall be a merger or consolidation of the Company with or into another corporation (other than a merger or reorganization involving only a change in the state of incorporation of the Company or the acquisition by the Company of other businesses where the Company survives as a going concern), or the sale of all or substantially all of the Company's capital stock or assets to any other person, then as a part of such transaction, provision shall be made so that the Holder shall thereafter be entitled to receive the number of shares of stock or other securities or property of the Company, or of the successor corporation resulting from the merger, consolidation or sale, to which the Holder would have been entitled if the Holder had exercised its rights pursuant to this Warrant immediately prior thereto. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 2 to the end that the provisions of this Section 2 shall be applicable after that event in as nearly equivalent a manner as may be practicable.

2.5 Certificate of Adjustment. When any adjustment is required to be made in the Purchase Price, the Company shall promptly mail to the Holder a certificate setting forth the Purchase Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Delivery of such certificate shall be deemed to be a final and binding determination with respect to such adjustment unless challenged by the Holder within ten (10) days of receipt thereof. Such certificate shall also set forth the kind and amount of stock or other securities or property into which this Warrant shall be exercisable following the occurrence of any of the events specified in this Section 2.

3. Compliance with Securities Act.

3.1 Unregistered Securities. The Holder acknowledges that this Warrant and the Warrant Stock have not been registered under the Securities Act, and agrees not to sell, pledge, distribute, offer for sale, transfer or otherwise dispose of this Warrant or any Warrant Stock in the absence of (i) an effective registration statement under the Securities Act covering this Warrant or such Warrant Stock and registration or qualification of this Warrant or such Warrant Stock under any applicable "blue-sky" or state securities law then in effect, or (ii) an opinion of counsel, satisfactory to the Company, that such registration and qualification are not required. The Company may delay issuance of the Warrant Stock until completion of any action or obtaining of any consent, which the Company deems necessary under any applicable law (including without limitation state securities or "blue-sky" laws).

3.2 Legend. Certificates delivered to the Holder pursuant to Section 1.3 shall bear the following legend or a legend in substantially similar form:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS, OR (B) AN OPINION OF COUNSEL, IN A REASONABLY ACCEPTABLE FORM, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR APPLICABLE STATE SECURITIES LAWS, OR (II) UNLESS SOLD PURSUANT TO RULE 144 UNDER SAID ACT."

4 . Reservation of Stock. The Company agrees that, prior to the expiration of this Warrant, the Company will at all times have authorized and in reserve, and will keep available, solely for issuance or delivery upon the exercise of this Warrant, the shares of Common Stock and other securities and properties as from time to time shall be receivable upon the exercise of this Warrant, free and clear of all restrictions on sale or transfer and free and clear of all preemptive rights and rights of first refusal.

5 . Replacement of Warrants. Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and (in the case of loss, theft or destruction) upon delivery of an indemnity agreement (with surety if reasonably required) in an amount reasonably satisfactory to the Company, or (in the case of mutilation) upon surrender and cancellation of this Warrant, the Company will issue, in lieu thereof, a new Warrant of like tenor.

6. Registration Rights.

6.1 "Piggy Back" Registration. If at any time the Company shall determine to register under the Securities Act, any of its Common Stock, other than on Form S-8 or its then equivalent, it shall send to the Holder written notice of such determination and, if within thirty (30) days after receipt of such notice, the Holder shall so request in writing, the Company shall include in such registration statement all or any part of the Warrant Stock except that if, in connection with any offering involving an underwriting of Common Stock to be issued by the Company, the managing underwriter shall impose a limitation on the number of shares of such Common Stock which may be included in any such registration statement because, in its judgment, such limitation is necessary to effect an orderly public distribution, then the Company may exclude some or all of the Warrant Stock from the registration statement with respect to which the Holder has requested inclusion hereunder.

6.2 Indemnification of Holder. In the event that the Company registers any of the Warrant Stock under the Securities Act, the Company will indemnify and hold harmless the Holder from and against any and all losses, claims, damages, expenses or liabilities to which it becomes subject under the Securities Act or under any other statute or at common law or otherwise, and, except as hereinafter provided, will reimburse the Holder for any legal or other expenses reasonably incurred by it in connection with investigating or defending any actions whether or not resulting in any liability, insofar as such losses, claims, damages, expenses, liabilities or actions arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the registration statement, in any preliminary or amended preliminary prospectus or in the prospectus (or the registration statement or prospectus as from time to time amended or supplemented by the Company) or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein not misleading or any violation by the Company of any rule or regulation promulgated under the Securities Act applicable to the Company and relating to action or inaction required of the Company in connection with such registration, unless such untrue statement or omission was made in such registration statement, preliminary or amended, preliminary prospectus or prospectus in reliance upon and in conformity with information furnished in writing to the Company in connection therewith by the Holder expressly for use therein. Promptly after receipt by the Holder of notice of the commencement of any action in respect of which indemnity may be sought against the Company, the Holder will notify the Company in writing of the commencement thereof, and, subject to the provisions hereinafter stated, the Company shall assume the defense of such action (including the employment of counsel, who shall be counsel reasonably satisfactory to the Holder), and the payment of expenses insofar as such action shall relate to any alleged liability in respect of which indemnity may be sought against the Company. The Holder shall have the right to employ separate counsel in any such action and to participate in the defense thereof but the fees and expenses of such counsel shall not be at the expense of the Company unless the employment of such counsel has been specifically authorized by the Company. The Company shall not be liable to indemnify any person for any settlement of any such action effected without the Company's consent.

6.3 Indemnification of Company. In the event that the Company registers any of the Warrant Stock under the Securities Act, the Holder will indemnify and hold harmless the Company, each of its directors, each of its officers who have signed the registration statement, each underwriter of the shares so registered (including any broker or dealer through whom such of the shares may be sold) and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act from and against any and all losses, claims, damages, expenses or liabilities, joint or several, to which they or any of them may become subject under the Securities Act or under any other statute or at common law or otherwise, and, except as hereinafter provided, will reimburse the Company and each such director, officer, underwriter or controlling person for any legal or other expenses reasonably incurred by them or any of them in connection with investigating or defending any actions whether or not resulting in any liability, insofar as such losses, claims, damages, expenses, liabilities or actions arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the registration statement, in any preliminary or amended preliminary prospectus or in the prospectus (or in the registration statement or prospectus as from time to time amended or supplemented) or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein not misleading, but only insofar as any such statement or omission was made in reliance upon and in conformity with information furnished in writing to the Company in connection therewith by the Holder expressly for use therein. Promptly after receipt of notice of the commencement of any action in respect of which indemnity may be sought against the Holder, the Company will notify the Holder in writing of the commencement thereof, and the Holder shall, subject to the provisions hereinafter stated, assume the defense of such action (including the employment of counsel, who shall be counsel reasonably satisfactory to the Company) and the payment of expenses insofar as such action shall relate to the alleged liability in respect of which indemnity may be sought against the Holder. The Company and each such director, officer, underwriter or controlling person shall have the right to employ separate counsel in any such action and to participate in the defense thereof but the fees and expenses of such counsel shall not be at the expense of the Holder unless employment of such counsel has been specifically authorized by the Holder. The Holder shall not be liable to indemnify any person for any settlement of any such action effected without the Holder's consent.

7 . Termination Upon Certain Events. If there shall be a merger or consolidation of the Company with or into another corporation (other than a merger or reorganization involving only a change in the state of incorporation of the Company or the acquisition by the Company of other businesses where the Company survives as a going concern), or the sale of all or substantially all of the Company's capital stock or assets to any other person, or the liquidation or dissolution of the Company, then as a part of such transaction, provision shall be made so that the Holder shall thereafter be entitled to receive the number of shares of stock or other securities or property of the Company, or of the successor corporation resulting from the merger, consolidation or sale, to which the Holder would have been entitled if the Holder had exercised its rights pursuant to this Warrant immediately prior thereto (and, in such case, appropriate adjustment shall be made in the application of the provisions of this Section 7(a) to the end that the provisions of Section 2 shall be applicable after that event in as nearly equivalent a manner as may be practicable).

8 . Transferability. Subject to compliance with Section 3.1, this Warrant may be assigned, pledged or hypothecated by the Holder without the prior consent of the Company.

9 . No Rights as Stockholder. Until the exercise of this Warrant, the Holder shall not have or exercise any rights by virtue hereof as a stockholder of the Company.

10. Notices. All notices, requests and other communications hereunder shall be in writing and shall be either (i) delivered by hand, (ii) made by telex, telecopy or facsimile transmission, (iii) sent by overnight courier, or (iv) sent by registered mail, postage prepaid, return receipt requested. In the case of notices from the Company to the Holder, they shall be sent to the address furnished to the Company in writing by the last Holder who shall have furnished an address to the Company in writing. All notices from the Holder to the Company shall be delivered to the Company at its offices at 411 West 14th Street, New York, New York 10014, Attention: Chief Executive Officer, or such other address as the Company shall so notify the Holder. All notices, requests and other communications hereunder shall be deemed to have been given (i) if delivered by hand, at the time of the delivery thereof to the receiving party at the address of such party described above, (ii) if made by telex, telecopy or facsimile transmission, at the time that receipt thereof has been acknowledged by electronic confirmation or otherwise, (iii) if sent by overnight courier, on the next business day following the day such notices is delivered to the courier service, or (iv) if sent by registered mail, on the fifth business day following the day such mailing is made.

11. Waivers and Modifications. Any term or provision of this Warrant may be waived only by written document executed by the party entitled to the benefits of such terms or provisions. The terms and provisions of this Warrant may be modified or amended only by written agreement executed by the parties hereto.

12. Headings. The headings in this Warrant are for convenience of reference only and shall in no way modify or affect the meaning or construction of any of the terms or provisions of this Warrant.

13. Governing Law. This Warrant will be governed by and construed in accordance with and governed by the laws of Delaware without giving effect to the conflict of law principles thereof.

[Signature Page Follows]

EXHIBIT E

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed by its duly authorized representative as of the date first written above.

THE ONE GROUP HOSPITALITY, INC.

By: _____
Name: _____
Title: _____

EXHIBIT A

PURCHASE FORM

To: The ONE Group Hospitality, Inc.

The undersigned, pursuant to the provisions set forth in the attached Warrant, hereby irrevocably elects to (check one):

_____ (A) purchase _____ shares of Common Stock, par value $_____ per share, of The ONE Group Hospitality, Inc. (the "**Common Stock**"), covered by such Warrant and herewith makes payment of $_____, representing the full purchase price for such shares at the price per share provided for in such Warrant; or

_____ (B) convert _____ Warrant Shares into that number of shares of fully paid and nonassessable shares of Common Stock, determined pursuant to the provisions of Section 1.5 of the Warrant.

Common Stock for which the Warrant may be exercised or converted shall be known herein as "**Warrant Stock**."

The undersigned is aware that Warrant Stock has not been and will not be registered under the Securities Act of 1933, as amended (the "**Securities Act**"), or any state securities laws. The undersigned understands that reliance by the Company on exemptions under the Securities Act is predicated in part upon the truth and accuracy of the statements of the undersigned in this Purchase Form.

The undersigned represents and warrants that (i) it has been furnished with all information which it deems necessary to evaluate the merits and risks of the purchase of Warrant Stock, (ii) it has had the opportunity to ask questions concerning Warrant Stock and the Company and all questions posed have been answered to his satisfaction, (iii) it has been given the opportunity to obtain any additional information it deems necessary to verify the accuracy of any information obtained concerning Warrant Stock and the Company and (iv) it has such knowledge and experience in financial and business matters that it is able to evaluate the merits and risks of purchasing Warrant Stock and to make an informed investment decision relating thereto.

The undersigned hereby represents and warrants that it is purchasing Warrant Stock for its own account for investment and not with a view to the sale or distribution of all or any part of Warrant Stock.

The undersigned understands that because Warrant Stock has not been registered under the Securities Act, the undersigned must continue to bear the economic risk of the investment for an indefinite period of time and Warrant Stock cannot be sold unless it is subsequently registered under applicable federal and state securities laws or an exemption from such registration is available.

The undersigned agrees that it will in no event sell or distribute or otherwise dispose of all or any part of Warrant Stock unless (i) there is an effective registration statement under the Securities Act and applicable state securities laws covering any such transaction involving Warrant Stock, or (ii) the Company receives an opinion from legal counsel acceptable to the Company stating that such transaction is exempt from registration. The undersigned consents to the placing of a legend on his certificate for Warrant Stock stating: (A) that the resale or transfer of the Warrant Stock has not been registered and setting forth the restriction on transfer contemplated hereby, and (B) to the placing of a stop-transfer order on the books of the Company and with any transfer agents against Warrant Stock until Warrant Stock may be legally resold or distributed without restriction.

The undersigned has considered the federal and state income tax implications of the exercise of the Warrant and the purchase and subsequent sale of the Warrant Stock.

_____
Signature

_____
Print Name

or

Entity Name: _____

By: _____
Signature

_____
Print Name

_____
Title

Exhibit 2.2

EXECUTION VERSION

AGREEMENT AND PLAN OF MERGER

DATED AS OF JULY 9, 2015

by and among

KATSUYA-H&V, LLC,

SBEEG HOLDINGS, LLC,

SBE/KATSUYA USA, LLC,

THE ONE GROUP HOSPITALITY, INC.,

and

WASABI ACQUISITION H&V, LLC,

TABLE OF CONTENTS

INDEX OF EXHIBITS

INDEX OF SCHEDULES

	Description
Schedule I	List of Members and Company LLC Interests
Schedule II	Permitted Liens Schedule
Schedule III	Merger Consideration Schedule
Schedule IV	Disclosure Schedules

AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger (the "Agreement") is made as of July 9, 2015 by and among Katsuya-H&V, LLC, a Delaware limited liability company (the "Company"), SBEEG Holdings, LLC, a Delaware limited liability company ("SBEEG"), SBE/Katsuya USA, LLC, the manager of the Company (the "Manager"), The ONE Group Hospitality, Inc., a Delaware corporation ("Parent"), and Wasabi Acquisition H&V, LLC, a Delaware limited liability company and a wholly owned subsidiary of Parent (" Merger Sub"). The Company, Parent, Merger Sub and SBEEG are collectively referred to herein as the "Parties" and individually each as a "Party."

WHEREAS, upon the terms and subject to the conditions of this Agreement and in accordance with the Limited Liability Company Act of the State of Delaware (the "LLC Act"), Parent, Merger Sub and the Company will consummate a business combination transaction pursuant to which Merger Sub will merge (the "Merger") with and into the Company, with the Company continuing as the surviving company (the "Surviving Company"); and

WHEREAS, the Manager has determined that the Merger is consistent with and in furtherance of the long-term business strategy of the Company and fair to, and in the best interests of, the Company and its Members and has approved this Agreement, the Merger, the Related Agreements to which the Company is a party and the transactions contemplated hereby and thereby;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, and intending to be legally bound hereby, the Company, Parent, Merger Sub, the Manager and SBEEG hereby agree as follows:

ARTICLE I
DEFINITIONS

1.01 Definitions.

For purposes hereof, the following terms, when used herein with initial capital letters, shall have (a) the respective meanings set forth herein or (b) if not otherwise defined herein, the meaning set forth in the Asset Purchase Agreement:

"Action" means any suit, action, arbitration, cause of action, claim, complaint, prosecution, audit, inquiry, investigation, governmental or other proceeding, whether civil, criminal, administrative, investigative or informal, at law or at equity, before or by any Court, Governmental Authority, arbitrator or other tribunal.

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the first mentioned Person, including any partnership or joint venture in which one Person (either alone, or through or together with any other subsidiary) has, directly or indirectly, an interest of ten percent (10%), or more; and "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of stock or other securities, as trustee or executor, by contract or credit arrangement or otherwise.

"Affiliated Group" means an affiliated group as defined in Section 1504 of the Code (or any analogous combined, consolidated or unitary group defined under state, local or foreign income Tax Law) of which either the Company are or have been a member.

"Aggregate Closing Merger Consideration" means an amount equal to the Base Purchase Price in cash minus (a) Indebtedness of the Company plus (b) the amount (if any) by which the Estimated Working Capital is greater than the Target Working Capital minus (c) the amount (if any) by which the Estimated Working Capital is less than the Target Working Capital.

"Asset Purchase Agreement" means that certain asset purchase agreement dated as of the date hereof by and among the Parent, SBEEG, the Manager and the other parties thereto.

"Assets" means all of the assets, properties, rights, interests and goodwill of every kind and nature whatsoever, whether tangible or intangible, wherever located, owned, used or held for use by the Company in connection with the Business, whether now owned, used or held for use or acquired prior to the Closing.

"Base Purchase Price" means $8,000,000.00.

"Business" means the ownership, operation, promotion and development of Katsuya Hollywood.

"Business Day" means any day other than a Saturday, Sunday or day on which banks are permitted to close in the State of Delaware.

"Business Employee" means any employee of Spoonful who currently provides services primarily to the Business.

"Business Material Adverse Effect" means a material adverse effect on the Company, condition (financial or otherwise), properties, prospects, operations or results of operation of the Business or the ability of the Company, SBEEG or the Manager to perform its obligations as contemplated in this Agreement or any Related Agreement.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

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

"Company LLC Interests" means the limited liability company membership interests of the Company, and with respect to each member of the Company, such number of Company LLC Interests as are set forth next to such member's name on Schedule I hereto.

"Company's Accounting Practices and Procedures" means the accounting methods, policies, practices and procedures, including classification and estimation methodology (but taking into account all available information as of the time of preparation of the applicable financial statements or calculations) used by the Company in the preparation of the Audited Financial Statements for the year ended December 31, 2014.

"Contract" means any loan agreement, indenture, letter of credit (including related letter of credit applications and reimbursement obligations), mortgage, security agreement, pledge agreement, deed of trust, bond, note, guarantee, surety obligation, warranty, license, franchise, permit, power of attorney, invoice, quotation, purchase order, sales order, lease, endorsement agreement, and any other agreement, contract, instrument, obligation, offer, commitment, plan, arrangement, understanding or undertaking, written or oral, express or implied, to which a Person is a party or by which any of its properties, assets or Intellectual Property may be bound or affected, in each case as amended, supplemented, waived or otherwise modified.

"Court" means any court or arbitration tribunal of any country or territory, or any state, province or other subdivision thereof.

"Employee Benefit Plan" means any employee benefit plan (as defined in Section 3(3) of ERISA) and any bonus, option, interest purchase, interest ownership, stock appreciation right, restricted stock, phantom stock, equity or equity-based, incentive compensation, pension, profit-sharing, deferred compensation, health, medical, dental, vision, retiree medical or other retirement benefit, welfare, accident, disability or life insurance, workmen's compensation or other insurance, vacation, day or dependent care, legal services, cafeteria benefit, dependent care, disability, director, leave of absence, layoff, employee or independent contractor loan, fringe benefit, sabbatical, supplemental retirement, severance, separation, termination, change of control, collective bargaining, or other benefit plan, program, policy or arrangement, and all employment, termination, severance, consulting or other contract or agreement which the Company maintains, administers, sponsors, or contributes to, or with respect to which the Company has or may have any obligation, whether written or oral, and whether or not subject to ERISA.

"Environmental Law" means any Law or Order relating to the environment or occupational health and safety, including any Law or Order pertaining to (i) treatment, storage, disposal, generation and transportation of Materials of Environmental Concern; (ii) air, water and noise pollution; (iii) the protection of groundwater, surface water or soil; (iv) the release or threatened release into the environment of Materials of Environmental Concern, including emissions, discharges, injections, spills, escapes or dumping; (v) storage tanks, vessels, containers, abandoned or discarded barrels, and other closed receptacles used for Materials of Environmental Concern; or (vi) occupational health and safety. As used above, the terms "release" and "environment" shall have the meaning set forth in CERCLA.

"Equity Interest" means, with respect to any Person, (a) any capital stock, partnership or membership interest, unit of participation or other similar interest (however designated) in such Person and (b) any option, warrant, purchase right, conversion right, exchange right or other Contract which would entitle any other Person to acquire any such interest in such Person or otherwise entitle any other Person to share in the equity, profits, earnings, losses or gains of such Person (including stock appreciation, phantom stock, profit participation or other similar rights).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Escrow Agent" means Continental Stock Transfer & Trust Company, or any successor escrow agent appointed pursuant to the Escrow Agreement.

"Escrow Amount" means an amount equal to (A) $2,000,000 multiplied by (B) (i) the Base Purchase Price divided by (ii) $27,600,000. One-half of the Escrow Amount shall be released twelve (12) months after the Closing Date (less the amount of any pending or resolved claims as of such date) and the remainder shall be released at eighteen (18) months (less the amount of any pending or resolved claims as of such date), as further described and upon the terms set forth in the Escrow Agreement.

"GAAP" means United States generally accepted accounting principles applied in a consistent manner throughout the periods involved.

"Governmental Authority" means any (i) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (ii) federal, state, local, municipal, foreign or other government; and (iii) governmental or quasi-governmental body, agency or instrumentality of any nature (including any governmental division, authority, program, plan, office, bureau, board, directorate, political subdivision, department, agency, commission, instrumentality, official, organization, unit, body or entity or any court or other tribunal, taxing authority, arbitrator or arbitral body).

"Indebtedness" means Liabilities (including Liabilities for principal, accrued interest, penalties, fees and premiums) (i) for borrowed money, or with respect to deposits or advances of any kind, (ii) evidenced by bonds, debentures, notes or similar instruments, (iii) upon which interest charges are customarily paid, (iv) under conditional sale or other title retention agreements, (v) issued or assumed as the deferred purchase price of property or services (other than all accounts payable incurred in the ordinary course of the Business to the extent included in the calculation of Working Capital), (vi) of others secured by (or for which the holder of such Liabilities has an existing right, contingent or otherwise, to be secured by) any Lien or security interest on property owned or acquired by the Person in question whether or not the obligations secured thereby have been assumed, and (vii) under leases required to be accounted for as capital leases under GAAP.

"Intellectual Property" means (i) worldwide trademarks, service marks, trade names, trade dress, designs, logos, slogans and general intangibles of like nature, together with all goodwill related to the foregoing (whether registered or not, but including any registrations and applications for any of the foregoing) (collectively, "Trademarks"); (ii) patents (including the ideas, inventions and discoveries described therein, any pending applications, any registrations, patents or patent applications based on applications that are continuations, continuations-in-part, divisional, reexamination, reissues, renewals of any of the foregoing and applications and patents granted on applications that claim the benefit of priority to any of the foregoing) (collectively, "Patents"); (iii) works of authorship or copyrights (including any registrations, applications and renewals for any of the foregoing) and other rights of authorship (collectively, "Copyrights"); (iv) trade secrets and other confidential or proprietary information, know-how, confidential or proprietary technology, processes, work flows, formulae, algorithms, models, user interfaces, customer, supplier, vendor, distributor and user lists, databases, pricing and marketing information, inventions, marketing materials, inventions and discoveries (whether patentable or not) (collectively, "Trade Secrets"); (v) computer programs and other Software, macros, scripts, source code, object code, binary code, methodologies, processes, work flows, architecture, structure, display screens, layouts, development tools, instructions and templates; (vi) published and unpublished works of authorship, including audiovisual works, databases and literary works; (vii) rights in, or associated with a person's name, voice, signature, photograph or likeness, including rights of personality, privacy and publicity; (viii) rights of attribution and integrity and other moral rights; (ix) Uniform Resource Locators ("URLs") and Internet domain names and applications therefor (and all interest therein), IP addresses, adwords, key word associations and related rights; and (x) (a) all other proprietary, intellectual property and other rights relating to any or all of the foregoing, (b) all copies and tangible embodiments of any or all of the foregoing (in whatever form or medium, including electronic media) and (c) all rights to sue for and any and all remedies for past, present and future infringements of any or all of the foregoing and rights of priority and protection of interests therein under the Laws of any jurisdiction.

"IRS" means the Internal Revenue Service.

"Law" means any United States federal, state, local, municipal, or any foreign law, statute, constitution, principle of common law, standard, ordinance, code, edict, decree, rule, regulation, resolution, promulgation, ruling or requirement, or any Order, or any Permit granted under any of the foregoing, or any similar provision having the force or effect of law.

"Landlord Agreement" means the Landlord Agreement in the form attached hereto as Exhibit C.

"Landlord Consent" means the Landlord Consent and Acknowledgment to be entered into by the Company and the lessor of any Facility Lease, in the form attached hereto as Exhibit D, or in such other form as shall be acceptable to the Parent in its reasonable discretion.

"Liability" means any debts, liabilities, obligations, claims, charges, Taxes, damages, demands and assessments of any kind, including those with respect to any Governmental Authority, whether accrued or not, known or unknown, disclosed or undisclosed, fixed or contingent, asserted or unasserted, liquidated or unliquidated, whenever or however arising (including, those arising out of any Contract or tort based on negligence or strict liability) and whether or not the same would be required by GAAP to be reflected in financial statements or disclosed in the notes thereto.

"Liens" means any mortgage, easement, right of way, charge, claim, community property interest, condition, equitable interest, lien, option, pledge, security interest, right of first refusal, or restriction or adverse claim of any kind, including any restriction on use, voting, transfer, receipt of income, or exercise of any other attribute of ownership, or any other encumbrance or exception to title of any kind.

"Losses" means any loss, damage, Liability, encumbrance, Tax, fine, penalty, cost or expense, including but not limited to the costs and expenses of any investigation, defense or settlement of an Action or claim, the costs and expenses associated with the enforcement of this Agreement or any Related Agreement and any reasonable, actual and documented fees or expenses of attorneys, accountants or other experts or consultants retained in connection with any such Action or claim or the enforcement of this Agreement; provided, that Losses shall not include any punitive damages, consequential damages, exemplary damages or special damages except to the extent any such damages are reasonably foreseeable and incurred as a result of a Third Party Claim.

"Material Adverse Change" means an event, change or effect, that has or would be reasonably likely to have a material adverse effect or a material adverse change to (a) the financial condition, business, results of operations, assets or liabilities of the Company and its Affiliates party to and merging pursuant to the Other Merger Agreements (collectively, the "Merger Entities"), on a combined basis; (b) the ability of each of the Merger Entities to consummate the transactions contemplated by this Agreement or any Other Merger Agreement, as applicable, or to perform any of its respective obligations under this Agreement or any Other Merger Agreement, as applicable; or (c) the ability of any Affiliate of the Company that is party to the Asset Purchase Agreement (collectively, the "Seller Entities") to consummate the transactions contemplated by the Asset Purchase Agreement or perform any of its obligations under the Asset Purchase Agreement; provided, however, that any adverse effects attributable to any of the following shall not be deemed to constitute, and the following shall not be taken into account in determining whether there has been or will be, a Material Adverse Change: (i) conditions affecting the industries in which the Merger Entities or Seller Entities participate or the U.S. economy as a whole (other than those that disproportionately affect the Merger Entities or Seller Entities); (ii) actions taken by the Seller Entities and Merger Entities at Buyer or Parent's express written direction or with Buyer or Parent's express written consent; (iii) the announcement of this Agreement, any Other Merger Agreement or the Asset Purchase Agreement; (iv) compliance with the provisions of this Agreement, any Other Merger Agreement or the Asset Purchase Agreement; (v) conditions resulting from the outbreak or escalation of hostilities, including acts of war or terrorism (other than those that disproportionately affect Seller Entities and Merger Entities); (vi) conditions resulting from any breach by Buyer or Parent of any provisions of this Agreement, any Other Merger Agreement or the Asset Purchase Agreement; and (vii) change in GAAP.

"Materials of Environmental Concern" means any substances, chemicals, compounds, solids, liquids, gases, materials, pollutants or contaminants, hazardous substances (including as such term is defined under CERCLA), solid wastes and hazardous wastes (including as such terms are defined under the Resource Conservation and Recovery Act), toxic materials, oil or petroleum and petroleum products, asbestos or substances containing asbestos, polychlorinated biphenyls or any other material subject to regulation under any Environmental Law.

"Members" or "Member" means the members of the Company that are from time to time listed on Schedule I hereto.

"Order" means any order, writ, judgment, injunction, decree, stipulation, ruling, decision, verdict, determination, settlement, agreement, or award made, issued or entered into by or with any Governmental Authority.

"Organizational Documents" means, with respect to any Person (other than an individual), (a) the certificate or articles of incorporation or organization and any joint venture, limited liability company, operating or partnership agreement and other similar documents adopted or filed in connection with the creation, formation or organization of such Person and (b) all by-laws, voting agreements and similar documents, instruments or agreements relating to the organization or governance of such Person, in each case, as amended or supplemented.

"Other Merger Agreements" means those certain agreements and plans of merger dated as of the date hereof by and among the Parent, SBEEG, the Manager and the other parties thereto.

"Permitted Liens" means (i) statutory Liens for current Taxes or other governmental charges not yet due and payable or the amount or validity of which is being contested in good faith by appropriate proceedings by the Company and for which appropriate reserves have been established in accordance with GAAP; (ii) mechanics', carriers', workers', repairers' and similar statutory Liens arising or incurred in the ordinary course of business for amounts which are not delinquent and which are not, individually or in the aggregate, material; (iii) purchase money Liens and Liens securing rental payments under capital or operating lease arrangements so long as such leases were disclosed in the Schedules to this Agreement; (iv) other Liens arising in the ordinary course of business and not incurred in connection with the borrowing of money and which are not, individually or in the aggregate, material; and (v) the items set forth on the Permitted Liens Schedule attached as Schedule II hereto.

"Per LLC Interest Equivalent Escrow Amount" means an amount equal to the quotient of (a) the Escrow Amount divided by (b) the total number of Company LLC Interests of the Company as of immediately prior to the Closing.

"Per LLC Interest Closing Merger Consideration" means (a) the Aggregate Closing Merger Consideration, divided by (b) the total number of Company LLC Interests of the Company immediately prior to Closing.

"Permits" means, with respect to any Person, any license, franchise, permit, permission, variance, clearance, registration, accreditation, qualification, consent, approval, right, privilege, certificate or other similar authorization issued by, or otherwise granted by, any Governmental Authority or pursuant to any Law to which or by which such Person is subject or bound or to which or by which any property, business, operation or right of such Person is subject or bound.

"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 Authority.

"Post-Closing Covenant" means any covenant or agreement on the part of any Party hereto that is required to be performed in whole or in part from and after the Closing Date.

"Pre-Closing Covenant" means any covenant or agreement on the part of any Party hereto that is required to be performed in its entirely on or prior to the Closing Date.

"Pro Rata Share" means, with respect to any Member, the percentage set forth opposite such Member's name on the Merger Consideration Schedule attached as Schedule III hereto.

"Related Agreements" means the Asset Purchase Agreement, the Escrow Agreement, and each of the other agreements, certificates, instruments and documents to be executed and delivered in connection with the consummation of the Merger and the other transactions contemplated hereby.

"Release" means any spill, discharge, leak, emission, escape, injection, dumping, or other release by the Company of any Materials of Environmental Concern into the environment.

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

"Spoonful" means Spoonful Management LLC.

"Target Working Capital" means Zero Dollars ($0).

"Tax" or "Taxes" means any and all taxes whatsoever, including any interest, penalties or other additions to tax that may become payable in respect thereof, whether disputed or not, imposed by any Governmental Authority, which taxes shall include all federal, state, local or foreign income taxes, profits taxes, taxes on gains, gross receipts taxes, goods and services taxes, franchise taxes, estimated taxes, alternative minimum taxes, sales taxes, use taxes, ad valorem taxes, transfer taxes, real or personal property taxes, land transfer taxes, registration taxes, value added taxes, escheat or unclaimed property assessments, excise taxes, natural resources taxes, severance taxes, stamp taxes, occupation taxes, premium taxes, workers' compensation taxes, windfall taxes, environmental taxes, taxes on stock, social security or similar taxes (including FICA), welfare taxes, unemployment insurance taxes, disability taxes, payroll taxes, license charges, employee or other withholding taxes, net worth taxes, and other taxes, fees, duties, levies, customs, tariffs, imposts, assessments, obligations and any charges of any kind in the nature of (or similar to) taxes.

"Tax Returns" means any and all returns, reports, information returns, declarations, statements, certificates, bills, schedules, claims for refund or other written information (including any and all schedules, attachments, amendments or related or supporting information thereto) of or with respect to any Tax filed or required to be filed with any Governmental Authority in connection with the determination, assessment or collection of any Tax or the administration of any laws, regulations or administrative requirements relating to any Tax.

"Transferred Employees" means each employee of Spoonful hired by the Surviving Company.

"Working Capital" means the excess of (a) the current assets of the Company determined in accordance with the Company's Accounting Practices and Procedures minus (b) the current liabilities of the Company determined in accordance with the Company's Accounting Practices and Procedures.

ARTICLE II
THE MERGER

2.01 The Merger

On the terms and subject to the conditions set forth in this Agreement, and in accordance with the LLC Act, at the Effective Time, Merger Sub shall be merged with and into the Company. At the Effective Time, the separate corporate existence of Merger Sub shall cease and the Company shall continue as the Surviving Company.

2.02 Closing

Subject to the terms and conditions hereof, the closing of the transactions contemplated by this Agreement (the "Closing") will take place on the third (3rd) Business Day following the date on which all of the conditions set forth in Article IV have been satisfied or waived (other than any such conditions that by their terms cannot be satisfied until the Closing Date, which conditions shall be required to be so satisfied or waived on the Closing Date), unless another time and/or date is agreed to in writing by the Company and Parent (the "Closing Date"). The Closing shall be held at the offices of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, Massachusetts, unless another place is agreed to in writing by the Company and Parent (it being understood that the Closing may be effected by the delivery of documents via e-mail, facsimile and/or overnight courier). The consummation of the transactions contemplated by this Agreement to occur at the Closing shall be deemed to occur at 12:01 a.m. (EST) on the Closing Date. The Closing shall occur simultaneously with the "Closings" of the transactions contemplated in each of the Asset Purchase Agreement and the Other Merger Agreement.

2.03 Effective Time

Prior to the Closing, Parent shall prepare, and on the Closing Date, the Parties shall cause a certificate of merger (the "Certificate of Merger") to be filed with the Secretary of State of the State of Delaware, in such form as is required by, and executed and acknowledged in accordance with, the relevant provisions of the LLC Act and shall make all other filings or recordings required under the LLC Act in connection with the Merger. The Merger shall become effective at the time upon which the Certificate of Merger is duly filed and accepted with such Secretary of State, or at such other time as Parent and the Company shall agree and specify in the Certificate of Merger (the time the Merger becomes effective being the "Effective Time").

2.04 Effect of the Merger

At the Effective Time, the effect of the Merger shall be as provided in this Agreement, the Certificate of Merger and the applicable provisions of the LLC Act.

2.05 Operating Agreement.

The Operating Agreement of the Surviving Company shall be amended at the Effective Time to be in the form of Exhibit A attached hereto and, as so amended, such Operating Agreement shall be the operating agreement of the Surviving Company until thereafter changed or amended as provided therein and by applicable law.

2.06 Managing Member.

Wasabi Holdings, LLC shall be the managing member of the Surviving Company in accordance with the Operating Agreement of the Surviving Company.

ARTICLE III
EFFECT ON THE CONSTITUENT ENTITIES; PAYMENT OF MERGER CONSIDERATION

3.01 Effect on Equity Interests

At the Effective Time, by virtue of the Merger and without any action on the part of Merger Sub, the Company or the Members:

(a) Each outstanding unit of limited liability company membership interest of Merger Sub shall be converted into and become one unit of limited liability company membership interest of the Surviving Company.

(b) Subject to Section 3.01(e), the Company LLC Interests outstanding immediately prior to the Effective Time shall be converted into the right to receive, (A) the Per LLC Interest Closing Merger Consideration in cash minus the Per LLC Interest Equivalent Escrow Amount, payable to the holder thereof upon the Closing in the manner provided in Section 3.02, plus (B) subject to adjustment as provided in the Escrow Agreement, an amount equal to the quotient of (i) the aggregate amount, if any, of the distributions to the Members of any portion of the Escrow Amount from the Escrow Account divided by (ii) the total number of Company LLC Interests.

(c) The consideration paid in accordance with the terms of Sections 3.01(b) and 3.02 shall be deemed to have been paid in full satisfaction of all rights pertaining to such Company LLC Interests, and after the Effective Time there shall be no further registration of transfers on the transfer books of the Surviving Company of Company LLC Interests that were outstanding immediately prior to the Effective Time.

(d) Notwithstanding anything to the contrary contained herein, Parent, the Company, Merger Sub, the Surviving Company or any other applicable withholding agent, as applicable, and after adequate notice to and discussion with SBEEG as to the appropriateness of withholding shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement such amounts as may be required to be deducted and withheld under the Code, or under any provision of applicable state, local or foreign Tax Law, with respect to the making of such payment and any amounts so deducted or withheld shall be treated for all purposes of this Agreement as having been paid to the holder of Company LLC Interests in respect of which such deduction or withholding was made.

(e) Notwithstanding anything to the contrary contained herein, in no event shall the aggregate amounts payable at the Closing in connection with the Merger under this Article III exceed the Aggregate Closing Merger Consideration less the Escrow Amount.

3.02 Payment of Merger Consideration and Other Amounts.

(a) At the Closing, Parent shall pay or cause to be paid, by wire transfer of immediately available funds to the accounts specified by SBEEG in writing to Parent not less than two (2) Business Days prior to the Closing, to each Member (subject to Section 3.01) the amount specified in Section 3.01(b)(A) with respect to the Company LLC Interests held by such Member.

(b) At the Closing, Parent or Merger Sub shall pay or cause to be paid, by wire transfer of immediately available funds to the escrow account to be maintained pursuant to the Escrow Agreement (the "Escrow Account"), an amount equal to the Escrow Amount pursuant to the terms of an escrow agreement, in form and substance reasonably satisfactory to the Parent, SBEEG and the Escrow Agent, and which will be attached hereto as Exhibit B (the "Escrow Agreement"), which Escrow Amount shall be distributed to Parent or SBEEG in the manner specified in the Escrow Agreement, and, if applicable, distributed to the Members by SBEEG in accordance with this Article III.

(c) Notwithstanding anything to the contrary contained herein, Parent shall not be required to deliver to any Member any consideration for any Member's outstanding Company LLC Interests, or any other payments pursuant to this Article III, until such Member has delivered to Parent evidence of ownership of such Member's Company LLC Interests, a letter of transmittal, which shall include a general release of all claims by such Member against the Company, Parent, Merger Sub and the Surviving Company (other than claims arising out of or in connection with this Agreement or the transaction contemplated hereby), or such other documentation as may be reasonably satisfactory to Parent, or such other documentation as may be reasonably satisfactory to Parent.

(d) Not less than two (2) Business Days prior to the Closing, SBEEG shall deliver to Parent a schedule setting forth a true and complete list of all the Members, the number of Company LLC Interests held by each such holder, the amount of the Aggregate Closing Merger Consideration to be paid to each such holder on the Closing Date, and the Parent and Merger Sub shall be entitled to rely on such schedule.

(e) Notwithstanding anything to the contrary contained herein, in the case of any Member who, as of the Effective Time, owes any Indebtedness (including accrued interest) to the Company (each, a "Member Loan Amount"), Parent or Merger Sub and the Surviving Company, as the case may be, shall deduct and withhold such holder's Member Loan Amount from the Aggregate Closing Merger Consideration otherwise payable to such holder pursuant to the Merger and, if such Member Loan Amount has been paid in full, any instrument evidencing such Member Loan Amount shall be promptly returned to the applicable Member. To the extent a Member Loan Amount is so withheld by Parent, Merger Sub or the Surviving Company, as the case may be, the withheld amount shall be treated for all purposes of this Agreement as having been paid to the Member in respect of which the deduction and withholding was made, and such Member Loan Amount shall to such extent be deemed paid.

3.03 Adjustment to Aggregate Closing Merger Consideration.

(a) At least two (2) Business Days prior to the Closing, the Company will, in good faith and in accordance with the terms of this Section 3.03, prepare and deliver to Parent a written estimate (which shall be subject to review and the reasonable approval of the Parent) setting forth a calculation of the Aggregate Closing Merger Consideration (the "Estimated Aggregate Merger Consideration") and calculations of the components thereof together with an estimated closing balance sheet of the Company determined as of 11:59 p.m. (EST) on the day immediately preceding the Closing Date (the "Estimated Closing Balance Sheet"), calculated in a manner consistent with the Company's Accounting Practices and Procedures; provided, that such Closing Balance Sheet shall include (i) an estimation of Working Capital as of 11:59 p.m. (EST) on the day immediately preceding the Closing Date ("Estimated Working Capital"), and (ii) an Indebtedness Schedule setting forth the amount of Indebtedness of the Company (the "Estimated Indebtedness" and, together with the Estimated Working Capital, the "Merger Consideration Components").

(b) Within 60 days following the Closing, the Surviving Company will, in good faith and in accordance with the terms of this Section 3.03, prepare and deliver to SBEEG a calculation of the Aggregate Closing Merger Consideration and the Merger Consideration Components (the "Merger Consideration Statement"), calculated in a manner consistent with the Company's Accounting Practices and Procedures.

(c) SBEEG shall have 45 days from the date of receipt of the Merger Consideration Statement to review the computation of the Aggregate Closing Merger Consideration and the Merger Consideration Components. In connection with the review of the Merger Consideration Statement: (i) Parent and the Surviving Company will make available to SBEEG and its auditors and other advisors (if any) all records and work papers that SBEEG and its auditors and other advisors (if any) reasonably request in reviewing the Merger Consideration Statement; (ii) SBEEG and its auditors and other advisors (if any) shall be entitled to make copies thereof; and (iii) upon reasonable request of SBEEG, for copies thereof to be made and sent to SBEEG and its auditors and other advisors (if any) at the reasonable expense of SBEEG. In the event that SBEEG disagrees with the Merger Consideration Statement or the amount of any Merger Consideration Component as calculated, SBEEG shall deliver written notice of such disagreement to Parent and the Surviving Company (an "Objection Notice"). The Merger Consideration Statement and the Merger Consideration Components, as calculated, shall be final, conclusive and binding on the parties if no Objection Notice is timely delivered prior to such 45th day following delivery of the Merger Consideration Statement. If SBEEG has timely delivered an Objection Notice to Parent and the Surviving Company, Parent, on the one hand, and SBEEG, on the other hand, will endeavor to resolve any disagreements noted in the Objection Notice in good faith as soon as practicable after the delivery of such notice, but if they do not obtain a final resolution within 30 days after Parent has received the Objection Notice, SBEEG or Parent may submit the matter for resolution to a nationally recognized independent accounting firm mutually agreed upon by Parent and SBEEG (the "Firm") to resolve any remaining disagreements. Parent, on the one hand, and SBEEG, on the other hand, will direct the Firm to use its commercially reasonable efforts to render a determination within 30 days of submitting the matters to it for resolution and the Surviving Company, SBEEG and Parent and their respective agents will cooperate with the Firm during its resolution of any disagreements included in the Objection Notice. The Firm will consider only those items and amounts set forth in the Objection Notice that Parent, on the one hand, and SBEEG, on the other hand, are unable to resolve. SBEEG and Parent shall furnish or cause to be furnished to the Firm such work papers and other documents and information relating to such disputed items as the Firm may request and are available to that party or its agents and shall be afforded the opportunity to present to the Firm any material relating to such disputed items. In resolving any disputed item, the Firm may not assign a value to any item greater than the greatest value for such item claimed by any Party or less than the smallest value for such item claimed by any Party. The fees and expenses of the Firm incurred pursuant to this Section 3.03(c), shall be paid by Parent and the Members out of the Escrow Account in inverse proportion as they may prevail on matters resolved by the Firm (by way of example, if Parent is 80% successful in the dispute, Parent would be responsible for 20% of the fees and expenses of the Firm), which proportionate allocation shall be determined by the Firm. The determination of the Firm as to any disputed matters (and the reasons therefor) shall be set forth in a written statement delivered to Parent, the Surviving Company and SBEEG and shall be final, conclusive and binding on the parties, absent manifest error. The Parties agree that judgment may be entered for purposes of enforcement upon the determination of the Firm in any court of competent jurisdiction.

(d) The Aggregate Closing Merger Consideration, Merger Consideration Components, including the Closing Balance Sheet and Working Capital as agreed to by SBEEG and Parent or as determined by the Firm, as applicable, shall be conclusive and binding on all of the Parties and shall be deemed the "Final Aggregate Merger Consideration", "Final Closing Balance Sheet" and "Final Working Capital," respectively, for all purposes herein.

(e) The Merger Consideration Components, the Estimated Closing Balance Sheet and Final Closing Balance Sheet shall be prepared, and the Estimated Working Capital and the Final Working Capital shall be calculated pursuant to this Section 3.03 on a basis consistent with the Company's Accounting Practices and Procedures.

(f) If the Final Aggregate Merger Consideration is less than the Estimated Aggregate Merger Consideration, then an amount equal to such shortfall shall be satisfied out of the Escrow Amount by withdrawal from the Escrow Account, and Parent and SBEEG shall promptly and in any event within two (2) Business Days provide joint written instructions to the Escrow Agent directing that such shortfall amount be disbursed to the payee and account(s) specified by Parent. If the Final Aggregate Merger Consideration is greater than the Estimated Aggregate Merger Consideration, payment of such excess amount shall be made promptly and in any event within two (2) Business Days in the same manner as the payments made pursuant to Section 3.02(a) and (b).

ARTICLE IV
CLOSING CONDITIONS

4.01 Conditions to the Parent's and Merger Sub's Obligations

The obligations of the Parent and Merger Sub to consummate the transactions contemplated by this Agreement are subject to the satisfaction, or to the extent permitted by Law, waiver by the Parent and Merger Sub, of each of the following conditions to the Closing:

(a) Each of the representations and warranties of the Manager in Article VI and of the Company, SBEEG and the Manager in Article VII that is qualified by "materiality" "Business Material Adverse Effect" or a similar qualifier shall be true and correct in all respects, and each of such representations and warranties that is not so qualified shall be true and correct in all material respects, in each case, as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (except for representations and warranties made as of a specified date, the accuracy of which will be determined only as of the specified date), in all cases after giving effect to any supplement to the Disclosure Schedule.

(b) The Company, the Members and SBEEG shall have performed or complied with in all material respects all of the covenants and agreements required to be performed or complied with by them under this Agreement at or prior to the Closing;

(c) No Action will be pending or threatened in writing wherein an unfavorable judgment, decree or order would (i) prevent the performance of this Agreement or the consummation of any of the transactions contemplated hereby, (ii) declare unlawful the transactions contemplated by this Agreement or (iii) would reasonably be expected to cause such transactions to be rescinded;

(d) The Certificate of Merger shall have been duly executed and delivered on behalf of the Company and filed with the Delaware Secretary of State, and accepted for filing, and the Merger shall have become effective under applicable Law;

(e) Parent shall have received the Escrow Agreement duly executed by SBEEG (on behalf of the Members) and the Escrow Agent (along with the wire transfer instructions for payment of the Escrow Amount to the Escrow Agent);

(f) The Company and SBEEG shall have delivered to the Parent each of the following:

(i) A certificate, dated as of the Closing Date, signed by an officer of the Manager or the Company certifying as to the conditions specified in subsections (a), (b), (c) (to its knowledge), (k) and (l) to this Section 4.01;

(ii) Copies of all material governmental or third party consents listed on Schedule 6.04, 7.02 or 7.03 relating to the consummation of the transactions contemplated hereby, including, without limitation, the consent of the lessor of any Facility Lease to the modification of the guarantees made by Sam Nazarian and any other guarantors of such Facility Leases (or the Facility Leases themselves) (the "Guaranty Modifications") such that the act or omissions of Sam Nazarian or any other applicable guarantor (or their Affiliates) cannot cause an event of default of breach by the tenant under the applicable Facility Leases); and all such consents shall be in form and substance reasonably satisfactory to the Parent and shall be in full force and effect and not subject to any condition or waiver that has not been satisfied;

(iii) All payoff letters and lien release documentation (or other evidence of payment in full satisfaction where applicable) reasonably satisfactory to the Parent and their counsel and lenders relating to any Indebtedness being paid off at Closing and the termination of all Liens on any assets securing any such Indebtedness shall have been provided by the lenders related thereto;

(iv) All existing minute books, ledgers and registers, schedules of members, corporate seals, if any, and other corporate records relating to the organization, ownership and maintenance of the Company, if not already located on the premises of the Company;

(v) Resignations effective as of the Closing Date from the Manager and all officers of the Company;

(vi) A copy of the Organizational Documents of the Company, and a certificate of good standing from the Secretary of State of the state of formation for the Company dated within fifteen (15) days of the Closing Date, a listing of all the names and incumbency of each of the officers of the Manager executing this Agreement on behalf of itself and the Company or any Related Agreement and all resolutions adopted by the Manager or any of the Members of the Company in connection with this Agreement and the transactions contemplated hereby, in each case, certified by an appropriate officer of the Manager; and

(vii) A certification dated as of the Closing Date, conforming to the requirements of the Treasury Regulations promulgated under Section 1445 of the Code that eliminates the obligation of Buyer to withhold on the transactions contemplated hereunder pursuant to Section 1445 of the Code;

(g) Parent shall have received the Landlord Consent duly executed by the Company and the applicable lessor party thereto;

(h) Any management agreements in effect relating to the operation of the Business or other agreements between the Company and any Affiliate of SBEEG shall have been terminated;

(i) This Agreement shall have been approved and adopted by the requisite affirmative vote of the members of the Company in accordance with the LLC Act and the Company's Organizational Documents;

(j) All of the conditions set forth in Sections 6.1 and 6.2 of the Asset Purchase Agreement have been satisfied or waived (other than any such conditions that by their terms cannot be satisfied until the "Closing Date" set forth in the Asset Purchase Agreement, which conditions shall be required to be so satisfied or waived on the "Closing Date" set forth in the Asset Purchase Agreement);

(k) All of the conditions set forth in Section 4.01 of the Other Merger Agreements have been satisfied or waived (other than any such conditions that by their terms cannot be satisfied until the "Closing Date" set forth in the Other Merger Agreements, which conditions shall be required to be so satisfied or waived on the "Closing Date" set forth in the Other Merger Agreements); and

(l) Since the date of this Agreement, there shall not have occurred a Material Adverse Change, it being acknowledged that any disclosure of a matter in the Disclosure Schedule indicating that a matter might have a Material Adverse Change shall not limit the Buyer's or Parent's ability to assert that such matter has had a Material Adverse Change for purposes of this Section 4.01(l).

4.02 Conditions to the Company's, SBEEG's and the Manager's Obligations

The obligations of the Company, SBEEG and the Manager to consummate the transactions contemplated by this Agreement are subject to the satisfaction, or to the extent permitted by Law, waiver by the Company, SBEEG and the Manager of the following conditions to the Closing:

(a) Each of the representations and warranties of the Parent and Merger Sub in Article VIII that is qualified by "materiality" "material adverse effect" or a similar qualifier shall be true and correct in all respects, and each of such representations and warranties that is not so qualified shall be true and correct in all material respects, in each case, as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (except for representations and warranties made as of a specified date, the accuracy of which will be determined only as of the specified date), in all cases after giving effect to any supplement to the Disclosure Schedule;

(b) The Parent shall have performed in all material respects all of the covenants and agreements required to be performed by it under this Agreement at or prior to the Closing;

(c) No Action will be pending wherein an unfavorable judgment, decree or order would (i) prevent the performance of this Agreement or the consummation of any of the transactions contemplated hereby, (ii) declare unlawful the transactions contemplated by this Agreement or (iii) would reasonably be expected to cause such transactions to be rescinded;

(d) SBEEG shall have received a copy of the Escrow Agreement duly executed by Parent and the Escrow Agent and Parent shall be ready, willing and able to fund the Escrow Amount at Closing;

(e) The Parent shall have delivered to SBEEG each of the following:

(i) A certificate of Parent attaching copies of the resolutions duly adopted by the Parent's board of directors authorizing the execution, delivery and performance of this Agreement and the other agreements contemplated hereby, and the consummation of all transactions contemplated hereby and thereby;

(ii) An officer certificate of Parent, dated as of the Closing Date, certifying as to the conditions specified in subsections (a) and (b) of this Section 4.02 have been satisfied;

(iii) A certificate of good standing from the Secretary of State of the state of incorporation of the Parent dated within fifteen (15) days of the Closing Date; and

(iv) Copies of all material governmental or third party consents relating to the consummation of the transactions contemplated hereby, (except that the requirement to obtain the Landlord Consent and the Guaranty Modifications shall be sole responsibility of the Company and SBEEG and shall not be deemed a condition to closing pursuant to this Section 4.02); and all such consents shall be in form and substance reasonably satisfactory to SBEEG and shall be in full force and effect and not subject to any condition or waiver that has not been satisfied;

(f) All of the conditions set forth in Sections 6.1 and 6.3 of the Asset Purchase Agreement have been satisfied or waived (other than any such conditions that by their terms cannot be satisfied until the "Closing Date" set forth in the Asset Purchase Agreement, which conditions shall be required to be so satisfied or waived on the "Closing Date" set forth in the Asset Purchase Agreement); and

(g) All of the conditions set forth in Section 4.02 of the Other Merger Agreements have been satisfied or waived (other than any such conditions that by their terms cannot be satisfied until the "Closing Date" set forth in the Other Merger Agreements, which conditions shall be required to be so satisfied or waived on the "Closing Date" set forth in the Other Merger Agreements).

ARTICLE V
PRE-CLOSING COVENANTS

5.01 Conduct of the Business

(a) From the date hereof until the Closing Date, or the earlier termination of this Agreement pursuant to Article IX, except to the extent described in Schedule 5.01 or otherwise required or specifically permitted by this Agreement, the Company shall: (i) conduct the Business in the ordinary course of business consistent with past practice in all material respects (including with respect to capital expenditures, the timely making of any budgeted or emergency capital expenditures or capital expenditures that are required to maintain the Business in compliance with any applicable Laws), unless the Parent shall have otherwise consented in writing (which consent will not be unreasonably withheld, conditioned or delayed); (ii) maintain in effect the insurance coverage described on Schedule 7.16 (or reasonably equivalent replacement coverage); (iii) use its commercially reasonable efforts to preserve the present relationships of the Business with suppliers, vendors, licensees and other Persons with which the Business has business relations; (iv) maintain in effect the Business Licenses (if any) in accordance with the terms thereof and renew any Business License that would otherwise expire pursuant to the terms thereof between the date of this Agreement and the Closing; (v) use its commercially reasonable efforts to keep, or to cause Spoonful to keep, available the services of the Business Employees subject to the normal hiring and firing of Business Employees in the ordinary course of business consistent with past practice and (vi) use commercially reasonable efforts to preserve intact its business organization, value as a going concern and relationships with third parties (including lessors, licensors, suppliers, distributors and customers) and employees.

(b) From the date hereof until the Closing Date, or the earlier termination of this Agreement pursuant to Article IX, except to the extent described in Schedule 5.01 or otherwise required or specifically permitted by this Agreement or consented to in writing by the Parent (which consent will not be unreasonably withheld, conditioned or delayed), the Company shall refrain from: (i) issuing, selling or delivering any of its Company LLC Interests or other Equity Interests or issuing or selling any securities convertible into, or options with respect to, or warrants to purchase or rights to subscribe for, any of its Company LLC Interests or other Equity Interests (or amending any term of any of the foregoing); (ii) effecting any recapitalization, reclassification, dividend, split or like change in its capitalization other than dividends in the in the ordinary course of business consistent with past practice and the terms and conditions of the Company's Organizational Documents; (iii) amending its Organizational Documents; (iv) making any redemption or purchase of any of its of its Company LLC Interests or other Equity Interests; (v) (A) merging, consolidating or combining with any Person or (B) acquiring any material assets, except for acquisitions of inventory, equipment and supplies in the ordinary course of business consistent with past practice; (vi) permitting any of the assets of the Company to become subject to a Lien (other than a Permitted Lien) or selling, leasing, licensing or otherwise disposing of any assets or securities, including by merger, consolidation, asset sale or other business combination, other than in the ordinary course of business consistent with past practice; (vii) making any loans or advances to, or any investments in, any other Person (in the case of loans or advances to employees, in excess of $100,000 in the aggregate for all such loans and advances); (viii) pledging or otherwise encumbering of its Company LLC Interests or other Equity Interests; (ix) excepting as required or specifically permitted by this Agreement, entering into or amending any Contract with the Manager or any officer of the Company; (x) increasing any benefits under any Employee Benefit Plan or increasing the compensation payable or paid, whether conditionally or otherwise, to any employee, officer, manager or consultant of Company (other than (A) any increase adopted in the ordinary course of business consistent with past practice in respect of the compensation of any employee whose annual base compensation does not exceed $125,000 after giving effect to such increase or (B) any increase in benefits or compensation required by Law or required pursuant to the terms of an existing Employee Benefit Plan); (xi) becoming liable in respect of any guarantee (other than a guarantee by the Company of a Liability of the Company that is made in the ordinary course of business consistent with past practice) or incur, assume or otherwise become liable in respect of any Indebtedness; (xii) repaying, prepaying or otherwise discharging or satisfying any Indebtedness or other material Liabilities, other than in the ordinary course of business consistent with past practice, or waiving, cancelling or assigning any claims or rights of substantial value other than in the ordinary course of business consistent with past practice; (xiii) making any capital expenditures that are in the aggregate in excess of $100,000 (other than capital expenditures contemplated by the capital expenditure budget attached to Schedule 5.01, emergency capital expenditures or capital expenditures that are required to maintain the Business in compliance with any applicable Laws); (xiv) making any change in its methods of accounting or accounting practices (including with respect to reserves) or any Tax election; filing any amended Tax Return; electing or changing any method of accounting for Tax purposes; settling any Action or claim in respect of Taxes; or consenting to any extension or waiver of the limitations period for the assessment of any Tax; (xv) settling, agreeing to settle, waiving or otherwise compromising any pending or threatened Actions or claims (A) involving potential payments by or to the Company of more than $100,000 in aggregate, (B) that admit Liability or consent to non-monetary relief, or (C) that otherwise are or would reasonably be expected to be material to the Company or the Business; (xvi) entering into, adopt, terminate, modify, renew or amend in any material respect (including by accelerating material rights or benefits under) any Contract unless such Contract requires payments by the Company of less than $10,000 per month and that can be terminated by the Company upon 60 days' or less notice without penalty; (xvii) writing up or writing down any of its material assets of the Company or revalue its inventory or reserves in respect of its accounts receivable; (xviii) taking any action or failing to take any action that would result in any of the representations and warranties set forth in this Agreement becoming false or inaccurate in any material respect; or (xix) authorizing, agreeing or committing or entering into a Contract to do any of the foregoing.

5.02 Regulatory Filings

(a) The Company shall, as soon as reasonably practical after the date hereof (it being the objective of the Parties to do so within two Business Days of the date hereof), make all necessary filings and submissions under any Laws applicable to the Company for the consummation of the transactions contemplated herein and the operation of the Business following the Closing. Subject to Section 5.05 and the restrictions of applicable Law, the Company shall coordinate and cooperate with the Parent in exchanging such information and providing such assistance as the Parent may reasonably request in connection with the foregoing and Parent's efforts described in 5.02(b).

(b) The Parent shall, as soon as reasonably practical after the date hereof (it being the objective of the Parties to do so within two Business Days of the date hereof), make or cause to be made all filings and submissions required under any Laws applicable to the Parent for the consummation of the transactions contemplated herein and the operation of the business following the Closing. The Parent shall comply with any additional requests for information, including requests for production of documents and production of witnesses for interviews or depositions by any Governmental Authority. In addition, the Parent shall cooperate in good faith with all such governmental authorities and undertake promptly any and all action required to complete lawfully the transactions contemplated by this Agreement (including, without limitation, divestitures of its assets).

5.03 Closing Conditions

(a) Subject to the terms and conditions of this Agreement, from the date of this Agreement to the Closing or the earlier termination of this Agreement pursuant to Article IX, the Manager and the Company shall use commercially reasonable efforts to take or cause to be taken all actions, to file or cause to be filed all documents, to give or cause to be given all notices to Governmental Authorities or other Persons, to obtain or cause to be obtained all authorizations, consents, waivers, approvals, permits or orders from Governmental Authorities or other Persons, and to do or cause to be done all other things necessary, proper or advisable, in order to cause the conditions set forth in Section 4.01 to be satisfied and to consummate the transactions contemplated herein as soon as reasonably practicable after the satisfaction of the conditions set forth in Section 4.01 (other than those to be satisfied at the Closing) and allow the Business to be operated immediately following the Closing in the same manner as it is operated prior to the Closing; provided that neither the Company nor the Manager shall be required to expend any funds to obtain any governmental or third party consents required under Section 4.01(d), other than de minimis amounts and fees and expenses of their Representatives.

(b) Subject to the terms and conditions of this Agreement (including Section 5.02 above), from the date of this Agreement to the Closing or the earlier termination of this Agreement pursuant to Article IX, the Parent shall use commercially reasonable efforts to take or cause to be taken all actions, to file or cause to be filed all documents, to give or cause to be given all notices to Governmental Authorities or other Persons, to obtain or cause to be obtained all authorizations, consents, waivers, approvals, permits or orders from Governmental Authorities or other Persons, and to do or cause to be done all other things necessary, proper or advisable, in order to cause the conditions set forth in Section 4.02 to be satisfied and to consummate the transactions contemplated herein as soon as reasonably practicable after the satisfaction of the conditions set forth in Section 4.02 (other than those to be satisfied at the Closing).

5.04 Notification.

(a) From the date hereof until the Closing Date or the earlier termination of this Agreement pursuant to Article IX, the Company and SBEEG shall promptly after discovery thereof (and in any event prior to the Closing) disclose to the Parent in writing any (i) material variances from the representations and warranties contained in Article VI and Article VII, as applicable, together with updated and corrected Schedules, (ii) other fact or event that would constitute a breach of the covenants in this Agreement made by the Members or the Company, (iii) commencement or initiation or threat of commencement or initiation of any Action (or any material development in any pending Action) regarding the transactions contemplated hereby or otherwise involving the Company or the Business, (iv) notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated hereby, or (v) notice or other communication from any Governmental Authority in connection with the transactions contemplated. The delivery of any notice pursuant to this Section 5.04 shall not cure any breach of any representation or warranty requiring disclosure of such matter or any breach of any covenant contained in this Agreement or any Related Agreement. For the avoidance of doubt, (x) the closing conditions shall be read after giving effect to any update to the Schedules or other written notices delivered pursuant to this Section 5.04, and (y) the indemnification provisions of this Agreement shall be read without giving effect to any update to the Schedules or other written notices delivered pursuant to this Section 5.04.

(b) From the date hereof until the Closing Date or the earlier termination of this Agreement pursuant to Article IX, the Parent shall promptly (and in any event prior to the Closing) notify the Company and SBEEG after discovery by the Parent and Merger Sub of (i) any material variances from the representations and warranties contained in Article VIII and (ii) any other fact or event that would cause or constitute a breach of the covenants in this Agreement made by the Parent, if, in each case, such variance or breach would have a material adverse effect on the ability of the Parent to consummate the transactions contemplated hereby.

5.05 Contact with Providers, Suppliers, Employees and Others

From the date hereof until the Closing Date or the earlier termination of this Agreement pursuant to Article IX, the Parent and its authorized Representatives shall contact and communicate with the employees of Spoonful working at the Company, providers, customers, suppliers or any other Person with a material business relationship with the Company only after prior consultation with and oral or written approval of SBEEG or its authorized Representatives; provided, that SBEEG will consent to any reasonable request by the Parent, prospective providers of financing or their respective Representatives to contact any such employees, providers, customers, suppliers or other Persons and no such contact shall be made prior to the granting of such consent by SBEEG. Notwithstanding the foregoing, this Section 5.05 shall not prohibit any contacts or communications to the extent not related to the Company or the Merger.

5.06 No Negotiation

From the date of this Agreement until the Closing or the earlier termination of this Agreement pursuant to Article IX, the Company and the Manager shall not, and the Manager shall require the Company not to, directly or indirectly (a) solicit, initiate, encourage, negotiate or discuss any inquiries, proposals, discussions or offers from or with any Person (other than Parent) or enter into any agreement with any such Person (other than Parent) relating to, or consummate any transaction involving the sale of the business or assets of either the Company, or any of the Equity Interests of the Company, or any merger, consolidation, business combination, or similar transaction involving the Company, or any recapitalization transaction or any other transaction that would prevent the transactions contemplated by this Agreement from being consummated or (b) participate in any discussions or negotiations that any of them or any of their respective Representatives have been having with any Person (other than Parent) that relate to such matters (it being understood that any such discussions or negotiations shall immediately terminate on the date hereof) and shall not provide any such Person any additional information related to such matters or otherwise assist or participate in, or facilitate in any other manner, any effort or attempt by any Person to do or seek any of the foregoing. Additionally, SBEEG will notify the Parent as soon as practicable if any Person makes any proposal, offer, inquiry to or contact with the Company or any Member with respect to any such matter.

5.07 Financing and Other Cooperation

From the date of this Agreement until the Closing or the earlier termination of this Agreement pursuant to Article IX, the Company shall permit, the Parent and its Affiliates and lenders and its and their Representatives to have reasonable access (at reasonable times following reasonable notice) to the Company's premises, properties, books, records and personnel, and provide to the foregoing Persons (a) such contracts, financial and operating data and other information and documents of, or pertaining to, the Company, the Assets or the Business, as the Parent, any prospective providers of debt financing or their respective Representatives may reasonably request from time to time and (b) such cooperation in connection with the arrangement of any debt financing as may be reasonably requested by the Parent and Merger Sub; provided, that in the cases of clauses (a) and (b) such access shall not unreasonably interfere with the conduct by the Company of its businesses in the ordinary course of business. The Company shall make available to the Representatives of Parent upon the reasonable request of Parent and during normal working hours all officers, employees, accountants, counsel and other Representatives of the Company and its Affiliates as Parent may reasonably request. The Company shall use its best efforts to make available to the Representatives of Parent, upon the reasonable request of Parent, such suppliers of the Business and the Company or other Persons with whom the Company or any of its Affiliates maintains a similar business or commercial relationship with respect to the Company or the Business.

5.08 Parent Financing

The Parent shall use commercially reasonable efforts to take, or cause to be taken, all actions and do, or cause to be done, all thing necessary, proper or advisable to arrange the financing necessary to close the transactions contemplated hereby, including, without limitation, using all commercially reasonable efforts to consummate the financing necessary to consummate the transactions contemplated herein at or prior to the Closing.

5.09 Update Financials.

The Company shall prepare and furnish to the Parent, promptly after becoming available and in any event within fifteen (15) Business Days of the end of each calendar month, an unaudited balance sheet and unaudited statements of income and cash flow with respect to the Company (the “Update Financials”) for each month following the date of the Latest Balance Sheet Date through the Closing Date.

5.10 Employment Matters.

(a) The Surviving Company shall offer employment to all Business Employees who are employed by Spoonful (or, in the case of independent contractors, offer to continue to engage such independent contractors who are under contract to perform services for the Company) on the Closing Date at a salary or wage and commission and bonus opportunity at least comparable to that in effect immediately prior to Closing. The Company and SBEEG hereby consents, and shall cause Spoonful to consent, to the hiring of the Transferred Employees of Spoonful working at the Company by the Surviving Company and waives in perpetuity, with respect to the employment or engagement by the Surviving Company of the Transferred Employees, any claims or rights the Company, SBEEG or Spoonful may have against the Surviving Company or Parent, any of their respective Affiliates or any such Transferred Employees under any non-competition, confidentiality, employment, assignment of inventions or similar Contract with the Transferred Employees. The Company and SBEEG, and SBEEG on behalf of Spoonful, acknowledge and agree that neither the Surviving Company nor Parent shall have any liability relating to or arising out of the employment of any Business Employee up to Closing and with respect to the termination on or before the Closing Date of any employee of Spoonful working at the Business on or before the Closing Date. Neither the Surviving Company nor Parent shall have any liability with respect to any current or former Business Employee of Spoonful working at the Company or any of its Affiliates, including any Transferred Employee, arising from such Business Employee's employment or engagement with Spoonful or any its Affiliates or the termination of such Business Employee's employment or engagement with the Company or Spoonful or any of its Affiliates on or before Closing. Without limiting the generality of the foregoing, from and after the Closing Date, Spoonful shall retain liability and remain responsible for any and all Liabilities in respect of the Business Employees and their beneficiaries and dependents relating to or arising in connection with or as a result of (i) the employment or engagement or the termination of employment or engagement of any such Business Employee by Spoonful or any of their Affiliates (including, without limitation, in connection with the consummation of the transactions contemplated by this Agreement); (ii) the participation in or accrual of benefits or compensation under, or the failure to participate in or to accrue compensation or benefits under, or the operation and administration of, any Employee Benefit Plan; and (iii) accrued but unpaid salaries, wages, bonuses, commissions, incentive compensation, vacation or sick pay or other compensation or payroll items (including, without limitation, deferred compensation) relating to such individual's engagement with Spoonful or its Affiliates on or before Closing. Further, SBEEG and Spoonful, as applicable, shall remain responsible for the payment of any and all retention, change in control, severance or other similar compensation or benefits which are or may become payable under an Employee Benefit Plan in connection with the consummation of the transactions contemplated by this Agreement. Subject to the first sentence of this section, nothing in this Agreement shall obligate Parent or the Surviving Company to retain any Transferred Employee in its employ for any specific time period. The Surviving Company may (i) unilaterally change the salary (either by increase or decrease) and/or the title and duties of any Transferred Employee at any time on or after the Closing Date and (ii) at the Surviving Company's sole discretion, change or eliminate any of the plans, policies or arrangements of the Surviving Company applicable to the Transferred Employees. Notwithstanding the foregoing, Parent acknowledges and agrees that any Employee Benefit Plan, including any vacation plan, which provides for benefits determined with reference to the date an employee's employment began shall be determined based upon each Transferring Employees original employment date with the Company or Spoonful.

(b) The Company and SBEEG shall be, and SBEEG shall cause Spoonful to be, responsible for timely compliance with all federal, state and local Laws with respect to the effect to any of its employees on or before Closing of the transactions contemplated by this Agreement or by any Related Agreement, including, without limitation, the Worker Adjustment and Retraining and Notification Act of 1988, as amended ("WARN") and the California Worker Adjustment and Retraining Notification Act, California Labor Code Section 1400 ("California WARN"). The Company and SBEEG agree, and SBEEG shall cause Spoonful to agree, and each of Parent and the Surviving Company agree, that it will not take any action that causes the notice provisions of WARN or any state or local analog to WARN, including, without limitation, the California WARN, to be applicable to the transactions contemplated by this Agreement or by any Related Agreement.

(c) SBEEG and its respective ERISA Affiliates (if any) shall make available COBRA Coverage in accordance with Treasury Regulation §54.4980B-9 to all "M&A qualified beneficiaries" associated with the transactions contemplated by this Agreement who have a "qualifying event" within the meaning hereof.

(d) Prior to the Closing Date, the Company and SBEEG shall have, and SBEEG shall cause Spoonful to have, with respect to any compensation or benefits contemplated by this Agreement to be received by a "disqualified individual" in connection with the transactions contemplated by this Agreement that may be deemed to constitute "parachute payments" pursuant to Code Section 280G ("Potential 280G Benefits"), provided to the members: (i) adequate disclosure of all material facts concerning any Potential 280G Benefits as provided in Code Section 280G(b)(5)(B) and (ii) provided a disqualified individual has executed a waiver of Potential 280G Benefits, a written consent seeking member approval of all such Potential 280G Benefits by the requisite vote such that all such Potential 280G Benefits resulting from the transaction contemplated hereby shall not be deemed to be "parachute payments" pursuant to Code Section 280G or shall be exempt from such treatment under such Section 280G (the "280G Vote").

(e) None of the provisions of this Section 5.10 are intended to be for the benefit of, or otherwise enforceable by, any third party, including, without limitation, any Business Employee, and no Business Employees (or any dependents of such employees) will be treated as third party beneficiaries in or under this Agreement. None of the provisions of this Section 5.10 shall be construed to amend any Employee Benefit Plan.

(f) Participation of Transferred Employees in the Employee Benefit Plans shall end as of the Closing Date. Surviving Company shall not assume sponsorship of or any Liability for any Employee Benefit Plan, including, but not limited to, any accrued, unused vacation, sick and other paid time off of the Transferred Employees.

ARTICLE VI
REPRESENTATIONS AND WARRANTIES CONCERNING THE MANAGER

Except as set forth in the Schedules attached as Schedule IV to this Agreement (each a "Schedule" and collectively, the "Disclosure Schedules") which shall be prepared in accordance with and qualify the representations and warranties herein to the extent and in the manner set forth in Section 11.01, the Manager hereby represents and warrants solely as to itself that:

6.01 Authority; Power

The Manager has all requisite power and authority to execute and deliver this Agreement and the Related Agreements to which the Manager is, or will be at Closing, a party and to perform its obligations hereunder and thereunder.

6.02 Organization

The Manager is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation. The execution and delivery of this Agreement and the Related Agreements to which it is or will be at Closing a party, as applicable, by it and the performance by it of all of its obligations under this Agreement and such Related Agreements, as applicable, have been duly approved prior to the date of this Agreement by it by all requisite action of its board of directors, shareholders, partners, managers, members, trustees or the like, as the case may be. Neither the execution and delivery of this Agreement by it, nor the consummation by it of the transactions contemplated hereby will conflict with or constitute a breach of the terms, conditions or provisions of its Organizational Documents.

6.03 Execution and Delivery; Valid and Binding Agreement

This Agreement, and each Related Agreement to which the Manager is, or will be at Closing, a party (a) have been (or, in the case of Related Agreements to be entered at Closing, will be when executed and delivered) duly executed and delivered by it, and (b) assuming that this Agreement and such Related Agreements are the valid and binding obligation of the Parent and Merger Sub, this Agreement constitutes (or in the case of Related Agreements to be entered into at Closing, will constitute when executed and delivered) the legal, valid and binding obligation of the Manager, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies.

6.04 Noncontravention

Except as set forth on Schedule 6.04, neither the execution and the delivery by the Manager of this Agreement or any Related Agreement to which it is, or will be at Closing, a party, nor the consummation of the transactions contemplated hereby or thereby by the Manager will (a) violate any Law or (b) conflict with or result in a breach or violation of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in termination of, or accelerate the performance required by, or result in a right of termination or acceleration under, or require any action by (including any authorization, consent or approval) or notice to any Person, or result in the creation of any Lien upon any Company LLC Interests of the Manager under, any of the terms, conditions or provisions of (i) any material Contract of it or (ii) any provision of its Organizational Documents, as the case may be.

6.05 Ownership of Equity Interests

Except as set forth on Schedule 6.05, the Manager is and will be at Closing the record and beneficial owner of the Equity Interests set forth by its name on the Merger Consideration Schedule, free and clear of all Liens.

ARTICLE VII
REPRESENTATIONS AND WARRANTIES
CONCERNING THE COMPANY

Except as set forth in the Disclosure Schedules (which shall be prepared in accordance with and qualify such representations and warranties to the extent and in the manner set forth in Section 11.01), the Company, SBEEG and the Manager, on a joint and several basis, make the following representations and warranties to the Parent and the Merger Sub:

7.01 Organization, Corporate Power and Authorization.

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and the Company has all requisite limited liability company power and authority and all authorizations, licenses and permits necessary to own or lease and operate its properties and to use the Assets and to carry on its businesses as now conducted. The Company is qualified to do business and in good standing in every jurisdiction in which its ownership or leasing of property or the conduct of its businesses as now conducted requires it to qualify.

(b) The Company has all requisite power and authority necessary for the execution, delivery and performance by it of this Agreement and each such Related Agreement. The Company has duly authorized by all necessary action on the part of its Manager (or equivalent) and the Members the execution, delivery and performance of this Agreement and each such Related Agreement, and the consummation of the Merger and the other transactions contemplated hereby. This Agreement and each Related Agreement to which the Company is, or will be at Closing, a party (i) have been (or, in the case of Related Agreements to be entered into at Closing, will be when executed and delivered) duly executed and delivered by each such Person that is, or will be at Closing, a party thereto and (ii) is (or in the case of Related Agreements to be entered into at the Closing, will be when executed and delivered) a legal, valid and binding obligation of each such Person, enforceable against each such Person in accordance with its terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies.

(c) The affirmative vote of the holders of a majority of the Company LLC Interests outstanding (the "Required Vote") are the only votes or consents of the holders of any class or series of the Company's Equity Interests necessary (under applicable Law or Contracts or under the Company's Organizational Documents or otherwise) to adopt this Agreement and to consummate the Merger and perform the other transactions contemplated hereby. The Required Vote has been obtained as of the date of this Agreement in compliance with all applicable Laws and the Organization Documents of the Company.

(d) The Manager, by written consent, has determined that this Agreement and the transactions contemplated hereby, including the Merger, are advisable and fair to and in the best interests of the Company and the Members and has approved the same.

(e) No "fair price," "moratorium," "control share acquisition," "business combination" or other anti-takeover statute or regulation enacted under the Laws of any State is applicable to the Merger.

7.02 Consents and Approvals

Except as set forth in Schedule 7.02, the execution and delivery by the Company (and, if applicable, one or more of its Affiliates) of this Agreement, the Related Agreements or any other instrument or document required by this Agreement or any Related Agreement to be executed and delivered by the Company (and, if applicable, one or more of its Affiliates) do not, and the performance of this Agreement, the Related Agreements and any other instrument or document required by this Agreement or any Related Agreement to be executed and delivered by the Company (and, if applicable, one or more of its Affiliates) shall not require the Company (or, if applicable, one or more of its Affiliates) to provide notice to, obtain any consent of or take any other action in respect of any Person or obtain Approval of, observe any waiting period imposed by, make any filing with or notification to, or take any other action in respect of any Governmental Authority.

7.03 Noncontravention

Except as listed on Schedule 7.03, the authorization, execution, delivery and performance of this Agreement or any Related Agreement by the Company or the Manager and the consummation of the Merger and other transactions contemplated hereby and thereby do not and will not conflict with or result in any breach of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in a violation or termination of (or right of termination in respect of), or accelerate the performance required by (or result in a right of acceleration under), or require any action by (including any authorization, consent or approval) or notice to any Person, or require any offer to purchase or prepayment of any Indebtedness or Liability under, or result in the creation of any Lien upon or forfeiture of any of the rights, properties or any assets of the Company under (a) the provisions of the Company's Organizational Documents; (b) any Lease, Employee Benefit Plan, insurance policy or other Contract that is listed or required to be listed in the Disclosure Schedules or that is otherwise material to the Company; or (c) assuming the taking of each action by (including the obtaining of each necessary authorization, consent or approval), or in respect of, and the making of all necessary filings with, Governmental Authorities, in each case, as disclosed on Schedule 7.03, any Order or material Permit applicable to or otherwise affecting the Company or any other Law to which the Company is subject.

7.04 Equity Interests

The authorized outstanding Company LLC Interests are set forth on Schedule 7.04 and such Company LLC Interests are owned of record by the Persons in the respective amounts set forth in such Schedule. All of the outstanding Company LLC Interests have been duly authorized. Except as set forth on Schedule 7.04, the Company does not have any other Equity Interests or other securities containing any equity features authorized, issued or outstanding, and there are no agreements, options, warrants or preemptive or other rights or arrangements existing or outstanding which provide for the sale or issuance of any of the foregoing by the Company. Except as set forth on Schedule 7.04, there are no agreements or other obligations (contingent or otherwise) which require the Company to repurchase, redeem or otherwise acquire, or make any payment (including any dividend or distribution) in respect of any Equity Interests and there are no existing rights with respect to registration under the Securities Act of any Equity Interests in the Company. There are no outstanding or authorized stock appreciation, phantom stock, or similar rights with respect to the Company. There are no voting trusts, proxies, stockholder agreements or any other agreements or understandings with respect to the voting or transfer of Equity Interests of the Company. The Company has made available to the Parent accurate and complete copies of the stock ledger (or equivalent records) of the Company, which records reflect all issuances, transfers, repurchases and cancellations of Equity Interests of the Company. The Company has not violated the Securities Act, any state “blue sky” or securities Laws, any other similar Law or any preemptive or other similar rights of any Person in connection with the issuance, repurchase or redemption of any of its Equity Interests.

7.05 Licenses and Permits

Schedule 7.05 contains a correct and complete list of all Approvals and Orders that are necessary for the ownership or operation of the Assets or the Business, or that have been issued, granted or otherwise made available to the Company or its Affiliates with respect to the Assets or the Business, including, without limitation, any liquor licenses (the "Business Licenses"). Each Business License is valid and in full force and effect, no Business License is subject to any Lien, limitation, restriction, probation or other qualification, and there is no default under any Business License or, to the knowledge of the Company, any basis for the assertion of any default thereunder. There is no Action pending or, to the knowledge of the Company, threatened that would reasonably be expected to result in the termination, cancellation, modification, non-renewal, revocation, limitation, suspension, restriction or impairment of any Business License or the imposition of any fine, penalty or other sanctions for violation of any legal or regulatory requirements relating to any Business License or, to the knowledge of the Company, any basis therefor. The Company or its Affiliates have, and have had at all relevant times, all Approvals and Orders that are or were necessary in order to own and operate the Assets and to operate the Business. None of the Business Licenses will be adversely affected by the consummation of the transactions contemplated hereby. The Company is in material compliance with the terms and conditions of each Business License.

7.06 Title to and Condition of Properties; Sufficiency of Assets.

(a) The Company is the sole and exclusive legal and equitable owner of all right, title and interest in, and has good, valid and marketable title to, all of the Assets, free and clear of all Liens, including, without limitation, the equipment, fixtures and other material Assets listed on Schedule 7.06(a).

(b) All tangible assets and personal property included in the Assets have been maintained in accordance with normal industry practice and are in good operating condition and repair, subject to ordinary wear and tear, and there has not been any interruption of the operations of the Business due to the condition of any such assets or properties.

(c) Except as set forth in Schedule 7.06, the Assets comprise all assets, properties, rights and Contracts used in connection with the operation of the Business, which are all of the assets, properties, rights and Contracts necessary for Parent and the Surviving Company to operate the Business following the Closing in the manner in which the Business historically has been, is currently and is proposed to be conducted. Except as set forth in Schedule 7.06, no other Person, including any Member or other Affiliate, owns or has the right to use any of the assets or property used in connection with the operation of the Business, and no Assets are in the possession of others.

(d) Use of the Leased Spaces in the Business for the sale of food, wine, liquor, and beer is permitted as of right under all applicable zoning legal requirements. The Leased Spaces are in material compliance with all applicable Laws, including those pertaining to zoning, building and the disabled.

7.07 Environmental Matters

The Company has materially complied and is in material compliance with all Environmental Laws relating to the Business, which material compliance includes the possession by the Company of all Approvals required under Environmental Laws and material compliance with the terms and conditions thereof. Schedule 7.07 includes a list of all of the Approvals required under Environmental Laws necessary to own and operate the Assets or the Business as currently conducted. To the knowledge of the Company, there are no past or present facts, circumstances, conditions, activities or incidents that could give rise to any Liability, including any Liability for investigation costs, cleanup costs, response costs, remediation costs, corrective action costs, personal injury, property damage, natural resources damages or attorneys' fees, or result in a claim against the Company, any of its Affiliates or Parent, Merger Sub or any of their respective Affiliates under any Environmental Law, arising from the operation of the Business. There is no Action pending or, to the knowledge of the Company, threatened or other written notice or claim of any violation, formal administrative proceeding or written information request by any Governmental Authority, nor has the Company or any of its Affiliates received written notice of any investigation by any Governmental Authority relating to any Environmental Law nor any other written notice or claim from a Governmental Authority or any Person alleging that the Company or any of its Affiliates is not in compliance with any Environmental Law or Approval required under any Environmental Law in connection with the Business or has any Liability under any Environmental Law or for the remediation of any Materials of Environmental Concern at any property in connection with the Business.

7.08 Financial Statements; No Undisclosed Liabilities.

(a) Schedule 7.08 contains the following consolidated financial statements (collectively, the "Financial Statements"):

(i) the unaudited balance sheet of the Company as of May 31, 2015 (the "Interim Balance Sheet") and the related statements of income and cash flow for the five-month period then ended (the "Interim Financial Statements"); and

(ii) the combined audited balance sheet of the Company, Katsu USA, LLC, Katsu Glendale, LLC and Katsuya-Downtown L.A., LLC as of December 31, 2013 and December 31, 2014 and the related statements of income, cash flow and members' equity for each twelve (12)-month period then ended.

(b) The Financial Statements were prepared in accordance with the books and records of the Company, are accurate and complete and fairly present in all material respects the financial condition of the Company as of the dates indicated and the results of operations of the Company for the respective periods indicated, and have been prepared in accordance with the Company's Accounting Practices and Procedures, subject to changes resulting from normal, recurring period-end audit adjustments, which adjustments, individually and in the aggregate, shall not be material. Except as and to the extent the amounts are specifically accrued or disclosed in the Interim Balance Sheet, the Company does not have any existing Liabilities, except for Liabilities that were incurred in the ordinary course of the Company consistent with past practice since the date of the Interim Balance Sheet.

7.09 Absence of Certain Events.

Since May 31, 2015, the operation of the Business has been conducted only in the ordinary and usual course and in a manner consistent with past practice and there has not been any change, event, loss, development, damage or circumstance affecting the Assets or the Business which, individually or in the aggregate, has had or could reasonably be expected to have a Business Material Adverse Effect. Without limiting the foregoing, since May 31, 2015, except as set forth on Schedule 7.09, there has not been:

(a) any material decrease in the value of any of the Assets;

(b) any voluntary or involuntary sale, lease, assignment, license, transfer or other disposition of any kind of any asset or property used in connection with the operation of the Business, including the Assets, except the sale of Inventory in the ordinary course of the Business consistent with past practices;

(c) any Lien imposed, incurred or created on any of the Assets;

(d) any damage, destruction or loss of any asset or property used in connection with or relating to the operation of the Business, by fire or other casualty, whether or not covered by insurance;

(e) any capital expenditure or commitment by the Company in excess of $10,000 or series of capital expenditures or commitments in excess of $20,000 in the aggregate in connection with the Business;

(f) any payment, discharge or satisfaction of any Liability of the Business, other than payments made in the ordinary course of the Business or Liabilities reflected or reserved against in the Interim Balance Sheet, or Liabilities incurred since that date in the ordinary course of the Business consistent with past practice;

(g) any assignment, termination, modification, amendment or waiver of, or any failure to comply with any provision of, any Contract or transaction that relates to the Business, or any account receivable relating thereto, whether as a security interest or otherwise, except as would not have a Business Material Adverse Effect;

(h) any discontinuance, termination, receipt of a notice of termination of or other alteration to any relationship with any supplier, vendor or sales or service representative of the Business, except as would not have a Business Material Adverse Effect;

(i) any change in the rate of compensation, commission, bonus or other direct or indirect remuneration payable or to become payable to any Business Employee, or any agreement to pay any bonus or extra compensation or other employee benefit to any Business Employee, other than in the ordinary course of business and not in excess of 5% of such Business Employee's prior compensation;

(j) any failure to pay or discharge when due (after the application of any applicable grace periods) any Liabilities of the Business;

(k) any change in any of the accounting principles adopted by the Company in connection with the Business, or any change in the Company's accounting policies, procedures, practices or methods with respect to applying such principles, other than as required by GAAP;

(l) any material transaction or Contract entered into, or Liability created, assumed, guarantied or incurred outside the ordinary course of business in connection with the Business;

(m) any termination of employment of any employee of the Company or any of its Affiliates who provided services to the Business or any expression of intention by the Company or any of its Affiliates or by any Business Employee to terminate employment with the Company, except as would not have a Business Material Adverse Effect;

(n) any write-off of any accounts receivable or notes receivable of the Company or any portion thereof in excess of $10,000 individually or $50,000 in the aggregate, or any sale, assignment or disposition of any such account or note receivable (including by means of any factoring agreement), in each case that relate to the Business;

(o) any engagement by the Company in any transaction with any Affiliate, employee, officer, director, manager or security holder thereof in connection with the Business, other than (i) the payment of normal wages and salaries to employees in the ordinary course of business and consistent with past practice and advances to employees in the ordinary course of business for travel and similar business expenses and consistent with past practice and (ii) pursuant to written intercompany Contracts among the Company and any of its Affiliates in effect as of the date hereof;

(p) any material change in the manner in which the Company extends or receives discounts or credit from customers, suppliers or vendors of the Business;

(q) any settlement or offer or proposal to settle (i) any Action involving or relating to the Business or (ii) any litigation, arbitration, proceeding or dispute that relates to the transactions contemplated hereby or by the Related Agreements, in each case, that would result in payments in excess of $20,000 individually or $50,000 in the aggregate; or

(r) any agreement, understanding, authorization or proposal, whether in writing or otherwise, for the Company or any of its Affiliates to take any of the actions specified in this Section 7.09.

7.10 Legal Proceedings.

(a) Except as set forth on Schedule 7.10, there is no Action pending or, to the knowledge of the Company, threatened by or against the Company or any of its officers, directors or managers (in their capacities as such) (i) relating to the Business or the Assets, (ii) that, individually or in the aggregate, is reasonably likely to have a Business Material Adverse Effect on the Business or the Assets or (iii) that would (A) give any Person the right to enjoin or rescind the transactions contemplated by this Agreement or (B) otherwise prevent the Company from (x) executing and delivering this Agreement or the Related Agreements or (y) performing its obligations pursuant to, or observing any of the terms and provisions of, this Agreement or the Related Agreements, and neither the Company nor any of its Affiliates has received any claim, complaint, incident, report, threat or notice of any such Action. There is no Action pending or threatened against any other Person by the Company or any of its Affiliates relating to the Business or the Assets.

(b) Schedule 7.10 sets forth all Actions that (i) involved the Business or the Assets at any time during the past five (5) years and (ii) are no longer pending (the "Prior Actions"). All of the Prior Actions have been concluded in their entirety and none of the Assets has and will not have any Liability with respect to the Prior Actions. The Company has provided Parent and Merger Sub with all formal written communications relating to the Prior Actions between the Company and a Governmental Authority and any Orders related thereto.

(c) There are no outstanding Orders against, involving or affecting the Business or the Assets, and the Company is not in default with respect to any such Order of which it has knowledge or was served upon it.

7.11 Compliance with Laws.

(a) The Company has materially complied and is in material compliance with all Laws (excluding Laws specifically addressed elsewhere in this Article VII) applicable to (i) the properties or assets of the Business, including the Assets, and the Company's ownership, use or operation thereof, and (ii) the operation of the Business. The Company has not received any written notice to the effect that, or otherwise been advised that, the Company is not in material compliance with any such Laws, and the Company has no reason to anticipate that any existing circumstances is likely to result in an Action or a violation of any such Law. No investigation or review by any Governmental Authority with respect to the Business or the Assets is pending or, to the knowledge of the Company, threatened, nor has any Governmental Authority indicated an intention to conduct the same. The Company has not received any credible evidence that any Business Employee or agent of the Company has committed a violation of federal criminal law involving fraud, conflict of interest, bribery or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(b) Neither the Company nor any of its Affiliates, executive officers or directors (i) appears on the Specially Designated Nationals and Blocked Persons List of OFAC or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation; (ii) is otherwise a party with whom, or has its principal place of business or the majority of its business operations (measured by revenues) located in a country in which, transactions are prohibited by (A) United States Executive Order 13224, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism; (B) the United States Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001; (C) the United States Trading with the Enemy Act of 1917, as amended; (D) the United States International Emergency Economic Powers Act of 1977, as amended or (E) the foreign asset control regulations of the United States Department of the Treasury; (iii) has been convicted of or charged with a felony relating to money laundering; or (iv) is under investigation by any Governmental Authority for money laundering.

7.12 Employment Matters.

(a) Schedule 7.12 sets forth a complete and accurate list of all current Business Employees who are in employment with Spoonful as of the date hereof and each such Business Employee's (i) rate of pay or annual compensation (including actual or potential bonus payments and the terms of any commission payments or programs), (ii) title(s), (iii) status of employment or engagement, (iv) date of hire or engagement, (v) annual vacation, sick and other paid time off allowance and (vi) amount of accrued vacation, sick and other paid time off and the economic value thereof. Schedule 7.12 also separately identifies each Business Employee who is not fully available to perform his or her duties as a result of disability or other leave and sets forth the anticipated date of return to full service. All Business Employees are employed by Spoonful. As of the date hereof and as of the Closing Date, the Company does not and will not have any employees.

(b) Neither the Company nor Spoonful on behalf of the Company, is, or, as of the Closing Date, will be delinquent in payments to any Business Employee for any wages, salaries, commissions, bonuses, benefits or other compensation for any services performed by them to date or through the Closing Date or any amounts required to be reimbursed to any Business Employee or any post-employment or post-engagement obligations of any type. Upon termination of engagement of any Business Employee on or before Closing, neither Parent, Merger Sub nor any of their respective Affiliates will, by reason of anything done prior to the Closing, be liable to any Business Employee for so-called "severance pay" or any other similar payments, and to the knowledge of the Company, there are no circumstances whereby any current or former Business Employee may demand payment or compensation in connection with the termination of his or her employment on or before Closing.

(c) Neither Spoonful nor the Company is, or has ever been a party to, bound by, or negotiated any collective bargaining agreement or other Contract with a union, works council or labor organization purporting to represent any employee of the Company, Spoonful or SBEEG (collectively, "Union"), and there is not, and has never been any Union representing or purporting to represent any Business Employee. To the knowledge of the Company, no Union or group of employees is seeking or has sought to organize employees for the purpose of engaging in collective bargaining. There is not and has never been any threat of a strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor disruption or dispute affecting the Company or Spoonful. There is no unfair labor practice charge or any other action, complaint, suit, arbitration, inquiry, proceeding or investigation pending before the National Labor Relations Board or any other agency having jurisdiction thereof or, to the knowledge of the Company, threatened.

(d) Schedule 7.12(d) sets forth all Employee Benefit Plans under which current or former Business Employees (or their beneficiaries) are eligible to participate or derive a benefit or for which the Assets may be subject to any Liability. The Company has made available to Parent and Merger Sub correct and complete copies of all Employee Benefit Plans listed in Schedule 7.12(d), and has made available to Parent and Merger Sub accurate, current and complete copies of each of the following: (i) where the Employee Benefit Plan has been reduced to writing, the plan's governing document together with all amendments; (ii) where the Employee Benefit Plan has not been reduced to writing, a written summary of all material plan terms; (iii) where applicable, copies of any adoption agreements, trust agreements, other funding arrangements, custodial agreements, insurance policies and contracts, administration agreements, investment management or investment advisory agreements, or other similar agreements; (iv) the most recent summary plan description and any summaries of material modifications thereto; (v) employee handbooks and any other written communications (or a description of any oral communications) of a Company-wide nature that are currently in effect and material relating to any Employee Benefit Plan; (vi) in the case of any Employee Benefit Plan that is intended to be qualified under Code Section 401(a), a copy of the most recent determination, advisory or opinion letter from the IRS; (vii) in the case of any Employee Benefit Plan for which a Form 5500 is required to be filed, a copy of the filed Form 5500 for each of the most recent prior three (3) plan years, with schedules attached; (viii) actuarial valuations and reports, to the extent applicable, related to any Employee Benefit Plans with respect to the two (2) most recently completed plan years; and (ix) the results of the coverage, non-discrimination and other qualification related tests under Code Sections 401, 410, 411, 414 and 416 for each of the two (2) most recent plan years and any documents related to any required corrective actions taken by the Company within the past three (3) plan years, as to any plan qualified under Code Section 401(a). Each Employee Benefit Plan intended to be qualified under Code Section 401(a), and the trust (if any) forming a part thereof, is so qualified and has received a favorable determination letter from the IRS or, with respect to a prototype or volume submitted plan, can rely on an opinion letter or advisory letter from the IRS to the prototype or volume submitted plan sponsor. To the knowledge of the Company, nothing has occurred that would reasonably be expected to cause the loss of such qualification. There are no correction filings, petitions or applications pending with respect to the Employee Benefit Plans with the IRS, the U.S. Department of Labor or any other Governmental Authority. Each Employee Benefit Plan has been operated in all material respects in accordance with applicable Law and such plan's governing documents. The parties acknowledge and agree that the transactions contemplated by this Agreement are an "asset sale" (within the meaning of Treas. Reg. § 54.4980B-9, Q&A 4), which also results in "qualifying event" (i.e., termination of employment") with respect to Transferred Employees. The Company or its applicable ERISA Affiliate shall be responsible for complying with the requirements of the health care continuation coverage requirements of Code Section 4980B and Subtitle B of Title I of ERISA in connection with the transactions contemplated by this Agreement with respect to all Transferred Employees who are "M&A Qualifying Beneficiaries" (within the meaning of Treas. Reg. § 54.4980B-7, Q&A 4(a)).

(e) Except as provided in Schedule 7.12(e), the Company is not and has never been (i) a member of a "controlled group of corporations," under "common control" or an "affiliated service group" within the meaning of Code Section 414(b), (c) or (m), or (ii) required to be aggregated under Code Section 414(o) or (iii) under "common control," within the meaning of Section 4001(a)(14) of ERISA, or any regulations promulgated or proposed under any of the foregoing Sections, in each case with any other entity (an "ERISA Affiliate"). Except as provided in Schedule 7.12(e), none of the Employee Benefit Plans is and neither the Company nor any of its ERISA Affiliates have at any time sponsored, contributed to or been obligated to contribute to: (i) a "defined benefit plan" as defined in ERISA Section 3(35); (ii) a pension plan subject to the funding standards of ERISA Section 302 or Code Section 412; (iii) a "multiemployer plan" as such term is defined in ERISA Section 3(37) or Code Section 414(f); (iv) a "multiple employer plan" within the meaning of ERISA Section 201(a) or Code Section 413(a); or (v) a multiple employer welfare arrangement within the meaning of ERISA Section 3(40). There are no Employee Benefit Plans under which welfare benefits are provided to the Company's employees beyond their retirement or other termination of service, other than coverage mandated by Code Section 4980B, Subtitle B of Title I of ERISA or similar state group health plan continuation Laws, the cost of which is fully paid by such Employees or their dependents.

(f) Neither SBEEG, the Company nor any other "disqualified person" or "party in interest," as defined in Code Section 4975 and Section 3(14) of ERISA, respectively, has engaged in any "prohibited transaction," as defined in Code Section 4975 or Section 406 of ERISA (which is not otherwise exempt), with respect to any Employee Benefit Plan, nor, to the knowledge of the Company, has there been any fiduciary violations under ERISA that could subject the Company (or any other Person) to any material penalty or tax under Section 502(i) of ERISA or Code Section 4975.

(g) Except as provided in Schedule 7.12(g), neither the execution and delivery of this Agreement nor the approval or consummation of the transactions contemplated herein will (either alone or in conjunction with any other event) (i) result in any payment becoming due to any Transferred Employee in connection with their employment with Spoonful or SBEEG on or before Closing, (ii) increase any payments or benefits otherwise payable under any Employee Benefit Plan, (iii) result in the acceleration of the time of payment, funding or vesting of any payments or benefits under any Employee Benefit Plan, (iv) result in the forgiveness in whole or in part of any outstanding loans made by the Company to any person, or (v) result in any compensation payable to any individual in connection with the transactions contemplated herein being nondeductible to the Company under Code Section 280G or subject to the excise tax imposed by Code Section 4999. The Company does not have any obligation to any person to provide any indemnification, "gross up" or similar payment to any Person in the event any excise tax is imposed on such person under Code Sections 409A or 4999 or similar state laws.

(h) No Representative of the Company, Spoonful or any of their respective Affiliates has made any representation, promise or guarantee to any of the Business Employees (i) that Parent or the Surviving Company intends to retain or offer to retain any such individual, or (ii) regarding the terms and conditions on which Parent or the Surviving Company may retain or offer to retain any such individual. There are no Actions pending or, to the knowledge of the Company, threatened against or involving the Company or any of its Affiliates by any Business Employee. To the knowledge of the Company, no Business Employee is in violation of any term of any employment, consulting, independent contractor, non-disclosure, non-competition, non-solicitation, inventions assignment or any other Contract (or any other legal obligation such as a trade secrets statute or common law duty of loyalty) with Spoonful. Each of the Company and Spoonful has complied in all material respects with all its obligations under Law with respect to any aspect of the employment or engagement of all Business Employees, including with respect to employment practices, the requirements of the Immigration Reform and Control Act of 1968, as amended, terms and conditions of employment, wage and hours, and the health and safety at work of their employees, and there are no claims pending or, to the knowledge of the Company, threatened by any Person in respect of employment or engagement or any accident or injury.

7.13 Taxes.

(a) All Taxes payable by the Company or any of its Affiliates (or any affiliated, consolidated, combined unitary or similar group of which the Company is or was a member), including but not limited to in respect of the Assets or the Business, have been timely paid, including but not limited to any Taxes the non-payment of which would result in a Lien on any Asset or as would otherwise adversely affect the Assets or would result in Parent, Merger Sub or the Surviving Company becoming liable or responsible therefor.

(b) All material Tax Returns required to be filed by or on behalf of the Company or any of its Affiliates (or any affiliated, consolidated, combined unitary or similar group of which the Company is or was a member), including with respect to the Assets or the Business, have been timely filed, and all such Tax Returns are true, complete and correct in all material respects and have been filed in accordance with all applicable Law; neither the Company nor any of its Affiliates has been informed in writing by any jurisdiction that such jurisdiction believes that the Company or any of its Affiliates is or was required to file any Tax Return in respect of the Business or the Assets.

(c) All Taxes that the Company or any of its Affiliates is or was required by Law to have withheld, including in connection with the Assets or the Business, to any employee, independent contractor, creditor, stockholder, or other third party have been duly withheld or collected and timely paid to the proper Governmental Authority, and the Company and its Affiliates have complied with all reporting and recordkeeping requirements. The Company has properly classified all personnel as either employees or independent contractors.

(d) No unpaid Tax deficiency has been asserted against or with respect to the Assets or the Business and neither the Company nor any of its Affiliates has received notice of any such assertion.

(e) The Company is not and has never been a partnership the disposition of an interest in which would be subject to withholding under Code Section 1445(e)(5) or Code Section 897(g) and no withholding pursuant to Code Section 1445 will be required in connection with this Agreement or the transactions contemplated hereby.

(f) Neither the Company nor its Affiliates maintains a “permanent establishment” or “fixed base” in any foreign jurisdiction as such terms are defined in any applicable income Tax treaty and the Company does not have any requirement to file any Tax Return or pay any Tax Liability to any foreign Governmental Authority.

(g) Neither Parent nor Merger Sub will be required to include any amount in taxable income for any taxable period or portion thereof ending after the Closing Date with respect to any (i) cash or cash equivalents received on or prior to the Closing Date or (ii) income economically accrued on or prior to the Closing Date.

(h) Neither the Company nor any of its Affiliates is or has been required to make any adjustment to any Tax accounting method used with respect to the Assets or the Business and there is no application pending with any Governmental Authority requesting permission for any changes in any of its accounting methods for Tax purposes currently nor has there been in the past four (4) years. No Governmental Authority has proposed in writing any such adjustment or change in accounting method of, or that is being used with respect to, the Assets or the Business.

(i) None of the Assets is treated for federal, state, local or other applicable income Tax purposes as an equity interest in an entity or other Person.

(j) The Company (i) has never been a member of any "affiliated group" within the meaning of Code Section 1504(a) filing a consolidated federal income Tax Return or any other consolidated, combined, or unitary group for federal, state, local or foreign Tax purposes; (ii) is not a party to any contractual obligation relating to Tax sharing, Tax allocation or any similar arrangement; or (iii) does not have any liability for the income Taxes of any person under Treasury Regulation Section 1.1502-6 (or any similar or analogous law or administrative provision of federal, state, local or foreign Tax law), as a transferee or successor, or by contract or otherwise.

(k) No Tax Return in respect of any Assets or the Business is currently being audited by any Governmental Authority and no examination or audit of any such Tax Return is currently threatened in writing by any Governmental Authority.

(l) There is no pending or threatened Action in writing concerning any Tax Liability of the Company, any of its Affiliates, or otherwise concerning the Assets or the Business. No assessment or deficiency for any Tax or adjustment to any Tax item has been proposed or threatened in writing against the Company. The Company has made available to Parent and Merger Sub accurate and complete copies of all Tax Returns, examination reports and statements of deficiencies filed, assessed against or agreed to by the Company or any of its Affiliates since June 30, 2012.

(m) Neither the Company nor its Affiliates has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency. Neither the Company nor its Affiliates has executed any power of attorney with respect to any Tax, other than powers of attorney that are no longer in force. No closing agreements, private letter rulings, technical advice memoranda or similar agreements or rulings relating to Taxes have been entered into or issued by any Governmental Authority with or in respect of the Company or any of its Affiliates.

(n) The Company has never engaged in or promoted any "listed transaction" (within the meaning of Code Section 6707(A)(c)(2) and Treasury Regulation 1.6011-4).

(o) The Company is a "partnership" for U.S. federal income Tax, and applicable state and local Tax, purposes. The Company has not made any election to be treated as a corporation for U.S. federal income Tax, or state and local Tax, purposes.

7.14 Contracts.

(a) Schedule 7.14 sets forth a complete and accurate list of all of the following Contracts to which the Company or any of its Affiliates is a party or is otherwise bound relating to the Business or the Company (and with respect to any oral Contract provides a complete description of the terms of such Contract):

(i) all operating and capital leases for any assets used in connection with the Business;

(ii) all Contracts of employment with Business Employees and service Contracts with independent contractors and consultants of the Business providing for annual compensation in excess of $75,000;

(iii) all Contracts involving an annual payment from or to any Person in excess of $10,000 individually or $50,000 in the aggregate with respect to all Contracts with such Person that relate to the Business;

(iv) all Contracts for capital expenditures or the purchase or sale of any asset or property in excess of $10,000 individually for any Person or $50,000 in the aggregate for all Contracts with such Person that relate to the Business;

(v) all Contracts between the Company and any of its Affiliates that relate to the Business;

(vi) all Contracts (other than Employee Benefit Plans) with any Affiliate, director, manager, officer or employee of the Company or any family member or relative or Affiliate of any such director, manager, officer or employee that relate to the Business;

(vii) all joint venture, partnership or other Contracts relating to the Business involving a share of profits or losses with another Person;

(viii) all Contracts relating to the Business that contain a covenant not to compete or other covenant restricting the marketing, sale, commercialization or other similar activities relating to any products or services of the Business;

(ix) all Contracts pursuant to which the Company or any of its Affiliates has granted or received most favored nation pricing provisions or exclusive marketing in connection with the Business or other rights relating to Asset or the operation of the Business;

(x) all Contracts with any Governmental Authority relating to the Business;

(xi) all sales, agency, representative, distributor, franchise or similar Contracts relating to the Business;

(xii) all Contracts under which the Company subcontracts services to a third party in connection with the Business;

(xiii) all Contracts granting or permitting any Lien on any of the Assets;

(xiv) any (A) Contract pursuant to which the Company or any of its Affiliates is granted by any other Person, or grants to any other Person, any license or other right to use, or a covenant not to sue with respect to, or assigns to any Person, or is assigned by any Person, any Business Intellectual Property, or otherwise to the Business (other than shrink wrap agreements for off-the-shelf software with a replacement cost and/or annual license fees of less than $25,000), and (B) any other Contract relating in whole or in part to any Business Intellectual Property; and

(xv) any other agreement, Contract, lease, license, commitment or instrument relating to the Business to which the Company or any of its Affiliates is a party and by or to which the Business or any of the Assets is bound or subject, which has an aggregate future liability to any Person in excess of $25,000 and is not terminable by the Company or any of its Affiliates, as applicable, by notice of not more than thirty (30) days for a cost of less than $25,000.

The Company has made available to Parent and Merger Sub complete and accurate copies of all Contracts and all Contracts listed in Schedule 7.14, including all amendments and other changes thereto.

(b) Neither the Company nor its Affiliates is in breach or default under the terms of any Contract, and there exists no event, condition or occurrence that (with or without due notice or lapse of time, or both) would constitute such a breach or default, nor has the Company received any written notice of any breach or default or alleged breach or default under any Contract. To the knowledge of the Company, no other party to any Contract is in breach or default under the terms thereof, and, to the knowledge of the Company, there exists no event, condition or occurrence that (with or without due notice or lapse of time, or both) would constitute such a breach or default by any such party, nor has the Company received any notice of any breach or default by any such party.

(c) The Contracts have been entered into in the ordinary course of the operation of the Business consistent with past practice, are in full force and effect and are valid and binding obligations of the Company or an Affiliate thereof and, to the knowledge of the Company, the other parties thereto. The Company has not received any written notice from any other party to a Contract of the termination or threatened termination thereof, or of any claim, dispute or controversy with respect thereto, nor, to the knowledge of the Company, is there any basis therefor.

(d) Except as set forth on Schedule 7.02, no consent of, or notice to, any third party is required under any Contract as a result of or in connection with, and neither the enforceability nor any of the terms or provisions of any Contract will be affected in any manner by, the execution, delivery and performance of this Agreement or any Related Agreement, or the transactions contemplated hereby or thereby.

7.15 Transactions with Affiliates

Schedule 7.15 lists all Contracts or transactions relating to the Business or the Assets to or by which the Company or any of its Affiliates, on the one hand, and any of its members, officers, directors, managers or employees or, to the knowledge of the Company, any family member or Affiliate of any such member, officer, director, manager or employee, on the other hand, are or have been a party or otherwise bound or affected and that are currently pending or in effect. Except as set forth on Schedule 7.15, neither the Company nor any of its Affiliates, nor any officer, director, manager or employee of the Company or any of its Affiliates, nor, to the knowledge of the Company, any family member or Affiliate of any such officer, director, manager or employee, (a) owns, directly or indirectly, any interest in (i) any asset or other property used in or held for use in connection with the operation of the Business or (ii) any Person that is a supplier, vendor or competitor of the Business, (b) serves as an officer, director, manager or employee of any Person that is a supplier, vendor or competitor of the Business or (c) is a debtor or creditor of the Business.

7.16 Insurance

Schedule 7.16 lists each insurance policy to which the Company is a party, a named insured, or otherwise the beneficiary of coverage at any time within the past year. Schedule 7.16 lists each person or entity required to be listed as an additional insured under each such policy, provided that such Section does not include persons or entities that required to be listed as an additional insured in connection with a specific venue event. Each such policy is in full force and effect and by its terms and with the payment of the requisite premiums thereon will continue to be in full force and effect following the Closing. All such insurance policies provide reasonably adequate coverage for all material risks incident to the Business and the Assets. Neither the Company nor its Affiliates is in breach or default (including with respect to the payment of premiums or the giving of notices) under any such policy, and to the knowledge of the Company, no event has occurred which, with notice or the lapse of time, would constitute such a breach or default or permit termination or modification under such policy; and none of the Affiliates and none of its Affiliates has received any written notice or to the knowledge of the Company, oral notice, from the insurer disclaiming coverage or reserving rights with respect to a particular claim or such policy in general. Neither the Company nor its Affiliates has incurred any material loss, damage, expense or liability covered by any such insurance policy for which it has not properly asserted a claim under such policy.

7.17 [Reserved]

7.18 Accounts Receivable; Accounts Payable.

(a) All accounts receivable relating to the Business, including all accounts receivable included in the Assets (i) have arisen from bona fide transactions in the ordinary course of the Business consistent with past practice, (ii) represent valid and enforceable obligations, (iii) is presently expected to be fully collected in the aggregate face amounts thereof when due without resort to litigation and without offset or counterclaim (subject to any reserve for bad debts reflected in the Financial Statements), and (iv) are owned by the Company free and clear of all Liens. No discount or allowance from any such receivable has been made or agreed to and none represents billings prior to actual sale of goods or provision of services other than in the ordinary course of business consistent with past practice and in a manner consistent with the applicable provisions of GAAP. There is no obligor of any such account receivable that has refused or, to the knowledge of the Company, threatened to refuse to pay its obligations for any reason and, to the knowledge of the Company, no such obligor has been declared bankrupt by a Court of competent jurisdiction or is subject to any bankruptcy proceeding. Schedule 7.18(a) sets forth a complete and accurate accounts receivable aging report as of the date hereof.

(b) All accounts payable and accrued expenses of the Business have arisen only from bona fide transactions in the ordinary course of the Business consistent with past practice, and no such account payable or accrued expense is, or as of the Closing Date will be, delinquent in its payment by more than 45 days, except as otherwise set forth on Schedule 7.18(b). Schedule 7.18(b) is a complete and accurate accounts payable aging report as of the date hereof.

7.19 Absence of Restrictions on Business Activities

There is no Contract or Order binding upon the Business or any of the Assets that has had or could reasonably be expected to have the effect of prohibiting or impairing any business practice of Parent, Merger Sub or the Surviving Company, any acquisition of property (tangible or intangible) by Parent, Merger Sub or the Surviving Company, the operation of the Business by Parent or the Surviving Company or otherwise limiting the freedom of Parent or the Surviving Company to engage in any line of business or to compete with any Person.

7.20 Inventory

All Inventory is owned exclusively by the Company, free and clear of any Liens, has not been pledged as collateral, is not held by the Company on consignment from others, conforms in all material respects to all standards applicable to its use or sale imposed by any Governmental Authority, is fit for its intended purpose (and, if applicable, is not adulterated, misbranded, mispackaged or mislabeled) and is of a quality that is suitable, usable or (in the case of finished goods and products) saleable in the ordinary course of the Business. Schedule 7.20 lists all Inventory, the location of such Inventory and the approximate values of the amount of Inventory held in each such location as of the date of the Interim Balance Sheet. The quantity of the Inventory on hand, in transit and on order as of the Closing will be at levels substantially customary for the Company for that time of year in which the Closing occurs; such quantity representing Company's good faith estimate of quantity required by the Business to continue to operate in the ordinary course of Business and without interruption. Items of such Inventory which are not of a quality usable and saleable in the ordinary course have been written down to net realizable value.

7.21 Regulatory Approvals.

(a) In connection with the Business, the Company and its Affiliates are now and have at all times been in material compliance with all requirements of Regulatory Authorities with jurisdiction over the Business. The Company and its Affiliates have filed, obtained, maintained or submitted all material notices, reports, documents and records required by all applicable Laws and Regulations with respect to the Business, and all such notices, reports, documents and records were complete and correct on the date filed or submitted.

(b) Except as set forth in Schedule 7.21, neither the Company nor any of its Affiliates has received any warning letter or other written communication from any domestic or foreign Regulatory Authority regarding any failure or alleged failure by the Company or any of its Affiliates to comply with any applicable Law or Regulation or any licenses, certifications, approvals or clearances in connection with the operation of the Business, and to the knowledge of the Company, no Governmental Authority is considering any action with respect to any such failure or alleged failure to comply. The Leased Spaces contain adequate warnings, presented in a reasonably prominent manner, in accordance with applicable, Laws, Orders or requirements of any Governmental Authority and current industry practice with respect to their contents and use.

7.22 Suppliers.

(a) Schedule 7.22(a) sets forth a true, correct and complete list of the top 99 suppliers and vendors of the Business in order of net expense for the twelve (12) month period ending on the date hereof.

(b) There are not, and have not been during the two (2)-year period preceding the date hereof, any disputes with any supplier or vendor of the Company.

(c) No supplier or vendor has (i) cancelled or otherwise terminated any Contract with the Company prior to the expiration of such Contract's term (or elected not to renew such Contract at the expiration of such term), (ii) cancelled or has threatened in writing to cancel or otherwise terminate its relationship with the Company, (iii) reduced or has threatened in writing to reduce its sales to the Company or (iv) has sought or is seeking to change the amounts payable by the Company or any of its Affiliates in connection with the sale of their products or services to the Business, or has notified the Company or any of its Affiliates in writing of any intention to do any of the foregoing, including after the consummation of the transactions contemplated hereby.

(d) Neither the Company nor its Affiliates has, in the past twelve (12) months, (i) cancelled or otherwise terminated any Contract with a supplier or vendor of the Company prior to the expiration of such Contract's term (or elected not to renew such Contract at the expiration of such term), (ii) cancelled or has threatened in writing to cancel or otherwise terminate its relationship with any such supplier or vendor, (iii) reduced or has threatened in writing to reduce its purchases from any such supplier or vendor or (iv) has sought or is seeking to change the amounts payable by the Company or any of its Affiliates in connection with the purchase of products or services for the Business, or has notified such supplier or vendor in writing of any intention to do any of the foregoing, including after the consummation of the transactions contemplated hereby.

(e) Neither the Company nor its Affiliates, in the past twelve (12) months, observed any quality or delivery issues with any seller or vendor in connection with the Business.

(f) The Company does not have any single source suppliers or vendors.

7.23 No Brokers

Except as set forth in Schedule 7.23, neither the Company nor its Affiliates nor any of their respective Representatives has employed or engaged, either directly or indirectly, or incurred or will incur any Liability to or is subject to any claim of, any broker, finder, investment banker or other agent or intermediary in connection with the transactions contemplated by this Agreement.

7.24 Gift Card Liability

The Company represents that it has a Liability for unredeemed gift cards or gift certificates, some of which may or may not have an expiration date. The amount of outstanding gift cards and gift certificates does not exceed $70,134.

7.25 Leases.

(a) The Company has made available to Parent and Merger Sub a true, correct and complete copy of the leases, subleases, assignments, modification agreements, easements, licenses and other occupancy agreements relating to the Leased Spaces to which the Company or any Affiliate of the Company (or any predecessor in interest thereto) is a party (the "Facility Leases") listed in Schedule 7.25(a) (which Facility Leases comprise all of the Contracts inclusive of any amendments, addenda and/or supplements relating to (i) real property and/or immovable property to which the Company is a party is a party and (ii) the Leased Spaces to which any Affiliate of the Company is a party). The Company has made available to Parent and Merger Sub a true, correct and complete copy of any guarantees or other security agreements for the Facility Leases (the "Facility Guarantees") listed in Schedule 7.25(a) (which Facility Guarantees comprise all of the guarantees and security agreements relating to real property and/or immovable property related to the Facility Leases).

(b) Schedule 7.25(b) sets forth (i) the name and address of the lessor or sublessor, as applicable, under the Facility Leases, (ii) the street address of the premises leased thereunder (the "Leased Spaces"), (iii) the square footage for the Leased Spaces, (iv) the commencement and termination dates of such Facility Leases and the rent commencement date for such Facility Leases, (v) the (A) current fixed rent, percentage rent, if any (along with the applicable breakpoint), and all other charges currently payable under the Facility Leases, including, without limitation, tenant's proportionate share of common area maintenance charges, utility payments, promotional fees, real estate taxes and insurance charges and (B) future fixed rent and percentage rent, if any (along with the applicable breakpoint), including during any options to renew, (vi) the security posted thereunder (including, without limitation, any cash deposits, letters of credit and/or bonds), (vii) all options to renew, if any, and (viii) a description of and reference to lessor's or sublessor's rights to terminate or not renew such Facility Leases for any reason other than "tenant's default", casualty, condemnation or bankruptcy.

(c) With respect to each such Facility Lease, except as may otherwise be set forth on Schedule 7.25(c):

(i) The Facility Leases are legal, valid, binding and enforceable against the Company, and to the knowledge of the Company, enforceable against the lessors and any sublessors thereunder in accordance with its terms;

(ii) All rentals or other monies due or required to be paid thereunder, including without limitation, all fixed and/or base rent, percentage rent, common area maintenance charges and all other fees, expenses and other items of additional rental, have been paid in full and will have been paid in full through the Closing Date;

(iii) No portion of the security deposit has been used or offset by the lessors or sublessors under the Facility Leases;

(iv) There are no assessments or other charges, ordinary or extraordinary, currently assessed or, to the knowledge of the Company, threatened by any lessors, sublessors, governmental authorities or other third parties against the Leased Space and, to the knowledge of the Company, there is no state of facts that will (or are likely to) cause an increase in the rentals listed in Schedule 7.25(b);

(v) Subject to obtaining the Landlord Consent as set forth on Schedule 7.02, all necessary consents required under the Facility Leases as a result of the transaction contemplated hereby have been or will be obtained and the Facility Leases will continue to be legal, valid, binding and enforceable as written, against the lessors or sublessors following the Closing;

(vi) Subject to obtaining the Landlord Consent as set forth on Schedule 7.02 following the Closing, (x) the lessors or sublessors under the Facility Leases shall not be entitled to any recapture or other termination rights, (y) the lessors or sublessors shall not be entitled to any increase in the current rental under any Facility Lease, and (z) no options to renew, exclusivity or use preferences or abatements shall be voided or otherwise terminated and no other rights of the "tenant" shall be affected or obligations of "tenant" increased, in each case as a result of the transactions contemplated hereby;

(vii) To the Company's knowledge, no lessors or any sublessors under the Facility Leases are cancelling or terminating the Facility Leases (or, to the Company's knowledge, intend to cancel or terminate such Facility Leases) or are exercising (or intend to exercise) any option to cancel or terminate thereunder;

(viii) (a) Neither the Company nor, to the knowledge of the Company, any lessors or sublessors under the Facility Leases is in breach or default thereunder and, to the knowledge of the Company, there has been no such breach or default thereunder with the last eighteen (18) months, and (b) no event has occurred that, with notice or lapse of time or both, would constitute a breach or default or permit termination, modification or acceleration thereunder;

(ix) Neither the Company nor, to the Company's knowledge, any lessor under the Facility Leases has a claim against the other, and no offset or defense to enforcement of any of the terms of the Facility Leases exists;

(x) To the Company's knowledge, no mortgagee, over-lessor, ground-lessor or other superior interest holder for the Leased Space or the buildings and/or lands on which the same are situated ("Superior Interest Holder") is foreclosing on its interest (or, to the Company's knowledge, intends to foreclose on its interest) and, in connection therewith or otherwise, is cancelling or terminating (or, to the Company's knowledge, intends to cancel or terminate) the Facility Leases, and the Company has not been made a party to a foreclosure actions (or received a notice that it may be made a party to a foreclosure action) involving the Facility Leases or its interest in the Leased Space;

(xi) Neither the Company nor, to the knowledge of the Company, any lessors or sublessors under the Facility Leases is in breach or default under any Contract with a Superior Interest Holder, and no event has occurred that, with notice or lapse of time or both, would constitute a breach or default or permit termination, modification or acceleration thereunder;

(xii) To the Company's knowledge, no Actions (voluntary or involuntary) are pending against Landlord under the bankruptcy laws of the United States or any state thereof;

(xiii) Neither the Company nor, to knowledge of the Company, any lessors or sublessors of the Facility Leases has repudiated any provision thereof;

(xiv) To the Company's knowledge, there are no easements, restrictions or other agreements (whether or not of record) which interfere (or could interfere) with the use of the Leased Spaces for the purposes permitted under the Facility Leases (whether or not such agreements easements, restrictions or other agreements are referenced in such Facility Leases);

(xv) The Company has complied with all maintenance obligations in accordance with the terms of the respective Facility Leases including, without limitation, the roof, plumbing, gasoline pumps, lines and equipment, gasoline tanks, electrical systems located thereon and the same are in good repair;

(xvi) The Company has not received any noise, vibration or nuisance complaints from any party (including from any lessors or sublessors, any other commercial or residential tenants or any community boards) with respect to any activity going on in or about the Leased Spaces within the last twenty-four (24) months;

(xvii) The Company has not made any noise, vibration or nuisance complaints against any party (including any lessors or sublessors or any other commercial or residential tenants) with respect to any activity going on in the proximity of the Leased Space and there are no state of facts which the Company is aware that is (or is likely to) materially interfere with business operations in the Leased Spaces;

(xviii) The Company's possession and quiet enjoyment of the Leased Space is not currently being disturbed;

(xix) Except as otherwise set forth in the Facility Leases, there are no refurbishments, renovations or other upgrades required to be performed by Tenant under any of the Facility Leases at any time during the term thereof, including any options to renew, and the Company has not received any written requests from any lessors or sublessors to refurbish, renovate or otherwise upgrade the Leased Spaces;

(xx) The Company has not received notice of any pending or threatened condemnation or expropriation proceedings, lawsuits or administrative actions relating to the Facility Leases that would adversely affect the current use, occupancy or value of the Facility Leases;

(xxi) The Company has not assigned, pledged, transferred or conveyed any interest in the leasehold and is not aware of any such assignment, transfer or conveyance.

7.26 Mailing Lists

All (a) lists of customers, (b) lists of suppliers and vendors, (c) depletion data, and (d) trade mailing lists of the Business, in any format, in the possession of the Company, which will be delivered to Parent and Merger Sub at the Closing (collectively, the "Mailing List"), are true, correct and complete copies of all of the lists owned, held or used by the Company in connection with the Business

7.27 Certain Payments

During the last three (3) years, neither the Company nor any director, officer, manager, partner, agent, or employee acting for or on behalf of the Company has, directly or indirectly, with respect to the Business (a) made any payment not in the ordinary course (including any bribes, payoffs or kickbacks), whether in money, property, or services (i) to obtain favorable treatment in securing business, (ii) to pay for favorable treatment for business secured, or (iii) to obtain special concessions or for special concessions already obtained, or (b) established or maintained any material fund or asset that has not been recorded in the books and records of the Company.

7.28 Indebtedness

Except as set forth on the Indebtedness Schedule, the Company has no outstanding Indebtedness. For each item of Indebtedness, Schedule 7.28 correctly sets forth the debtor, the Contract governing the Indebtedness, the principal amount of the Indebtedness as of the date of this Agreement, the creditor, the maturity date, the collateral, if any, securing the Indebtedness (and all Contracts governing all related Liens).

7.29 Books and Records

The books and records relating to the Business and the Company which have been made available to Parent are complete and accurate.

7.30 Disclosure

Neither this Agreement nor the Disclosure Schedule contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary, including with respect to the Business or the Assets, in order to make the statements contained herein or therein not misleading in light of the circumstances under which they were made.

ARTICLE VIII
REPRESENTATIONS AND WARRANTIES CONCERNING PARENT AND MERGER SUB

The Parent represents and warrants to the Members that:

8.01 Organization and Power

The Parent is a Delaware corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware, with full corporate power and authority to enter into this Agreement and perform its obligations hereunder. The Merger Sub is a Delaware limited liability company duly formed, validly existing and in good standing under the Laws of the State of Delaware, with full corporate power and authority to enter into this Agreement and perform its obligations hereunder.

8.02 Authorization; Valid and Binding Agreement

The execution, delivery and performance of this Agreement by each of the Parent and Merger Sub and the consummation of the transactions contemplated hereby have been duly and validly authorized by all requisite corporate action and no other proceedings on its part are necessary to authorize its execution, delivery or performance of this Agreement. This Agreement has been duly executed and delivered by the Parent and Merger Sub and, assuming the due authorization, execution and delivery by the other Parties, constitutes a legal, valid and binding obligation of the Parent and Merger Sub, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies.

8.03 No Breach

Neither the Parent nor Merger Sub is subject to or obligated under its Organizational Documents any applicable Law, or any material Contract, which would be breached or violated in any material respect by the Parent's or Merger Sub's execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby.

8.04 Governmental Consents, etc

Except as set forth on Schedule 8.04, neither the Parent nor Merger Sub is required to submit any notice, report or other filing with any Governmental Authority in connection with the execution, delivery or performance by it of this Agreement or the consummation of the transactions contemplated hereby. No consent, approval or authorization of any Governmental Authority or any other Person is required to be obtained by the Parent or Merger Sub in connection with its execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby. Neither the Parent nor Merger Sub is subject to any Order.

8.05 Litigation

There are no Actions pending or, to the Parent's or Merger Sub's knowledge, threatened against or affecting the Parent or Merger Sub at law or in equity, or before or by any Governmental Authority, which would materially and adversely affect the Parent's or Merger Sub's performance under this Agreement or the consummation of the transactions contemplated hereby.

8.06 Broker's Fees

There are no brokerage commissions, finders' fees or similar compensation payable in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of the Parent or its Affiliates.

ARTICLE IX
TERMINATION

9.01 Termination

This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of the Parent and SBEEG; or

(b) Upon Termination of the Asset Purchase Agreement.

9.02 Effect of Termination

In the event of a termination of this Agreement by either the Parent or SBEEG, on behalf of the Members as provided above, the provisions of this Agreement shall immediately become void and of no further force and effect (other than this Section 9.02 (Effect of Termination), Article XII (Miscellaneous), Sections 6.06 (Broker's Fees), 7.21 (Broker's Fees) and 8.06 (Broker's Fees), and Section 10.08 (Jurisdiction; Venue; Service of Process) hereof which shall survive the termination of this Agreement) and there shall be no Liability on the part of the Parent, Merger Sub, any of the Company, SBEEG or the Members to one another, except to the extent otherwise provided in the Asset Purchase Agreement.

ARTICLE X
INDEMNIFICATION

10.01 Survival; Notice of Indemnification Claims.

(a) The representations, warranties and Pre-Closing Covenants in this Agreement shall survive the Closing and shall terminate on the date that is eighteen (18) months after the Closing Date (the "General Survival Period"); provided that (A) the representations and warranties in Section 6.01 (Authority; Power), Section 6.02 (Organization), 6.03 (Execution and Delivery; Valid and Binding Agreement), Section 6.04(b)(ii) (Breach of Organizational Documents), Section 6.05 (Ownership of Equity Interests), Section 7.01 (Organization, Corporate Power and Authorization), Section 7.02 (Consents and Approvals), Section 7.03(a) (Breach of Organizational Documents), Section 7.04 (Equity Interests), Section 7.15 (Transactions with Affiliates), Section 7.23 (No Brokers), Section 7.25 (Leases), Section 7.28 (Indebtedness), Section 8.01 (Organization and Power), Section 8.02 (Authorization; Valid and Binding Agreement) and Section 8.03 (No Breach) shall survive indefinitely, and (B) the representations and warranties in Section 7.12 (Employment Matters) and Section 7.13 (Taxes) shall survive until the 30th day following the termination of the applicable statutes of limitation (as extended by any tolling periods and other extensions) with respect to the liabilities in question). Post-Closing Covenants in this Agreement shall survive the Closing in accordance with their terms and claims in respect thereof must be brought prior to the expiration of the applicable statute of limitations in respect of such claims. No claim for indemnification hereunder for breach of any such representations, warranties, covenants, agreements and other provisions may be made after the expiration of the survival period set forth in the immediately preceding sentences; provided that (x) any representation, warranty, covenant, agreement or other provision in respect of which indemnity may be sought under Section 10.02(a) or under Section 10.03, and the indemnity with respect thereto, shall survive (with respect to any claim that has been made) the time at which it would otherwise terminate pursuant to this Section 10.01 if timely written notice thereof shall have been given to the Person against whom such indemnity may be sought prior to such time of termination and (y) claims for indemnification based on upon fraud are not subject to the time limitations set forth in this Section 10.01. For the avoidance of doubt, with respect to any claim for indemnity that is made under Section 10.02(a) or Section 10.03 based on a breach of or inaccuracy in any statement, representation or warranty contained in any certificate delivered by or on behalf of a Party thereto at the Closing (each a "Closing Certificate"), such statements, representations and warranties shall survive for the General Survival Period (except that the statements, representations and warranties contained in the Closing Certificates to be delivered pursuant to Sections 4.01(f)(i) and 4.02(e)(ii) (the "Bring Down Certificates") shall survive for the same periods as the underlying representations, warranties or covenants set forth in this Agreement to which they relate). For the avoidance of doubt, claims for indemnification based on Section 10.02(a)(ii), (iv), (v) or (vi) shall not be subject to the time limitations set forth in this Section 10.01.

(b) If an Indemnified Person (as defined below) wishes to make a claim for indemnification under this Article X, the Indemnified Person shall give written notice of such claim to the Indemnifying Person (as defined below). Such written notice shall describe the basis for such claim for indemnification and the amount of Losses involved (if quantifiable), in each case, in reasonable detail in light of the facts then known to the Indemnified Person; provided, that the failure to so notify the Indemnifying Person shall not relieve the Indemnifying Person of its obligations hereunder except to the extent that (and only to the extent that) such failure shall have caused the damages for which the Indemnifying Person is obligated to be greater than such damages would have been had the Indemnified Person given the Indemnifying Person adequate notice hereunder. SBEEG shall give and receive all notices on behalf of all Seller Indemnified Persons in the case of all claims for indemnification under this Article X.

10.02 Indemnification by SBEEG and the Members for the Benefit of the Parent Indemnified Persons.

(a) Provided that timely notice has been made within the prescribed survival period set forth in Section 10.01 above, from and after the Closing, the Parent, Merger Sub and each of their respective Affiliates (including, following the Closing, the Company) and each director, officer, employee, agent, manager, consultant, advisor, or other representative (each a "Representative") of such Person, including their respective legal counsel, accountants, and financial advisors, and all of the successors, assigns and legal representatives of the foregoing (each, a "Parent Indemnified Person"), shall be indemnified and held harmless by the Members by means of the payment to such Parent Indemnified Persons of escrow funds from time to time held in the Escrow Account maintained pursuant to the Escrow Agreement ("Escrow Funds") and, from and after the time that the Escrow Funds have been fully distributed or are otherwise no longer available for such purposes, the Parent Indemnified Persons shall be indemnified and held harmless by SBEEG, in each case, from, against and in respect of any and all actual Losses (whether or not such Losses relate to a Third Party Claim (as defined below)), which all or any of such Parent Indemnified Persons may suffer or sustain as a result of, directly or indirectly relating to, or arising out of:

(i) any inaccuracy in or breach of any representation or warranty contained in Article VII, in each case, without giving effect to any update to the Disclosure Schedules;

(ii) any nonfulfillment or breach of any covenant, agreement or other provision by the Company contained in this Agreement or the Escrow Agreement;

(iii) any nonfulfillment or breach of any Pre-Closing Covenant by the Company contained in this Agreement;

(iv) the allocation of the aggregate purchase price among the Members pursuant to this Agreement or among any of the Parties (other than Buyer, Merger Sub or Wasabi Holdings, LLC) to this Agreement, the Other Merger Agreements or the Asset Purchase Agreement;

(v) the lawsuit currently filed in the Superior Court of the State of California, County of Los Angeles, Case No. BC 585265 and any and all substantially similar matters, including further litigation, that may arise out of substantially similar facts to those set forth in Los Angeles, Case No. BC 585265; and

(vi) any claim or Action brought by any holder of Company LLC Interests, or any other Person alleging to own Equity Interests of the Company or otherwise having an interest in the Company to the extent such claim or Action relates to (A) this Agreement, the Merger or any other event, action, omission or condition (or series of events, actions, omissions or conditions) occurring or existing on or prior to the Closing Date) other than claims arising out of conditional Per LLC Interest Closing Merger Consideration pursuant to Section 3.02(c), which, for the avoidance of doubt, shall be the liability of Buyer and Parent; or (B) any assertion of dissenters, appraisal or similar rights.

(b) Provided that timely notice has been made within the prescribed survival period set forth in Section 10.01 above, from and after the Closing, each Parent Indemnified Person, shall be indemnified and held harmless by SBEEG, in each case, from, against and in respect of any and all actual Losses (whether or not such Losses relate to a Third Party Claim (as defined below)), which all or any of such Parent Indemnified Persons may suffer or sustain as a result of, directly or indirectly relating to, or arising out of:

(i) any inaccuracy in or breach of any representation or warranty made by the Manager under Article VI without giving effect to any update to the Disclosure Schedules; or

(ii) any nonfulfillment or breach of any covenant, agreement or other provision by the Manager or SBEEG contained in this Agreement.

(c) Notwithstanding anything to the contrary contained in this Agreement or in any Related Agreement: (i)(A) in the case of any representation or warranty made by the Manager in Article VI, or any breach by SBEEG or the Manager of a covenant of SBEEG or the Manager contained herein, SBEEG or the Manager shall be liable for the indemnifiable Losses associated with such breach, and (ii)(B) the other Members shall have no liability in connection therewith; (ii) except as otherwise specifically provided in Section 10.02(d)(ii) below, in the case of any breach of a representation or warranty made by the Company in Article VII or a breach of a Pre-Closing Covenant of the Company, the Members shall be severally and not jointly liable (in accordance with their respective Pro Rata Shares) for such indemnifiable Losses associated with such breach; (iii) the Members shall have no liability under Section 10.02(a)(i) unless and until the aggregate of all Losses relating thereto, for which the Members would, but for this Section 10.02(c), be liable exceeds on a cumulative basis an amount equal to $300,000 (the "Deductible"), the calculation of which will include all Losses paid pursuant to the Asset Purchase Agreement (as Losses is defined therein) and the Other Merger Agreements (as Losses is defined therein), and then only to the extent such Losses exceed the Deductible; (iv) except as set forth in Section 10.02(f), the aggregate liability under Section 10.02(a)(i) shall in no event exceed $7,500,000 (the "Cap"), the calculation of which will include all Losses paid pursuant to the Asset Purchase Agreement (as Losses is defined therein) and the Other Merger Agreements (as Losses is defined therein).

(d) Notwithstanding anything to the contrary contained in this Agreement or in any Related Agreement: (i) the amount of indemnity payable pursuant to this Section 10.02 with respect to any Losses shall be reduced (A) by any reserves or accruals reflected on the face of the Latest Balance Sheet (as opposed to merely being disclosed in the notes thereto, if any) to the extent specifically and relating to the subject matter of the applicable Losses or (B) to the extent any such Loss amount has already been taken into account in making any adjustment to the Aggregate Closing Merger Consideration contemplated in Section 3.03; and (ii) other than SBEEG, no Member shall be liable for any indemnifiable Losses beyond such Member's Pro Rata Share of the Escrow Funds.

(e) With respect to any Member other than SBEEG, except as contemplated in Section 3.03 (Adjustment to Aggregate Closing Merger Consideration), recovery pursuant to this Article X constitutes the Parent Indemnified Persons' sole and exclusive remedy for any and all Losses or other claims relating to or arising from this Agreement and the transactions contemplated hereby and the Parent Indemnified Persons may not avoid the limitations on liability set forth in this Section 10.02 by seeking damages for breach of contract, tort or pursuant to any other theory of liability. With respect to SBE, except (i) as contemplated in Sections 3.03 (Adjustment to Aggregate Closing Merger Consideration) and 12.16 (Specific Performance), (ii) for remedies for breach of any Related Agreement and (iii) in cases of fraud, from and after the Closing, recovery pursuant to this Article X constitutes the Parent Indemnified Persons' sole and exclusive remedy for any and all Losses or other claims relating to or arising from this Agreement and the transactions contemplated hereby and the Parent Indemnified Persons may not avoid the limitations on liability set forth in this Section 10.02 by seeking damages for breach of contract, tort or pursuant to any other theory of liability.

(f) Notwithstanding Section 10.02(a), neither the Deductible nor the Cap shall apply to any claims based on fraud or intentional misrepresentation or claims for indemnification pursuant to Section 10.01(a) in respect of breach of representations and warranties set forth in Section 6.01 (Authority; Power), Section 6.02 (Organization), Section 6.03 (Execution and Delivery; Valid and Binding Agreement), Section 6.04(b)(ii) (Breach of Organizational Documents), Section 6.05 (Ownership of Equity Interests), Section 6.06 (Broker's Fees), Section 7.01 (Organization, Corporate Power and Authorization), Section 7.03(a) (Breach of Organizational Documents), Section 7.04 (Equity Interests), Section 7.13 (Taxes), Section 7.15 (Transactions with Affiliates), Section 7.23 (No Brokers), Section 7.25 (Leases) and Section 7.28 (Indebtedness) (or any breach of or inaccuracy in any statement, representation or warranty contained in any Bring Down Certificate to the extent relating to any of the foregoing representations and warranties). For the avoidance of doubt, claims for indemnification based on any of Sections 10.02(a)(ii) through (vi) shall not be subject to the monetary limitations set forth in Section 10.02(c).

(g) The right of any Parent Indemnified Person to indemnification pursuant to this Article X or Article XI will not be affected by any investigation conducted or knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing, with respect to the accuracy of any representation or warranty, or performance of or compliance with any covenant or agreement, referred to herein. The waiver of any condition contained in this Agreement based on the breach of any such representation or warranty, or on the performance of or compliance with any such covenant or agreement, will not affect the right of any Parent Indemnified Person to indemnification pursuant to this Article X or Article XI based on such representation, warranty, covenant or agreement.

(h) Each Member hereby agrees that he, she or it shall not make, and shall not permit his, her or its Affiliates or Representatives to make any claim for indemnification against any of the Parent Indemnified Persons, the Company by reason of the fact that such Member or any Affiliate or Representative thereof was a controlling person, director, employee or Representative of the Company thereof or was serving as such for another Person at the request of the Company (whether such claim is made pursuant to any Law, Organizational Document, Contract or otherwise) with respect to any indemnification claim brought by a Parent Indemnified Person under this Agreement. With respect to any indemnification claim brought by a Parent Indemnified Person under this Agreement, each Member expressly waives any right of subrogation, contribution, advancement, indemnification or other claim against the Company with respect to any amounts owed by him, her or it pursuant to this Agreement or otherwise in respect of the transactions contemplated by this Agreement.

10.03 Indemnification by the Parent for the Benefit of the Members

From and after the Closing, the Parent shall indemnify each of the Members and each of their respective Affiliates (each, a "Seller Indemnified Person") and hold them harmless against any Losses which the Members may suffer or sustain, as a result of: (a) any breach of any representation or warranty of the Parent under this Agreement, and (b) any breach of any covenant, agreement or other provision of this Agreement by the Parent; provided, however, that (i) the Parent shall have no liability under Section 10.02(a) unless and until the aggregate of all Losses relating thereto, for which the Parent would, but for this Section 10.03(a), be liable exceeds on a cumulative basis an amount equal to the Deductible, the calculation of which will include all Losses paid pursuant to the Asset Purchase Agreement (as Losses is defined therein) and the Other Merger Agreements (as Losses is defined therein), and then only to the extent such Losses exceed the Deductible and (ii) the aggregate liability under Section 10.02(a) shall in no event exceed the Cap, the calculation of which will include all Losses paid pursuant to the Asset Purchase Agreement (as Losses is defined therein) and the Other Merger Agreements (as Losses is defined therein). Except (i) as contemplated in Sections 3.03 (Adjustment to Aggregate Closing Merger Consideration) and 12.16 (Specific Performance), (ii) for remedies for breach of any Related Agreement and (iii) in cases of fraud, from and after the Closing, recovery pursuant to this Article X constitutes the Seller Indemnified Persons' sole and exclusive remedy for any and all Losses or other claims relating to or arising from this Agreement and the transactions contemplated hereby and the Seller Indemnified Persons may not avoid the limitations on liability set forth in this Section 10.02 by seeking damages for breach of contract, tort or pursuant to any other theory of liability.

10.04 Determination of Loss Amount

The amount of any Loss subject to indemnification under Section 10.02 shall be calculated net of any insurance proceeds actually received in cash by the Indemnified Person on account of such Loss and paid within ninety (90) days of the submission of a claim relating thereto, net of the present value of any reasonably probable increase in insurance premiums or other charges paid or to be paid by the Indemnified Person resulting from such Loss and all costs and expenses incurred by any Indemnified Person in recovering such proceeds from its insurers. The Indemnified Person shall use commercially reasonable efforts to seek full recovery under all insurance policies covering any Loss to the same extent as it would if such Loss were not subject to indemnification hereunder, provided, however, that, for the avoidance of doubt, in no event shall Indemnified Person be required to bring an action against the provider of any such insurance policies for such recovery. In the event that an insurance recovery is received by any Indemnified Person with respect to any Loss for which any such Person has been indemnified hereunder, then a refund equal to the aggregate amount of the recovery shall be made promptly to the Person or Persons that provided such indemnity payments to such Indemnified Person.

10.05 Mitigation

Each Person entitled to indemnification hereunder shall take all commercially reasonable steps to mitigate all Losses (other than matters concerning Taxes) after becoming aware of any event which could reasonably be expected to give rise to any Losses that are indemnifiable or recoverable hereunder or in connection herewith.

10.06 Manner of Payment

Any indemnification of the Parent pursuant to Section 10.02 shall be effected by release of Escrow Funds and when the Escrow Funds are depleted thereafter, but only to the extent applicable, by SBEEG to Parent by wire transfer of immediately available funds to an account designated by each applicable Indemnified Person within 10 days after the final determination thereof; provided, however, that Parent may, at its election, choose to seek payment directly from SBEEG with respect to any indemnification pursuant to Section 10.02(a)(v) and shall not be required to seek release of such amounts from the Escrow Funds. Any indemnification of SBEEG pursuant to Section 10.03 shall be effected by Parent's wire transfer of immediately available funds to an account designated by each applicable Indemnified Person within 10 days after the final determination thereof. Each indemnification payment made pursuant to this Article X shall, with respect to the Members and the Parent, be deemed to be an adjustment to the Aggregate Closing Merger Consideration.

10.07 Indemnification Process

(a) Any Person entitled to make a claim for indemnification under Section 10.02 or Section 10.03 (an "Indemnified Person") shall notify the indemnifying party (an "Indemnifying Person") in writing (the "Notice of Claim") which such Indemnified Person has determined has given rise to or would reasonably be expected to give rise to a right of indemnification under this Agreement, stating the amount of the Loss, if known (a "Loss Estimate"), describing the breach or inaccuracy and other material facts and circumstances upon which such claim is based and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed or arises as promptly as practicable after becoming aware of such matter; provided, however, that the failure so to provide such Notice of Claim or any defect in such Notice of Claim will not affect the rights of any Indemnified Persons to obtain indemnification hereunder, except to the extent such failure to include information actually and materially prejudices such Indemnifying Person. Notwithstanding the foregoing, no claim shall be brought under this Article X with respect to an event of indemnification described in Section 10.02(a)(i), (iii), or Section 10.02(b)(i) or (ii), unless the Indemnified Person, at any time prior to the end of the General Survival Period, gives the Indemnifying Person(s) a Notice of Claim with respect to such claim. If a Notice of Claim has been given on or prior to the end of the General Survival Period, the relevant representations and warranties shall survive as to such claim until the claim has been finally resolved.

(b) Except as provided below, the Indemnifying Person may elect to assume the defense of any Claims for indemnification hereunder resulting from the assertion of liability by third parties (each, a "Third Party Claim") with counsel reasonably satisfactory to the Indemnified Person by (i) giving notice to the Indemnified Person of its election to assume the defense of the Third Party Claim and (ii) giving the Indemnified Person evidence acceptable to the Indemnified Person that the Indemnifying Person has adequate financial resources to defend against the Third Party Claim and fulfill its obligations under this Article X, in each case no later than 10 days after the Indemnified Person gives notice of the assertion of a Third Party Claim. If the Indemnifying Person elects to assume the defense of a Third Party Claim:

(i) it shall diligently conduct the defense and shall not be liable to the Indemnified Person for any Indemnified Person's fees or expenses subsequently incurred in connection with the defense of the Third Party Claim other than reasonable costs of investigation;

(ii) the election will conclusively establish for purposes of this Agreement that the Indemnified Person is entitled to relief under this Agreement for any Loss arising from or in connection with the Third Party Claim (subject to the provisions of this Article X;

(iii) no compromise or settlement of such Third Party Claim may be effected by the Indemnifying Person without the Indemnified Person's consent unless (A) there is no finding or admission of any violation by the Indemnified Person of any Law or any rights of any Person, (B) the Indemnified Person receives a full release of and from any other claims that may be made against the Indemnified Person by the third party bringing the Third Party Claim, and (C) the sole relief provided is monetary damages that are paid in full by the Indemnifying Person; and

(iv) the Indemnifying Person shall have no liability with respect to any compromise or settlement of such claims effected without its consent.

(c) If the Indemnifying Person does not assume the defense of a Third Party Claim in the manner and within the period provided above, the Indemnified Person may conduct the defense of the Third Party Claim at the expense of the Indemnifying Person. Indemnifying Person will be bound by any determination resulting from such Third Party Claim or, upon the consent of Indemnifying Person, which consent shall not be unreasonably withheld, conditioned or delayed, any compromise or settlement effected by the Indemnified Person.

(d) With respect to any Third Party Claim subject to this Article X:

(i) any Indemnified Person and any Indemnifying Person, as the case may be, shall keep the other Person fully informed of the status of such Third Party Claim and any related Action at all stages thereof where such Person is not represented by its own counsel; and

(ii) both the Indemnified Person and the Indemnifying Person, as the case may be, shall render to each other such assistance as they may reasonably require of each other and shall cooperate in good faith with each other in order to ensure the proper and adequate defense of any Third Party Claim.

(e) With respect to any Third Party Claim subject to this Article X, the parties shall cooperate in a manner to preserve in full (to the extent possible) the confidentiality of all confidential information and the attorney-client and work-product privileges, including making reasonable best efforts to comply with the provisions of Section 12.16. In connection therewith, each party agrees that:

(i) it will use its best efforts, in respect of any Third Party Claim in which it has assumed or participated in the defense, to avoid production of Confidential Information (consistent with applicable Law and rules of procedure); and

(ii) all communications between any party and counsel responsible for or participating in the defense of any Third Party Claim shall, to the extent possible, be made so as to preserve any applicable attorney-client or work-product privilege.

10.08 Governing Law; Jurisdiction; Venue; Service of Process.

(a) This Agreement shall be governed by the Laws of the State of Delaware without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause application of the Laws of any jurisdiction other than the State of Delaware.

(b) All Actions arising out of or relating to this Agreement shall be heard and determined in any state or federal Court sitting in the State of New York. Each of the parties to this Agreement irrevocably submits to the exclusive jurisdiction of the state Courts of New York and to the jurisdiction of the United States District Court for the Southern District of New York, for the purpose of any Action arising out of or relating to this Agreement and each of the parties to this Agreement irrevocably agrees that all claims in respect of such Action may be heard and determined exclusively in any New York state or federal Court sitting in the State of New York. Each of the parties to this Agreement consents to service of process by delivery pursuant to Section 9.8 and agrees that a final judgment in any Action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

10.09 Limitation on Recourse

Other than in the case of fraud, no claim shall be brought or maintained by any Parent Indemnified Person against any officer, director, employee (present or former) or Affiliate of a Member which is not otherwise expressly identified as a Party hereto, and no recourse shall be brought or granted against any of them, by virtue of or based upon any alleged misrepresentation or inaccuracy in or breach of any of the representations, warranties or covenants of any party hereto set forth or contained in this Agreement or any exhibit or schedule hereto or any certificate delivered hereunder. For the avoidance of doubt and subject to the rights of Parent under the terms of any debt commitment letters with any lender, none of the parties hereto, nor or any of their respective Affiliates, solely in their respective capacities as parties to this Agreement, shall have any rights or claims against any such lender or any Affiliate thereof (collectively, the "Debt Financing Sources"), solely in their respective capacities as lenders or arrangers in connection with the transactions contemplated by this Agreement, including any related financing.

ARTICLE XI
ADDITIONAL COVENANTS AND AGREEMENTS

11.01 Disclosure Generally

The Disclosures Schedules attached hereto are incorporated herein and expressly made a part of this Agreement as though completely set forth herein. All references to this Agreement herein or in any of the Disclosures Schedules shall be deemed to refer to this entire Agreement.

11.02 Acknowledgment of Parent

The Parent acknowledges that it has conducted an independent investigation of the financial condition, results of operations, assets, liabilities, properties and projected operations of the Company and, in making its determination to proceed with the transactions contemplated by this Agreement, the Parent has relied on the results of its own independent investigation, the representations and warranties of the Company expressly and specifically set forth in this Agreement including the Disclosure Schedules and the representations and warranties of SBEEG and the Manager expressly and specifically set forth in this Agreement, the Asset Purchase Agreement and the Other Merger Agreements including the disclosure schedules thereto. **SUCH REPRESENTATIONS AND WARRANTIES BY THE COMPANY, SBEEG AND THE MANAGER CONSTITUTE THE SOLE AND EXCLUSIVE REPRESENTATIONS AND WARRANTIES OF THE COMPANY, SBEEG AND THE MANAGER TO PARENT IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, AND PARENT UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED (INCLUDING, BUT NOT LIMITED TO, ANY RELATING TO THE FUTURE FINANCIAL CONDITION, RESULTS OF OPERATIONS, ASSETS OR LIABILITIES OF THE COMPAN Y) ARE SPECIFICALLY DISCLAIMED BY THE COMPANY, SBEEG AND THE MANAGER.**

11.03 Tax Matters.

(a) The Parent Indemnified Persons shall be indemnified and held harmless by the Members by means of the payment to such Parent Indemnified Persons of Escrow Funds and, from and after the time that the Escrow Funds have been fully distributed or are otherwise no longer available for such purposes, by the Members, in each case, from, against and in respect of any and all actual Losses (whether or not such Losses relate to a Third Party Claim), which all or any of such Parent Indemnified Persons may suffer or sustain as a result of, directly or indirectly relating to, or arising out of: (i) all Taxes (or the non-payment thereof) of the Company or assessed on the Assets for all taxable periods ending on or before the Closing Date and the portion through the end of the Closing Date for any Straddle Period (as defined in Section 11.02(c) of this Agreement); (ii) all Taxes (or the non-payment thereof) of the Company attributable to any breach or violation of, or failure to fully perform (as applicable), any representations or covenants set forth in Section 7.13 or this Section 11.02 of this Agreement; (iii) all income Taxes (or the non-payment thereof) of any member of any Affiliated Group of which the Company (or any predecessor thereof) is or was a member on or prior to the Closing Date, including pursuant to Treasury Regulation section 1.1502-6 or any analogous or similar state, local, or non-U.S. Law or regulation; (iv) all income Taxes (or the non-payment thereof) of the Company attributable to any election under section 108(i) of the Code made with respect to a Pre-Closing Tax Period or Straddle Period; and (v) any and all income Taxes of any Person (other than the Company) imposed on the Company as a transferee or successor, by Contract or pursuant to any Law, which Taxes relate to an event, transaction or other circumstances occurring before the Closing; provided, however, that the Parent Indemnified Persons shall be indemnified and held harmless for Taxes described in this sentence only to the extent that such Taxes exceed the amount, if any, reserved for such Taxes (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax income and after reduction for any estimated Tax payments made prior to the Closing) on the face of the Final Closing Balance Sheet or shown as a liability for Taxes in Working Capital as finally determined under this Agreement. The Parent Indemnified Parties shall be reimbursed for any Taxes of the Company pursuant to this Section 11.03(a) at least five days prior to the payment of such Taxes by the Parent, the Company; provided that the Parent shall provide notice of such responsibility (and the amount) no less than 15 days prior to the payment of such Taxes by the Parent. Notwithstanding anything herein to the contrary, no limitations on indemnification contained in Article X shall apply to this Section 11.02. For all purposes of this Article XI, any indemnification obligation owing to any Parent Indemnified Person shall be satisfied by means of the payment to such Parent Indemnified Person out of the Escrow Funds and, from and after the time that the Escrow Funds have been fully distributed or are otherwise no longer available for such purposes, by SBEEG.

(b) SBEEG shall prepare all income Tax Returns for the Company that are required to be filed for all periods ending on or prior to the Closing Date (any such taxable period, a "Pre-Closing Tax Period") which have not yet been filed as of the Closing Date (collectively, "Seller Returns"). SBEEG shall timely cause to be paid any Taxes due and payable with respect to such Seller Returns in the manner provided in Section 11.03(a) above and Section 11.03(f) below. All Seller Returns shall be prepared on a basis consistent with past practice to the extent consistent with applicable Tax Law, and shall be true, correct and complete in all material respects. Not later than thirty (30) days prior to the due date for the filing of any Seller Return, SBEEG shall provide the Parent with a copy of such Seller Return and the Parent shall have the right to review, comment on, and approve any such Seller Return. SBEEG shall make such changes to such Seller Return as the Parent may reasonably request, and the Company shall file such Seller Return after SBEEG has made such changes, if any, to the reasonable satisfaction of the Parent. The Parent shall prepare and file all Tax Returns of the Company other than Seller Returns. In the case of any Tax Return of the Company prepared by Parent that concerns a Straddle Period and is not an income Tax Return (a "Buyer Return"), not later than thirty (30) days prior to the due date for the filing of any Buyer Return, Parent shall provide SBEEG with a copy of any such Buyer Return and SBEEG shall have the right to review and comment on any such Buyer Return. Parent shall consider in good faith any comments made by SBEEG to any such Buyer Return but shall not be obligated to make the changes proposed by SBEEG.

(c) In the case of Taxes that are payable with respect to a taxable period that begins on or before the Closing Date and ends after the Closing Date (a "Straddle Period"), the portion of any such Tax that is allocable to the portion of the period ending on and including the Closing Date shall be:

(i) in the case of Taxes that are either (x) based upon or related to income or receipts or (y) imposed in connection with any sale or other transfer or assignment of property (real or personal, tangible or intangible), deemed equal to the amount which would be payable if the taxable year ended on and included the Closing Date (an interim closing of the books); and

(ii) in the case of Taxes imposed on a periodic basis with respect to the assets of the Company, or otherwise measured by the level of any item, deemed to be the amount of such Taxes for the entire period (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period), multiplied by a fraction the numerator of which is the number of calendar days in the period ending on and including the Closing Date and the denominator of which is the number of calendar days in such Straddle Period.

(d) All transfer, documentary, sales, lease, use stamp, registration and other such Taxes, and any conveyance fees or recording charges imposed on the Company or the Members as a result of the transactions contemplated by this Agreement (collectively, "Transfer Taxes"), and any penalties, interest and filing fees or cost with respect to the Transfer Taxes shall be borne 50% by Parent and 50% by the Members. The Parent agrees to cooperate with SBEEG in the filing of any returns with respect to the Transfer Taxes, including promptly supplying any information in its possession reasonably requested by SBEEG that is reasonably necessary to complete such returns. If SBEEG fails to file any returns with respect to Transfer Taxes, the Parent, at SBEEG's expense, may file such returns.

(e) The Parent shall promptly notify SBEEG if the Parent receives notice of a claim by a Governmental Authority in respect of Taxes of the Company that could give rise to a liability of the Members under this Section 11.02 (a "Tax Claim"). SBEEG shall have the right to defend the Company against any such Tax Claim to the extent such Tax Claim principally concerns a taxable period ending on or prior to the Closing Date (a "Pre-Closing Tax Period"); provided that SBEEG provides the Parent with written notice of its intent to assume the defense of such Tax Claim. The Parent and its counsel shall be allowed to participate in the defense of any Tax Claim over which SBEEG has assumed the defense under the preceding sentence on a face-to-face basis at the Parent's own expense. SBEEG will not settle any Tax Claim over which SBEEG has assumed the defense under the second-preceding sentence without the prior written consent of the Parent, such consent not to be unreasonably withheld, conditioned or delayed. SBEEG shall have the right to participate at its own expense in the defense of any Tax Claim not discussed in the third preceding sentence that concerns a Pre-Closing Tax Period.

(f) To the extent not accrued as an asset in Working Capital, the Parent shall promptly pay or cause prompt payment to be made to SBEEG, on behalf of the Members, within ten (10) days after receipt thereof or entitlement thereto by the Parent, the Company or any Affiliate on behalf of the Members, of all refunds of Taxes and interest thereon received by, or credited against the Tax liability of the Parent, any Affiliate of the Parent, the Company (but only to the extent that any such credit actually reduces the Taxes paid by the Company for any Tax period (or the portion of any Straddle Period) beginning after the Closing Date) to the extent such refunds or credits are attributable to Taxes paid by the Company in a Pre-Closing Tax Period (and not due to the carry-back of any Tax attributes generated in a period other than a Pre-Closing Tax Period).

(g) Parent, Merger Sub, and the Company will cooperate fully, as and to the extent reasonably requested by the other party, in connection with any Tax matters relating to the Company (including by the provision of reasonably relevant records or information). The party requesting such cooperation will pay the reasonable out-of-pocket expenses of the other party.

(h) The Aggregate Closing Merger Consideration, and any assumption of liabilities as determined for U.S. federal income tax purposes, shall be allocated among the Assets of the Company in accordance with Code Section 1060 (and any similar provisions of state or local Law, as appropriate) and shall be set forth in a schedule delivered by Parent to SBEEG within forty-five (45) days following the Closing Date (the "Allocation Schedule"). SBEEG shall have an opportunity to review the Allocation Schedule for a period of thirty (30) days after the receipt of the Allocation Schedule and Parent will not finalize the Allocation Schedule until such thirty (30) day period has elapsed or Parent has received the consent of the Seller Entities (such consent not to be unreasonably withheld, conditioned or delayed) The Parties and their respective Affiliates shall file all Tax Returns (including IRS Form 8594) consistent with the final Allocation Schedule as determined hereunder (as reasonably adjusted to account for events occurring after the determination of the final allocation of the Purchase Price) and none of the Parties or their respective Affiliates shall take any Tax position inconsistent with the final Allocation Schedule determined hereunder unless required to do so by a change in applicable Laws or a good faith resolution of a Tax contest.

11.04 Further Assurances

From time to time, as and when requested by any Party hereto and at such Party's expense, any other Party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further actions as the requesting Party may reasonably deem necessary or desirable to evidence and effectuate the transactions contemplated by this Agreement.

11.05 Access to Books and Records

From and after the Closing, the Parent shall, and shall cause the Company to, provide SBEEG and its authorized Representatives with reasonable access, at their own cost and expense, during normal business hours and upon reasonable notice, to the books and records and, with the consent of the Parent (not to be unreasonably withheld, conditioned or delayed), any relevant personnel of the Company with respect to periods prior to the Closing Date in connection with the preparation of any financial statements or Tax Returns of the Members or any claim or Action brought against a Seller Indemnified Person relating to the Company (other than a claim or Action brought by a Parent Indemnified Person relating to or arising out of this Agreement or the transactions contemplated hereby).

11.06 Employee Matters.

(a) SBEEG shall be responsible for, and the Parent Indemnified Persons shall be indemnified and held harmless by the Members from, against and in respect of any and all actual Losses (whether or not such Losses relate to a Third Party Claim), which all or any of such Parent Indemnified Persons may suffer or sustain as a result of, directly or indirectly relating to, or arising out of any notices, payments, benefits, fines, penalties, backpay, and damages required under WARN relating to any "plant closing" or "mass layoff" (as defined in WARN) (or similar triggering event) caused in part by the termination of employees of Spoonful working at the Company before the Closing.

(b) From and after the Closing Date, the Surviving Company shall not be liable for any claims and liabilities under any welfare plans, regardless of when such claims or liabilities arise or are asserted. To the extent the Surviving Company provides any substantially similar welfare plans as those maintained by Spoonful with respect to the Business Employees providing services to the Company, the Surviving Company shall use commercially reasonable efforts to cause credit to be given (without duplication; and not to an extent greater than counted immediately before the Closing Date for comparable purposes) to all employees of the Company and their eligible dependents and beneficiaries for any premiums, co-payments and deductibles paid on or prior to the Closing Date in satisfying any deductible and out-of-pocket expense requirements under any new group medical plan for the current plan year.

(c) Effective as of the Closing Date, the Parent will use commercially reasonable efforts to count (without duplication; and not to an extent greater than counted immediately before the Closing Date for comparable purposes) the service of all employees with the Company under the Surviving Company's vacation policy and welfare benefit plans to the extent applicable to such employees. In addition, the Surviving Company shall use commercially reasonable efforts to count (without duplication; and not to an extent greater than counted immediately before the Closing Date for comparable purposes) such service but only in determining each employee's eligibility to participate in, and each such employee's vested percentage in, each of the Surviving Company's employee benefit plans (as defined in Section 3(3) of ERISA) which are subject to ERISA and are applicable to such employee, but, for the avoidance of doubt, not for benefit accrual purposes.

(d) It is expressly acknowledged, understood and agreed that nothing herein is intended to or does or shall constitute an amendment to or requirement to establish any employee benefit or other plan or grant any Person any rights as a third party beneficiary of this Agreement.

11.07 SBEEG as the Members' Representative.

(a) SBEEG shall serve as the representative of the Members and act in any and all capacities to do and perform every act and thing required or permitted to be done in connection with the transactions contemplated by this Agreement and the Related Agreements, including, without limitation:

(i) determine the presence (or absence) of claims for indemnification against the Parent and its Affiliates pursuant to Article X or Article XI above;

(ii) deliver all notices required to be delivered under this Agreement or the Related Agreements, including, without limitation, any notice of a claim for which indemnification is sought under Article X or Article XI above or any notice in respect of Section 3.03, and make all filings, enter into all Contracts, make all decisions, prosecute, defend, settle or otherwise compromise all Actions and claims and take all other actions in connection therewith, and execute any amendments to the Agreement or any Related Agreements, and provide any consents or waivers to any of the foregoing;

(iii) receive all notices required or permitted to be delivered to SBEEG, the Manager or the Members under this Agreement or Related Agreements, including, without limitation, any notice of or relating to a claim for which indemnification is sought under Article X or Article XI;

(iv) take any and all actions as SBEEG may deem necessary or desirable to resolve or settle claims under this Agreement or any Related Agreement or otherwise relating to this Agreement, any Related Agreement or Merger or other transactions contemplated hereby or otherwise as permitted or required to be taken by or on behalf of SBEEG, the Manager or the Members under this Agreement, the Escrow Agreement or other Related Agreements and exercise any rights that SBEEG, the Manager or the Members are permitted or required to do or exercise under this Agreement, the Escrow Agreement or the other Related Agreements; and

(v) in connection with the Closing, execute and receive all documents, instruments, certificates and agreements on behalf of and in the name of SBEEG, the Manager or the Company necessary to effectuate the Closing and consummate the contemplated transactions.

The Company, the Manager and SBEEG hereby acknowledge and agree that upon execution of this Agreement, any delivery by SBEEG of any waiver, amendment, agreement, certificate or other documents in respect of this Agreement, the Escrow Agreement or the other Related Agreements executed by SBEEG (in its capacity as the Members' representative hereunder), such party shall be bound by such documents as fully as if such holder had executed and delivered such documents. All decisions and actions by SBEEG within the scope of the authorization granted in this Section, including, without limitation, any agreement between SBEEG and Parent or Merger Sub relating to the resolution of disputes relating to Section 3.03, or the defense or settlement of any indemnity claims by any Indemnifying Person pursuant to Article X or Article XI hereof, shall be final and binding upon SBEEG, the Manager and, to the extent permitted by law, the Members, and no such party shall have the right to object, dissent, protest or otherwise contest the same. All expenses and other fees incurred by SBEEG shall be paid by the Members based on such Members' Pro Rata Share, provided, however, that other than SBEEG, no Member shall be liable for any expenses or fees incurred by SBEEG beyond an amount equal to (i) such Member's Pro Rata Share of the Escrow Funds, less (ii) any amounts paid by such Member pursuant to Article X.

(b) Parent shall be entitled to rely on any action taken by SBEEG pursuant to Section 11.07(a) above (each, an "Authorized Action"). SBEEG and the Manager, jointly and severally, shall pay to and indemnify and hold harmless the Parent and the other Parent Indemnified Persons from and against any Losses which it or any of them may suffer, sustain, or become subject to, as the result of any claim by any Member that an Authorized Action is not binding on, or enforceable against, the Members.

11.08 Confidentiality.

The Manager acknowledges that the success of the Company after the Closing depends upon the continued preservation of the confidentiality of certain information it possesses, that the preservation of the confidentiality of such information by it is an essential premise of the bargain between the Manager and the Parent and Merger Sub, and that the Parent and Merger Sub would be unwilling to enter into this Agreement in the absence of this Section 11.08. Accordingly, the Manager hereby severally agrees with the Parent and Merger Sub that it, its Affiliates and its and its Affiliate's Representatives shall not, and that it shall cause its Affiliates and such Representatives not to, at any time on or after the Closing Date, directly or indirectly, without the prior written consent of Parent, disclose or use, any information involving or relating to the Business or the Company (other than in the course of fulfilling its duties to the Company in such capacity); provided, that the information subject to this Section 11.08) will not include any information generally available to, or known by, the public (other than as a result of disclosure in violation hereof); provided, further, that the provisions of this Section 11.08 will not prohibit any retention of copies of records or disclosure (A) required by any applicable Law so long as reasonable prior notice is given to Parent and the Company of such disclosure and a reasonable opportunity is afforded Parent and the Company to contest the same or (B) made in connection with the enforcement of any right or remedy relating to this Agreement or the transactions contemplated hereby. The Manager agrees that it shall be responsible for any breach or violation of the provisions of this Section 11.08 by any of its Affiliates or its or its Affiliates' Representatives.

11.09 Landlord Agreement; SNDA.

The Company shall use commercially reasonable efforts to (i) obtain the Landlord Agreement signed by the applicable lessor and (ii) a subordination, non-disturbance and attornment agreement from each mortgagee, groundlessee and superior interest holder of any Facility Lease in a form reasonably acceptable to the Parent.

11.10 Percentage Rent True-Up.

On or before February 15, 2016 (or if rent is payable based on a year which is not a calendar year, within forty-five (45) days of the expiration of the lease year in which the Closing Date occurs), Parent and the Surviving Entity shall provide SBEEG with written notice of its calculation of the portion of the rent payable pursuant to any Facility Leases for the Leased Spaces relating to the period on or prior to the Closing (the "Pre-Closing Rent Portion") and the period after the Closing through December 31, 2015. With respect to any calculation of percentage rent, the parties shall calculate the Pre-Closing Rent Portion by multiplying (i) the total percentage rent payable for said year by (ii) the fraction (x) the numerator of which is gross sales made at the Leased Space (as calculated in accordance with the Facility Leases) for the portion of the year occurring prior to the Closing Date and (y) the denominator of which is total gross sales made at the Leased Space for said year. Parent shall respond within ten (10) days indicating that it agrees with such calculation or objects to such calculation. In the event Parent fails to respond within such period, it will be deemed to have accepted the calculation. In the event Parent objects to the calculation, such dispute shall be resolved in accordance with the provisions in Section 3.02(c) with respect to the determination of the Final Working Capital. In the event that the Pre-Closing Rent Portion exceeds the amount of rent reflected in the Final Balance Sheet with respect to such period, Parent shall make payment of such difference within two (2) business days of the final determination of the Pre-Closing Rent Portion. In the event that the Pre-Closing Rent Portion is less than the amount of rent reflected in the Final Balance Sheet with respect to such period, SBEEG shall make payment of such difference within two (2) business days of the final determination of the Pre-Closing Rent Portion.

11.11 Lease Modification.

The Parent shall use commercially reasonable efforts to obtain the release of the lessor of any Facility Lease to the termination of the guarantees made by Sam Nazarian and any other guarantors of such Facility Leases (each, a "Guarantor"). If the Parent is unable to obtain the release of any Guarantor, then the Parent shall not have any obligation to obtain the release of such Guarantor and shall instead provide an indemnification agreement, in a form mutually agreed by the parties and pursuant to which the Parent shall indemnify such Guarantor for all payments and other liabilities of such Guarantor thereunder on a dollar-for-dollar basis.

11.12 Gift Cards.

The Company shall pay (and the Parent shall cause the Company to pay) SBEEG for the face amount of each gift card that is included in the calculation of Working Capital as of the Closing which are subsequently redeemed at any property owned or managed by SBEEG or any of its Affiliates following the Closing within fifteen (15) days after receipt by the Company or the Parent of an invoice therefor.

ARTICLE XII
MISCELLANEOUS

12.01 Press Releases and Communications

No press release or public announcement related to this Agreement or the transactions contemplated herein, or prior to the Closing, any other announcement or communication to the employees, providers, patients, customers or suppliers of the Company, shall be issued or made by any Party without the joint written approval of the Parent and SBEEG, unless (a) required by Law (in the reasonable opinion of counsel) in which case the Parent and SBEEG shall have the right to review such press release, announcement or communication prior to its issuance, distribution or publication or (b) any disclosure made in connection with the enforcement of any right or remedy relating to this Agreement or any Related Agreement or the transactions contemplated hereby.

12.02 Expenses

Except as otherwise expressly provided herein, each Party shall pay all of its own expenses (including attorneys' and accountants' fees and expenses) in connection with the negotiation of this Agreement, the performance of its obligations hereunder and the consummation of the transactions contemplated by this Agreement (whether consummated or not).

12.03 Knowledge Defined

For purposes of this Agreement, the term “the Company's knowledge” or similar references to knowledge as used herein shall mean in the case of the Members and the Company, the actual knowledge of Richard Acosta, Sam Nazarian and John Kolaski after reasonably inquiry.

12.04 Notices

All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given when personally delivered or delivered by facsimile, one day after deposit with Federal Express or similar reputable overnight courier service or three days after being mailed by first class mail, return receipt requested or transmitted via electronic mail (including by PDF format). Notices, demands and communications to the Parent, the Company, and the Members shall, unless another address is specified in writing, be sent to the addresses indicated below:

Notices to the Parent and the Company (after the Closing), to it:

The ONE Group, LLC
411 West 14th Street
New York, New York 10014
Fax: (212) 255-9715
Attention: Jonathan Segal
Sam Goldfinger
Sonia Low

with a copy (which shall not constitute notice) to:

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

One Financial Center
Boston, MA 02111
Fax: (617) 542-2241
Attention: Sahir Surmeli, Esq.

Notices to SBEEG and the Company (prior to the Closing):

SBEEG Holdings, LLC
5900 Wilshire Blvd., 31st Floor
Los Angeles, CA 90036
Fax: 323 655-8001
Attention: Legal Department

with copies to (which shall not constitute notice):

Venable LLP
505 Montgomery Street, Suite 1400
San Francisco, CA 94111
Fax: (415) 653-3755
Attention: Brandt U. Mori, Esq.

Venable LLP
750 East Pratt Street, Suite 900
Baltimore, MD 21202
Fax: (410) 244-7742
Attention: W. Bryan Rakes, Esq.

12.05 Assignment

Neither the Company, SBEEG or the Manager may assign, delegate or otherwise transfer this Agreement or any of such party's rights, interests or obligations hereunder, without the prior written consent of Parent and Buyer, and any attempt to do so will be null and void ab initio. Neither Buyer nor Parent may assign, delegate or otherwise transfer this Agreement or any of such party's rights, interests or obligations hereunder, without the prior written consent of the Company, SBEEG and the Manager and any attempt to do so will be null and void ab initio, provided, however, that Buyer or Parent may, without the approval of any other party to this Agreement, but with prior notice to SBEEG, make a collateral assignment of this Agreement to its Debt Financing Source. If either Buyer or Parent assigns this Agreement or any of its rights, interests or obligations hereunder, Buyer and Parent shall remain liable for all obligations of Buyer and Parent pursuant to this Agreement. Upon any such permitted assignment, the references in this Agreement to Parent shall refer to such assignee unless the context otherwise requires. Subject to this Section 12.05, this Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon the parties hereto, and each party's successors, heirs, estates, executors, administrators and permitted assigns.

12.06 Severability

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

12.07 References; Interpretation

The table of contents and the section and other headings and subheadings contained in this Agreement and the exhibits hereto are solely for the purpose of reference, are not part of the agreement of the Parties, and shall not in any way affect the meaning or interpretation of this Agreement or any exhibit hereto. All references to days (as opposed to Business Days) or months shall be deemed references to calendar days or months. All references to "$" shall be deemed references to United States dollars. Unless the context otherwise requires, any reference to a "Section," "Exhibit," or "Schedule" shall be deemed to refer to a section of this Agreement, Exhibit to this Agreement or a Schedule to this Agreement, as applicable. The words "hereof," "herein" and "hereunder" and words of similar import referring to this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The word "including" means including without limitation. Unless the context clearly requires otherwise, when used herein "or" shall not be exclusive (i.e., "or" shall mean "and/or").

12.08 No Strict Construction

The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Person.

12.09 Amendment and Waiver

Any provision of this Agreement or the Schedules or Exhibits may be amended or waived only in a writing signed by the Parent, the Company and SBEEG. No waiver of any provision hereunder or any breach or default thereof shall extend to or affect in any way any other provision or prior or subsequent breach or default, and no failure or delay to enforce, or partial enforcement of, any provision hereof shall operate as a waiver of such provision or of any other provision. Notwithstanding the foregoing, Section 10.09, Section 12.05, Section 12.08, Section 12.09, Section 12.12 and Section 12.13 hereof may not be amended in any manner that would be adverse to a Debt Financing Source without such Debt Financing Source's written consent.

12.10 Complete Agreement

This Agreement, the Disclosure Schedules, Exhibits, the Related Agreements, and the other documents referred to herein (including, prior to the Closing, the Nondisclosure Agreement, dated March 27, 2015 (the "Confidentiality Agreement")) contain the complete agreement between the Parties and supersede any prior understandings, agreements or representations by or between the parties, written or oral, which may have related to the subject matter hereof in any way.

12.11 Counterparts

This Agreement may be executed in multiple counterparts (including by means of facsimile or PDF signature pages), any one of which need not contain the signatures of more than one Party, but all such counterparts taken together shall constitute one and the same instrument.

12.12 No Third-Party Beneficiaries

Other than (a) in respect of Parent Indemnified Persons (in their capacities as such) and Seller Indemnified Persons (in their capacities as such) and (b) as otherwise provided in Section 10.09, Section 12.05 and Section 12.09, no party hereto (each of whom is an express third party beneficiary hereof), this Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

12.13 Waiver of Jury Trial

TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, EACH OF THE PARTIES HEREBY WAIVES, AND COVENANTS THAT NONE OF THE PARTIES WILL ASSERT ANY RIGHT TO TRIAL BY JURY ON ANY ISSUE IN ANY ACTION, WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE, IN RESPECT OF ANY ISSUE, CLAIM, DEMAND OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE SUBJECT MATTER HEREOF OR IN ANY WAY CONNECTED WITH, RELATED OR INCIDENTAL TO THE DEALINGS OF THE COMPANY, PARENT AND MEMBERS HEREUNDER, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER IN TORT OR CONTRACT OR OTHERWISE. Each of the Parties hereto acknowledges that it has been informed by the other Parties that the provisions of this Section 12.13 constitute a material inducement upon which such other Parties are relying and will rely in entering into this Agreement. Any of the Parties may file an original counterpart or a copy of this Section 12.13 with any court as written evidence of the consent of the other Parties to the waiver of its right to trial by jury.

12.14 Delivery by Facsimile or PDF.

This Agreement and any signed agreement or instrument entered into in connection with this Agreement, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine or PDF email, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any Party hereto or to any such agreement or instrument, each other Party hereto or thereto shall re-execute original forms thereof and deliver them to all other Parties. No Party hereto or to any such agreement or instrument shall raise the use of a facsimile machine or PDF email to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine or PDF email as a defense to the formation of a Contract and each such Party forever waives any such defense.

12.15 Specific Performance.

In furtherance and not in limitation of Section 9.02, each of the Parties acknowledges and agrees that the other Parties would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached or violated. Accordingly, each of the Parties agrees that, without posting a bond or other undertaking, the other Parties will be entitled to an injunction or injunctions to prevent breaches or violations of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any Action instituted in any court of the United States or any state thereof having jurisdiction over the Parties and the matter in addition to any other remedy to which it may be entitled, at Law or in equity. Each Party further agrees that, in the event of any action for specific performance in respect of such breach or violation, it will not assert that the defense that a remedy at Law would be adequate. Notwithstanding the foregoing and for the avoidance of doubt, in no event shall the Parent or Merger Sub have any obligation to seek or consummate a financing transaction in connection with the transactions contemplated by this Agreement.

12.16 Attorney-Client Privilege; Continued Representation.

The parties hereto hereby acknowledge that Venable LLP has acted as counsel to the Company, the Manager and SBEEG from time to time prior to the transactions contemplated by this Agreement as well as with respect thereto. The following provisions in this Section 12.17 apply to the attorney-client relationship between (a) the Company and Venable LLP prior to the Closing and (b) the Manager and SBEEG and Venable LLP following the Closing. Each of the parties hereto agrees that: (i) it will not seek to disqualify Venable LLP, based solely on its prior representation of the Company, the Manager and SBEEG, from acting and continuing to act as counsel to the Manager and SBEEG either in the event of a dispute hereunder or in the course of the defense or prosecution of any claim relating to the transactions contemplated by this Agreement; (ii) the Manager and SBEEG have a reasonable expectation of privacy with respect to their and the Company's communications (including any e-mail communications using the Company's email system) with Venable LLP prior to Closing to the extent that such communications concern the transactions contemplated herein and were confidential between the Manager, SBEEG and/or the Company and Venable LLP; and (iii) the Manager and SBEEG (and, following the Closing, not Parent or any of its Affiliates, including, without limitation, the Company) shall have access to all such privileged communications.

* * * *

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first written above.

PARENT:

ONE GROUP HOSPITALITY, INC.

By: /s/ Jonathan Segal
Name: Jonathan Segal
Title: Chief Executive Officer

MERGER SUB:

WASABI ACQUISITION H&V, LLC

By: Wasabi Holdings, LLC, its sole member

By: The ONE Group, LLC, its sole member

By: The ONE Group Hospitality, Inc.
(f/k/a Committed Capital Acquisition Corporation),
its sole member

By: /s/ Jonathan Segal
Name: Jonathan Segal
Title: Chief Executive Officer

SBEEG:

SBEEG HOLDINGS, LLC

By: /s/ Sam Nazarian
Name: Sam Nazarian
Title: Authorized Person

COMPANY:

KATSUYA-H&V, LLC

By: /s/ Sam Nazarian
Name: Sam Nazarian
Title: Authorized Person

MANAGER:

SBE/KATSUYA USA, LLC

By: /s/ Sam Nazarian
Name: Sam Nazarian
Title: Authorized Person

SCHEDULE I

List of Members and Company Interests

Owner	Percentage
SBE/Katsuya USA, LLC	81.50%
Katsuya Uechi	10%
Reza Roohi	8.50%

SCHEDULE II

Permitted Liens Schedule

None

SCHEDULE III

Merger Consideration Schedule

Owner	Pro Rata Share
SBE/Katsuya USA, LLC	81.50%
Katsuya Uechi	10%
Reza Roohi	8.50%

SCHEDULE IV

Disclosure Schedules

See attached

Exhibit 2.3

EXECUTION VERSION

AGREEMENT AND PLAN OF MERGER

DATED AS OF JULY 9, 2015

by and among

KATSU USA, LLC,

SBEEG HOLDINGS, LLC,

SBE/KATSUYA USA, LLC,

THE ONE GROUP HOSPITALITY, INC.,

and

WASABI ACQUISITION USA, LLC,

TABLE OF CONTENTS

INDEX OF EXHIBITS

Exhibit	Description
Exhibit A	Operating Agreement
Exhibit B	Escrow Agreement
Exhibit C	Form of Landlord Agreement
Exhibit D	Form of Landlord Consent and Acknowledgment

INDEX OF SCHEDULES

	Description
Schedule I	List of Members and Company LLC Interests
Schedule II	Permitted Liens Schedule
Schedule III	Merger Consideration Schedule
Schedule IV	Disclosure Schedules

AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger (the "Agreement") is made as of July 9, 2015 by and among Katsu USA, LLC, a California limited liability company (the "Company"), SBEEG Holdings, LLC, a Delaware limited liability company ("SBEEG"), SBE/Katsuya USA, LLC, the manager of the Company (the "Manager"), The ONE Group Hospitality, Inc., a Delaware corporation ("Parent"), and Wasabi Acquisition USA, LLC, a Delaware limited liability company and a wholly owned subsidiary of Parent ("Merger Sub"). The Company, Parent, Merger Sub and SBEEG are collectively referred to herein as the "Parties" and individually each as a "Party."

WHEREAS, upon the terms and subject to the conditions of this Agreement and in accordance with the Limited Liability Company Act of the State of California (the "LLC Act") and the State of Delaware (the "DE LLC Act"), Parent, Merger Sub and the Company will consummate a business combination transaction pursuant to which Merger Sub will merge (the "Merger") with and into the Company, with the Company continuing as the surviving company (the "Surviving Company"); and

WHEREAS, the Manager has determined that the Merger is consistent with and in furtherance of the long-term business strategy of the Company and fair to, and in the best interests of, the Company and its Members and has approved this Agreement, the Merger, the Related Agreements to which the Company is a party and the transactions contemplated hereby and thereby;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, and intending to be legally bound hereby, the Company, Parent, Merger Sub, the Manager and SBEEG hereby agree as follows:

ARTICLE I
DEFINITIONS

1.01 Definitions.

For purposes hereof, the following terms, when used herein with initial capital letters, shall have (a) the respective meanings set forth herein or (b) if not otherwise defined herein, the meaning set forth in the Asset Purchase Agreement:

"Action" means any suit, action, arbitration, cause of action, claim, complaint, prosecution, audit, inquiry, investigation, governmental or other proceeding, whether civil, criminal, administrative, investigative or informal, at law or at equity, before or by any Court, Governmental Authority, arbitrator or other tribunal.

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the first mentioned Person, including any partnership or joint venture in which one Person (either alone, or through or together with any other subsidiary) has, directly or indirectly, an interest of ten percent (10%), or more; and "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of stock or other securities, as trustee or executor, by contract or credit arrangement or otherwise.

"Affiliated Group" means an affiliated group as defined in Section 1504 of the Code (or any analogous combined, consolidated or unitary group defined under state, local or foreign income Tax Law) of which either the Company are or have been a member.

"Aggregate Closing Merger Consideration" means an amount equal to the Base Purchase Price in cash minus (a) Indebtedness of the Company plus (b) the amount (if any) by which the Estimated Working Capital is greater than the Target Working Capital minus (c) the amount (if any) by which the Estimated Working Capital is less than the Target Working Capital.

"Asset Purchase Agreement" means that certain asset purchase agreement dated as of the date hereof by and among the Parent, SBEEG, the Manager and the other parties thereto.

"Assets" means all of the assets, properties, rights, interests and goodwill of every kind and nature whatsoever, whether tangible or intangible, wherever located, owned, used or held for use by the Company in connection with the Business, whether now owned, used or held for use or acquired prior to the Closing.

"Base Purchase Price" means $11,200,000.00.

"Business" means the ownership, operation, promotion and development of Katsuya Brentwood.

"Business Day" means any day other than a Saturday, Sunday or day on which banks are permitted to close in the State of Delaware.

"Business Employee" means any employee of Spoonful who currently provides services primarily to the Business.

"Business Material Adverse Effect" means a material adverse effect on the Company, condition (financial or otherwise), properties, prospects, operations or results of operation of the Business or the ability of the Company, SBEEG or the Manager to perform its obligations as contemplated in this Agreement or any Related Agreement.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

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

"Company LLC Interests" means the limited liability company membership interests of the Company, and with respect to each member of the Company, such number of Company LLC Interests as are set forth next to such member's name on Schedule I hereto.

"Company's Accounting Practices and Procedures" means the accounting methods, policies, practices and procedures, including classification and estimation methodology (but taking into account all available information as of the time of preparation of the applicable financial statements or calculations) used by the Company in the preparation of the Audited Financial Statements for the year ended December 31, 2014.

"Contract" means any loan agreement, indenture, letter of credit (including related letter of credit applications and reimbursement obligations), mortgage, security agreement, pledge agreement, deed of trust, bond, note, guarantee, surety obligation, warranty, license, franchise, permit, power of attorney, invoice, quotation, purchase order, sales order, lease, endorsement agreement, and any other agreement, contract, instrument, obligation, offer, commitment, plan, arrangement, understanding or undertaking, written or oral, express or implied, to which a Person is a party or by which any of its properties, assets or Intellectual Property may be bound or affected, in each case as amended, supplemented, waived or otherwise modified.

"Court" means any court or arbitration tribunal of any country or territory, or any state, province or other subdivision thereof.

"Employee Benefit Plan" means any employee benefit plan (as defined in Section 3(3) of ERISA) and any bonus, option, interest purchase, interest ownership, stock appreciation right, restricted stock, phantom stock, equity or equity-based, incentive compensation, pension, profit-sharing, deferred compensation, health, medical, dental, vision, retiree medical or other retirement benefit, welfare, accident, disability or life insurance, workmen's compensation or other insurance, vacation, day or dependent care, legal services, cafeteria benefit, dependent care, disability, director, leave of absence, layoff, employee or independent contractor loan, fringe benefit, sabbatical, supplemental retirement, severance, separation, termination, change of control, collective bargaining, or other benefit plan, program, policy or arrangement, and all employment, termination, severance, consulting or other contract or agreement which the Company maintains, administers, sponsors, or contributes to, or with respect to which the Company has or may have any obligation, whether written or oral, and whether or not subject to ERISA.

"Environmental Law" means any Law or Order relating to the environment or occupational health and safety, including any Law or Order pertaining to (i) treatment, storage, disposal, generation and transportation of Materials of Environmental Concern; (ii) air, water and noise pollution; (iii) the protection of groundwater, surface water or soil; (iv) the release or threatened release into the environment of Materials of Environmental Concern, including emissions, discharges, injections, spills, escapes or dumping; (v) storage tanks, vessels, containers, abandoned or discarded barrels, and other closed receptacles used for Materials of Environmental Concern; or (vi) occupational health and safety. As used above, the terms "release" and "environment" shall have the meaning set forth in CERCLA.

"Equity Interest" means, with respect to any Person, (a) any capital stock, partnership or membership interest, unit of participation or other similar interest (however designated) in such Person and (b) any option, warrant, purchase right, conversion right, exchange right or other Contract which would entitle any other Person to acquire any such interest in such Person or otherwise entitle any other Person to share in the equity, profits, earnings, losses or gains of such Person (including stock appreciation, phantom stock, profit participation or other similar rights).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Escrow Agent" means Continental Stock Transfer & Trust Company, or any successor escrow agent appointed pursuant to the Escrow Agreement.

"Escrow Amount" means an amount equal to (A) $2,000,000 multiplied by (B) (i) the Base Purchase Price divided by (ii) $27,600,000. One-half of the Escrow Amount shall be released twelve (12) months after the Closing Date (less the amount of any pending or resolved claims as of such date) and the remainder shall be released at eighteen (18) months (less the amount of any pending or resolved claims as of such date), as further described and upon the terms set forth in the Escrow Agreement.

"GAAP" means United States generally accepted accounting principles applied in a consistent manner throughout the periods involved.

"Governmental Authority" means any (i) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (ii) federal, state, local, municipal, foreign or other government; and (iii) governmental or quasi-governmental body, agency or instrumentality of any nature (including any governmental division, authority, program, plan, office, bureau, board, directorate, political subdivision, department, agency, commission, instrumentality, official, organization, unit, body or entity or any court or other tribunal, taxing authority, arbitrator or arbitral body).

"Indebtedness" means Liabilities (including Liabilities for principal, accrued interest, penalties, fees and premiums) (i) for borrowed money, or with respect to deposits or advances of any kind, (ii) evidenced by bonds, debentures, notes or similar instruments, (iii) upon which interest charges are customarily paid, (iv) under conditional sale or other title retention agreements, (v) issued or assumed as the deferred purchase price of property or services (other than all accounts payable incurred in the ordinary course of the Business to the extent included in the calculation of Working Capital), (vi) of others secured by (or for which the holder of such Liabilities has an existing right, contingent or otherwise, to be secured by) any Lien or security interest on property owned or acquired by the Person in question whether or not the obligations secured thereby have been assumed, and (vii) under leases required to be accounted for as capital leases under GAAP.

"Intellectual Property" means (i) worldwide trademarks, service marks, trade names, trade dress, designs, logos, slogans and general intangibles of like nature, together with all goodwill related to the foregoing (whether registered or not, but including any registrations and applications for any of the foregoing) (collectively, "Trademarks"); (ii) patents (including the ideas, inventions and discoveries described therein, any pending applications, any registrations, patents or patent applications based on applications that are continuations, continuations-in-part, divisional, reexamination, reissues, renewals of any of the foregoing and applications and patents granted on applications that claim the benefit of priority to any of the foregoing) (collectively, "Patents"); (iii) works of authorship or copyrights (including any registrations, applications and renewals for any of the foregoing) and other rights of authorship (collectively, "Copyrights"); (iv) trade secrets and other confidential or proprietary information, know-how, confidential or proprietary technology, processes, work flows, formulae, algorithms, models, user interfaces, customer, supplier, vendor, distributor and user lists, databases, pricing and marketing information, inventions, marketing materials, inventions and discoveries (whether patentable or not) (collectively, "Trade Secrets"); (v) computer programs and other Software, macros, scripts, source code, object code, binary code, methodologies, processes, work flows, architecture, structure, display screens, layouts, development tools, instructions and templates; (vi) published and unpublished works of authorship, including audiovisual works, databases and literary works; (vii) rights in, or associated with a person's name, voice, signature, photograph or likeness, including rights of personality, privacy and publicity; (viii) rights of attribution and integrity and other moral rights; (ix) Uniform Resource Locators ("URLs") and Internet domain names and applications therefor (and all interest therein), IP addresses, adwords, key word associations and related rights; and (x) (a) all other proprietary, intellectual property and other rights relating to any or all of the foregoing, (b) all copies and tangible embodiments of any or all of the foregoing (in whatever form or medium, including electronic media) and (c) all rights to sue for and any and all remedies for past, present and future infringements of any or all of the foregoing and rights of priority and protection of interests therein under the Laws of any jurisdiction.

"IRS" means the Internal Revenue Service.

"Law" means any United States federal, state, local, municipal, or any foreign law, statute, constitution, principle of common law, standard, ordinance, code, edict, decree, rule, regulation, resolution, promulgation, ruling or requirement, or any Order, or any Permit granted under any of the foregoing, or any similar provision having the force or effect of law.

"Landlord Agreement" means the Landlord Agreement in the form attached hereto as Exhibit C.

"Landlord Consent" means the Landlord Consent and Acknowledgment to be entered into by the Company and the lessor of any Facility Lease, in the form attached hereto as Exhibit D, or in such other form as shall be acceptable to the Parent in its reasonable discretion.

"Liability" means any debts, liabilities, obligations, claims, charges, Taxes, damages, demands and assessments of any kind, including those with respect to any Governmental Authority, whether accrued or not, known or unknown, disclosed or undisclosed, fixed or contingent, asserted or unasserted, liquidated or unliquidated, whenever or however arising (including, those arising out of any Contract or tort based on negligence or strict liability) and whether or not the same would be required by GAAP to be reflected in financial statements or disclosed in the notes thereto.

"Liens" means any mortgage, easement, right of way, charge, claim, community property interest, condition, equitable interest, lien, option, pledge, security interest, right of first refusal, or restriction or adverse claim of any kind, including any restriction on use, voting, transfer, receipt of income, or exercise of any other attribute of ownership, or any other encumbrance or exception to title of any kind.

"Losses" means any loss, damage, Liability, encumbrance, Tax, fine, penalty, cost or expense, including but not limited to the costs and expenses of any investigation, defense or settlement of an Action or claim, the costs and expenses associated with the enforcement of this Agreement or any Related Agreement and any reasonable, actual and documented fees or expenses of attorneys, accountants or other experts or consultants retained in connection with any such Action or claim or the enforcement of this Agreement; provided, that Losses shall not include any punitive damages, consequential damages, exemplary damages or special damages except to the extent any such damages are reasonably foreseeable and incurred as a result of a Third Party Claim.

"Material Adverse Change" means an event, change or effect, that has or would be reasonably likely to have a material adverse effect or a material adverse change to (a) the financial condition, business, results of operations, assets or liabilities of the Company and its Affiliates party to and merging pursuant to the Other Merger Agreements (collectively, the "Merger Entities"), on a combined basis; (b) the ability of each of the Merger Entities to consummate the transactions contemplated by this Agreement or any Other Merger Agreement, as applicable, or to perform any of its respective obligations under this Agreement or any Other Merger Agreement, as applicable; or (c) the ability of any Affiliate of the Company that is party to the Asset Purchase Agreement (collectively, the "Seller Entities") to consummate the transactions contemplated by the Asset Purchase Agreement or perform any of its obligations under the Asset Purchase Agreement; provided, however, that any adverse effects attributable to any of the following shall not be deemed to constitute, and the following shall not be taken into account in determining whether there has been or will be, a Material Adverse Change: (i) conditions affecting the industries in which the Merger Entities or Seller Entities participate or the U.S. economy as a whole (other than those that disproportionately affect the Merger Entities or Seller Entities); (ii) actions taken by the Seller Entities and Merger Entities at Buyer or Parent's express written direction or with Buyer or Parent's express written consent; (iii) the announcement of this Agreement, any Other Merger Agreement or the Asset Purchase Agreement; (iv) compliance with the provisions of this Agreement, any Other Merger Agreement or the Asset Purchase Agreement; (v) conditions resulting from the outbreak or escalation of hostilities, including acts of war or terrorism (other than those that disproportionately affect Seller Entities and Merger Entities); (vi) conditions resulting from any breach by Buyer or Parent of any provisions of this Agreement, any Other Merger Agreement or the Asset Purchase Agreement; and (vii) change in GAAP.

"Materials of Environmental Concern" means any substances, chemicals, compounds, solids, liquids, gases, materials, pollutants or contaminants, hazardous substances (including as such term is defined under CERCLA), solid wastes and hazardous wastes (including as such terms are defined under the Resource Conservation and Recovery Act), toxic materials, oil or petroleum and petroleum products, asbestos or substances containing asbestos, polychlorinated biphenyls or any other material subject to regulation under any Environmental Law.

"Members" or "Member" means the members of the Company that are from time to time listed on Schedule I hereto.

"Order" means any order, writ, judgment, injunction, decree, stipulation, ruling, decision, verdict, determination, settlement, agreement, or award made, issued or entered into by or with any Governmental Authority.

"Organizational Documents" means, with respect to any Person (other than an individual), (a) the certificate or articles of incorporation or organization and any joint venture, limited liability company, operating or partnership agreement and other similar documents adopted or filed in connection with the creation, formation or organization of such Person and (b) all by-laws, voting agreements and similar documents, instruments or agreements relating to the organization or governance of such Person, in each case, as amended or supplemented.

"Other Merger Agreements" means those certain agreements and plans of merger dated as of the date hereof by and among the Parent, SBEEG, the Manager and the other parties thereto.

"Permitted Liens" means (i) statutory Liens for current Taxes or other governmental charges not yet due and payable or the amount or validity of which is being contested in good faith by appropriate proceedings by the Company and for which appropriate reserves have been established in accordance with GAAP; (ii) mechanics', carriers', workers', repairers' and similar statutory Liens arising or incurred in the ordinary course of business for amounts which are not delinquent and which are not, individually or in the aggregate, material; (iii) purchase money Liens and Liens securing rental payments under capital or operating lease arrangements so long as such leases were disclosed in the Schedules to this Agreement; (iv) other Liens arising in the ordinary course of business and not incurred in connection with the borrowing of money and which are not, individually or in the aggregate, material; and (v) the items set forth on the Permitted Liens Schedule attached as Schedule II hereto.

"Per LLC Interest Closing Merger Consideration" means (a) the Aggregate Closing Merger Consideration, divided by (b) the total number of Company LLC Interests of the Company immediately prior to Closing.

"Permits" means, with respect to any Person, any license, franchise, permit, permission, variance, clearance, registration, accreditation, qualification, consent, approval, right, privilege, certificate or other similar authorization issued by, or otherwise granted by, any Governmental Authority or pursuant to any Law to which or by which such Person is subject or bound or to which or by which any property, business, operation or right of such Person is subject or bound.

"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 Authority.

"Post-Closing Covenant" means any covenant or agreement on the part of any Party hereto that is required to be performed in whole or in part from and after the Closing Date.

"Pre-Closing Covenant" means any covenant or agreement on the part of any Party hereto that is required to be performed in its entirely on or prior to the Closing Date.

"Pro Rata Share" means, with respect to any Member, the percentage set forth opposite such Member's name on the Merger Consideration Schedule attached as Schedule III hereto.

"Related Agreements" means the Asset Purchase Agreement, the Escrow Agreement, and each of the other agreements, certificates, instruments and documents to be executed and delivered in connection with the consummation of the Merger and the other transactions contemplated hereby.

"Release" means any spill, discharge, leak, emission, escape, injection, dumping, or other release by the Company of any Materials of Environmental Concern into the environment.

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

"Spoonful" means Spoonful Management LLC.

"Target Working Capital" means Zero Dollars ($0).

"Tax" or "Taxes" means any and all taxes whatsoever, including any interest, penalties or other additions to tax that may become payable in respect thereof, whether disputed or not, imposed by any Governmental Authority, which taxes shall include all federal, state, local or foreign income taxes, profits taxes, taxes on gains, gross receipts taxes, goods and services taxes, franchise taxes, estimated taxes, alternative minimum taxes, sales taxes, use taxes, ad valorem taxes, transfer taxes, real or personal property taxes, land transfer taxes, registration taxes, value added taxes, escheat or unclaimed property assessments, excise taxes, natural resources taxes, severance taxes, stamp taxes, occupation taxes, premium taxes, workers' compensation taxes, windfall taxes, environmental taxes, taxes on stock, social security or similar taxes (including FICA), welfare taxes, unemployment insurance taxes, disability taxes, payroll taxes, license charges, employee or other withholding taxes, net worth taxes, and other taxes, fees, duties, levies, customs, tariffs, imposts, assessments, obligations and any charges of any kind in the nature of (or similar to) taxes.

"Tax Returns" means any and all returns, reports, information returns, declarations, statements, certificates, bills, schedules, claims for refund or other written information (including any and all schedules, attachments, amendments or related or supporting information thereto) of or with respect to any Tax filed or required to be filed with any Governmental Authority in connection with the determination, assessment or collection of any Tax or the administration of any laws, regulations or administrative requirements relating to any Tax.

"Transferred Employees" means each employee of Spoonful hired by the Surviving Company.

"Working Capital" means the excess of (a) the current assets of the Company determined in accordance with the Company's Accounting Practices and Procedures minus (b) the current liabilities of the Company determined in accordance with the Company's Accounting Practices and Procedures.

ARTICLE II
THE MERGER

2.01 The Merger

On the terms and subject to the conditions set forth in this Agreement, and in accordance with the LLC Act and the DE LLC Act, at the Effective Time, Merger Sub shall be merged with and into the Company. At the Effective Time, the separate corporate existence of Merger Sub shall cease and the Company shall continue as the Surviving Company.

2.02 Closing

Subject to the terms and conditions hereof, the closing of the transactions contemplated by this Agreement (the "Closing") will take place on the third (3rd) Business Day following the date on which all of the conditions set forth in Article IV have been satisfied or waived (other than any such conditions that by their terms cannot be satisfied until the Closing Date, which conditions shall be required to be so satisfied or waived on the Closing Date), unless another time and/or date is agreed to in writing by the Company and Parent (the "Closing Date"). The Closing shall be held at the offices of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, Massachusetts, unless another place is agreed to in writing by the Company and Parent (it being understood that the Closing may be effected by the delivery of documents via e-mail, facsimile and/or overnight courier). The consummation of the transactions contemplated by this Agreement to occur at the Closing shall be deemed to occur at 12:01 a.m. (EST) on the Closing Date. The Closing shall occur simultaneously with the "Closings" of the transactions contemplated in each of the Asset Purchase Agreement and the Other Merger Agreement.

2.03 Effective Time

Prior to the Closing, Parent shall prepare, and on the Closing Date, the Parties shall cause a certificate of merger (the "Certificate of Merger") to be filed with the Secretary of State of the State of Delaware and the State of California, in such form as is required by, and executed and acknowledged in accordance with, the relevant provisions of the LLC Act and the DE LLC Act and shall make all other filings or recordings required under the LLC Act and the DE LLC Act in connection with the Merger. The Merger shall become effective at the time upon which the Certificate of Merger is duly filed and accepted with such Secretary of State, or at such other time as Parent and the Company shall agree and specify in the Certificate of Merger (the time the Merger becomes effective being the "Effective Time").

2.04 Effect of the Merger

At the Effective Time, the effect of the Merger shall be as provided in this Agreement, the Certificate of Merger and the applicable provisions of the LLC Act and the DE LLC Act.

2.05 Operating Agreement.

The Operating Agreement of the Surviving Company shall be amended at the Effective Time to be in the form of Exhibit A attached hereto and, as so amended, such Operating Agreement shall be the operating agreement of the Surviving Company until thereafter changed or amended as provided therein and by applicable law.

2.06 Managing Member.

Wasabi Holdings, LLC shall be the managing member of the Surviving Company in accordance with the Operating Agreement of the Surviving Company.

ARTICLE III
EFFECT ON THE CONSTITUENT ENTITIES; PAYMENT OF MERGER CONSIDERATION

3.01 Effect on Equity Interests

At the Effective Time, by virtue of the Merger and without any action on the part of Merger Sub, the Company or the Members:

(a) Each outstanding unit of limited liability company membership interest of Merger Sub shall be converted into and become one unit of limited liability company membership interest of the Surviving Company.

(b) Subject to Section 3.01(e), the Company LLC Interests outstanding immediately prior to the Effective Time shall be converted into the right to receive, (A) for the Manager (i) the Per LLC Interest Closing Merger Consideration in cash minus the Escrow Amount, payable to the Manager upon the Closing in the manner provided in Section 3.02, plus (ii) subject to adjustment as provided in the Escrow Agreement, any distribution from the Escrow Account to which the Manager is entitled; or (B) for all other Members, the Per LLC Interest Closing Merger Consideration payable to the holder thereof upon the Closing in the manner provided in Section 3.02.

(c) The consideration paid in accordance with the terms of Sections 3.01(b) and 3.02 shall be deemed to have been paid in full satisfaction of all rights pertaining to such Company LLC Interests, and after the Effective Time there shall be no further registration of transfers on the transfer books of the Surviving Company of Company LLC Interests that were outstanding immediately prior to the Effective Time.

(d) Notwithstanding anything to the contrary contained herein, Parent, the Company, Merger Sub, the Surviving Company or any other applicable withholding agent, as applicable, and after adequate notice to and discussion with SBEEG as to the appropriateness of withholding shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement such amounts as may be required to be deducted and withheld under the Code, or under any provision of applicable state, local or foreign Tax Law, with respect to the making of such payment and any amounts so deducted or withheld shall be treated for all purposes of this Agreement as having been paid to the holder of Company LLC Interests in respect of which such deduction or withholding was made.

(e) Notwithstanding anything to the contrary contained herein, in no event shall the aggregate amounts payable at the Closing in connection with the Merger under this Article III exceed the Aggregate Closing Merger Consideration less the Escrow Amount.

3.02 Payment of Merger Consideration and Other Amounts.

(a) At the Closing, Parent shall pay or cause to be paid, by wire transfer of immediately available funds to the accounts specified by SBEEG in writing to Parent not less than two (2) Business Days prior to the Closing, to each Member (subject to Section 3.01) the amount specified in Section 3.01(b)(A) with respect to the Company LLC Interests held by such Member.

(b) At the Closing, Parent or Merger Sub shall pay or cause to be paid, by wire transfer of immediately available funds to the escrow account to be maintained pursuant to the Escrow Agreement (the "Escrow Account"), an amount equal to the Escrow Amount pursuant to the terms of an escrow agreement, in form and substance reasonably satisfactory to the Parent, SBEEG and the Escrow Agent, and which will be attached hereto as Exhibit B (the "Escrow Agreement"), which Escrow Amount shall be distributed to Parent or SBEEG in the manner specified in the Escrow Agreement, and, if applicable, distributed to the Members by SBEEG in accordance with this Article III.

(c) Notwithstanding anything to the contrary contained herein, Parent shall not be required to deliver to any Member any consideration for any Member's outstanding Company LLC Interests, or any other payments pursuant to this Article III, until such Member has delivered to Parent evidence of ownership of such Member's Company LLC Interests, a letter of transmittal, which shall include a general release of all claims by such Member against the Company, Parent, Merger Sub and the Surviving Company (other than claims arising out of or in connection with this Agreement or the transaction contemplated hereby), or such other documentation as may be reasonably satisfactory to Parent, or such other documentation as may be reasonably satisfactory to Parent.

(d) Not less than two (2) Business Days prior to the Closing, SBEEG shall deliver to Parent a schedule setting forth a true and complete list of all the Members, the number of Company LLC Interests held by each such holder, the amount of the Aggregate Closing Merger Consideration to be paid to each such holder on the Closing Date, and the Parent and Merger Sub shall be entitled to rely on such schedule.

(e) Notwithstanding anything to the contrary contained herein, in the case of any Member who, as of the Effective Time, owes any Indebtedness (including accrued interest) to the Company (each, a "Member Loan Amount"), Parent or Merger Sub and the Surviving Company, as the case may be, shall deduct and withhold such holder's Member Loan Amount from the Aggregate Closing Merger Consideration otherwise payable to such holder pursuant to the Merger and, if such Member Loan Amount has been paid in full, any instrument evidencing such Member Loan Amount shall be promptly returned to the applicable Member. To the extent a Member Loan Amount is so withheld by Parent, Merger Sub or the Surviving Company, as the case may be, the withheld amount shall be treated for all purposes of this Agreement as having been paid to the Member in respect of which the deduction and withholding was made, and such Member Loan Amount shall to such extent be deemed paid.

3.03 Adjustment to Aggregate Closing Merger Consideration.

(a) At least two (2) Business Days prior to the Closing, the Company will, in good faith and in accordance with the terms of this Section 3.03, prepare and deliver to Parent a written estimate (which shall be subject to review and the reasonable approval of the Parent) setting forth a calculation of the Aggregate Closing Merger Consideration (the "Estimated Aggregate Merger Consideration") and calculations of the components thereof together with an estimated closing balance sheet of the Company determined as of 11:59 p.m. (EST) on the day immediately preceding the Closing Date (the "Estimated Closing Balance Sheet"), calculated in a manner consistent with the Company's Accounting Practices and Procedures; provided, that such Closing Balance Sheet shall include (i) an estimation of Working Capital as of 11:59 p.m. (EST) on the day immediately preceding the Closing Date ("Estimated Working Capital"), and (ii) an Indebtedness Schedule setting forth the amount of Indebtedness of the Company (the "Estimated Indebtedness" and, together with the Estimated Working Capital, the "Merger Consideration Components").

(b) Within 60 days following the Closing, the Surviving Company will, in good faith and in accordance with the terms of this Section 3.03, prepare and deliver to SBEEG a calculation of the Aggregate Closing Merger Consideration and the Merger Consideration Components (the "Merger Consideration Statement"), calculated in a manner consistent with the Company's Accounting Practices and Procedures.

(c) SBEEG shall have 45 days from the date of receipt of the Merger Consideration Statement to review the computation of the Aggregate Closing Merger Consideration and the Merger Consideration Components. In connection with the review of the Merger Consideration Statement: (i) Parent and the Surviving Company will make available to SBEEG and its auditors and other advisors (if any) all records and work papers that SBEEG and its auditors and other advisors (if any) reasonably request in reviewing the Merger Consideration Statement; (ii) SBEEG and its auditors and other advisors (if any) shall be entitled to make copies thereof; and (iii) upon reasonable request of SBEEG, for copies thereof to be made and sent to SBEEG and its auditors and other advisors (if any) at the reasonable expense of SBEEG. In the event that SBEEG disagrees with the Merger Consideration Statement or the amount of any Merger Consideration Component as calculated, SBEEG shall deliver written notice of such disagreement to Parent and the Surviving Company (an "Objection Notice"). The Merger Consideration Statement and the Merger Consideration Components, as calculated, shall be final, conclusive and binding on the parties if no Objection Notice is timely delivered prior to such 45th day following delivery of the Merger Consideration Statement. If SBEEG has timely delivered an Objection Notice to Parent and the Surviving Company, Parent, on the one hand, and SBEEG, on the other hand, will endeavor to resolve any disagreements noted in the Objection Notice in good faith as soon as practicable after the delivery of such notice, but if they do not obtain a final resolution within 30 days after Parent has received the Objection Notice, SBEEG or Parent may submit the matter for resolution to a nationally recognized independent accounting firm mutually agreed upon by Parent and SBEEG (the "Firm") to resolve any remaining disagreements. Parent, on the one hand, and SBEEG, on the other hand, will direct the Firm to use its commercially reasonable efforts to render a determination within 30 days of submitting the matters to it for resolution and the Surviving Company, SBEEG and Parent and their respective agents will cooperate with the Firm during its resolution of any disagreements included in the Objection Notice. The Firm will consider only those items and amounts set forth in the Objection Notice that Parent, on the one hand, and SBEEG, on the other hand, are unable to resolve. SBEEG and Parent shall furnish or cause to be furnished to the Firm such work papers and other documents and information relating to such disputed items as the Firm may request and are available to that party or its agents and shall be afforded the opportunity to present to the Firm any material relating to such disputed items. In resolving any disputed item, the Firm may not assign a value to any item greater than the greatest value for such item claimed by any Party or less than the smallest value for such item claimed by any Party. The fees and expenses of the Firm incurred pursuant to this Section 3.03(c), shall be paid by Parent and the Manager out of the Escrow Account in inverse proportion as they may prevail on matters resolved by the Firm (by way of example, if Parent is 80% successful in the dispute, Parent would be responsible for 20% of the fees and expenses of the Firm), which proportionate allocation shall be determined by the Firm. The determination of the Firm as to any disputed matters (and the reasons therefor) shall be set forth in a written statement delivered to Parent, the Surviving Company, the Manager and SBEEG and shall be final, conclusive and binding on the parties, absent manifest error. The Parties agree that judgment may be entered for purposes of enforcement upon the determination of the Firm in any court of competent jurisdiction.

(d) The Aggregate Closing Merger Consideration, Merger Consideration Components, including the Closing Balance Sheet and Working Capital as agreed to by SBEEG and Parent or as determined by the Firm, as applicable, shall be conclusive and binding on all of the Parties and shall be deemed the "Final Aggregate Merger Consideration", "Final Closing Balance Sheet" and "Final Working Capital," respectively, for all purposes herein.

(e) The Merger Consideration Components, the Estimated Closing Balance Sheet and Final Closing Balance Sheet shall be prepared, and the Estimated Working Capital and the Final Working Capital shall be calculated pursuant to this Section 3.03 on a basis consistent with the Company's Accounting Practices and Procedures.

(f) If the Final Aggregate Merger Consideration is less than the Estimated Aggregate Merger Consideration, then an amount equal to such shortfall shall be satisfied out of the Escrow Amount by withdrawal from the Escrow Account, and Parent and SBEEG shall promptly and in any event within two (2) Business Days provide joint written instructions to the Escrow Agent directing that such shortfall amount be disbursed to the payee and account(s) specified by Parent. If the Final Aggregate Merger Consideration is greater than the Estimated Aggregate Merger Consideration, payment of such excess amount shall be made promptly and in any event within two (2) Business Days in the same manner as the payments made pursuant to Section 3.02(a) and (b).

ARTICLE IV
CLOSING CONDITIONS

4.01 Conditions to the Parent's and Merger Sub's Obligations

The obligations of the Parent and Merger Sub to consummate the transactions contemplated by this Agreement are subject to the satisfaction, or to the extent permitted by Law, waiver by the Parent and Merger Sub, of each of the following conditions to the Closing:

(a) Each of the representations and warranties of the Manager in Article VI and of the Company, SBEEG and the Manager in Article VII that is qualified by "materiality" "Business Material Adverse Effect" or a similar qualifier shall be true and correct in all respects, and each of such representations and warranties that is not so qualified shall be true and correct in all material respects, in each case, as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (except for representations and warranties made as of a specified date, the accuracy of which will be determined only as of the specified date), in all cases after giving effect to any supplement to the Disclosure Schedule.

(b) The Company, the Members and SBEEG shall have performed or complied with in all material respects all of the covenants and agreements required to be performed or complied with by them under this Agreement at or prior to the Closing;

(c) No Action will be pending or threatened in writing wherein an unfavorable judgment, decree or order would (i) prevent the performance of this Agreement or the consummation of any of the transactions contemplated hereby, (ii) declare unlawful the transactions contemplated by this Agreement or (iii) would reasonably be expected to cause such transactions to be rescinded;

(d) The Certificate of Merger shall have been duly executed and delivered on behalf of the Company and filed with each of the Delaware Secretary of State and the California Secretary of State, and accepted for filing, and the Merger shall have become effective under applicable Law;

(e) Parent shall have received the Escrow Agreement duly executed by SBEEG, the Manager and the Escrow Agent (along with the wire transfer instructions for payment of the Escrow Amount to the Escrow Agent);

(f) The Company and SBEEG shall have delivered to the Parent each of the following:

(i) A certificate, dated as of the Closing Date, signed by an officer of the Manager or the Company certifying as to the conditions specified in subsections (a), (b), (c) (to its knowledge), (k) and (l) to this Section 4.01;

(ii) Copies of all material governmental or third party consents listed on Schedule 6.04, 7.02 or 7.03 relating to the consummation of the transactions contemplated hereby, including, without limitation, the consent of the lessor of any Facility Lease to the modification of the guarantees made by Sam Nazarian and any other guarantors of such Facility Leases (or the Facility Leases themselves) (the "Guaranty Modifications") such that the act or omissions of Sam Nazarian or any other applicable guarantor (or their Affiliates) cannot cause an event of default of breach by the tenant under the applicable Facility Leases); and all such consents shall be in form and substance reasonably satisfactory to the Parent and shall be in full force and effect and not subject to any condition or waiver that has not been satisfied;

(iii) All payoff letters and lien release documentation (or other evidence of payment in full satisfaction where applicable) reasonably satisfactory to the Parent and their counsel and lenders relating to any Indebtedness being paid off at Closing and the termination of all Liens on any assets securing any such Indebtedness shall have been provided by the lenders related thereto;

(iv) All existing minute books, ledgers and registers, schedules of members, corporate seals, if any, and other corporate records relating to the organization, ownership and maintenance of the Company, if not already located on the premises of the Company;

(v) Resignations effective as of the Closing Date from the Manager and all officers of the Company;

(vi) A copy of the Organizational Documents of the Company, and a certificate of good standing from the Secretary of State of the state of formation for the Company dated within fifteen (15) days of the Closing Date, a listing of all the names and incumbency of each of the officers of the Manager executing this Agreement on behalf of itself and the Company or any Related Agreement and all resolutions adopted by the Manager or any of the Members of the Company in connection with this Agreement and the transactions contemplated hereby, in each case, certified by an appropriate officer of the Manager; and

(vii) A certification dated as of the Closing Date, conforming to the requirements of the Treasury Regulations promulgated under Section 1445 of the Code that eliminates the obligation of Buyer to withhold on the transactions contemplated hereunder pursuant to Section 1445 of the Code;

(g) Parent shall have received the Landlord Consent duly executed by the Company and the applicable lessor party thereto;

(h) Any management agreements in effect relating to the operation of the Business or other agreements between the Company and any Affiliate of SBEEG shall have been terminated;

(i) This Agreement shall have been approved and adopted by the requisite affirmative vote of the members of the Company in accordance with the LLC Act and the Company's Organizational Documents;

(j) All of the conditions set forth in Sections 6.1 and 6.2 of the Asset Purchase Agreement have been satisfied or waived (other than any such conditions that by their terms cannot be satisfied until the "Closing Date" set forth in the Asset Purchase Agreement, which conditions shall be required to be so satisfied or waived on the "Closing Date" set forth in the Asset Purchase Agreement);

(k) All of the conditions set forth in Section 4.01 of the Other Merger Agreements have been satisfied or waived (other than any such conditions that by their terms cannot be satisfied until the "Closing Date" set forth in the Other Merger Agreements, which conditions shall be required to be so satisfied or waived on the "Closing Date" set forth in the Other Merger Agreements); and

(l) Since the date of this Agreement, there shall not have occurred a Material Adverse Change, it being acknowledged that any disclosure of a matter in the Disclosure Schedule indicating that a matter might have a Material Adverse Change shall not limit the Buyer's or Parent's ability to assert that such matter has had a Material Adverse Change for purposes of this Section 4.01(l).

4.02 Conditions to the Company's, SBEEG's and the Manager's Obligations

The obligations of the Company, SBEEG and the Manager to consummate the transactions contemplated by this Agreement are subject to the satisfaction, or to the extent permitted by Law, waiver by the Company, SBEEG and the Manager of the following conditions to the Closing:

(a) Each of the representations and warranties of the Parent and Merger Sub in Article VIII that is qualified by "materiality" "material adverse effect" or a similar qualifier shall be true and correct in all respects, and each of such representations and warranties that is not so qualified shall be true and correct in all material respects, in each case, as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (except for representations and warranties made as of a specified date, the accuracy of which will be determined only as of the specified date), in all cases after giving effect to any supplement to the Disclosure Schedule;

(b) The Parent shall have performed in all material respects all of the covenants and agreements required to be performed by it under this Agreement at or prior to the Closing;

(c) No Action will be pending wherein an unfavorable judgment, decree or order would (i) prevent the performance of this Agreement or the consummation of any of the transactions contemplated hereby, (ii) declare unlawful the transactions contemplated by this Agreement or (iii) would reasonably be expected to cause such transactions to be rescinded;

(d) SBEEG shall have received a copy of the Escrow Agreement duly executed by Parent and the Escrow Agent and Parent shall be ready, willing and able to fund the Escrow Amount at Closing;

(e) The Parent shall have delivered to SBEEG each of the following:

(i) A certificate of Parent attaching copies of the resolutions duly adopted by the Parent's board of directors authorizing the execution, delivery and performance of this Agreement and the other agreements contemplated hereby, and the consummation of all transactions contemplated hereby and thereby;

(ii) An officer certificate of Parent, dated as of the Closing Date, certifying as to the conditions specified in subsections (a) and (b) of this Section 4.02 have been satisfied;

(iii) A certificate of good standing from the Secretary of State of the state of incorporation of the Parent dated within fifteen (15) days of the Closing Date; and

(iv) Copies of all material governmental or third party consents relating to the consummation of the transactions contemplated hereby, (except that the requirement to obtain the Landlord Consent and the Guaranty Modifications shall be sole responsibility of the Company and SBEEG and shall not be deemed a condition to closing pursuant to this Section 4.02); and all such consents shall be in form and substance reasonably satisfactory to SBEEG and shall be in full force and effect and not subject to any condition or waiver that has not been satisfied;

(f) All of the conditions set forth in Sections 6.1 and 6.3 of the Asset Purchase Agreement have been satisfied or waived (other than any such conditions that by their terms cannot be satisfied until the "Closing Date" set forth in the Asset Purchase Agreement, which conditions shall be required to be so satisfied or waived on the "Closing Date" set forth in the Asset Purchase Agreement); and

(g) All of the conditions set forth in Section 4.02 of the Other Merger Agreements have been satisfied or waived (other than any such conditions that by their terms cannot be satisfied until the "Closing Date" set forth in the Other Merger Agreements, which conditions shall be required to be so satisfied or waived on the "Closing Date" set forth in the Other Merger Agreements).

ARTICLE V
PRE-CLOSING COVENANTS

5.01 Conduct of the Business

(a) From the date hereof until the Closing Date, or the earlier termination of this Agreement pursuant to Article IX, except to the extent described in Schedule 5.01 or otherwise required or specifically permitted by this Agreement, the Company shall: (i) conduct the Business in the ordinary course of business consistent with past practice in all material respects (including with respect to capital expenditures, the timely making of any budgeted or emergency capital expenditures or capital expenditures that are required to maintain the Business in compliance with any applicable Laws), unless the Parent shall have otherwise consented in writing (which consent will not be unreasonably withheld, conditioned or delayed); (ii) maintain in effect the insurance coverage described on Schedule 7.16 (or reasonably equivalent replacement coverage); (iii) use its commercially reasonable efforts to preserve the present relationships of the Business with suppliers, vendors, licensees and other Persons with which the Business has business relations; (iv) maintain in effect the Business Licenses (if any) in accordance with the terms thereof and renew any Business License that would otherwise expire pursuant to the terms thereof between the date of this Agreement and the Closing; (v) use its commercially reasonable efforts to keep, or to cause Spoonful to keep, available the services of the Business Employees subject to the normal hiring and firing of Business Employees in the ordinary course of business consistent with past practice and (vi) use commercially reasonable efforts to preserve intact its business organization, value as a going concern and relationships with third parties (including lessors, licensors, suppliers, distributors and customers) and employees.

(b) From the date hereof until the Closing Date, or the earlier termination of this Agreement pursuant to Article IX, except to the extent described in Schedule 5.01 or otherwise required or specifically permitted by this Agreement or consented to in writing by the Parent (which consent will not be unreasonably withheld, conditioned or delayed), the Company shall refrain from: (i) issuing, selling or delivering any of its Company LLC Interests or other Equity Interests or issuing or selling any securities convertible into, or options with respect to, or warrants to purchase or rights to subscribe for, any of its Company LLC Interests or other Equity Interests (or amending any term of any of the foregoing); (ii) effecting any recapitalization, reclassification, dividend, split or like change in its capitalization other than dividends in the in the ordinary course of business consistent with past practice and the terms and conditions of the Company's Organizational Documents; (iii) amending its Organizational Documents; (iv) making any redemption or purchase of any of its of its Company LLC Interests or other Equity Interests; (v) (A) merging, consolidating or combining with any Person or (B) acquiring any material assets, except for acquisitions of inventory, equipment and supplies in the ordinary course of business consistent with past practice; (vi) permitting any of the assets of the Company to become subject to a Lien (other than a Permitted Lien) or selling, leasing, licensing or otherwise disposing of any assets or securities, including by merger, consolidation, asset sale or other business combination, other than in the ordinary course of business consistent with past practice; (vii) making any loans or advances to, or any investments in, any other Person (in the case of loans or advances to employees, in excess of $100,000 in the aggregate for all such loans and advances); (viii) pledging or otherwise encumbering of its Company LLC Interests or other Equity Interests; (ix) excepting as required or specifically permitted by this Agreement, entering into or amending any Contract with the Manager or any officer of the Company; (x) increasing any benefits under any Employee Benefit Plan or increasing the compensation payable or paid, whether conditionally or otherwise, to any employee, officer, manager or consultant of Company (other than (A) any increase adopted in the ordinary course of business consistent with past practice in respect of the compensation of any employee whose annual base compensation does not exceed $125,000 after giving effect to such increase or (B) any increase in benefits or compensation required by Law or required pursuant to the terms of an existing Employee Benefit Plan); (xi) becoming liable in respect of any guarantee (other than a guarantee by the Company of a Liability of the Company that is made in the ordinary course of business consistent with past practice) or incur, assume or otherwise become liable in respect of any Indebtedness; (xii) repaying, prepaying or otherwise discharging or satisfying any Indebtedness or other material Liabilities, other than in the ordinary course of business consistent with past practice, or waiving, cancelling or assigning any claims or rights of substantial value other than in the ordinary course of business consistent with past practice; (xiii) making any capital expenditures that are in the aggregate in excess of $100,000 (other than capital expenditures contemplated by the capital expenditure budget attached to Schedule 5.01, emergency capital expenditures or capital expenditures that are required to maintain the Business in compliance with any applicable Laws); (xiv) making any change in its methods of accounting or accounting practices (including with respect to reserves) or any Tax election; filing any amended Tax Return; electing or changing any method of accounting for Tax purposes; settling any Action or claim in respect of Taxes; or consenting to any extension or waiver of the limitations period for the assessment of any Tax; (xv) settling, agreeing to settle, waiving or otherwise compromising any pending or threatened Actions or claims (A) involving potential payments by or to the Company of more than $100,000 in aggregate, (B) that admit Liability or consent to non-monetary relief, or (C) that otherwise are or would reasonably be expected to be material to the Company or the Business; (xvi) entering into, adopt, terminate, modify, renew or amend in any material respect (including by accelerating material rights or benefits under) any Contract unless such Contract requires payments by the Company of less than $10,000 per month and that can be terminated by the Company upon 60 days' or less notice without penalty; (xvii) writing up or writing down any of its material assets of the Company or revalue its inventory or reserves in respect of its accounts receivable; (xviii) taking any action or failing to take any action that would result in any of the representations and warranties set forth in this Agreement becoming false or inaccurate in any material respect; or (xix) authorizing, agreeing or committing or entering into a Contract to do any of the foregoing.

5.02 Regulatory Filings

(a) The Company shall, as soon as reasonably practical after the date hereof (it being the objective of the Parties to do so within two Business Days of the date hereof), make all necessary filings and submissions under any Laws applicable to the Company for the consummation of the transactions contemplated herein and the operation of the Business following the Closing. Subject to Section 5.05 and the restrictions of applicable Law, the Company shall coordinate and cooperate with the Parent in exchanging such information and providing such assistance as the Parent may reasonably request in connection with the foregoing and Parent's efforts described in 5.02(b).

(b) The Parent shall, as soon as reasonably practical after the date hereof (it being the objective of the Parties to do so within two Business Days of the date hereof), make or cause to be made all filings and submissions required under any Laws applicable to the Parent for the consummation of the transactions contemplated herein and the operation of the business following the Closing. The Parent shall comply with any additional requests for information, including requests for production of documents and production of witnesses for interviews or depositions by any Governmental Authority. In addition, the Parent shall cooperate in good faith with all such governmental authorities and undertake promptly any and all action required to complete lawfully the transactions contemplated by this Agreement (including, without limitation, divestitures of its assets).

5.03 Closing Conditions

(a) Subject to the terms and conditions of this Agreement, from the date of this Agreement to the Closing or the earlier termination of this Agreement pursuant to Article IX, the Manager and the Company shall use commercially reasonable efforts to take or cause to be taken all actions, to file or cause to be filed all documents, to give or cause to be given all notices to Governmental Authorities or other Persons, to obtain or cause to be obtained all authorizations, consents, waivers, approvals, permits or orders from Governmental Authorities or other Persons, and to do or cause to be done all other things necessary, proper or advisable, in order to cause the conditions set forth in Section 4.01 to be satisfied and to consummate the transactions contemplated herein as soon as reasonably practicable after the satisfaction of the conditions set forth in Section 4.01 (other than those to be satisfied at the Closing) and allow the Business to be operated immediately following the Closing in the same manner as it is operated prior to the Closing; provided that neither the Company nor the Manager shall be required to expend any funds to obtain any governmental or third party consents required under Section 4.01(d), other than de minimis amounts and fees and expenses of their Representatives.

(b) Subject to the terms and conditions of this Agreement (including Section 5.02 above), from the date of this Agreement to the Closing or the earlier termination of this Agreement pursuant to Article IX, the Parent shall use commercially reasonable efforts to take or cause to be taken all actions, to file or cause to be filed all documents, to give or cause to be given all notices to Governmental Authorities or other Persons, to obtain or cause to be obtained all authorizations, consents, waivers, approvals, permits or orders from Governmental Authorities or other Persons, and to do or cause to be done all other things necessary, proper or advisable, in order to cause the conditions set forth in Section 4.02 to be satisfied and to consummate the transactions contemplated herein as soon as reasonably practicable after the satisfaction of the conditions set forth in Section 4.02 (other than those to be satisfied at the Closing).

5.04 Notification.

(a) From the date hereof until the Closing Date or the earlier termination of this Agreement pursuant to Article IX, the Company and SBEEG shall promptly after discovery thereof (and in any event prior to the Closing) disclose to the Parent in writing any (i) material variances from the representations and warranties contained in Article VI and Article VII, as applicable, together with updated and corrected Schedules, (ii) other fact or event that would constitute a breach of the covenants in this Agreement made by the Members or the Company, (iii) commencement or initiation or threat of commencement or initiation of any Action (or any material development in any pending Action) regarding the transactions contemplated hereby or otherwise involving the Company or the Business, (iv) notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated hereby, or (v) notice or other communication from any Governmental Authority in connection with the transactions contemplated. The delivery of any notice pursuant to this Section 5.04 shall not cure any breach of any representation or warranty requiring disclosure of such matter or any breach of any covenant contained in this Agreement or any Related Agreement. For the avoidance of doubt, (x) the closing conditions shall be read after giving effect to any update to the Schedules or other written notices delivered pursuant to this Section 5.04, and (y) the indemnification provisions of this Agreement shall be read without giving effect to any update to the Schedules or other written notices delivered pursuant to this Section 5.04.

(b) From the date hereof until the Closing Date or the earlier termination of this Agreement pursuant to Article IX, the Parent shall promptly (and in any event prior to the Closing) notify the Company and SBEEG after discovery by the Parent and Merger Sub of (i) any material variances from the representations and warranties contained in Article VIII and (ii) any other fact or event that would cause or constitute a breach of the covenants in this Agreement made by the Parent, if, in each case, such variance or breach would have a material adverse effect on the ability of the Parent to consummate the transactions contemplated hereby.

5.05 Contact with Providers, Suppliers, Employees and Others

From the date hereof until the Closing Date or the earlier termination of this Agreement pursuant to Article IX, the Parent and its authorized Representatives shall contact and communicate with the employees of Spoonful working at the Company, providers, customers, suppliers or any other Person with a material business relationship with the Company only after prior consultation with and oral or written approval of SBEEG or its authorized Representatives; provided, that SBEEG will consent to any reasonable request by the Parent, prospective providers of financing or their respective Representatives to contact any such employees, providers, customers, suppliers or other Persons and no such contact shall be made prior to the granting of such consent by SBEEG. Notwithstanding the foregoing, this Section 5.05 shall not prohibit any contacts or communications to the extent not related to the Company or the Merger.

5.06 No Negotiation

From the date of this Agreement until the Closing or the earlier termination of this Agreement pursuant to Article IX, the Company and the Manager shall not, and the Manager shall require the Company not to, directly or indirectly (a) solicit, initiate, encourage, negotiate or discuss any inquiries, proposals, discussions or offers from or with any Person (other than Parent) or enter into any agreement with any such Person (other than Parent) relating to, or consummate any transaction involving the sale of the business or assets of either the Company, or any of the Equity Interests of the Company, or any merger, consolidation, business combination, or similar transaction involving the Company, or any recapitalization transaction or any other transaction that would prevent the transactions contemplated by this Agreement from being consummated or (b) participate in any discussions or negotiations that any of them or any of their respective Representatives have been having with any Person (other than Parent) that relate to such matters (it being understood that any such discussions or negotiations shall immediately terminate on the date hereof) and shall not provide any such Person any additional information related to such matters or otherwise assist or participate in, or facilitate in any other manner, any effort or attempt by any Person to do or seek any of the foregoing. Additionally, SBEEG will notify the Parent as soon as practicable if any Person makes any proposal, offer, inquiry to or contact with the Company or any Member with respect to any such matter.

5.07 Financing and Other Cooperation

From the date of this Agreement until the Closing or the earlier termination of this Agreement pursuant to Article IX, the Company shall permit, the Parent and its Affiliates and lenders and its and their Representatives to have reasonable access (at reasonable times following reasonable notice) to the Company's premises, properties, books, records and personnel, and provide to the foregoing Persons (a) such contracts, financial and operating data and other information and documents of, or pertaining to, the Company, the Assets or the Business, as the Parent, any prospective providers of debt financing or their respective Representatives may reasonably request from time to time and (b) such cooperation in connection with the arrangement of any debt financing as may be reasonably requested by the Parent and Merger Sub; provided, that in the cases of clauses (a) and (b) such access shall not unreasonably interfere with the conduct by the Company of its businesses in the ordinary course of business. The Company shall make available to the Representatives of Parent upon the reasonable request of Parent and during normal working hours all officers, employees, accountants, counsel and other Representatives of the Company and its Affiliates as Parent may reasonably request. The Company shall use its best efforts to make available to the Representatives of Parent, upon the reasonable request of Parent, such suppliers of the Business and the Company or other Persons with whom the Company or any of its Affiliates maintains a similar business or commercial relationship with respect to the Company or the Business.

5.08 Parent Financing

The Parent shall use commercially reasonable efforts to take, or cause to be taken, all actions and do, or cause to be done, all thing necessary, proper or advisable to arrange the financing necessary to close the transactions contemplated hereby, including, without limitation, using all commercially reasonable efforts to consummate the financing necessary to consummate the transactions contemplated herein at or prior to the Closing.

5.09 Update Financials.

The Company shall prepare and furnish to the Parent, promptly after becoming available and in any event within fifteen (15) Business Days of the end of each calendar month, an unaudited balance sheet and unaudited statements of income and cash flow with respect to the Company (the “Update Financials”) for each month following the date of the Latest Balance Sheet Date through the Closing Date.

5.10 Employment Matters.

(a) The Surviving Company shall offer employment to all Business Employees who are employed by Spoonful (or, in the case of independent contractors, offer to continue to engage such independent contractors who are under contract to perform services for the Company) on the Closing Date at a salary or wage and commission and bonus opportunity at least comparable to that in effect immediately prior to Closing. The Company and SBEEG hereby consents, and shall cause Spoonful to consent, to the hiring of the Transferred Employees of Spoonful working at the Company by the Surviving Company and waives in perpetuity, with respect to the employment or engagement by the Surviving Company of the Transferred Employees, any claims or rights the Company, SBEEG or Spoonful may have against the Surviving Company or Parent, any of their respective Affiliates or any such Transferred Employees under any non-competition, confidentiality, employment, assignment of inventions or similar Contract with the Transferred Employees. The Company and SBEEG, and SBEEG on behalf of Spoonful, acknowledge and agree that neither the Surviving Company nor Parent shall have any liability relating to or arising out of the employment of any Business Employee up to Closing and with respect to the termination on or before the Closing Date of any employee of Spoonful working at the Business on or before the Closing Date. Neither the Surviving Company nor Parent shall have any liability with respect to any current or former Business Employee of Spoonful working at the Company or any of its Affiliates, including any Transferred Employee, arising from such Business Employee's employment or engagement with Spoonful or any its Affiliates or the termination of such Business Employee's employment or engagement with the Company or Spoonful or any of its Affiliates on or before Closing. Without limiting the generality of the foregoing, from and after the Closing Date, Spoonful shall retain liability and remain responsible for any and all Liabilities in respect of the Business Employees and their beneficiaries and dependents relating to or arising in connection with or as a result of (i) the employment or engagement or the termination of employment or engagement of any such Business Employee by Spoonful or any of their Affiliates (including, without limitation, in connection with the consummation of the transactions contemplated by this Agreement); (ii) the participation in or accrual of benefits or compensation under, or the failure to participate in or to accrue compensation or benefits under, or the operation and administration of, any Employee Benefit Plan; and (iii) accrued but unpaid salaries, wages, bonuses, commissions, incentive compensation, vacation or sick pay or other compensation or payroll items (including, without limitation, deferred compensation) relating to such individual's engagement with Spoonful or its Affiliates on or before Closing. Further, SBEEG and Spoonful, as applicable, shall remain responsible for the payment of any and all retention, change in control, severance or other similar compensation or benefits which are or may become payable under an Employee Benefit Plan in connection with the consummation of the transactions contemplated by this Agreement. Subject to the first sentence of this section, nothing in this Agreement shall obligate Parent or the Surviving Company to retain any Transferred Employee in its employ for any specific time period. The Surviving Company may (i) unilaterally change the salary (either by increase or decrease) and/or the title and duties of any Transferred Employee at any time on or after the Closing Date and (ii) at the Surviving Company's sole discretion, change or eliminate any of the plans, policies or arrangements of the Surviving Company applicable to the Transferred Employees. Notwithstanding the foregoing, Parent acknowledges and agrees that any Employee Benefit Plan, including any vacation plan, which provides for benefits determined with reference to the date an employee's employment began shall be determined based upon each Transferring Employees original employment date with the Company or Spoonful.

(b) The Company and SBEEG shall be, and SBEEG shall cause Spoonful to be, responsible for timely compliance with all federal, state and local Laws with respect to the effect to any of its employees on or before Closing of the transactions contemplated by this Agreement or by any Related Agreement, including, without limitation, the Worker Adjustment and Retraining and Notification Act of 1988, as amended ("WARN") and the California Worker Adjustment and Retraining Notification Act, California Labor Code Section 1400 ("California WARN"). The Company and SBEEG agree, and SBEEG shall cause Spoonful to agree, and each of Parent and the Surviving Company agree, that it will not take any action that causes the notice provisions of WARN or any state or local analog to WARN, including, without limitation, the California WARN, to be applicable to the transactions contemplated by this Agreement or by any Related Agreement.

(c) SBEEG and its respective ERISA Affiliates (if any) shall make available COBRA Coverage in accordance with Treasury Regulation §54.4980B-9 to all "M&A qualified beneficiaries" associated with the transactions contemplated by this Agreement who have a "qualifying event" within the meaning hereof.

(d) Prior to the Closing Date, the Company and SBEEG shall have, and SBEEG shall cause Spoonful to have, with respect to any compensation or benefits contemplated by this Agreement to be received by a "disqualified individual" in connection with the transactions contemplated by this Agreement that may be deemed to constitute "parachute payments" pursuant to Code Section 280G ("Potential 280G Benefits"), provided to the members: (i) adequate disclosure of all material facts concerning any Potential 280G Benefits as provided in Code Section 280G(b)(5)(B) and (ii) provided a disqualified individual has executed a waiver of Potential 280G Benefits, a written consent seeking member approval of all such Potential 280G Benefits by the requisite vote such that all such Potential 280G Benefits resulting from the transaction contemplated hereby shall not be deemed to be "parachute payments" pursuant to Code Section 280G or shall be exempt from such treatment under such Section 280G (the "280G Vote").

(e) None of the provisions of this Section 5.10 are intended to be for the benefit of, or otherwise enforceable by, any third party, including, without limitation, any Business Employee, and no Business Employees (or any dependents of such employees) will be treated as third party beneficiaries in or under this Agreement. None of the provisions of this Section 5.10 shall be construed to amend any Employee Benefit Plan.

(f) Participation of Transferred Employees in the Employee Benefit Plans shall end as of the Closing Date. Surviving Company shall not assume sponsorship of or any Liability for any Employee Benefit Plan, including, but not limited to, any accrued, unused vacation, sick and other paid time off of the Transferred Employees.

ARTICLE VI
REPRESENTATIONS AND WARRANTIES CONCERNING THE MANAGER

Except as set forth in the Schedules attached as Schedule IV to this Agreement (each a "Schedule" and collectively, the "Disclosure Schedules") which shall be prepared in accordance with and qualify the representations and warranties herein to the extent and in the manner set forth in Section 11.01, the Manager hereby represents and warrants solely as to itself that:

6.01 Authority; Power

The Manager has all requisite power and authority to execute and deliver this Agreement and the Related Agreements to which the Manager is, or will be at Closing, a party and to perform its obligations hereunder and thereunder.

6.02 Organization

The Manager is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation. The execution and delivery of this Agreement and the Related Agreements to which it is or will be at Closing a party, as applicable, by it and the performance by it of all of its obligations under this Agreement and such Related Agreements, as applicable, have been duly approved prior to the date of this Agreement by it by all requisite action of its board of directors, shareholders, partners, managers, members, trustees or the like, as the case may be. Neither the execution and delivery of this Agreement by it, nor the consummation by it of the transactions contemplated hereby will conflict with or constitute a breach of the terms, conditions or provisions of its Organizational Documents.

6.03 Execution and Delivery; Valid and Binding Agreement

This Agreement, and each Related Agreement to which the Manager is, or will be at Closing, a party (a) have been (or, in the case of Related Agreements to be entered at Closing, will be when executed and delivered) duly executed and delivered by it, and (b) assuming that this Agreement and such Related Agreements are the valid and binding obligation of the Parent and Merger Sub, this Agreement constitutes (or in the case of Related Agreements to be entered into at Closing, will constitute when executed and delivered) the legal, valid and binding obligation of the Manager, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies.

6.04 Noncontravention

Except as set forth on Schedule 6.04, neither the execution and the delivery by the Manager of this Agreement or any Related Agreement to which it is, or will be at Closing, a party, nor the consummation of the transactions contemplated hereby or thereby by the Manager will (a) violate any Law or (b) conflict with or result in a breach or violation of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in termination of, or accelerate the performance required by, or result in a right of termination or acceleration under, or require any action by (including any authorization, consent or approval) or notice to any Person, or result in the creation of any Lien upon any Company LLC Interests of the Manager under, any of the terms, conditions or provisions of (i) any material Contract of it or (ii) any provision of its Organizational Documents, as the case may be.

6.05 Ownership of Equity Interests

Except as set forth on Schedule 6.05, the Manager is and will be at Closing the record and beneficial owner of the Equity Interests set forth by its name on the Merger Consideration Schedule, free and clear of all Liens.

ARTICLE VII
REPRESENTATIONS AND WARRANTIES
CONCERNING THE COMPANY

Except as set forth in the Disclosure Schedules (which shall be prepared in accordance with and qualify such representations and warranties to the extent and in the manner set forth in Section 11.01), the Company, SBEEG and the Manager, on a joint and several basis, make the following representations and warranties to the Parent and the Merger Sub:

7.01 Organization, Corporate Power and Authorization.

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and the Company has all requisite limited liability company power and authority and all authorizations, licenses and permits necessary to own or lease and operate its properties and to use the Assets and to carry on its businesses as now conducted. The Company is qualified to do business and in good standing in every jurisdiction in which its ownership or leasing of property or the conduct of its businesses as now conducted requires it to qualify.

(b) The Company has all requisite power and authority necessary for the execution, delivery and performance by it of this Agreement and each such Related Agreement. The Company has duly authorized by all necessary action on the part of its Manager (or equivalent) and the Members the execution, delivery and performance of this Agreement and each such Related Agreement, and the consummation of the Merger and the other transactions contemplated hereby. This Agreement and each Related Agreement to which the Company is, or will be at Closing, a party (i) have been (or, in the case of Related Agreements to be entered into at Closing, will be when executed and delivered) duly executed and delivered by each such Person that is, or will be at Closing, a party thereto and (ii) is (or in the case of Related Agreements to be entered into at the Closing, will be when executed and delivered) a legal, valid and binding obligation of each such Person, enforceable against each such Person in accordance with its terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies.

(c) The affirmative vote of the holders of a majority of the Company LLC Interests outstanding (the "Required Vote") are the only votes or consents of the holders of any class or series of the Company's Equity Interests necessary (under applicable Law or Contracts or under the Company's Organizational Documents or otherwise) to adopt this Agreement and to consummate the Merger and perform the other transactions contemplated hereby. The Required Vote has been obtained as of the date of this Agreement in compliance with all applicable Laws and the Organization Documents of the Company.

(d) The Manager, by written consent, has determined that this Agreement and the transactions contemplated hereby, including the Merger, are advisable and fair to and in the best interests of the Company and the Members and has approved the same.

(e) No "fair price," "moratorium," "control share acquisition," "business combination" or other anti-takeover statute or regulation enacted under the Laws of any State is applicable to the Merger.

7.02 Consents and Approvals

Except as set forth in Schedule 7.02, the execution and delivery by the Company (and, if applicable, one or more of its Affiliates) of this Agreement, the Related Agreements or any other instrument or document required by this Agreement or any Related Agreement to be executed and delivered by the Company (and, if applicable, one or more of its Affiliates) do not, and the performance of this Agreement, the Related Agreements and any other instrument or document required by this Agreement or any Related Agreement to be executed and delivered by the Company (and, if applicable, one or more of its Affiliates) shall not require the Company (or, if applicable, one or more of its Affiliates) to provide notice to, obtain any consent of or take any other action in respect of any Person or obtain Approval of, observe any waiting period imposed by, make any filing with or notification to, or take any other action in respect of any Governmental Authority.

7.03 Noncontravention

Except as listed on Schedule 7.03, the authorization, execution, delivery and performance of this Agreement or any Related Agreement by the Company or the Manager and the consummation of the Merger and other transactions contemplated hereby and thereby do not and will not conflict with or result in any breach of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in a violation or termination of (or right of termination in respect of), or accelerate the performance required by (or result in a right of acceleration under), or require any action by (including any authorization, consent or approval) or notice to any Person, or require any offer to purchase or prepayment of any Indebtedness or Liability under, or result in the creation of any Lien upon or forfeiture of any of the rights, properties or any assets of the Company under (a) the provisions of the Company's Organizational Documents; (b) any Lease, Employee Benefit Plan, insurance policy or other Contract that is listed or required to be listed in the Disclosure Schedules or that is otherwise material to the Company; or (c) assuming the taking of each action by (including the obtaining of each necessary authorization, consent or approval), or in respect of, and the making of all necessary filings with, Governmental Authorities, in each case, as disclosed on Schedule 7.03, any Order or material Permit applicable to or otherwise affecting the Company or any other Law to which the Company is subject.

7.04 Equity Interests

The authorized outstanding Company LLC Interests are set forth on Schedule 7.04 and such Company LLC Interests are owned of record by the Persons in the respective amounts set forth in such Schedule. All of the outstanding Company LLC Interests have been duly authorized. Except as set forth on Schedule 7.04, the Company does not have any other Equity Interests or other securities containing any equity features authorized, issued or outstanding, and there are no agreements, options, warrants or preemptive or other rights or arrangements existing or outstanding which provide for the sale or issuance of any of the foregoing by the Company. Except as set forth on Schedule 7.04, there are no agreements or other obligations (contingent or otherwise) which require the Company to repurchase, redeem or otherwise acquire, or make any payment (including any dividend or distribution) in respect of any Equity Interests and there are no existing rights with respect to registration under the Securities Act of any Equity Interests in the Company. There are no outstanding or authorized stock appreciation, phantom stock, or similar rights with respect to the Company. There are no voting trusts, proxies, stockholder agreements or any other agreements or understandings with respect to the voting or transfer of Equity Interests of the Company. The Company has made available to the Parent accurate and complete copies of the stock ledger (or equivalent records) of the Company, which records reflect all issuances, transfers, repurchases and cancellations of Equity Interests of the Company. The Company has not violated the Securities Act, any state “blue sky” or securities Laws, any other similar Law or any preemptive or other similar rights of any Person in connection with the issuance, repurchase or redemption of any of its Equity Interests.

7.05 Licenses and Permits

Schedule 7.05 contains a correct and complete list of all Approvals and Orders that are necessary for the ownership or operation of the Assets or the Business, or that have been issued, granted or otherwise made available to the Company or its Affiliates with respect to the Assets or the Business, including, without limitation, any liquor licenses (the "Business Licenses"). Each Business License is valid and in full force and effect, no Business License is subject to any Lien, limitation, restriction, probation or other qualification, and there is no default under any Business License or, to the knowledge of the Company, any basis for the assertion of any default thereunder. There is no Action pending or, to the knowledge of the Company, threatened that would reasonably be expected to result in the termination, cancellation, modification, non-renewal, revocation, limitation, suspension, restriction or impairment of any Business License or the imposition of any fine, penalty or other sanctions for violation of any legal or regulatory requirements relating to any Business License or, to the knowledge of the Company, any basis therefor. The Company or its Affiliates have, and have had at all relevant times, all Approvals and Orders that are or were necessary in order to own and operate the Assets and to operate the Business. None of the Business Licenses will be adversely affected by the consummation of the transactions contemplated hereby. The Company is in material compliance with the terms and conditions of each Business License.

7.06 Title to and Condition of Properties; Sufficiency of Assets.

(a) The Company is the sole and exclusive legal and equitable owner of all right, title and interest in, and has good, valid and marketable title to, all of the Assets, free and clear of all Liens, including, without limitation, the equipment, fixtures and other material Assets listed on Schedule 7.06(a).

(b) All tangible assets and personal property included in the Assets have been maintained in accordance with normal industry practice and are in good operating condition and repair, subject to ordinary wear and tear, and there has not been any interruption of the operations of the Business due to the condition of any such assets or properties.

(c) Except as set forth in Schedule 7.06, the Assets comprise all assets, properties, rights and Contracts used in connection with the operation of the Business, which are all of the assets, properties, rights and Contracts necessary for Parent and the Surviving Company to operate the Business following the Closing in the manner in which the Business historically has been, is currently and is proposed to be conducted. Except as set forth in Schedule 7.06, no other Person, including any Member or other Affiliate, owns or has the right to use any of the assets or property used in connection with the operation of the Business, and no Assets are in the possession of others.

(d) Use of the Leased Spaces in the Business for the sale of food, wine, liquor, and beer is permitted as of right under all applicable zoning legal requirements. The Leased Spaces are in material compliance with all applicable Laws, including those pertaining to zoning, building and the disabled.

7.07 Environmental Matters

The Company has materially complied and is in material compliance with all Environmental Laws relating to the Business, which material compliance includes the possession by the Company of all Approvals required under Environmental Laws and material compliance with the terms and conditions thereof. Schedule 7.07 includes a list of all of the Approvals required under Environmental Laws necessary to own and operate the Assets or the Business as currently conducted. To the knowledge of the Company, there are no past or present facts, circumstances, conditions, activities or incidents that could give rise to any Liability, including any Liability for investigation costs, cleanup costs, response costs, remediation costs, corrective action costs, personal injury, property damage, natural resources damages or attorneys' fees, or result in a claim against the Company, any of its Affiliates or Parent, Merger Sub or any of their respective Affiliates under any Environmental Law, arising from the operation of the Business. There is no Action pending or, to the knowledge of the Company, threatened or other written notice or claim of any violation, formal administrative proceeding or written information request by any Governmental Authority, nor has the Company or any of its Affiliates received written notice of any investigation by any Governmental Authority relating to any Environmental Law nor any other written notice or claim from a Governmental Authority or any Person alleging that the Company or any of its Affiliates is not in compliance with any Environmental Law or Approval required under any Environmental Law in connection with the Business or has any Liability under any Environmental Law or for the remediation of any Materials of Environmental Concern at any property in connection with the Business.

7.08 Financial Statements; No Undisclosed Liabilities.

(a) Schedule 7.08 contains the following consolidated financial statements (collectively, the "Financial Statements"):

(i) the unaudited balance sheet of the Company as of May 31, 2015 (the "Interim Balance Sheet") and the related statements of income and cash flow for the five-month period then ended (the "Interim Financial Statements"); and

(ii) the combined audited balance sheet of the Company, Katsuya-H&V, LLC, Katsu Glendale, LLC and Katsuya-Downtown L.A., LLC as of December 31, 2013 and December 31, 2014 and the related statements of income, cash flow and members' equity for each twelve (12)-month period then ended.

(b) The Financial Statements were prepared in accordance with the books and records of the Company, are accurate and complete and fairly present in all material respects the financial condition of the Company as of the dates indicated and the results of operations of the Company for the respective periods indicated, and have been prepared in accordance with the Company's Accounting Practices and Procedures, subject to changes resulting from normal, recurring period-end audit adjustments, which adjustments, individually and in the aggregate, shall not be material. Except as and to the extent the amounts are specifically accrued or disclosed in the Interim Balance Sheet, the Company does not have any existing Liabilities, except for Liabilities that were incurred in the ordinary course of the Company consistent with past practice since the date of the Interim Balance Sheet.

7.09 Absence of Certain Events.

Since May 31, 2015, the operation of the Business has been conducted only in the ordinary and usual course and in a manner consistent with past practice and there has not been any change, event, loss, development, damage or circumstance affecting the Assets or the Business which, individually or in the aggregate, has had or could reasonably be expected to have a Business Material Adverse Effect. Without limiting the foregoing, since May 31, 2015, except as set forth on Schedule 7.09, there has not been:

(a) any material decrease in the value of any of the Assets;

(b) any voluntary or involuntary sale, lease, assignment, license, transfer or other disposition of any kind of any asset or property used in connection with the operation of the Business, including the Assets, except the sale of Inventory in the ordinary course of the Business consistent with past practices;

(c) any Lien imposed, incurred or created on any of the Assets;

(d) any damage, destruction or loss of any asset or property used in connection with or relating to the operation of the Business, by fire or other casualty, whether or not covered by insurance;

(e) any capital expenditure or commitment by the Company in excess of $10,000 or series of capital expenditures or commitments in excess of $20,000 in the aggregate in connection with the Business;

(f) any payment, discharge or satisfaction of any Liability of the Business, other than payments made in the ordinary course of the Business or Liabilities reflected or reserved against in the Interim Balance Sheet, or Liabilities incurred since that date in the ordinary course of the Business consistent with past practice;

(g) any assignment, termination, modification, amendment or waiver of, or any failure to comply with any provision of, any Contract or transaction that relates to the Business, or any account receivable relating thereto, whether as a security interest or otherwise, except as would not have a Business Material Adverse Effect;

(h) any discontinuance, termination, receipt of a notice of termination of or other alteration to any relationship with any supplier, vendor or sales or service representative of the Business, except as would not have a Business Material Adverse Effect;

(i) any change in the rate of compensation, commission, bonus or other direct or indirect remuneration payable or to become payable to any Business Employee, or any agreement to pay any bonus or extra compensation or other employee benefit to any Business Employee, other than in the ordinary course of business and not in excess of 5% of such Business Employee's prior compensation;

(j) any failure to pay or discharge when due (after the application of any applicable grace periods) any Liabilities of the Business;

(k) any change in any of the accounting principles adopted by the Company in connection with the Business, or any change in the Company's accounting policies, procedures, practices or methods with respect to applying such principles, other than as required by GAAP;

(l) any material transaction or Contract entered into, or Liability created, assumed, guarantied or incurred outside the ordinary course of business in connection with the Business;

(m) any termination of employment of any employee of the Company or any of its Affiliates who provided services to the Business or any expression of intention by the Company or any of its Affiliates or by any Business Employee to terminate employment with the Company, except as would not have a Business Material Adverse Effect;

(n) any write-off of any accounts receivable or notes receivable of the Company or any portion thereof in excess of $10,000 individually or $50,000 in the aggregate, or any sale, assignment or disposition of any such account or note receivable (including by means of any factoring agreement), in each case that relate to the Business;

(o) any engagement by the Company in any transaction with any Affiliate, employee, officer, director, manager or security holder thereof in connection with the Business, other than (i) the payment of normal wages and salaries to employees in the ordinary course of business and consistent with past practice and advances to employees in the ordinary course of business for travel and similar business expenses and consistent with past practice and (ii) pursuant to written intercompany Contracts among the Company and any of its Affiliates in effect as of the date hereof;

(p) any material change in the manner in which the Company extends or receives discounts or credit from customers, suppliers or vendors of the Business;

(q) any settlement or offer or proposal to settle (i) any Action involving or relating to the Business or (ii) any litigation, arbitration, proceeding or dispute that relates to the transactions contemplated hereby or by the Related Agreements, in each case, that would result in payments in excess of $20,000 individually or $50,000 in the aggregate;

(r) any agreement, understanding, authorization or proposal, whether in writing or otherwise, for the Company or any of its Affiliates to take any of the actions specified in this Section 7.09; or

(s) any action (or omission to take any action) that adversely affects, or could reasonably be expected to adversely affect any Business Intellectual Property, including the grant of any license or sublicense of any rights under or with respect to, or the sale, transfer, abandonment or permitting to lapse of, any Business Intellectual Property.

7.10 Legal Proceedings.

(a) Except as set forth on Schedule 7.10, there is no Action pending or, to the knowledge of the Company, threatened by or against the Company or any of its officers, directors or managers (in their capacities as such) (i) relating to the Business or the Assets, (ii) that, individually or in the aggregate, is reasonably likely to have a Business Material Adverse Effect on the Business or the Assets or (iii) that would (A) give any Person the right to enjoin or rescind the transactions contemplated by this Agreement or (B) otherwise prevent the Company from (x) executing and delivering this Agreement or the Related Agreements or (y) performing its obligations pursuant to, or observing any of the terms and provisions of, this Agreement or the Related Agreements, and neither the Company nor any of its Affiliates has received any claim, complaint, incident, report, threat or notice of any such Action. There is no Action pending or threatened against any other Person by the Company or any of its Affiliates relating to the Business or the Assets.

(b) Schedule 7.10 sets forth all Actions that (i) involved the Business or the Assets at any time during the past five (5) years and (ii) are no longer pending (the "Prior Actions"). All of the Prior Actions have been concluded in their entirety and none of the Assets has and will not have any Liability with respect to the Prior Actions. The Company has provided Parent and Merger Sub with all formal written communications relating to the Prior Actions between the Company and a Governmental Authority and any Orders related thereto.

(c) There are no outstanding Orders against, involving or affecting the Business or the Assets, and the Company is not in default with respect to any such Order of which it has knowledge or was served upon it.

7.11 Compliance with Laws.

(a) The Company has materially complied and is in material compliance with all Laws (excluding Laws specifically addressed elsewhere in this Article VII) applicable to (i) the properties or assets of the Business, including the Assets, and the Company's ownership, use or operation thereof, and (ii) the operation of the Business. The Company has not received any written notice to the effect that, or otherwise been advised that, the Company is not in material compliance with any such Laws, and the Company has no reason to anticipate that any existing circumstances is likely to result in an Action or a violation of any such Law. No investigation or review by any Governmental Authority with respect to the Business or the Assets is pending or, to the knowledge of the Company, threatened, nor has any Governmental Authority indicated an intention to conduct the same. The Company has not received any credible evidence that any Business Employee or agent of the Company has committed a violation of federal criminal law involving fraud, conflict of interest, bribery or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(b) Neither the Company nor any of its Affiliates, executive officers or directors (i) appears on the Specially Designated Nationals and Blocked Persons List of OFAC or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation; (ii) is otherwise a party with whom, or has its principal place of business or the majority of its business operations (measured by revenues) located in a country in which, transactions are prohibited by (A) United States Executive Order 13224, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism; (B) the United States Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001; (C) the United States Trading with the Enemy Act of 1917, as amended; (D) the United States International Emergency Economic Powers Act of 1977, as amended or (E) the foreign asset control regulations of the United States Department of the Treasury; (iii) has been convicted of or charged with a felony relating to money laundering; or (iv) is under investigation by any Governmental Authority for money laundering.

7.12 Employment Matters.

(a) Schedule 7.12 sets forth a complete and accurate list of all current Business Employees who are in employment with Spoonful as of the date hereof and each such Business Employee's (i) rate of pay or annual compensation (including actual or potential bonus payments and the terms of any commission payments or programs), (ii) title(s), (iii) status of employment or engagement, (iv) date of hire or engagement, (v) annual vacation, sick and other paid time off allowance and (vi) amount of accrued vacation, sick and other paid time off and the economic value thereof. Schedule 7.12 also separately identifies each Business Employee who is not fully available to perform his or her duties as a result of disability or other leave and sets forth the anticipated date of return to full service. All Business Employees are employed by Spoonful. As of the date hereof and as of the Closing Date, the Company does not and will not have any employees.

(b) Neither the Company nor Spoonful on behalf of the Company, is, or, as of the Closing Date, will be delinquent in payments to any Business Employee for any wages, salaries, commissions, bonuses, benefits or other compensation for any services performed by them to date or through the Closing Date or any amounts required to be reimbursed to any Business Employee or any post-employment or post-engagement obligations of any type. Upon termination of engagement of any Business Employee on or before Closing, neither Parent, Merger Sub nor any of their respective Affiliates will, by reason of anything done prior to the Closing, be liable to any Business Employee for so-called "severance pay" or any other similar payments, and to the knowledge of the Company, there are no circumstances whereby any current or former Business Employee may demand payment or compensation in connection with the termination of his or her employment on or before Closing.

(c) Neither Spoonful nor the Company is, or has ever been a party to, bound by, or negotiated any collective bargaining agreement or other Contract with a union, works council or labor organization purporting to represent any employee of the Company, Spoonful or SBEEG (collectively, "Union"), and there is not, and has never been any Union representing or purporting to represent any Business Employee. To the knowledge of the Company, no Union or group of employees is seeking or has sought to organize employees for the purpose of engaging in collective bargaining. There is not and has never been any threat of a strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor disruption or dispute affecting the Company or Spoonful. There is no unfair labor practice charge or any other action, complaint, suit, arbitration, inquiry, proceeding or investigation pending before the National Labor Relations Board or any other agency having jurisdiction thereof or, to the knowledge of the Company, threatened.

(d) Schedule 7.12(d) sets forth all Employee Benefit Plans under which current or former Business Employees (or their beneficiaries) are eligible to participate or derive a benefit or for which the Assets may be subject to any Liability. The Company has made available to Parent and Merger Sub correct and complete copies of all Employee Benefit Plans listed in Schedule 7.12(d), and has made available to Parent and Merger Sub accurate, current and complete copies of each of the following: (i) where the Employee Benefit Plan has been reduced to writing, the plan's governing document together with all amendments; (ii) where the Employee Benefit Plan has not been reduced to writing, a written summary of all material plan terms; (iii) where applicable, copies of any adoption agreements, trust agreements, other funding arrangements, custodial agreements, insurance policies and contracts, administration agreements, investment management or investment advisory agreements, or other similar agreements; (iv) the most recent summary plan description and any summaries of material modifications thereto; (v) employee handbooks and any other written communications (or a description of any oral communications) of a Company-wide nature that are currently in effect and material relating to any Employee Benefit Plan; (vi) in the case of any Employee Benefit Plan that is intended to be qualified under Code Section 401(a), a copy of the most recent determination, advisory or opinion letter from the IRS; (vii) in the case of any Employee Benefit Plan for which a Form 5500 is required to be filed, a copy of the filed Form 5500 for each of the most recent prior three (3) plan years, with schedules attached; (viii) actuarial valuations and reports, to the extent applicable, related to any Employee Benefit Plans with respect to the two (2) most recently completed plan years; and (ix) the results of the coverage, non-discrimination and other qualification related tests under Code Sections 401, 410, 411, 414 and 416 for each of the two (2) most recent plan years and any documents related to any required corrective actions taken by the Company within the past three (3) plan years, as to any plan qualified under Code Section 401(a). Each Employee Benefit Plan intended to be qualified under Code Section 401(a), and the trust (if any) forming a part thereof, is so qualified and has received a favorable determination letter from the IRS or, with respect to a prototype or volume submitted plan, can rely on an opinion letter or advisory letter from the IRS to the prototype or volume submitted plan sponsor. To the knowledge of the Company, nothing has occurred that would reasonably be expected to cause the loss of such qualification. There are no correction filings, petitions or applications pending with respect to the Employee Benefit Plans with the IRS, the U.S. Department of Labor or any other Governmental Authority. Each Employee Benefit Plan has been operated in all material respects in accordance with applicable Law and such plan's governing documents. The parties acknowledge and agree that the transactions contemplated by this Agreement are an "asset sale" (within the meaning of Treas. Reg. § 54.4980B-9, Q&A 4), which also results in "qualifying event" (i.e., termination of employment") with respect to Transferred Employees. The Company or its applicable ERISA Affiliate shall be responsible for complying with the requirements of the health care continuation coverage requirements of Code Section 4980B and Subtitle B of Title I of ERISA in connection with the transactions contemplated by this Agreement with respect to all Transferred Employees who are "M&A Qualifying Beneficiaries" (within the meaning of Treas. Reg. § 54.4980B-7, Q&A 4(a)).

(e) Except as provided in Schedule 7.12(e), the Company is not and has never been (i) a member of a "controlled group of corporations," under "common control" or an "affiliated service group" within the meaning of Code Section 414(b), (c) or (m), or (ii) required to be aggregated under Code Section 414(o) or (iii) under "common control," within the meaning of Section 4001(a)(14) of ERISA, or any regulations promulgated or proposed under any of the foregoing Sections, in each case with any other entity (an "ERISA Affiliate"). Except as provided in Schedule 7.12(e), none of the Employee Benefit Plans is and neither the Company nor any of its ERISA Affiliates have at any time sponsored, contributed to or been obligated to contribute to: (i) a "defined benefit plan" as defined in ERISA Section 3(35); (ii) a pension plan subject to the funding standards of ERISA Section 302 or Code Section 412; (iii) a "multiemployer plan" as such term is defined in ERISA Section 3(37) or Code Section 414(f); (iv) a "multiple employer plan" within the meaning of ERISA Section 201(a) or Code Section 413(a); or (v) a multiple employer welfare arrangement within the meaning of ERISA Section 3(40). There are no Employee Benefit Plans under which welfare benefits are provided to the Company's employees beyond their retirement or other termination of service, other than coverage mandated by Code Section 4980B, Subtitle B of Title I of ERISA or similar state group health plan continuation Laws, the cost of which is fully paid by such Employees or their dependents.

(f) Neither SBEEG, the Company nor any other "disqualified person" or "party in interest," as defined in Code Section 4975 and Section 3(14) of ERISA, respectively, has engaged in any "prohibited transaction," as defined in Code Section 4975 or Section 406 of ERISA (which is not otherwise exempt), with respect to any Employee Benefit Plan, nor, to the knowledge of the Company, has there been any fiduciary violations under ERISA that could subject the Company (or any other Person) to any material penalty or tax under Section 502(i) of ERISA or Code Section 4975.

(g) Except as provided in Schedule 7.12(g), neither the execution and delivery of this Agreement nor the approval or consummation of the transactions contemplated herein will (either alone or in conjunction with any other event) (i) result in any payment becoming due to any Transferred Employee in connection with their employment with Spoonful or SBEEG on or before Closing, (ii) increase any payments or benefits otherwise payable under any Employee Benefit Plan, (iii) result in the acceleration of the time of payment, funding or vesting of any payments or benefits under any Employee Benefit Plan, (iv) result in the forgiveness in whole or in part of any outstanding loans made by the Company to any person, or (v) result in any compensation payable to any individual in connection with the transactions contemplated herein being nondeductible to the Company under Code Section 280G or subject to the excise tax imposed by Code Section 4999. The Company does not have any obligation to any person to provide any indemnification, "gross up" or similar payment to any Person in the event any excise tax is imposed on such person under Code Sections 409A or 4999 or similar state laws.

(h) No Representative of the Company, Spoonful or any of their respective Affiliates has made any representation, promise or guarantee to any of the Business Employees (i) that Parent or the Surviving Company intends to retain or offer to retain any such individual, or (ii) regarding the terms and conditions on which Parent or the Surviving Company may retain or offer to retain any such individual. There are no Actions pending or, to the knowledge of the Company, threatened against or involving the Company or any of its Affiliates by any Business Employee. To the knowledge of the Company, no Business Employee is in violation of any term of any employment, consulting, independent contractor, non-disclosure, non-competition, non-solicitation, inventions assignment or any other Contract (or any other legal obligation such as a trade secrets statute or common law duty of loyalty) with Spoonful. Each of the Company and Spoonful has complied in all material respects with all its obligations under Law with respect to any aspect of the employment or engagement of all Business Employees, including with respect to employment practices, the requirements of the Immigration Reform and Control Act of 1968, as amended, terms and conditions of employment, wage and hours, and the health and safety at work of their employees, and there are no claims pending or, to the knowledge of the Company, threatened by any Person in respect of employment or engagement or any accident or injury.

7.13 Taxes.

(a) All Taxes payable by the Company or any of its Affiliates (or any affiliated, consolidated, combined unitary or similar group of which the Company is or was a member), including but not limited to in respect of the Assets or the Business, have been timely paid, including but not limited to any Taxes the non-payment of which would result in a Lien on any Asset or as would otherwise adversely affect the Assets or would result in Parent, Merger Sub or the Surviving Company becoming liable or responsible therefor.

(b) All material Tax Returns required to be filed by or on behalf of the Company or any of its Affiliates (or any affiliated, consolidated, combined unitary or similar group of which the Company is or was a member), including with respect to the Assets or the Business, have been timely filed, and all such Tax Returns are true, complete and correct in all material respects and have been filed in accordance with all applicable Law; neither the Company nor any of its Affiliates has been informed in writing by any jurisdiction that such jurisdiction believes that the Company or any of its Affiliates is or was required to file any Tax Return in respect of the Business or the Assets.

(c) All Taxes that the Company or any of its Affiliates is or was required by Law to have withheld, including in connection with the Assets or the Business, to any employee, independent contractor, creditor, stockholder, or other third party have been duly withheld or collected and timely paid to the proper Governmental Authority, and the Company and its Affiliates have complied with all reporting and recordkeeping requirements. The Company has properly classified all personnel as either employees or independent contractors.

(d) No unpaid Tax deficiency has been asserted against or with respect to the Assets or the Business and neither the Company nor any of its Affiliates has received notice of any such assertion.

(e) The Company is not and has never been a partnership the disposition of an interest in which would be subject to withholding under Code Section 1445(e)(5) or Code Section 897(g) and no withholding pursuant to Code Section 1445 will be required in connection with this Agreement or the transactions contemplated hereby.

(f) Neither the Company nor its Affiliates maintains a “permanent establishment” or “fixed base” in any foreign jurisdiction as such terms are defined in any applicable income Tax treaty and the Company does not have any requirement to file any Tax Return or pay any Tax Liability to any foreign Governmental Authority.

(g) Neither Parent nor Merger Sub will be required to include any amount in taxable income for any taxable period or portion thereof ending after the Closing Date with respect to any (i) cash or cash equivalents received on or prior to the Closing Date or (ii) income economically accrued on or prior to the Closing Date.

(h) Neither the Company nor any of its Affiliates is or has been required to make any adjustment to any Tax accounting method used with respect to the Assets or the Business and there is no application pending with any Governmental Authority requesting permission for any changes in any of its accounting methods for Tax purposes currently nor has there been in the past four (4) years. No Governmental Authority has proposed in writing any such adjustment or change in accounting method of, or that is being used with respect to, the Assets or the Business.

(i) None of the Assets is treated for federal, state, local or other applicable income Tax purposes as an equity interest in an entity or other Person.

(j) The Company (i) has never been a member of any "affiliated group" within the meaning of Code Section 1504(a) filing a consolidated federal income Tax Return or any other consolidated, combined, or unitary group for federal, state, local or foreign Tax purposes; (ii) is not a party to any contractual obligation relating to Tax sharing, Tax allocation or any similar arrangement; or (iii) does not have any liability for the income Taxes of any person under Treasury Regulation Section 1.1502-6 (or any similar or analogous law or administrative provision of federal, state, local or foreign Tax law), as a transferee or successor, or by contract or otherwise.

(k) No Tax Return in respect of any Assets or the Business is currently being audited by any Governmental Authority and no examination or audit of any such Tax Return is currently threatened in writing by any Governmental Authority.

(l) There is no pending or threatened Action in writing concerning any Tax Liability of the Company, any of its Affiliates, or otherwise concerning the Assets or the Business. No assessment or deficiency for any Tax or adjustment to any Tax item has been proposed or threatened in writing against the Company. The Company has made available to Parent and Merger Sub accurate and complete copies of all Tax Returns, examination reports and statements of deficiencies filed, assessed against or agreed to by the Company or any of its Affiliates since June 30, 2012.

(m) Neither the Company nor its Affiliates has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency. Neither the Company nor its Affiliates has executed any power of attorney with respect to any Tax, other than powers of attorney that are no longer in force. No closing agreements, private letter rulings, technical advice memoranda or similar agreements or rulings relating to Taxes have been entered into or issued by any Governmental Authority with or in respect of the Company or any of its Affiliates.

(n) The Company has never engaged in or promoted any "listed transaction" (within the meaning of Code Section 6707(A)(c)(2) and Treasury Regulation 1.6011-4).

(o) The Company is a "partnership" for U.S. federal income Tax, and applicable state and local Tax, purposes. The Company has not made any election to be treated as a corporation for U.S. federal income Tax, or state and local Tax, purposes.

7.14 Contracts.

(a) Schedule 7.14 sets forth a complete and accurate list of all of the following Contracts to which the Company or any of its Affiliates is a party or is otherwise bound relating to the Business or the Company (and with respect to any oral Contract provides a complete description of the terms of such Contract):

(i) all operating and capital leases for any assets used in connection with the Business;

(ii) all Contracts of employment with Business Employees and service Contracts with independent contractors and consultants of the Business providing for annual compensation in excess of $75,000;

(iii) all Contracts involving an annual payment from or to any Person in excess of $10,000 individually or $50,000 in the aggregate with respect to all Contracts with such Person that relate to the Business;

(iv) all Contracts for capital expenditures or the purchase or sale of any asset or property in excess of $10,000 individually for any Person or $50,000 in the aggregate for all Contracts with such Person that relate to the Business;

(v) all Contracts between the Company and any of its Affiliates that relate to the Business;

(vi) all Contracts (other than Employee Benefit Plans) with any Affiliate, director, manager, officer or employee of the Company or any family member or relative or Affiliate of any such director, manager, officer or employee that relate to the Business;

(vii) all joint venture, partnership or other Contracts relating to the Business involving a share of profits or losses with another Person;

(viii) all Contracts relating to the Business that contain a covenant not to compete or other covenant restricting the marketing, sale, commercialization or other similar activities relating to any products or services of the Business;

(ix) all Contracts pursuant to which the Company or any of its Affiliates has granted or received most favored nation pricing provisions or exclusive marketing in connection with the Business or other rights relating to Asset or the operation of the Business;

(x) all Contracts with any Governmental Authority relating to the Business;

(xi) all sales, agency, representative, distributor, franchise or similar Contracts relating to the Business;

(xii) all Contracts under which the Company subcontracts services to a third party in connection with the Business;

(xiii) all Contracts granting or permitting any Lien on any of the Assets;

(xiv) any (A) Contract pursuant to which the Company or any of its Affiliates is granted by any other Person, or grants to any other Person, any license or other right to use, or a covenant not to sue with respect to, or assigns to any Person, or is assigned by any Person, any Business Intellectual Property, or otherwise to the Business (other than shrink wrap agreements for off-the-shelf software with a replacement cost and/or annual license fees of less than $25,000), and (B) any other Contract relating in whole or in part to any Business Intellectual Property; and

(xv) any other agreement, Contract, lease, license, commitment or instrument relating to the Business to which the Company or any of its Affiliates is a party and by or to which the Business or any of the Assets is bound or subject, which has an aggregate future liability to any Person in excess of $25,000 and is not terminable by the Company or any of its Affiliates, as applicable, by notice of not more than thirty (30) days for a cost of less than $25,000.

The Company has made available to Parent and Merger Sub complete and accurate copies of all Contracts and all Contracts listed in Schedule 7.14, including all amendments and other changes thereto.

(b) Neither the Company nor its Affiliates is in breach or default under the terms of any Contract, and there exists no event, condition or occurrence that (with or without due notice or lapse of time, or both) would constitute such a breach or default, nor has the Company received any written notice of any breach or default or alleged breach or default under any Contract. To the knowledge of the Company, no other party to any Contract is in breach or default under the terms thereof, and, to the knowledge of the Company, there exists no event, condition or occurrence that (with or without due notice or lapse of time, or both) would constitute such a breach or default by any such party, nor has the Company received any notice of any breach or default by any such party.

(c) The Contracts have been entered into in the ordinary course of the operation of the Business consistent with past practice, are in full force and effect and are valid and binding obligations of the Company or an Affiliate thereof and, to the knowledge of the Company, the other parties thereto. The Company has not received any written notice from any other party to a Contract of the termination or threatened termination thereof, or of any claim, dispute or controversy with respect thereto, nor, to the knowledge of the Company, is there any basis therefor.

(d) Except as set forth on Schedule 7.02, no consent of, or notice to, any third party is required under any Contract as a result of or in connection with, and neither the enforceability nor any of the terms or provisions of any Contract will be affected in any manner by, the execution, delivery and performance of this Agreement or any Related Agreement, or the transactions contemplated hereby or thereby.

7.15 Transactions with Affiliates

Schedule 7.15 lists all Contracts or transactions relating to the Business or the Assets to or by which the Company or any of its Affiliates, on the one hand, and any of its members, officers, directors, managers or employees or, to the knowledge of the Company, any family member or Affiliate of any such member, officer, director, manager or employee, on the other hand, are or have been a party or otherwise bound or affected and that are currently pending or in effect. Except as set forth on Schedule 7.15, neither the Company nor any of its Affiliates, nor any officer, director, manager or employee of the Company or any of its Affiliates, nor, to the knowledge of the Company, any family member or Affiliate of any such officer, director, manager or employee, (a) owns, directly or indirectly, any interest in (i) any asset or other property used in or held for use in connection with the operation of the Business or (ii) any Person that is a supplier, vendor or competitor of the Business, (b) serves as an officer, director, manager or employee of any Person that is a supplier, vendor or competitor of the Business or (c) is a debtor or creditor of the Business.

7.16 Insurance

Schedule 7.16 lists each insurance policy to which the Company is a party, a named insured, or otherwise the beneficiary of coverage at any time within the past year. Schedule 7.16 lists each person or entity required to be listed as an additional insured under each such policy, provided that such Section does not include persons or entities that required to be listed as an additional insured in connection with a specific venue event. Each such policy is in full force and effect and by its terms and with the payment of the requisite premiums thereon will continue to be in full force and effect following the Closing. All such insurance policies provide reasonably adequate coverage for all material risks incident to the Business and the Assets. Neither the Company nor its Affiliates is in breach or default (including with respect to the payment of premiums or the giving of notices) under any such policy, and to the knowledge of the Company, no event has occurred which, with notice or the lapse of time, would constitute such a breach or default or permit termination or modification under such policy; and none of the Affiliates and none of its Affiliates has received any written notice or to the knowledge of the Company, oral notice, from the insurer disclaiming coverage or reserving rights with respect to a particular claim or such policy in general. Neither the Company nor its Affiliates has incurred any material loss, damage, expense or liability covered by any such insurance policy for which it has not properly asserted a claim under such policy.

7.17 [Reserved]

7.18 Accounts Receivable; Accounts Payable.

(a) All accounts receivable relating to the Business, including all accounts receivable included in the Assets (i) have arisen from bona fide transactions in the ordinary course of the Business consistent with past practice, (ii) represent valid and enforceable obligations, (iii) is presently expected to be fully collected in the aggregate face amounts thereof when due without resort to litigation and without offset or counterclaim (subject to any reserve for bad debts reflected in the Financial Statements), and (iv) are owned by the Company free and clear of all Liens. No discount or allowance from any such receivable has been made or agreed to and none represents billings prior to actual sale of goods or provision of services other than in the ordinary course of business consistent with past practice and in a manner consistent with the applicable provisions of GAAP. There is no obligor of any such account receivable that has refused or, to the knowledge of the Company, threatened to refuse to pay its obligations for any reason and, to the knowledge of the Company, no such obligor has been declared bankrupt by a Court of competent jurisdiction or is subject to any bankruptcy proceeding. Schedule 7.18(a) sets forth a complete and accurate accounts receivable aging report as of the date hereof.

(b) All accounts payable and accrued expenses of the Business have arisen only from bona fide transactions in the ordinary course of the Business consistent with past practice, and no such account payable or accrued expense is, or as of the Closing Date will be, delinquent in its payment by more than 45 days, except as otherwise set forth on Schedule 7.18(b). Schedule 7.18(b) is a complete and accurate accounts payable aging report as of the date hereof.

7.19 Absence of Restrictions on Business Activities

There is no Contract or Order binding upon the Business or any of the Assets that has had or could reasonably be expected to have the effect of prohibiting or impairing any business practice of Parent, Merger Sub or the Surviving Company, any acquisition of property (tangible or intangible) by Parent, Merger Sub or the Surviving Company, the operation of the Business by Parent or the Surviving Company or otherwise limiting the freedom of Parent or the Surviving Company to engage in any line of business or to compete with any Person.

7.20 Inventory

All Inventory is owned exclusively by the Company, free and clear of any Liens, has not been pledged as collateral, is not held by the Company on consignment from others, conforms in all material respects to all standards applicable to its use or sale imposed by any Governmental Authority, is fit for its intended purpose (and, if applicable, is not adulterated, misbranded, mispackaged or mislabeled) and is of a quality that is suitable, usable or (in the case of finished goods and products) saleable in the ordinary course of the Business. Schedule 7.20 lists all Inventory, the location of such Inventory and the approximate values of the amount of Inventory held in each such location as of the date of the Interim Balance Sheet. The quantity of the Inventory on hand, in transit and on order as of the Closing will be at levels substantially customary for the Company for that time of year in which the Closing occurs; such quantity representing Company's good faith estimate of quantity required by the Business to continue to operate in the ordinary course of Business and without interruption. Items of such Inventory which are not of a quality usable and saleable in the ordinary course have been written down to net realizable value.

7.21 Regulatory Approvals.

(a) In connection with the Business, the Company and its Affiliates are now and have at all times been in material compliance with all requirements of Regulatory Authorities with jurisdiction over the Business. The Company and its Affiliates have filed, obtained, maintained or submitted all material notices, reports, documents and records required by all applicable Laws and Regulations with respect to the Business, and all such notices, reports, documents and records were complete and correct on the date filed or submitted.

(b) Except as set forth in Schedule 7.21, neither the Company nor any of its Affiliates has received any warning letter or other written communication from any domestic or foreign Regulatory Authority regarding any failure or alleged failure by the Company or any of its Affiliates to comply with any applicable Law or Regulation or any licenses, certifications, approvals or clearances in connection with the operation of the Business, and to the knowledge of the Company, no Governmental Authority is considering any action with respect to any such failure or alleged failure to comply. The Leased Spaces contain adequate warnings, presented in a reasonably prominent manner, in accordance with applicable, Laws, Orders or requirements of any Governmental Authority and current industry practice with respect to their contents and use.

7.22 Suppliers.

(a) Schedule 7.22(a) sets forth a true, correct and complete list of the top 99 suppliers and vendors of the Business in order of net expense for the twelve (12) month period ending on the date hereof.

(b) There are not, and have not been during the two (2)-year period preceding the date hereof, any disputes with any supplier or vendor of the Company.

(c) No supplier or vendor has (i) cancelled or otherwise terminated any Contract with the Company prior to the expiration of such Contract's term (or elected not to renew such Contract at the expiration of such term), (ii) cancelled or has threatened in writing to cancel or otherwise terminate its relationship with the Company, (iii) reduced or has threatened in writing to reduce its sales to the Company or (iv) has sought or is seeking to change the amounts payable by the Company or any of its Affiliates in connection with the sale of their products or services to the Business, or has notified the Company or any of its Affiliates in writing of any intention to do any of the foregoing, including after the consummation of the transactions contemplated hereby.

(d) Neither the Company nor its Affiliates has, in the past twelve (12) months, (i) cancelled or otherwise terminated any Contract with a supplier or vendor of the Company prior to the expiration of such Contract's term (or elected not to renew such Contract at the expiration of such term), (ii) cancelled or has threatened in writing to cancel or otherwise terminate its relationship with any such supplier or vendor, (iii) reduced or has threatened in writing to reduce its purchases from any such supplier or vendor or (iv) has sought or is seeking to change the amounts payable by the Company or any of its Affiliates in connection with the purchase of products or services for the Business, or has notified such supplier or vendor in writing of any intention to do any of the foregoing, including after the consummation of the transactions contemplated hereby.

(e) Neither the Company nor its Affiliates, in the past twelve (12) months, observed any quality or delivery issues with any seller or vendor in connection with the Business.

(f) The Company does not have any single source suppliers or vendors.

7.23 No Brokers

Except as set forth in Schedule 7.23, neither the Company nor its Affiliates nor any of their respective Representatives has employed or engaged, either directly or indirectly, or incurred or will incur any Liability to or is subject to any claim of, any broker, finder, investment banker or other agent or intermediary in connection with the transactions contemplated by this Agreement.

7.24 Gift Card Liability

The Company represents that it has a Liability for unredeemed gift cards or gift certificates, some of which may or may not have an expiration date. The amount of outstanding gift cards and gift certificates does not exceed $124,729.

7.25 Leases.

(a) The Company has made available to Parent and Merger Sub a true, correct and complete copy of the leases, subleases, assignments, modification agreements, easements, licenses and other occupancy agreements relating to the Leased Spaces to which the Company or any Affiliate of the Company (or any predecessor in interest thereto) is a party (the "Facility Leases") listed in Schedule 7.25(a) (which Facility Leases comprise all of the Contracts inclusive of any amendments, addenda and/or supplements relating to (i) real property and/or immovable property to which the Company is a party is a party and (ii) the Leased Spaces to which any Affiliate of the Company is a party). The Company has made available to Parent and Merger Sub a true, correct and complete copy of any guarantees or other security agreements for the Facility Leases (the "Facility Guarantees") listed in Schedule 7.25(a) (which Facility Guarantees comprise all of the guarantees and security agreements relating to real property and/or immovable property related to the Facility Leases).

(b) Schedule 7.25(b) sets forth (i) the name and address of the lessor or sublessor, as applicable, under the Facility Leases, (ii) the street address of the premises leased thereunder (the "Leased Spaces"), (iii) the square footage for the Leased Spaces, (iv) the commencement and termination dates of such Facility Leases and the rent commencement date for such Facility Leases, (v) the (A) current fixed rent, percentage rent, if any (along with the applicable breakpoint), and all other charges currently payable under the Facility Leases, including, without limitation, tenant's proportionate share of common area maintenance charges, utility payments, promotional fees, real estate taxes and insurance charges and (B) future fixed rent and percentage rent, if any (along with the applicable breakpoint), including during any options to renew, (vi) the security posted thereunder (including, without limitation, any cash deposits, letters of credit and/or bonds), (vii) all options to renew, if any, and (viii) a description of and reference to lessor's or sublessor's rights to terminate or not renew such Facility Leases for any reason other than "tenant's default", casualty, condemnation or bankruptcy.

(c) With respect to each such Facility Lease, except as may otherwise be set forth on Schedule 7.25(c):

(i) The Facility Leases are legal, valid, binding and enforceable against the Company, and to the knowledge of the Company, enforceable against the lessors and any sublessors thereunder in accordance with its terms;

(ii) All rentals or other monies due or required to be paid thereunder, including without limitation, all fixed and/or base rent, percentage rent, common area maintenance charges and all other fees, expenses and other items of additional rental, have been paid in full and will have been paid in full through the Closing Date;

(iii) No portion of the security deposit has been used or offset by the lessors or sublessors under the Facility Leases;

(iv) There are no assessments or other charges, ordinary or extraordinary, currently assessed or, to the knowledge of the Company, threatened by any lessors, sublessors, governmental authorities or other third parties against the Leased Space and, to the knowledge of the Company, there is no state of facts that will (or are likely to) cause an increase in the rentals listed in Schedule 7.25(b);

(v) Subject to obtaining the Landlord Consent as set forth on Schedule 7.02, all necessary consents required under the Facility Leases as a result of the transaction contemplated hereby have been or will be obtained and the Facility Leases will continue to be legal, valid, binding and enforceable as written, against the lessors or sublessors following the Closing;

(vi) Subject to obtaining the Landlord Consent as set forth on Schedule 7.02 following the Closing, (x) the lessors or sublessors under the Facility Leases shall not be entitled to any recapture or other termination rights, (y) the lessors or sublessors shall not be entitled to any increase in the current rental under any Facility Lease, and (z) no options to renew, exclusivity or use preferences or abatements shall be voided or otherwise terminated and no other rights of the "tenant" shall be affected or obligations of "tenant" increased, in each case as a result of the transactions contemplated hereby;

(vii) To the Company's knowledge, no lessors or any sublessors under the Facility Leases are cancelling or terminating the Facility Leases (or, to the Company's knowledge, intend to cancel or terminate such Facility Leases) or are exercising (or intend to exercise) any option to cancel or terminate thereunder;

(viii) (a) Neither the Company nor, to the knowledge of the Company, any lessors or sublessors under the Facility Leases is in breach or default thereunder and, to the knowledge of the Company, there has been no such breach or default thereunder with the last eighteen (18) months, and (b) no event has occurred that, with notice or lapse of time or both, would constitute a breach or default or permit termination, modification or acceleration thereunder;

(ix) Neither the Company nor, to the Company's knowledge, any lessor under the Facility Leases has a claim against the other, and no offset or defense to enforcement of any of the terms of the Facility Leases exists;

(x) To the Company's knowledge, no mortgagee, over-lessor, ground-lessor or other superior interest holder for the Leased Space or the buildings and/or lands on which the same are situated ("Superior Interest Holder") is foreclosing on its interest (or, to the Company's knowledge, intends to foreclose on its interest) and, in connection therewith or otherwise, is cancelling or terminating (or, to the Company's knowledge, intends to cancel or terminate) the Facility Leases, and the Company has not been made a party to a foreclosure actions (or received a notice that it may be made a party to a foreclosure action) involving the Facility Leases or its interest in the Leased Space;

(xi) Neither the Company nor, to the knowledge of the Company, any lessors or sublessors under the Facility Leases is in breach or default under any Contract with a Superior Interest Holder, and no event has occurred that, with notice or lapse of time or both, would constitute a breach or default or permit termination, modification or acceleration thereunder;

(xii) To the Company's knowledge, no Actions (voluntary or involuntary) are pending against Landlord under the bankruptcy laws of the United States or any state thereof;

(xiii) Neither the Company nor, to knowledge of the Company, any lessors or sublessors of the Facility Leases has repudiated any provision thereof;

(xiv) To the Company's knowledge, there are no easements, restrictions or other agreements (whether or not of record) which interfere (or could interfere) with the use of the Leased Spaces for the purposes permitted under the Facility Leases (whether or not such agreements easements, restrictions or other agreements are referenced in such Facility Leases);

(xv) The Company has complied with all maintenance obligations in accordance with the terms of the respective Facility Leases including, without limitation, the roof, plumbing, gasoline pumps, lines and equipment, gasoline tanks, electrical systems located thereon and the same are in good repair;

(xvi) The Company has not received any noise, vibration or nuisance complaints from any party (including from any lessors or sublessors, any other commercial or residential tenants or any community boards) with respect to any activity going on in or about the Leased Spaces within the last twenty-four (24) months;

(xvii) The Company has not made any noise, vibration or nuisance complaints against any party (including any lessors or sublessors or any other commercial or residential tenants) with respect to any activity going on in the proximity of the Leased Space and there are no state of facts which the Company is aware that is (or is likely to) materially interfere with business operations in the Leased Spaces;

(xviii) The Company's possession and quiet enjoyment of the Leased Space is not currently being disturbed;

(xix) Except as otherwise set forth in the Facility Leases, there are no refurbishments, renovations or other upgrades required to be performed by Tenant under any of the Facility Leases at any time during the term thereof, including any options to renew, and the Company has not received any written requests from any lessors or sublessors to refurbish, renovate or otherwise upgrade the Leased Spaces;

(xx) The Company has not received notice of any pending or threatened condemnation or expropriation proceedings, lawsuits or administrative actions relating to the Facility Leases that would adversely affect the current use, occupancy or value of the Facility Leases;

(xxi) The Company has not assigned, pledged, transferred or conveyed any interest in the leasehold and is not aware of any such assignment, transfer or conveyance.

7.26 Mailing Lists

All (a) lists of customers, (b) lists of suppliers and vendors, (c) depletion data, and (d) trade mailing lists of the Business, in any format, in the possession of the Company, which will be delivered to Parent and Merger Sub at the Closing (collectively, the "Mailing List"), are true, correct and complete copies of all of the lists owned, held or used by the Company in connection with the Business

7.27 Certain Payments

During the last three (3) years, neither the Company nor any director, officer, manager, partner, agent, or employee acting for or on behalf of the Company has, directly or indirectly, with respect to the Business (a) made any payment not in the ordinary course (including any bribes, payoffs or kickbacks), whether in money, property, or services (i) to obtain favorable treatment in securing business, (ii) to pay for favorable treatment for business secured, or (iii) to obtain special concessions or for special concessions already obtained, or (b) established or maintained any material fund or asset that has not been recorded in the books and records of the Company.

7.28 Indebtedness

Except as set forth on the Indebtedness Schedule, the Company has no outstanding Indebtedness. For each item of Indebtedness, Schedule 7.28 correctly sets forth the debtor, the Contract governing the Indebtedness, the principal amount of the Indebtedness as of the date of this Agreement, the creditor, the maturity date, the collateral, if any, securing the Indebtedness (and all Contracts governing all related Liens).

7.29 Books and Records

The books and records relating to the Business and the Company which have been made available to Parent are complete and accurate.

7.30 Disclosure

Neither this Agreement nor the Disclosure Schedule contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary, including with respect to the Business or the Assets, in order to make the statements contained herein or therein not misleading in light of the circumstances under which they were made.

ARTICLE VIII
REPRESENTATIONS AND WARRANTIES CONCERNING PARENT AND MERGER SUB

The Parent represents and warrants to the Members that:

8.01 Organization and Power

The Parent is a Delaware corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware, with full corporate power and authority to enter into this Agreement and perform its obligations hereunder. The Merger Sub is a Delaware limited liability company duly formed, validly existing and in good standing under the Laws of the State of Delaware, with full corporate power and authority to enter into this Agreement and perform its obligations hereunder.

8.02 Authorization; Valid and Binding Agreement

The execution, delivery and performance of this Agreement by each of the Parent and Merger Sub and the consummation of the transactions contemplated hereby have been duly and validly authorized by all requisite corporate action and no other proceedings on its part are necessary to authorize its execution, delivery or performance of this Agreement. This Agreement has been duly executed and delivered by the Parent and Merger Sub and, assuming the due authorization, execution and delivery by the other Parties, constitutes a legal, valid and binding obligation of the Parent and Merger Sub, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies.

8.03 No Breach

Neither the Parent nor Merger Sub is subject to or obligated under its Organizational Documents any applicable Law, or any material Contract, which would be breached or violated in any material respect by the Parent's or Merger Sub's execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby.

8.04 Governmental Consents, etc

Except as set forth on Schedule 8.04, neither the Parent nor Merger Sub is required to submit any notice, report or other filing with any Governmental Authority in connection with the execution, delivery or performance by it of this Agreement or the consummation of the transactions contemplated hereby. No consent, approval or authorization of any Governmental Authority or any other Person is required to be obtained by the Parent or Merger Sub in connection with its execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby. Neither the Parent nor Merger Sub is subject to any Order.

8.05 Litigation

There are no Actions pending or, to the Parent's or Merger Sub's knowledge, threatened against or affecting the Parent or Merger Sub at law or in equity, or before or by any Governmental Authority, which would materially and adversely affect the Parent's or Merger Sub's performance under this Agreement or the consummation of the transactions contemplated hereby.

8.06 Broker's Fees

There are no brokerage commissions, finders' fees or similar compensation payable in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of the Parent or its Affiliates.

ARTICLE IX
TERMINATION

9.01 Termination

This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of the Parent and SBEEG; or

(b) Upon Termination of the Asset Purchase Agreement.

9.02 Effect of Termination

In the event of a termination of this Agreement by either the Parent or SBEEG, on behalf of the Members as provided above, the provisions of this Agreement shall immediately become void and of no further force and effect (other than this Section 9.02 (Effect of Termination), Article XII (Miscellaneous), Sections 6.06 (Broker's Fees), 7.21 (Broker's Fees) and 8.06 (Broker's Fees), and Section 10.08 (Jurisdiction; Venue; Service of Process) hereof which shall survive the termination of this Agreement) and there shall be no Liability on the part of the Parent, Merger Sub, any of the Company, SBEEG or the Members to one another, except to the extent otherwise provided in the Asset Purchase Agreement.

ARTICLE X
INDEMNIFICATION

10.01 Survival; Notice of Indemnification Claims.

(a) The representations, warranties and Pre-Closing Covenants in this Agreement shall survive the Closing and shall terminate on the date that is eighteen (18) months after the Closing Date (the "General Survival Period"); provided that (A) the representations and warranties in Section 6.01 (Authority; Power), Section 6.02 (Organization), 6.03 (Execution and Delivery; Valid and Binding Agreement), Section 6.04(b)(ii) (Breach of Organizational Documents), Section 6.05 (Ownership of Equity Interests), Section 7.01 (Organization, Corporate Power and Authorization), Section 7.02 (Consents and Approvals), Section 7.03(a) (Breach of Organizational Documents), Section 7.04 (Equity Interests), Section 7.15 (Transactions with Affiliates), Section 7.23 Error! Reference source not found. (No Brokers), Section 7.25 (Leases), Section 7.28 (Indebtedness), Section 8.01 (Organization and Power), Section 8.02 (Authorization; Valid and Binding Agreement) and Section 8.03 (No Breach) shall survive indefinitely, and (B) the representations and warranties in Section 7.12 (Employment Matters) and Section 7.13 (Taxes) shall survive until the 30th day following the termination of the applicable statutes of limitation (as extended by any tolling periods and other extensions) with respect to the liabilities in question). Post-Closing Covenants in this Agreement shall survive the Closing in accordance with their terms and claims in respect thereof must be brought prior to the expiration of the applicable statute of limitations in respect of such claims. No claim for indemnification hereunder for breach of any such representations, warranties, covenants, agreements and other provisions may be made after the expiration of the survival period set forth in the immediately preceding sentences; provided that (x) any representation, warranty, covenant, agreement or other provision in respect of which indemnity may be sought under Section 10.02(a) or under Section 10.03, and the indemnity with respect thereto, shall survive (with respect to any claim that has been made) the time at which it would otherwise terminate pursuant to this Section 10.01 if timely written notice thereof shall have been given to the Person against whom such indemnity may be sought prior to such time of termination and (y) claims for indemnification based on upon fraud are not subject to the time limitations set forth in this Section 10.01. For the avoidance of doubt, with respect to any claim for indemnity that is made under Section 10.02(a) or Section 10.03 based on a breach of or inaccuracy in any statement, representation or warranty contained in any certificate delivered by or on behalf of a Party thereto at the Closing (each a "Closing Certificate"), such statements, representations and warranties shall survive for the General Survival Period (except that the statements, representations and warranties contained in the Closing Certificates to be delivered pursuant to Sections 4.01(f)(i) and 4.02(e)(ii) (the "Bring Down Certificates") shall survive for the same periods as the underlying representations, warranties or covenants set forth in this Agreement to which they relate). For the avoidance of doubt, claims for indemnification based on Section 10.02(a)(ii), (iv), (v) or (vi) shall not be subject to the time limitations set forth in this Section 10.01.

(b) If an Indemnified Person (as defined below) wishes to make a claim for indemnification under this Article X, the Indemnified Person shall give written notice of such claim to the Indemnifying Person (as defined below). Such written notice shall describe the basis for such claim for indemnification and the amount of Losses involved (if quantifiable), in each case, in reasonable detail in light of the facts then known to the Indemnified Person; provided, that the failure to so notify the Indemnifying Person shall not relieve the Indemnifying Person of its obligations hereunder except to the extent that (and only to the extent that) such failure shall have caused the damages for which the Indemnifying Person is obligated to be greater than such damages would have been had the Indemnified Person given the Indemnifying Person adequate notice hereunder. SBEEG shall give and receive all notices on behalf of all Seller Indemnified Persons in the case of all claims for indemnification under this Article X.

10.02 Indemnification by SBEEG for the Benefit of the Parent Indemnified Persons.

(a) Provided that timely notice has been made within the prescribed survival period set forth in Section 10.01 above, from and after the Closing, the Parent, Merger Sub and each of their respective Affiliates (including, following the Closing, the Company) and each director, officer, employee, agent, manager, consultant, advisor, or other representative (each a "Representative") of such Person, including their respective legal counsel, accountants, and financial advisors, and all of the successors, assigns and legal representatives of the foregoing (each, a "Parent Indemnified Person"), shall be indemnified and held harmless by the Manager by means of the payment to such Parent Indemnified Persons of escrow funds from time to time held in the Escrow Account maintained pursuant to the Escrow Agreement ("Escrow Funds") and, from and after the time that the Escrow Funds have been fully distributed or are otherwise no longer available for such purposes, the Parent Indemnified Persons shall be indemnified and held harmless by SBEEG, in each case, from, against and in respect of any and all actual Losses (whether or not such Losses relate to a Third Party Claim (as defined below)), which all or any of such Parent Indemnified Persons may suffer or sustain as a result of, directly or indirectly relating to, or arising out of:

(i) any inaccuracy in or breach of any representation or warranty contained in Article VII, in each case, without giving effect to any update to the Disclosure Schedules;

(ii) any nonfulfillment or breach of any covenant, agreement or other provision by the Company contained in this Agreement or the Escrow Agreement;

(iii) any nonfulfillment or breach of any Pre-Closing Covenant by the Company contained in this Agreement;

(iv) any claim or Action brought by any of the Members that relates to the allocation of the aggregate purchase price among the Members pursuant to this Agreement or among any of the Parties (other than Buyer, Merger Sub or Wasabi Holdings, LLC) to this Agreement, the Other Merger Agreements or the Asset Purchase Agreement;

(v) the lawsuit currently filed in the Superior Court of the State of California, County of Los Angeles, Case No. BC 585265 and any and all substantially similar matters, including further litigation, that may arise out of substantially similar facts to those set forth in Los Angeles, Case No. BC 585265; or

(vi) any claim or Action brought by any holder of Company LLC Interests, or any other Person alleging to own Equity Interests of the Company or otherwise having an interest in the Company to the extent such claim or Action relates to (A) this Agreement, the Merger or any other event, action, omission or condition (or series of events, actions, omissions or conditions) occurring or existing on or prior to the Closing Date) other than claims arising out of conditional Per LLC Interest Closing Merger Consideration pursuant to Section 3.02(c), which, for the avoidance of doubt, shall be the liability of Buyer and Parent; or (B) any assertion of dissenters, appraisal or similar rights.

(b) Provided that timely notice has been made within the prescribed survival period set forth in Section 10.01 above, from and after the Closing, each Parent Indemnified Person, shall be indemnified and held harmless by SBEEG, in each case, from, against and in respect of any and all actual Losses (whether or not such Losses relate to a Third Party Claim (as defined below)), which all or any of such Parent Indemnified Persons may suffer or sustain as a result of, directly or indirectly relating to, or arising out of:

(i) any inaccuracy in or breach of any representation or warranty made by the Manager under Article VI without giving effect to any update to the Disclosure Schedules; or

(ii) any nonfulfillment or breach of any covenant, agreement or other provision by the Manager or SBEEG contained in this Agreement.

(c) Notwithstanding anything to the contrary contained in this Agreement or in any Related Agreement: (i)(A) in the case of any representation or warranty made by the Manager in Article VI, or any breach by SBEEG or the Manager of a covenant of SBEEG or the Manager contained herein, SBEEG and the Manager shall be liable for the indemnifiable Losses associated with such breach, and (ii)(B) the other Members shall have no liability in connection therewith; (ii) in the case of any breach of a representation or warranty made by the Company in Article VII or a breach of a Pre-Closing Covenant of the Company, SBEEG and the Manager shall be severally and not jointly liable for such indemnifiable Losses associated with such breach; (iii) neither SBEEG nor the Manager shall have liability under Section 10.02(a)(i) unless and until the aggregate of all Losses relating thereto, for which they would, but for this Section 10.02(c), be liable exceeds on a cumulative basis an amount equal to $300,000 **(**the "Deductible"), the calculation of which will include all Losses paid pursuant to the Asset Purchase Agreement (as Losses is defined therein) and the Other Merger Agreements (as Losses is defined therein), and then only to the extent such Losses exceed the Deductible; (iv) except as set forth in Section 10.02(f), the aggregate liability under Section 10.02(a)(i) shall in no event exceed $7,500,000 (the "Cap"), the calculation of which will include all Losses paid pursuant to the Asset Purchase Agreement (as Losses is defined therein) and the Other Merger Agreements (as Losses is defined therein).

(d) Notwithstanding anything to the contrary contained in this Agreement or in any Related Agreement: (i) the amount of indemnity payable pursuant to this Section 10.01(b) with respect to any Losses shall be reduced (A) by any reserves or accruals reflected on the face of the Latest Balance Sheet (as opposed to merely being disclosed in the notes thereto, if any) to the extent specifically and relating to the subject matter of the applicable Losses or (B) to the extent any such Loss amount has already been taken into account in making any adjustment to the Aggregate Closing Merger Consideration contemplated in Section 3.03; and (ii) no Member shall be liable for any indemnifiable Losses.

(e) [Reserved.]

(f) Notwithstanding Section 10.02(a), neither the Deductible nor the Cap shall apply to any claims based on fraud or intentional misrepresentation or claims for indemnification pursuant to Section 10.01(a) in respect of breach of representations and warranties set forth in Section 6.01 (Authority; Power), Section 6.02 (Organization), Section 6.03 (Execution and Delivery; Valid and Binding Agreement), Section 6.04(b)(ii) (Breach of Organizational Documents), Section 6.05 (Ownership of Equity Interests), Section 6.06 (Broker's Fees), Section 7.01 (Organization, Corporate Power and Authorization), Section 7.03(a) (Breach of Organizational Documents), Section 7.04 (Equity Interests), Section 7.13 (Taxes), Section 7.15 (Transactions with Affiliates), Section 7.23 Error! Reference source not found. No Brokers), Section 7.25 (Leases) and Section 7.28 (Indebtedness) (or any breach of or inaccuracy in any statement, representation or warranty contained in any Bring Down Certificate to the extent relating to any of the foregoing representations and warranties). For the avoidance of doubt, claims for indemnification based on any of Sections 10.02(a)(ii) through (vi) shall not be subject to the monetary limitations set forth in Section 10.02(c).

(g) The right of any Parent Indemnified Person to indemnification pursuant to this Article X or Article XI will not be affected by any investigation conducted or knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing, with respect to the accuracy of any representation or warranty, or performance of or compliance with any covenant or agreement, referred to herein. The waiver of any condition contained in this Agreement based on the breach of any such representation or warranty, or on the performance of or compliance with any such covenant or agreement, will not affect the right of any Parent Indemnified Person to indemnification pursuant to this Article X or Article XI based on such representation, warranty, covenant or agreement.

(h) Each of the Manager and SBEEG hereby agrees that it shall not make, and shall not permit his, her or its Affiliates or Representatives to make any claim for indemnification against any of the Parent Indemnified Persons, the Company by reason of the fact it or any of its Affiliates or Representatives was a controlling person, director, employee or Representative of the Company thereof or was serving as such for another Person at the request of the Company (whether such claim is made pursuant to any Law, Organizational Document, Contract or otherwise) with respect to any indemnification claim brought by a Parent Indemnified Person under this Agreement. With respect to any indemnification claim brought by a Parent Indemnified Person under this Agreement, each of the Manager and SBEEG expressly waives any right of subrogation, contribution, advancement, indemnification or other claim against the Company with respect to any amounts owed by it pursuant to this Agreement or otherwise in respect of the transactions contemplated by this Agreement.

10.03 Indemnification by the Parent for the Benefit of the Members

From and after the Closing, the Parent shall indemnify each of the Members and each of their respective Affiliates (each, a "Seller Indemnified Person") and hold them harmless against any Losses which the Members may suffer or sustain, as a result of: (a) any breach of any representation or warranty of the Parent under this Agreement, and (b) any breach of any covenant, agreement or other provision of this Agreement by the Parent; provided, however, that (i) the Parent shall have no liability under Section 10.02(a) unless and until the aggregate of all Losses relating thereto, for which the Parent would, but for this Section 10.03(a), be liable exceeds on a cumulative basis an amount equal to the Deductible, the calculation of which will include all Losses paid pursuant to the Asset Purchase Agreement (as Losses is defined therein) and the Other Merger Agreements (as Losses is defined therein), and then only to the extent such Losses exceed the Deductible and (ii) the aggregate liability under Section 10.02(a) shall in no event exceed the Cap, the calculation of which will include all Losses paid pursuant to the Asset Purchase Agreement (as Losses is defined therein) and the Other Merger Agreements (as Losses is defined therein). Except (i) as contemplated in Sections 3.03 (Adjustment to Aggregate Closing Merger Consideration) and 12.16 (Specific Performance), (ii) for remedies for breach of any Related Agreement and (iii) in cases of fraud, from and after the Closing, recovery pursuant to this Article X constitutes the Seller Indemnified Persons' sole and exclusive remedy for any and all Losses or other claims relating to or arising from this Agreement and the transactions contemplated hereby and the Seller Indemnified Persons may not avoid the limitations on liability set forth in this Section 10.01(b) by seeking damages for breach of contract, tort or pursuant to any other theory of liability.

10.04 Determination of Loss Amount

The amount of any Loss subject to indemnification under Section 10.01(b) shall be calculated net of any insurance proceeds actually received in cash by the Indemnified Person on account of such Loss and paid within ninety (90) days of the submission of a claim relating thereto, net of the present value of any reasonably probable increase in insurance premiums or other charges paid or to be paid by the Indemnified Person resulting from such Loss and all costs and expenses incurred by any Indemnified Person in recovering such proceeds from its insurers. The Indemnified Person shall use commercially reasonable efforts to seek full recovery under all insurance policies covering any Loss to the same extent as it would if such Loss were not subject to indemnification hereunder, provided, however, that, for the avoidance of doubt, in no event shall Indemnified Person be required to bring an action against the provider of any such insurance policies for such recovery. In the event that an insurance recovery is received by any Indemnified Person with respect to any Loss for which any such Person has been indemnified hereunder, then a refund equal to the aggregate amount of the recovery shall be made promptly to the Person or Persons that provided such indemnity payments to such Indemnified Person.

10.05 Mitigation

Each Person entitled to indemnification hereunder shall take all commercially reasonable steps to mitigate all Losses (other than matters concerning Taxes) after becoming aware of any event which could reasonably be expected to give rise to any Losses that are indemnifiable or recoverable hereunder or in connection herewith.

10.06 Manner of Payment

Any indemnification of the Parent pursuant to Section 10.01(b) shall be effected by release of Escrow Funds and when the Escrow Funds are depleted thereafter, but only to the extent applicable, by SBEEG to Parent by wire transfer of immediately available funds to an account designated by each applicable Indemnified Person within 10 days after the final determination thereof; provided, however, that Parent may, at its election, choose to seek payment directly from SBEEG with respect to any indemnification pursuant to Section 10.02(a)(v) and shall not be required to seek release of such amounts from the Escrow Funds. Any indemnification of the Members pursuant to Section 10.03 shall be effected by Parent's wire transfer of immediately available funds to an account designated by each applicable Indemnified Person within 10 days after the final determination thereof. Each indemnification payment made pursuant to this Article X shall, with respect to the Members and the Parent, be deemed to be an adjustment to the Aggregate Closing Merger Consideration.

10.07 Indemnification Process

(a) Any Person entitled to make a claim for indemnification under Section 10.01(b) or Section 10.03 (an "Indemnified Person") shall notify the indemnifying party (an "Indemnifying Person") in writing (the "Notice of Claim") which such Indemnified Person has determined has given rise to or would reasonably be expected to give rise to a right of indemnification under this Agreement, stating the amount of the Loss, if known (a "Loss Estimate"), describing the breach or inaccuracy and other material facts and circumstances upon which such claim is based and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed or arises as promptly as practicable after becoming aware of such matter; provided, however, that the failure so to provide such Notice of Claim or any defect in such Notice of Claim will not affect the rights of any Indemnified Persons to obtain indemnification hereunder, except to the extent such failure to include information actually and materially prejudices such Indemnifying Person. Notwithstanding the foregoing, no claim shall be brought under this Article X with respect to an event of indemnification described in Section 10.02(a)(i), (iii), or Section 10.02(b)(i) or (ii), unless the Indemnified Person, at any time prior to the end of the General Survival Period, gives the Indemnifying Person(s) a Notice of Claim with respect to such claim. If a Notice of Claim has been given on or prior to the end of the General Survival Period, the relevant representations and warranties shall survive as to such claim until the claim has been finally resolved.

(b) Except as provided below, the Indemnifying Person may elect to assume the defense of any Claims for indemnification hereunder resulting from the assertion of liability by third parties (each, a "Third Party Claim") with counsel reasonably satisfactory to the Indemnified Person by (i) giving notice to the Indemnified Person of its election to assume the defense of the Third Party Claim and (ii) giving the Indemnified Person evidence acceptable to the Indemnified Person that the Indemnifying Person has adequate financial resources to defend against the Third Party Claim and fulfill its obligations under this Article X, in each case no later than 10 days after the Indemnified Person gives notice of the assertion of a Third Party Claim. If the Indemnifying Person elects to assume the defense of a Third Party Claim:

(i) it shall diligently conduct the defense and shall not be liable to the Indemnified Person for any Indemnified Person's fees or expenses subsequently incurred in connection with the defense of the Third Party Claim other than reasonable costs of investigation;

(ii) the election will conclusively establish for purposes of this Agreement that the Indemnified Person is entitled to relief under this Agreement for any Loss arising from or in connection with the Third Party Claim (subject to the provisions of this Article X;

(iii) no compromise or settlement of such Third Party Claim may be effected by the Indemnifying Person without the Indemnified Person's consent unless (A) there is no finding or admission of any violation by the Indemnified Person of any Law or any rights of any Person, (B) the Indemnified Person receives a full release of and from any other claims that may be made against the Indemnified Person by the third party bringing the Third Party Claim, and (C) the sole relief provided is monetary damages that are paid in full by the Indemnifying Person; and

(iv) the Indemnifying Person shall have no liability with respect to any compromise or settlement of such claims effected without its consent.

(c) If the Indemnifying Person does not assume the defense of a Third Party Claim in the manner and within the period provided above, the Indemnified Person may conduct the defense of the Third Party Claim at the expense of the Indemnifying Person. Indemnifying Person will be bound by any determination resulting from such Third Party Claim or, upon the consent of Indemnifying Person, which consent shall not be unreasonably withheld, conditioned or delayed, any compromise or settlement effected by the Indemnified Person.

(d) With respect to any Third Party Claim subject to this Article X:

(i) any Indemnified Person and any Indemnifying Person, as the case may be, shall keep the other Person fully informed of the status of such Third Party Claim and any related Action at all stages thereof where such Person is not represented by its own counsel; and

(ii) both the Indemnified Person and the Indemnifying Person, as the case may be, shall render to each other such assistance as they may reasonably require of each other and shall cooperate in good faith with each other in order to ensure the proper and adequate defense of any Third Party Claim.

(e) With respect to any Third Party Claim subject to this Article X, the parties shall cooperate in a manner to preserve in full (to the extent possible) the confidentiality of all confidential information and the attorney-client and work-product privileges, including making reasonable best efforts to comply with the provisions of Section 12.16. In connection therewith, each party agrees that:

(i) it will use its best efforts, in respect of any Third Party Claim in which it has assumed or participated in the defense, to avoid production of Confidential Information (consistent with applicable Law and rules of procedure); and

(ii) all communications between any party and counsel responsible for or participating in the defense of any Third Party Claim shall, to the extent possible, be made so as to preserve any applicable attorney-client or work-product privilege.

10.08 Governing Law; Jurisdiction; Venue; Service of Process.

(a) This Agreement shall be governed by the Laws of the State of Delaware without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause application of the Laws of any jurisdiction other than the State of Delaware.

(b) All Actions arising out of or relating to this Agreement shall be heard and determined in any state or federal Court sitting in the State of New York. Each of the parties to this Agreement irrevocably submits to the exclusive jurisdiction of the state Courts of New York and to the jurisdiction of the United States District Court for the Southern District of New York, for the purpose of any Action arising out of or relating to this Agreement and each of the parties to this Agreement irrevocably agrees that all claims in respect of such Action may be heard and determined exclusively in any New York state or federal Court sitting in the State of New York. Each of the parties to this Agreement consents to service of process by delivery pursuant to Section 9.8 and agrees that a final judgment in any Action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

10.09 Limitation on Recourse

Other than in the case of fraud, no claim shall be brought or maintained by any Parent Indemnified Person against any officer, director, employee (present or former) or Affiliate of a Member which is not otherwise expressly identified as a Party hereto, and no recourse shall be brought or granted against any of them, by virtue of or based upon any alleged misrepresentation or inaccuracy in or breach of any of the representations, warranties or covenants of any party hereto set forth or contained in this Agreement or any exhibit or schedule hereto or any certificate delivered hereunder. For the avoidance of doubt and subject to the rights of Parent under the terms of any debt commitment letters with any lender, none of the parties hereto, nor or any of their respective Affiliates, solely in their respective capacities as parties to this Agreement, shall have any rights or claims against any such lender or any Affiliate thereof (collectively, the "Debt Financing Sources"), solely in their respective capacities as lenders or arrangers in connection with the transactions contemplated by this Agreement, including any related financing.

ARTICLE XI
ADDITIONAL COVENANTS AND AGREEMENTS

11.01 Disclosure Generally

The Disclosures Schedules attached hereto are incorporated herein and expressly made a part of this Agreement as though completely set forth herein. All references to this Agreement herein or in any of the Disclosures Schedules shall be deemed to refer to this entire Agreement.

11.02 Acknowledgment of Parent

The Parent acknowledges that it has conducted an independent investigation of the financial condition, results of operations, assets, liabilities, properties and projected operations of the Company and, in making its determination to proceed with the transactions contemplated by this Agreement, the Parent has relied on the results of its own independent investigation, the representations and warranties of the Company expressly and specifically set forth in this Agreement including the Disclosure Schedules and the representations and warranties of SBEEG and the Manager expressly and specifically set forth in this Agreement, the Asset Purchase Agreement and the Other Merger Agreements including the disclosure schedules thereto. **SUCH REPRESENTATIONS AND WARRANTIES BY THE COMPANY, SBEEG AND THE MANAGER CONSTITUTE THE SOLE AND EXCLUSIVE REPRESENTATIONS AND WARRANTIES OF THE COMPANY, SBEEG AND THE MANAGER TO PARENT IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, AND PARENT UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED (INCLUDING, BUT NOT LIMITED TO, ANY RELATING TO THE FUTURE FINANCIAL CONDITION, RESULTS OF OPERATIONS, ASSETS OR LIABILITIES OF THE COMPAN Y) ARE SPECIFICALLY DISCLAIMED BY THE COMPANY, SBEEG AND THE MANAGER.**

11.03 Tax Matters.

(a) The Parent Indemnified Persons shall be indemnified and held harmless by the Members by means of the payment to such Parent Indemnified Persons of Escrow Funds and, from and after the time that the Escrow Funds have been fully distributed or are otherwise no longer available for such purposes, by the Members, in each case, from, against and in respect of any and all actual Losses (whether or not such Losses relate to a Third Party Claim), which all or any of such Parent Indemnified Persons may suffer or sustain as a result of, directly or indirectly relating to, or arising out of: (i) all Taxes (or the non-payment thereof) of the Company or assessed on the Assets for all taxable periods ending on or before the Closing Date and the portion through the end of the Closing Date for any Straddle Period (as defined in Section 11.02(c) of this Agreement); (ii) all Taxes (or the non-payment thereof) of the Company attributable to any breach or violation of, or failure to fully perform (as applicable), any representations or covenants set forth in Section 7.13 or this Section 11.02 of this Agreement; (iii) all income Taxes (or the non-payment thereof) of any member of any Affiliated Group of which the Company (or any predecessor thereof) is or was a member on or prior to the Closing Date, including pursuant to Treasury Regulation section 1.1502-6 or any analogous or similar state, local, or non-U.S. Law or regulation; (iv) all income Taxes (or the non-payment thereof) of the Company attributable to any election under section 108(i) of the Code made with respect to a Pre-Closing Tax Period or Straddle Period; and (v) any and all income Taxes of any Person (other than the Company) imposed on the Company as a transferee or successor, by Contract or pursuant to any Law, which Taxes relate to an event, transaction or other circumstances occurring before the Closing; provided, however, that the Parent Indemnified Persons shall be indemnified and held harmless for Taxes described in this sentence only to the extent that such Taxes exceed the amount, if any, reserved for such Taxes (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax income and after reduction for any estimated Tax payments made prior to the Closing) on the face of the Final Closing Balance Sheet or shown as a liability for Taxes in Working Capital as finally determined under this Agreement. The Parent Indemnified Parties shall be reimbursed for any Taxes of the Company pursuant to this Section 11.03(a) at least five days prior to the payment of such Taxes by the Parent, the Company; provided that the Parent shall provide notice of such responsibility (and the amount) no less than 15 days prior to the payment of such Taxes by the Parent. Notwithstanding anything herein to the contrary, no limitations on indemnification contained in Article X shall apply to this Section 11.02. For all purposes of this Article XI, any indemnification obligation owing to any Parent Indemnified Person shall be satisfied by means of the payment to such Parent Indemnified Person out of the Escrow Funds and, from and after the time that the Escrow Funds have been fully distributed or are otherwise no longer available for such purposes, by SBEEG.

(b) SBEEG shall prepare all income Tax Returns for the Company that are required to be filed for all periods ending on or prior to the Closing Date (any such taxable period, a "Pre-Closing Tax Period") which have not yet been filed as of the Closing Date (collectively, "Seller Returns"). SBEEG shall timely cause to be paid any Taxes due and payable with respect to such Seller Returns in the manner provided in Section 11.03(a) above and Section 11.03(f) below. All Seller Returns shall be prepared on a basis consistent with past practice to the extent consistent with applicable Tax Law, and shall be true, correct and complete in all material respects. Not later than thirty (30) days prior to the due date for the filing of any Seller Return, SBEEG shall provide the Parent with a copy of such Seller Return and the Parent shall have the right to review, comment on, and approve any such Seller Return. SBEEG shall make such changes to such Seller Return as the Parent may reasonably request, and the Company shall file such Seller Return after SBEEG has made such changes, if any, to the reasonable satisfaction of the Parent. The Parent shall prepare and file all Tax Returns of the Company other than Seller Returns. In the case of any Tax Return of the Company prepared by Parent that concerns a Straddle Period and is not an income Tax Return (a "Buyer Return"), not later than thirty (30) days prior to the due date for the filing of any Buyer Return, Parent shall provide SBEEG with a copy of any such Buyer Return and SBEEG shall have the right to review and comment on any such Buyer Return. Parent shall consider in good faith any comments made by SBEEG to any such Buyer Return but shall not be obligated to make the changes proposed by SBEEG.

(c) In the case of Taxes that are payable with respect to a taxable period that begins on or before the Closing Date and ends after the Closing Date (a "Straddle Period"), the portion of any such Tax that is allocable to the portion of the period ending on and including the Closing Date shall be:

(i) in the case of Taxes that are either (x) based upon or related to income or receipts or (y) imposed in connection with any sale or other transfer or assignment of property (real or personal, tangible or intangible), deemed equal to the amount which would be payable if the taxable year ended on and included the Closing Date (an interim closing of the books); and

(ii) in the case of Taxes imposed on a periodic basis with respect to the assets of the Company, or otherwise measured by the level of any item, deemed to be the amount of such Taxes for the entire period (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period), multiplied by a fraction the numerator of which is the number of calendar days in the period ending on and including the Closing Date and the denominator of which is the number of calendar days in such Straddle Period.

(d) All transfer, documentary, sales, lease, use stamp, registration and other such Taxes, and any conveyance fees or recording charges imposed on the Company or the Members as a result of the transactions contemplated by this Agreement (collectively, "Transfer Taxes"), and any penalties, interest and filing fees or cost with respect to the Transfer Taxes shall be borne 50% by Parent and 50% by the Members. The Parent agrees to cooperate with SBEEG in the filing of any returns with respect to the Transfer Taxes, including promptly supplying any information in its possession reasonably requested by SBEEG that is reasonably necessary to complete such returns. If SBEEG fails to file any returns with respect to Transfer Taxes, the Parent, at SBEEG's expense, may file such returns.

(e) The Parent shall promptly notify SBEEG if the Parent receives notice of a claim by a Governmental Authority in respect of Taxes of the Company that could give rise to a liability of the Members under this Section 11.02 (a "Tax Claim"). SBEEG shall have the right to defend the Company against any such Tax Claim to the extent such Tax Claim principally concerns a taxable period ending on or prior to the Closing Date (a "Pre-Closing Tax Period"); provided that SBEEG provides the Parent with written notice of its intent to assume the defense of such Tax Claim. The Parent and its counsel shall be allowed to participate in the defense of any Tax Claim over which SBEEG has assumed the defense under the preceding sentence on a face-to-face basis at the Parent's own expense. SBEEG will not settle any Tax Claim over which SBEEG has assumed the defense under the second-preceding sentence without the prior written consent of the Parent, such consent not to be unreasonably withheld, conditioned or delayed. SBEEG shall have the right to participate at its own expense in the defense of any Tax Claim not discussed in the third preceding sentence that concerns a Pre-Closing Tax Period.

(f) To the extent not accrued as an asset in Working Capital, the Parent shall promptly pay or cause prompt payment to be made to SBEEG, on behalf of the Members, within ten (10) days after receipt thereof or entitlement thereto by the Parent, the Company or any Affiliate on behalf of the Members, of all refunds of Taxes and interest thereon received by, or credited against the Tax liability of the Parent, any Affiliate of the Parent, the Company (but only to the extent that any such credit actually reduces the Taxes paid by the Company for any Tax period (or the portion of any Straddle Period) beginning after the Closing Date) to the extent such refunds or credits are attributable to Taxes paid by the Company in a Pre-Closing Tax Period (and not due to the carry-back of any Tax attributes generated in a period other than a Pre-Closing Tax Period).

(g) Parent, Merger Sub, and the Company will cooperate fully, as and to the extent reasonably requested by the other party, in connection with any Tax matters relating to the Company (including by the provision of reasonably relevant records or information). The party requesting such cooperation will pay the reasonable out-of-pocket expenses of the other party.

(h) The Aggregate Closing Merger Consideration, and any assumption of liabilities as determined for U.S. federal income tax purposes, shall be allocated among the Assets of the Company in accordance with Code Section 1060 (and any similar provisions of state or local Law, as appropriate) and shall be set forth in a schedule delivered by Parent to SBEEG within forty-five (45) days following the Closing Date (the "Allocation Schedule"). SBEEG shall have an opportunity to review the Allocation Schedule for a period of thirty (30) days after the receipt of the Allocation Schedule and Parent will not finalize the Allocation Schedule until such thirty (30) day period has elapsed or Parent has received the consent of the Seller Entities (such consent not to be unreasonably withheld, conditioned or delayed) The Parties and their respective Affiliates shall file all Tax Returns (including IRS Form 8594) consistent with the final Allocation Schedule as determined hereunder (as reasonably adjusted to account for events occurring after the determination of the final allocation of the Purchase Price) and none of the Parties or their respective Affiliates shall take any Tax position inconsistent with the final Allocation Schedule determined hereunder unless required to do so by a change in applicable Laws or a good faith resolution of a Tax contest.

11.04 Further Assurances

From time to time, as and when requested by any Party hereto and at such Party's expense, any other Party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further actions as the requesting Party may reasonably deem necessary or desirable to evidence and effectuate the transactions contemplated by this Agreement.

11.05 Access to Books and Records

From and after the Closing, the Parent shall, and shall cause the Company to, provide SBEEG and its authorized Representatives with reasonable access, at their own cost and expense, during normal business hours and upon reasonable notice, to the books and records and, with the consent of the Parent (not to be unreasonably withheld, conditioned or delayed), any relevant personnel of the Company with respect to periods prior to the Closing Date in connection with the preparation of any financial statements or Tax Returns of the Members or any claim or Action brought against a Seller Indemnified Person relating to the Company (other than a claim or Action brought by a Parent Indemnified Person relating to or arising out of this Agreement or the transactions contemplated hereby).

11.06 Employee Matters.

(a) SBEEG shall be responsible for, and the Parent Indemnified Persons shall be indemnified and held harmless by the Members from, against and in respect of any and all actual Losses (whether or not such Losses relate to a Third Party Claim), which all or any of such Parent Indemnified Persons may suffer or sustain as a result of, directly or indirectly relating to, or arising out of any notices, payments, benefits, fines, penalties, backpay, and damages required under WARN relating to any "plant closing" or "mass layoff" (as defined in WARN) (or similar triggering event) caused in part by the termination of employees of Spoonful working at the Company before the Closing.

(b) From and after the Closing Date, the Surviving Company shall not be liable for any claims and liabilities under any welfare plans, regardless of when such claims or liabilities arise or are asserted. To the extent the Surviving Company provides any substantially similar welfare plans as those maintained by Spoonful with respect to the Business Employees providing services to the Company, the Surviving Company shall use commercially reasonable efforts to cause credit to be given (without duplication; and not to an extent greater than counted immediately before the Closing Date for comparable purposes) to all employees of the Company and their eligible dependents and beneficiaries for any premiums, co-payments and deductibles paid on or prior to the Closing Date in satisfying any deductible and out-of-pocket expense requirements under any new group medical plan for the current plan year.

(c) Effective as of the Closing Date, the Parent will use commercially reasonable efforts to count (without duplication; and not to an extent greater than counted immediately before the Closing Date for comparable purposes) the service of all employees with the Company under the Surviving Company's vacation policy and welfare benefit plans to the extent applicable to such employees. In addition, the Surviving Company shall use commercially reasonable efforts to count (without duplication; and not to an extent greater than counted immediately before the Closing Date for comparable purposes) such service but only in determining each employee's eligibility to participate in, and each such employee's vested percentage in, each of the Surviving Company's employee benefit plans (as defined in Section 3(3) of ERISA) which are subject to ERISA and are applicable to such employee, but, for the avoidance of doubt, not for benefit accrual purposes.

(d) It is expressly acknowledged, understood and agreed that nothing herein is intended to or does or shall constitute an amendment to or requirement to establish any employee benefit or other plan or grant any Person any rights as a third party beneficiary of this Agreement.

11.07 SBEEG as the Members' Representative.

(a) SBEEG shall serve as the representative of the Members and act in any and all capacities to do and perform every act and thing required or permitted to be done in connection with the transactions contemplated by this Agreement and the Related Agreements, including, without limitation:

(i) determine the presence (or absence) of claims for indemnification against the Parent and its Affiliates pursuant to Article X or Article XI above;

(ii) deliver all notices required to be delivered under this Agreement or the Related Agreements, including, without limitation, any notice of a claim for which indemnification is sought under Article X or Article XI above or any notice in respect of Section 3.03, and make all filings, enter into all Contracts, make all decisions, prosecute, defend, settle or otherwise compromise all Actions and claims and take all other actions in connection therewith, and execute any amendments to the Agreement or any Related Agreements, and provide any consents or waivers to any of the foregoing;

(iii) receive all notices required or permitted to be delivered to SBEEG, the Manager or the Members under this Agreement or Related Agreements, including, without limitation, any notice of or relating to a claim for which indemnification is sought under Article X or Article XI;

(iv) take any and all actions as SBEEG may deem necessary or desirable to resolve or settle claims under this Agreement or any Related Agreement or otherwise relating to this Agreement, any Related Agreement or Merger or other transactions contemplated hereby or otherwise as permitted or required to be taken by or on behalf of SBEEG, the Manager or the Members under this Agreement, the Escrow Agreement or other Related Agreements and exercise any rights that SBEEG, the Manager or the Members are permitted or required to do or exercise under this Agreement, the Escrow Agreement or the other Related Agreements; and

(v) in connection with the Closing, execute and receive all documents, instruments, certificates and agreements on behalf of and in the name of SBEEG, the Manager or the Company necessary to effectuate the Closing and consummate the contemplated transactions.

The Company, the Manager and SBEEG hereby acknowledge and agree that upon execution of this Agreement, any delivery by SBEEG of any waiver, amendment, agreement, certificate or other documents in respect of this Agreement, the Escrow Agreement or the other Related Agreements executed by SBEEG (in its capacity as the Members' representative hereunder), such party shall be bound by such documents as fully as if such holder had executed and delivered such documents. All decisions and actions by SBEEG within the scope of the authorization granted in this Section, including, without limitation, any agreement between SBEEG and Parent or Merger Sub relating to the resolution of disputes relating to Section 3.03, or the defense or settlement of any indemnity claims by any Indemnifying Person pursuant to Article X or Article XI hereof, shall be final and binding upon SBEEG, the Manager and, to the extent permitted by law, the Members, and no such party shall have the right to object, dissent, protest or otherwise contest the same. All expenses and other fees incurred by SBEEG shall be paid by SBEEG.

(b) Parent shall be entitled to rely on any action taken by SBEEG, on behalf of the Members, pursuant to Section 11.07(a) above (each, an "Authorized Action"). SBEEG and the Manager, jointly and severally, shall pay to and indemnify and hold harmless the Parent and the other Parent Indemnified Persons from and against any Losses which it or any of them may suffer, sustain, or become subject to, as the result of any claim by any Member that an Authorized Action is not binding on, or enforceable against, the Members.

11.08 Confidentiality.

The Manager acknowledges that the success of the Company after the Closing depends upon the continued preservation of the confidentiality of certain information it possesses, that the preservation of the confidentiality of such information by it is an essential premise of the bargain between the Manager and the Parent and Merger Sub, and that the Parent and Merger Sub would be unwilling to enter into this Agreement in the absence of this Section 11.08. Accordingly, the Manager hereby severally agrees with the Parent and Merger Sub that it, its Affiliates and its and its Affiliate's Representatives shall not, and that it shall cause its Affiliates and such Representatives not to, at any time on or after the Closing Date, directly or indirectly, without the prior written consent of Parent, disclose or use, any information involving or relating to the Business or the Company (other than in the course of fulfilling its duties to the Company in such capacity); provided, that the information subject to this Section 11.08) will not include any information generally available to, or known by, the public (other than as a result of disclosure in violation hereof); provided, further, that the provisions of this Section 11.08 will not prohibit any retention of copies of records or disclosure (A) required by any applicable Law so long as reasonable prior notice is given to Parent and the Company of such disclosure and a reasonable opportunity is afforded Parent and the Company to contest the same or (B) made in connection with the enforcement of any right or remedy relating to this Agreement or the transactions contemplated hereby. The Manager agrees that it shall be responsible for any breach or violation of the provisions of this Section 11.08 by any of its Affiliates or its or its Affiliates' Representatives.

11.09 Landlord Agreement; SNDA.

The Company shall use commercially reasonable efforts to (i) obtain the Landlord Agreement signed by the applicable lessor and (ii) a subordination, non-disturbance and attornment agreement from each mortgagee, groundlessee and superior interest holder of any Facility Lease in a form reasonably acceptable to the Parent.

11.10 Percentage Rent True-Up.

On or before February 15, 2016 (or if rent is payable based on a year which is not a calendar year, within forty-five (45) days of the expiration of the lease year in which the Closing Date occurs), Parent and the Surviving Entity shall provide SBEEG with written notice of its calculation of the portion of the rent payable pursuant to any Facility Leases for the Leased Spaces relating to the period on or prior to the Closing (the "Pre-Closing Rent Portion") and the period after the Closing through December 31, 2015. With respect to any calculation of percentage rent, the parties shall calculate the Pre-Closing Rent Portion by multiplying (i) the total percentage rent payable for said year by (ii) the fraction (x) the numerator of which is gross sales made at the Leased Space (as calculated in accordance with the Facility Leases) for the portion of the year occurring prior to the Closing Date and (y) the denominator of which is total gross sales made at the Leased Space for said year. Parent shall respond within ten (10) days indicating that it agrees with such calculation or objects to such calculation. In the event Parent fails to respond within such period, it will be deemed to have accepted the calculation. In the event Parent objects to the calculation, such dispute shall be resolved in accordance with the provisions in Section 3.02(c) with respect to the determination of the Final Working Capital. In the event that the Pre-Closing Rent Portion exceeds the amount of rent reflected in the Final Balance Sheet with respect to such period, Parent shall make payment of such difference within two (2) business days of the final determination of the Pre-Closing Rent Portion. In the event that the Pre-Closing Rent Portion is less than the amount of rent reflected in the Final Balance Sheet with respect to such period, SBEEG shall make payment of such difference within two (2) business days of the final determination of the Pre-Closing Rent Portion.

11.11 Lease Modification.

The Parent shall use commercially reasonable efforts to obtain the release of the lessor of any Facility Lease to the termination of the guarantees made by Sam Nazarian and any other guarantors of such Facility Leases (each, a "Guarantor"). If the Parent is unable to obtain the release of any Guarantor, then the Parent shall not have any obligation to obtain the release of such Guarantor and shall instead provide an indemnification agreement, in a form mutually agreed by the parties and pursuant to which the Parent shall indemnify such Guarantor for all payments and other liabilities of such Guarantor thereunder on a dollar-for-dollar basis.

11.12 Gift Cards.

The Company shall pay (and the Parent shall cause the Company to pay) SBEEG for the face amount of each gift card that is included in the calculation of Working Capital as of the Closing which are subsequently redeemed at any property owned or managed by SBEEG or any of its Affiliates following the Closing within fifteen (15) days after receipt by the Company or the Parent of an invoice therefor.

ARTICLE XII
MISCELLANEOUS

12.01 Press Releases and Communications

No press release or public announcement related to this Agreement or the transactions contemplated herein, or prior to the Closing, any other announcement or communication to the employees, providers, patients, customers or suppliers of the Company, shall be issued or made by any Party without the joint written approval of the Parent and SBEEG, unless (a) required by Law (in the reasonable opinion of counsel) in which case the Parent and SBEEG shall have the right to review such press release, announcement or communication prior to its issuance, distribution or publication or (b) any disclosure made in connection with the enforcement of any right or remedy relating to this Agreement or any Related Agreement or the transactions contemplated hereby.

12.02 Expenses

Except as otherwise expressly provided herein, each Party shall pay all of its own expenses (including attorneys' and accountants' fees and expenses) in connection with the negotiation of this Agreement, the performance of its obligations hereunder and the consummation of the transactions contemplated by this Agreement (whether consummated or not).

12.03 Knowledge Defined

For purposes of this Agreement, the term "the Company's knowledge" or similar references to knowledge as used herein shall mean in the case of the Members and the Company, the actual knowledge of Richard Acosta, Sam Nazarian and John Kolaski after reasonably inquiry.

12.04 Notices

All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given when personally delivered or delivered by facsimile, one day after deposit with Federal Express or similar reputable overnight courier service or three days after being mailed by first class mail, return receipt requested or transmitted via electronic mail (including by PDF format). Notices, demands and communications to the Parent, the Company, and the Members shall, unless another address is specified in writing, be sent to the addresses indicated below:

Notices to the Parent and the Company (after the Closing), to it:

The ONE Group, LLC
411 West 14th Street
New York, New York 10014
Fax: (212) 255-9715
Attention: Jonathan Segal
Sam Goldfinger

Sonia Low

with a copy (which shall not constitute notice) to:

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111
Fax: (617) 542-2241
Attention: Sahir Surmeli, Esq.

Notices to SBEEG and the Company (prior to the Closing):

SBEEG Holdings, LLC
5900 Wilshire Blvd., 31st Floor
Los Angeles, CA 90036
Fax: 323 655-8001
Attention: Legal Department

with copies to (which shall not constitute notice):

Venable LLP
505 Montgomery Street, Suite 1400
San Francisco, CA 94111
Fax: (415) 653-3755
Attention: Brandt U. Mori, Esq.

Venable LLP

750 East Pratt Street, Suite 900

Baltimore, MD 21202

Fax: (410) 244-7742

Attention: W. Bryan Rakes, Esq.

12.05 Assignment

Neither the Company, SBEEG or the Manager may assign, delegate or otherwise transfer this Agreement or any of such party's rights, interests or obligations hereunder, without the prior written consent of Parent and Buyer, and any attempt to do so will be null and void ab initio. Neither Buyer nor Parent may assign, delegate or otherwise transfer this Agreement or any of such party's rights, interests or obligations hereunder, without the prior written consent of the Company, SBEEG and the Manager and any attempt to do so will be null and void ab initio, provided, however, that Buyer or Parent may, without the approval of any other party to this Agreement, but with prior notice to SBEEG, make a collateral assignment of this Agreement to its Debt Financing Source. If either Buyer or Parent assigns this Agreement or any of its rights, interests or obligations hereunder, Buyer and Parent shall remain liable for all obligations of Buyer and Parent pursuant to this Agreement. Upon any such permitted assignment, the references in this Agreement to Parent shall refer to such assignee unless the context otherwise requires. Subject to this Section 12.05, this Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon the parties hereto, and each party's successors, heirs, estates, executors, administrators and permitted assigns.

12.06 Severability

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

12.07 References; Interpretation

The table of contents and the section and other headings and subheadings contained in this Agreement and the exhibits hereto are solely for the purpose of reference, are not part of the agreement of the Parties, and shall not in any way affect the meaning or interpretation of this Agreement or any exhibit hereto. All references to days (as opposed to Business Days) or months shall be deemed references to calendar days or months. All references to "$" shall be deemed references to United States dollars. Unless the context otherwise requires, any reference to a "Section," "Exhibit," or "Schedule" shall be deemed to refer to a section of this Agreement, Exhibit to this Agreement or a Schedule to this Agreement, as applicable. The words "hereof," "herein" and "hereunder" and words of similar import referring to this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The word "including" means including without limitation. Unless the context clearly requires otherwise, when used herein "or" shall not be exclusive (i.e., "or" shall mean "and/or").

12.08 No Strict Construction

The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Person.

12.09 Amendment and Waiver

Any provision of this Agreement or the Schedules or Exhibits may be amended or waived only in a writing signed by the Parent, the Company and SBEEG. No waiver of any provision hereunder or any breach or default thereof shall extend to or affect in any way any other provision or prior or subsequent breach or default, and no failure or delay to enforce, or partial enforcement of, any provision hereof shall operate as a waiver of such provision or of any other provision. Notwithstanding the foregoing, Section 10.09, Section 12.05, Section 12.08, Section 12.09, Section 12.12 and Section 12.13 hereof may not be amended in any manner that would be adverse to a Debt Financing Source without such Debt Financing Source's written consent.

12.10 Complete Agreement

This Agreement, the Disclosure Schedules, Exhibits, the Related Agreements, and the other documents referred to herein (including, prior to the Closing, the Nondisclosure Agreement, dated March 27, 2015 (the "Confidentiality Agreement")) contain the complete agreement between the Parties and supersede any prior understandings, agreements or representations by or between the parties, written or oral, which may have related to the subject matter hereof in any way.

12.11 Counterparts

This Agreement may be executed in multiple counterparts (including by means of facsimile or PDF signature pages), any one of which need not contain the signatures of more than one Party, but all such counterparts taken together shall constitute one and the same instrument.

12.12 No Third-Party Beneficiaries

Other than (a) in respect of Parent Indemnified Persons (in their capacities as such) and Seller Indemnified Persons (in their capacities as such) and (b) as otherwise provided in Section 10.09, Section 12.05 and Section 12.09, no party hereto (each of whom is an express third party beneficiary hereof), this Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

12.13 Waiver of Jury Trial

TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, EACH OF THE PARTIES HEREBY WAIVES, AND COVENANTS THAT NONE OF THE PARTIES WILL ASSERT ANY RIGHT TO TRIAL BY JURY ON ANY ISSUE IN ANY ACTION, WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE, IN RESPECT OF ANY ISSUE, CLAIM, DEMAND OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE SUBJECT MATTER HEREOF OR IN ANY WAY CONNECTED WITH, RELATED OR INCIDENTAL TO THE DEALINGS OF THE COMPANY, PARENT AND MEMBERS HEREUNDER, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER IN TORT OR CONTRACT OR OTHERWISE. Each of the Parties hereto acknowledges that it has been informed by the other Parties that the provisions of this Section 12.13 constitute a material inducement upon which such other Parties are relying and will rely in entering into this Agreement. Any of the Parties may file an original counterpart or a copy of this Section 12.13 with any court as written evidence of the consent of the other Parties to the waiver of its right to trial by jury.

12.14 Delivery by Facsimile or PDF.

This Agreement and any signed agreement or instrument entered into in connection with this Agreement, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine or PDF email, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any Party hereto or to any such agreement or instrument, each other Party hereto or thereto shall re-execute original forms thereof and deliver them to all other Parties. No Party hereto or to any such agreement or instrument shall raise the use of a facsimile machine or PDF email to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine or PDF email as a defense to the formation of a Contract and each such Party forever waives any such defense.

12.15 Specific Performance.

In furtherance and not in limitation of Section 9.02, each of the Parties acknowledges and agrees that the other Parties would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached or violated. Accordingly, each of the Parties agrees that, without posting a bond or other undertaking, the other Parties will be entitled to an injunction or injunctions to prevent breaches or violations of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any Action instituted in any court of the United States or any state thereof having jurisdiction over the Parties and the matter in addition to any other remedy to which it may be entitled, at Law or in equity. Each Party further agrees that, in the event of any action for specific performance in respect of such breach or violation, it will not assert that the defense that a remedy at Law would be adequate. Notwithstanding the foregoing and for the avoidance of doubt, in no event shall the Parent or Merger Sub have any obligation to seek or consummate a financing transaction in connection with the transactions contemplated by this Agreement.

12.16 Attorney-Client Privilege; Continued Representation.

The parties hereto hereby acknowledge that Venable LLP has acted as counsel to the Company, the Manager and SBEEG from time to time prior to the transactions contemplated by this Agreement as well as with respect thereto. The following provisions in this Section 12.17 apply to the attorney-client relationship between (a) the Company and Venable LLP prior to the Closing and (b) the Manager and SBEEG and Venable LLP following the Closing. Each of the parties hereto agrees that: (i) it will not seek to disqualify Venable LLP, based solely on its prior representation of the Company, the Manager and SBEEG, from acting and continuing to act as counsel to the Manager and SBEEG either in the event of a dispute hereunder or in the course of the defense or prosecution of any claim relating to the transactions contemplated by this Agreement; (ii) the Manager and SBEEG have a reasonable expectation of privacy with respect to their and the Company's communications (including any e-mail communications using the Company's email system) with Venable LLP prior to Closing to the extent that such communications concern the transactions contemplated herein and were confidential between the Manager, SBEEG and/or the Company and Venable LLP; and (iii) the Manager and SBEEG (and, following the Closing, not Parent or any of its Affiliates, including, without limitation, the Company) shall have access to all such privileged communications.

* * * *

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first written above.

PARENT:

ONE GROUP HOSPITALITY, INC.

By: /s/ Jonathan Segal
Name: Jonathan Segal
Title: Chief Executive Officer

MERGER SUB:

WASABI ACQUISITION USA, LLC

By: Wasabi Holdings, LLC, its sole member

By: The ONE Group, LLC, its sole member

By: The ONE Group Hospitality, Inc.
(f/k/a Committed Capital Acquisition Corporation),
its sole member

By: /s/ Jonathan Segal
Name: Jonathan Segal
Title: Chief Executive Officer

SBEEG:

SBEEG HOLDINGS, LLC

By: /s/ Sam Nazarian
Name: Sam Nazarian
Title: Authorized Person

COMPANY:

KATSU USA, LLC

By: /s/ Sam Nazarian
Name: Sam Nazarian
Title: Authorized Person

MANAGER:
SBE/KATSUYA USA, LLC

By: /s/ Sam Nazarian
Name: Sam Nazarian
Title: Authorized Person

Exhibit 2.4

EXECUTION VERSION

AGREEMENT AND PLAN OF MERGER

DATED AS OF JULY 9, 2015

by and among

KATSU-GLENDALE, LLC,

SBEEG HOLDINGS, LLC,

SBE/KATSUYA USA, LLC,

THE ONE GROUP HOSPITALITY, INC.,

and

WASABI ACQUISITION GLENDALE, LLC,

TABLE OF CONTENTS

INDEX OF EXHIBITS

Exhibit	Description
Exhibit A	Operating Agreement
Exhibit B	Escrow Agreement
Exhibit C	Form of Landlord Agreement
Exhibit D	Form of Landlord Consent and Acknowledgment

INDEX OF SCHEDULES

	Description
Schedule I	List of Members and Company LLC Interests
Schedule II	Permitted Liens Schedule
Schedule III	Merger Consideration Schedule
Schedule IV	Disclosure Schedules

AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger (the "Agreement") is made as of July 9, 2015 by and among Katsu-Glendale, LLC, a California limited liability company (the "Company"), SBEEG Holdings, LLC, a Delaware limited liability company ("SBEEG"), SBE/Katsuya USA, LLC, the manager of the Company (the "Manager"), The ONE Group Hospitality, Inc., a Delaware corporation ("Parent"), and Wasabi Acquisition Glendale, LLC, a Delaware limited liability company and a wholly owned subsidiary of Parent ("Merger Sub"). The Company, Parent, Merger Sub and SBEEG are collectively referred to herein as the "Parties" and individually each as a "Party."

WHEREAS, upon the terms and subject to the conditions of this Agreement and in accordance with the Limited Liability Company Act of the State of California (the "LLC Act") and the State of Delaware (the "DE LLC Act"), Parent, Merger Sub and the Company will consummate a business combination transaction pursuant to which Merger Sub will merge (the "Merger") with and into the Company, with the Company continuing as the surviving company (the "Surviving Company"); and

WHEREAS, the Manager has determined that the Merger is consistent with and in furtherance of the long-term business strategy of the Company and fair to, and in the best interests of, the Company and its Members and has approved this Agreement, the Merger, the Related Agreements to which the Company is a party and the transactions contemplated hereby and thereby;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, and intending to be legally bound hereby, the Company, Parent, Merger Sub, the Manager and SBEEG hereby agree as follows:

ARTICLE I
DEFINITIONS

1.01 Definitions.

For purposes hereof, the following terms, when used herein with initial capital letters, shall have (a) the respective meanings set forth herein or (b) if not otherwise defined herein, the meaning set forth in the Asset Purchase Agreement:

"Action" means any suit, action, arbitration, cause of action, claim, complaint, prosecution, audit, inquiry, investigation, governmental or other proceeding, whether civil, criminal, administrative, investigative or informal, at law or at equity, before or by any Court, Governmental Authority, arbitrator or other tribunal.

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the first mentioned Person, including any partnership or joint venture in which one Person (either alone, or through or together with any other subsidiary) has, directly or indirectly, an interest of ten percent (10%), or more; and "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of stock or other securities, as trustee or executor, by contract or credit arrangement or otherwise.

"Affiliated Group" means an affiliated group as defined in Section 1504 of the Code (or any analogous combined, consolidated or unitary group defined under state, local or foreign income Tax Law) of which either the Company are or have been a member.

"Aggregate Closing Merger Consideration" means an amount equal to the Base Purchase Price in cash minus (a) Indebtedness of the Company plus (b) the amount (if any) by which the Estimated Working Capital is greater than the Target Working Capital minus (c) the amount (if any) by which the Estimated Working Capital is less than the Target Working Capital.

"Asset Purchase Agreement" means that certain asset purchase agreement dated as of the date hereof by and among the Parent, SBEEG, the Manager and the other parties thereto.

"Assets" means all of the assets, properties, rights, interests and goodwill of every kind and nature whatsoever, whether tangible or intangible, wherever located, owned, used or held for use by the Company in connection with the Business, whether now owned, used or held for use or acquired prior to the Closing.

"Base Purchase Price" means $1,200,000.00.

"Business" means the ownership, operation, promotion and development of Katsuya Glendale.

"Business Day" means any day other than a Saturday, Sunday or day on which banks are permitted to close in the State of Delaware.

"Business Employee" means any employee of Spoonful who currently provides services primarily to the Business.

"Business Material Adverse Effect" means a material adverse effect on the Company, condition (financial or otherwise), properties, prospects, operations or results of operation of the Business or the ability of the Company, SBEEG or the Manager to perform its obligations as contemplated in this Agreement or any Related Agreement.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

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

"Company LLC Interests" means the limited liability company membership interests of the Company, and with respect to each member of the Company, such number of Company LLC Interests as are set forth next to such member's name on Schedule I hereto.

"Company's Accounting Practices and Procedures" means the accounting methods, policies, practices and procedures, including classification and estimation methodology (but taking into account all available information as of the time of preparation of the applicable financial statements or calculations) used by the Company in the preparation of the Audited Financial Statements for the year ended December 31, 2014.

"Contract" means any loan agreement, indenture, letter of credit (including related letter of credit applications and reimbursement obligations), mortgage, security agreement, pledge agreement, deed of trust, bond, note, guarantee, surety obligation, warranty, license, franchise, permit, power of attorney, invoice, quotation, purchase order, sales order, lease, endorsement agreement, and any other agreement, contract, instrument, obligation, offer, commitment, plan, arrangement, understanding or undertaking, written or oral, express or implied, to which a Person is a party or by which any of its properties, assets or Intellectual Property may be bound or affected, in each case as amended, supplemented, waived or otherwise modified.

"Court" means any court or arbitration tribunal of any country or territory, or any state, province or other subdivision thereof.

"Employee Benefit Plan" means any employee benefit plan (as defined in Section 3(3) of ERISA) and any bonus, option, interest purchase, interest ownership, stock appreciation right, restricted stock, phantom stock, equity or equity-based, incentive compensation, pension, profit-sharing, deferred compensation, health, medical, dental, vision, retiree medical or other retirement benefit, welfare, accident, disability or life insurance, workmen's compensation or other insurance, vacation, day or dependent care, legal services, cafeteria benefit, dependent care, disability, director, leave of absence, layoff, employee or independent contractor loan, fringe benefit, sabbatical, supplemental retirement, severance, separation, termination, change of control, collective bargaining, or other benefit plan, program, policy or arrangement, and all employment, termination, severance, consulting or other contract or agreement which the Company maintains, administers, sponsors, or contributes to, or with respect to which the Company has or may have any obligation, whether written or oral, and whether or not subject to ERISA.

"Environmental Law" means any Law or Order relating to the environment or occupational health and safety, including any Law or Order pertaining to (i) treatment, storage, disposal, generation and transportation of Materials of Environmental Concern; (ii) air, water and noise pollution; (iii) the protection of groundwater, surface water or soil; (iv) the release or threatened release into the environment of Materials of Environmental Concern, including emissions, discharges, injections, spills, escapes or dumping; (v) storage tanks, vessels, containers, abandoned or discarded barrels, and other closed receptacles used for Materials of Environmental Concern; or (vi) occupational health and safety. As used above, the terms "release" and "environment" shall have the meaning set forth in CERCLA.

"Equity Interest" means, with respect to any Person, (a) any capital stock, partnership or membership interest, unit of participation or other similar interest (however designated) in such Person and (b) any option, warrant, purchase right, conversion right, exchange right or other Contract which would entitle any other Person to acquire any such interest in such Person or otherwise entitle any other Person to share in the equity, profits, earnings, losses or gains of such Person (including stock appreciation, phantom stock, profit participation or other similar rights).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Escrow Agent" means Continental Stock Transfer & Trust Company, or any successor escrow agent appointed pursuant to the Escrow Agreement.

"Escrow Amount" means an amount equal to (A) $2,000,000 multiplied by (B) (i) the Base Purchase Price divided by (ii) $27,600,000. One-half of the Escrow Amount shall be released twelve (12) months after the Closing Date (less the amount of any pending or resolved claims as of such date) and the remainder shall be released at eighteen (18) months (less the amount of any pending or resolved claims as of such date), as further described and upon the terms set forth in the Escrow Agreement.

"Exempted Litigation Matters" has the meaning set forth on Schedule 7.10(a) attached hereto.

"GAAP" means United States generally accepted accounting principles applied in a consistent manner throughout the periods involved.

"Governmental Authority" means any (i) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (ii) federal, state, local, municipal, foreign or other government; and (iii) governmental or quasi-governmental body, agency or instrumentality of any nature (including any governmental division, authority, program, plan, office, bureau, board, directorate, political subdivision, department, agency, commission, instrumentality, official, organization, unit, body or entity or any court or other tribunal, taxing authority, arbitrator or arbitral body).

"Indebtedness" means Liabilities (including Liabilities for principal, accrued interest, penalties, fees and premiums) (i) for borrowed money, or with respect to deposits or advances of any kind, (ii) evidenced by bonds, debentures, notes or similar instruments, (iii) upon which interest charges are customarily paid, (iv) under conditional sale or other title retention agreements, (v) issued or assumed as the deferred purchase price of property or services (other than all accounts payable incurred in the ordinary course of the Business to the extent included in the calculation of Working Capital), (vi) of others secured by (or for which the holder of such Liabilities has an existing right, contingent or otherwise, to be secured by) any Lien or security interest on property owned or acquired by the Person in question whether or not the obligations secured thereby have been assumed, and (vii) under leases required to be accounted for as capital leases under GAAP.

"Intellectual Property" means (i) worldwide trademarks, service marks, trade names, trade dress, designs, logos, slogans and general intangibles of like nature, together with all goodwill related to the foregoing (whether registered or not, but including any registrations and applications for any of the foregoing) (collectively, "Trademarks"); (ii) patents (including the ideas, inventions and discoveries described therein, any pending applications, any registrations, patents or patent applications based on applications that are continuations, continuations-in-part, divisional, reexamination, reissues, renewals of any of the foregoing and applications and patents granted on applications that claim the benefit of priority to any of the foregoing) (collectively, "Patents"); (iii) works of authorship or copyrights (including any registrations, applications and renewals for any of the foregoing) and other rights of authorship (collectively, "Copyrights"); (iv) trade secrets and other confidential or proprietary information, know-how, confidential or proprietary technology, processes, work flows, formulae, algorithms, models, user interfaces, customer, supplier, vendor, distributor and user lists, databases, pricing and marketing information, inventions, marketing materials, inventions and discoveries (whether patentable or not) (collectively, "Trade Secrets"); (v) computer programs and other Software, macros, scripts, source code, object code, binary code, methodologies, processes, work flows, architecture, structure, display screens, layouts, development tools, instructions and templates; (vi) published and unpublished works of authorship, including audiovisual works, databases and literary works; (vii) rights in, or associated with a person's name, voice, signature, photograph or likeness, including rights of personality, privacy and publicity; (viii) rights of attribution and integrity and other moral rights; (ix) Uniform Resource Locators ("URLs") and Internet domain names and applications therefor (and all interest therein), IP addresses, adwords, key word associations and related rights; and (x) (a) all other proprietary, intellectual property and other rights relating to any or all of the foregoing, (b) all copies and tangible embodiments of any or all of the foregoing (in whatever form or medium, including electronic media) and (c) all rights to sue for and any and all remedies for past, present and future infringements of any or all of the foregoing and rights of priority and protection of interests therein under the Laws of any jurisdiction.

"IRS" means the Internal Revenue Service.

"Law" means any United States federal, state, local, municipal, or any foreign law, statute, constitution, principle of common law, standard, ordinance, code, edict, decree, rule, regulation, resolution, promulgation, ruling or requirement, or any Order, or any Permit granted under any of the foregoing, or any similar provision having the force or effect of law.

"Landlord Agreement" means the Landlord Agreement in the form attached hereto as Exhibit C.

"Landlord Consent" means the Landlord Consent and Acknowledgment to be entered into by the Company and the lessor of any Facility Lease, in the form attached hereto as Exhibit D, or in such other form as shall be acceptable to the Parent in its reasonable discretion.

"Liability" means any debts, liabilities, obligations, claims, charges, Taxes, damages, demands and assessments of any kind, including those with respect to any Governmental Authority, whether accrued or not, known or unknown, disclosed or undisclosed, fixed or contingent, asserted or unasserted, liquidated or unliquidated, whenever or however arising (including, those arising out of any Contract or tort based on negligence or strict liability) and whether or not the same would be required by GAAP to be reflected in financial statements or disclosed in the notes thereto.

"Liens" means any mortgage, easement, right of way, charge, claim, community property interest, condition, equitable interest, lien, option, pledge, security interest, right of first refusal, or restriction or adverse claim of any kind, including any restriction on use, voting, transfer, receipt of income, or exercise of any other attribute of ownership, or any other encumbrance or exception to title of any kind.

"Losses" means any loss, damage, Liability, encumbrance, Tax, fine, penalty, cost or expense, including but not limited to the costs and expenses of any investigation, defense or settlement of an Action or claim, the costs and expenses associated with the enforcement of this Agreement or any Related Agreement and any reasonable, actual and documented fees or expenses of attorneys, accountants or other experts or consultants retained in connection with any such Action or claim or the enforcement of this Agreement; provided, that Losses shall not include any punitive damages, consequential damages, exemplary damages or special damages except to the extent any such damages are reasonably foreseeable and incurred as a result of a Third Party Claim.

"Material Adverse Change" means an event, change or effect, that has or would be reasonably likely to have a material adverse effect or a material adverse change to (a) the financial condition, business, results of operations, assets or liabilities of the Company and its Affiliates party to and merging pursuant to the Other Merger Agreements (collectively, the "Merger Entities"), on a combined basis; (b) the ability of each of the Merger Entities to consummate the transactions contemplated by this Agreement or any Other Merger Agreement, as applicable, or to perform any of its respective obligations under this Agreement or any Other Merger Agreement, as applicable; or (c) the ability of any Affiliate of the Company that is party to the Asset Purchase Agreement (collectively, the "Seller Entities") to consummate the transactions contemplated by the Asset Purchase Agreement or perform any of its obligations under the Asset Purchase Agreement; provided, however, that any adverse effects attributable to any of the following shall not be deemed to constitute, and the following shall not be taken into account in determining whether there has been or will be, a Material Adverse Change: (i) conditions affecting the industries in which the Merger Entities or Seller Entities participate or the U.S. economy as a whole (other than those that disproportionately affect the Merger Entities or Seller Entities); (ii) actions taken by the Seller Entities and Merger Entities at Buyer or Parent's express written direction or with Buyer or Parent's express written consent; (iii) the announcement of this Agreement, any Other Merger Agreement or the Asset Purchase Agreement; (iv) compliance with the provisions of this Agreement, any Other Merger Agreement or the Asset Purchase Agreement; (v) conditions resulting from the outbreak or escalation of hostilities, including acts of war or terrorism (other than those that disproportionately affect Seller Entities and Merger Entities); (vi) conditions resulting from any breach by Buyer or Parent of any provisions of this Agreement, any Other Merger Agreement or the Asset Purchase Agreement; and (vii) change in GAAP.

"Materials of Environmental Concern" means any substances, chemicals, compounds, solids, liquids, gases, materials, pollutants or contaminants, hazardous substances (including as such term is defined under CERCLA), solid wastes and hazardous wastes (including as such terms are defined under the Resource Conservation and Recovery Act), toxic materials, oil or petroleum and petroleum products, asbestos or substances containing asbestos, polychlorinated biphenyls or any other material subject to regulation under any Environmental Law.

"Members" or "Member" means the members of the Company that are from time to time listed on Schedule I hereto.

"Order" means any order, writ, judgment, injunction, decree, stipulation, ruling, decision, verdict, determination, settlement, agreement, or award made, issued or entered into by or with any Governmental Authority.

"Organizational Documents" means, with respect to any Person (other than an individual), (a) the certificate or articles of incorporation or organization and any joint venture, limited liability company, operating or partnership agreement and other similar documents adopted or filed in connection with the creation, formation or organization of such Person and (b) all by-laws, voting agreements and similar documents, instruments or agreements relating to the organization or governance of such Person, in each case, as amended or supplemented.

"Other Merger Agreements" means those certain agreements and plans of merger dated as of the date hereof by and among the Parent, SBEEG, the Manager and the other parties thereto.

"Permitted Liens" means (i) statutory Liens for current Taxes or other governmental charges not yet due and payable or the amount or validity of which is being contested in good faith by appropriate proceedings by the Company and for which appropriate reserves have been established in accordance with GAAP; (ii) mechanics', carriers', workers', repairers' and similar statutory Liens arising or incurred in the ordinary course of business for amounts which are not delinquent and which are not, individually or in the aggregate, material; (iii) purchase money Liens and Liens securing rental payments under capital or operating lease arrangements so long as such leases were disclosed in the Schedules to this Agreement; (iv) other Liens arising in the ordinary course of business and not incurred in connection with the borrowing of money and which are not, individually or in the aggregate, material; and (v) the items set forth on the Permitted Liens Schedule attached as Schedule II hereto.

"Per LLC Interest Closing Merger Consideration" means (a) the Aggregate Closing Merger Consideration, divided by (b) the total number of Company LLC Interests of the Company immediately prior to Closing.

"Permits" means, with respect to any Person, any license, franchise, permit, permission, variance, clearance, registration, accreditation, qualification, consent, approval, right, privilege, certificate or other similar authorization issued by, or otherwise granted by, any Governmental Authority or pursuant to any Law to which or by which such Person is subject or bound or to which or by which any property, business, operation or right of such Person is subject or bound.

"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 Authority.

"Post-Closing Covenant" means any covenant or agreement on the part of any Party hereto that is required to be performed in whole or in part from and after the Closing Date.

"Pre-Closing Covenant" means any covenant or agreement on the part of any Party hereto that is required to be performed in its entirely on or prior to the Closing Date.

"Pro Rata Share" means, with respect to any Member, the percentage set forth opposite such Member's name on the Merger Consideration Schedule attached as Schedule III hereto.

"Related Agreements" means the Asset Purchase Agreement, the Escrow Agreement, and each of the other agreements, certificates, instruments and documents to be executed and delivered in connection with the consummation of the Merger and the other transactions contemplated hereby.

"Release" means any spill, discharge, leak, emission, escape, injection, dumping, or other release by the Company of any Materials of Environmental Concern into the environment.

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

"Spoonful" means Spoonful Management LLC.

"Target Working Capital" means Zero Dollars ($0).

"Tax" or "Taxes" means any and all taxes whatsoever, including any interest, penalties or other additions to tax that may become payable in respect thereof, whether disputed or not, imposed by any Governmental Authority, which taxes shall include all federal, state, local or foreign income taxes, profits taxes, taxes on gains, gross receipts taxes, goods and services taxes, franchise taxes, estimated taxes, alternative minimum taxes, sales taxes, use taxes, ad valorem taxes, transfer taxes, real or personal property taxes, land transfer taxes, registration taxes, value added taxes, escheat or unclaimed property assessments, excise taxes, natural resources taxes, severance taxes, stamp taxes, occupation taxes, premium taxes, workers' compensation taxes, windfall taxes, environmental taxes, taxes on stock, social security or similar taxes (including FICA), welfare taxes, unemployment insurance taxes, disability taxes, payroll taxes, license charges, employee or other withholding taxes, net worth taxes, and other taxes, fees, duties, levies, customs, tariffs, imposts, assessments, obligations and any charges of any kind in the nature of (or similar to) taxes.

"Tax Returns" means any and all returns, reports, information returns, declarations, statements, certificates, bills, schedules, claims for refund or other written information (including any and all schedules, attachments, amendments or related or supporting information thereto) of or with respect to any Tax filed or required to be filed with any Governmental Authority in connection with the determination, assessment or collection of any Tax or the administration of any laws, regulations or administrative requirements relating to any Tax.

"Transferred Employees" means each employee of Spoonful hired by the Surviving Company.

"Working Capital" means the excess of (a) the current assets of the Company determined in accordance with the Company's Accounting Practices and Procedures minus (b) the current liabilities of the Company determined in accordance with the Company's Accounting Practices and Procedures.

ARTICLE II
THE MERGER

2.01 The Merger

On the terms and subject to the conditions set forth in this Agreement, and in accordance with the LLC Act and the DE LLC Act, at the Effective Time, Merger Sub shall be merged with and into the Company. At the Effective Time, the separate corporate existence of Merger Sub shall cease and the Company shall continue as the Surviving Company.

2.02 Closing

Subject to the terms and conditions hereof, the closing of the transactions contemplated by this Agreement (the "Closing") will take place on the third (3rd) Business Day following the date on which all of the conditions set forth in Article IV have been satisfied or waived (other than any such conditions that by their terms cannot be satisfied until the Closing Date, which conditions shall be required to be so satisfied or waived on the Closing Date), unless another time and/or date is agreed to in writing by the Company and Parent (the "Closing Date"). The Closing shall be held at the offices of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, Massachusetts, unless another place is agreed to in writing by the Company and Parent (it being understood that the Closing may be effected by the delivery of documents via e-mail, facsimile and/or overnight courier). The consummation of the transactions contemplated by this Agreement to occur at the Closing shall be deemed to occur at 12:01 a.m. (EST) on the Closing Date. The Closing shall occur simultaneously with the "Closings" of the transactions contemplated in each of the Asset Purchase Agreement and the Other Merger Agreement.

2.03 Effective Time

Prior to the Closing, Parent shall prepare, and on the Closing Date, the Parties shall cause a certificate of merger (the "Certificate of Merger") to be filed with the Secretary of State of the State of Delaware and the State of California, in such form as is required by, and executed and acknowledged in accordance with, the relevant provisions of the LLC Act and the DE LLC Act and shall make all other filings or recordings required under the LLC Act and the DE LLC Act in connection with the Merger. The Merger shall become effective at the time upon which the Certificate of Merger is duly filed and accepted with such Secretary of State, or at such other time as Parent and the Company shall agree and specify in the Certificate of Merger (the time the Merger becomes effective being the "Effective Time").

2.04 Effect of the Merger

At the Effective Time, the effect of the Merger shall be as provided in this Agreement, the Certificate of Merger and the applicable provisions of the LLC Act and the DE LLC Act.

2.05 Operating Agreement.

The Operating Agreement of the Surviving Company shall be amended at the Effective Time to be in the form of Exhibit A attached hereto and, as so amended, such Operating Agreement shall be the operating agreement of the Surviving Company until thereafter changed or amended as provided therein and by applicable law.

2.06 Managing Member.

Wasabi Holdings, LLC shall be the managing member of the Surviving Company in accordance with the Operating Agreement of the Surviving Company.

ARTICLE III
EFFECT ON THE CONSTITUENT ENTITIES; PAYMENT OF MERGER CONSIDERATION

3.01 Effect on Equity Interests

At the Effective Time, by virtue of the Merger and without any action on the part of Merger Sub, the Company or the Members:

(a) Each outstanding unit of limited liability company membership interest of Merger Sub shall be converted into and become one unit of limited liability company membership interest of the Surviving Company.

(b) Subject to Section 3.01(e), the Company LLC Interests outstanding immediately prior to the Effective Time shall be converted into the right to receive, (A) for the Manager (i) the Per LLC Interest Closing Merger Consideration in cash minus the Escrow Amount, payable to the Manager upon the Closing in the manner provided in Section 3.02, plus (ii) subject to adjustment as provided in the Escrow Agreement, any distribution from the Escrow Account to which the Manager is entitled; or (B) for all other Members, the Per LLC Interest Closing Merger Consideration payable to the holder thereof upon the Closing in the manner provided in Section 3.02.

(c) The consideration paid in accordance with the terms of Sections 3.01(b) and 3.02 shall be deemed to have been paid in full satisfaction of all rights pertaining to such Company LLC Interests, and after the Effective Time there shall be no further registration of transfers on the transfer books of the Surviving Company of Company LLC Interests that were outstanding immediately prior to the Effective Time.

(d) Notwithstanding anything to the contrary contained herein, Parent, the Company, Merger Sub, the Surviving Company or any other applicable withholding agent, as applicable, and after adequate notice to and discussion with SBEEG as to the appropriateness of withholding shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement such amounts as may be required to be deducted and withheld under the Code, or under any provision of applicable state, local or foreign Tax Law, with respect to the making of such payment and any amounts so deducted or withheld shall be treated for all purposes of this Agreement as having been paid to the holder of Company LLC Interests in respect of which such deduction or withholding was made.

(e) Notwithstanding anything to the contrary contained herein, in no event shall the aggregate amounts payable at the Closing in connection with the Merger under this Article III exceed the Aggregate Closing Merger Consideration less the Escrow Amount.

3.02 Payment of Merger Consideration and Other Amounts.

(a) At the Closing, Parent shall pay or cause to be paid, by wire transfer of immediately available funds to the accounts specified by SBEEG in writing to Parent not less than two (2) Business Days prior to the Closing, to each Member (subject to Section 3.01) the amount specified in Section 3.01(b)(A) with respect to the Company LLC Interests held by such Member.

(b) At the Closing, Parent or Merger Sub shall pay or cause to be paid, by wire transfer of immediately available funds to the escrow account to be maintained pursuant to the Escrow Agreement (the "Escrow Account"), an amount equal to the Escrow Amount pursuant to the terms of an escrow agreement, in form and substance reasonably satisfactory to the Parent, SBEEG and the Escrow Agent, and which will be attached hereto as Exhibit B (the "Escrow Agreement"), which Escrow Amount shall be distributed to Parent or SBEEG in the manner specified in the Escrow Agreement, and, if applicable, distributed to the Members by SBEEG in accordance with this Article III.

(c) Notwithstanding anything to the contrary contained herein, Parent shall not be required to deliver to any Member any consideration for any Member's outstanding Company LLC Interests, or any other payments pursuant to this Article III, until such Member has delivered to Parent evidence of ownership of such Member's Company LLC Interests, a letter of transmittal, which shall include a general release of all claims by such Member against the Company, Parent, Merger Sub and the Surviving Company (other than claims arising out of or in connection with this Agreement or the transaction contemplated hereby), or such other documentation as may be reasonably satisfactory to Parent, or such other documentation as may be reasonably satisfactory to Parent.

(d) Not less than two (2) Business Days prior to the Closing, SBEEG shall deliver to Parent a schedule setting forth a true and complete list of all the Members, the number of Company LLC Interests held by each such holder, the amount of the Aggregate Closing Merger Consideration to be paid to each such holder on the Closing Date, and the Parent and Merger Sub shall be entitled to rely on such schedule.

(e) Notwithstanding anything to the contrary contained herein, in the case of any Member who, as of the Effective Time, owes any Indebtedness (including accrued interest) to the Company (each, a "Member Loan Amount"), Parent or Merger Sub and the Surviving Company, as the case may be, shall deduct and withhold such holder's Member Loan Amount from the Aggregate Closing Merger Consideration otherwise payable to such holder pursuant to the Merger and, if such Member Loan Amount has been paid in full, any instrument evidencing such Member Loan Amount shall be promptly returned to the applicable Member. To the extent a Member Loan Amount is so withheld by Parent, Merger Sub or the Surviving Company, as the case may be, the withheld amount shall be treated for all purposes of this Agreement as having been paid to the Member in respect of which the deduction and withholding was made, and such Member Loan Amount shall to such extent be deemed paid.

3.03 Adjustment to Aggregate Closing Merger Consideration.

(a) At least two (2) Business Days prior to the Closing, the Company will, in good faith and in accordance with the terms of this Section 3.03, prepare and deliver to Parent a written estimate (which shall be subject to review and the reasonable approval of the Parent) setting forth a calculation of the Aggregate Closing Merger Consideration (the "Estimated Aggregate Merger Consideration") and calculations of the components thereof together with an estimated closing balance sheet of the Company determined as of 11:59 p.m. (EST) on the day immediately preceding the Closing Date (the "Estimated Closing Balance Sheet"), calculated in a manner consistent with the Company's Accounting Practices and Procedures; provided, that such Closing Balance Sheet shall include (i) an estimation of Working Capital as of 11:59 p.m. (EST) on the day immediately preceding the Closing Date ("Estimated Working Capital"), and (ii) an Indebtedness Schedule setting forth the amount of Indebtedness of the Company (the "Estimated Indebtedness" and, together with the Estimated Working Capital, the "Merger Consideration Components").

(b) Within 60 days following the Closing, the Surviving Company will, in good faith and in accordance with the terms of this Section 3.03, prepare and deliver to SBEEG a calculation of the Aggregate Closing Merger Consideration and the Merger Consideration Components (the "Merger Consideration Statement"), calculated in a manner consistent with the Company's Accounting Practices and Procedures.

(c) SBEEG shall have 45 days from the date of receipt of the Merger Consideration Statement to review the computation of the Aggregate Closing Merger Consideration and the Merger Consideration Components. In connection with the review of the Merger Consideration Statement: (i) Parent and the Surviving Company will make available to SBEEG and its auditors and other advisors (if any) all records and work papers that SBEEG and its auditors and other advisors (if any) reasonably request in reviewing the Merger Consideration Statement; (ii) SBEEG and its auditors and other advisors (if any) shall be entitled to make copies thereof; and (iii) upon reasonable request of SBEEG, for copies thereof to be made and sent to SBEEG and its auditors and other advisors (if any) at the reasonable expense of SBEEG. In the event that SBEEG disagrees with the Merger Consideration Statement or the amount of any Merger Consideration Component as calculated, SBEEG shall deliver written notice of such disagreement to Parent and the Surviving Company (an "Objection Notice"). The Merger Consideration Statement and the Merger Consideration Components, as calculated, shall be final, conclusive and binding on the parties if no Objection Notice is timely delivered prior to such 45th day following delivery of the Merger Consideration Statement. If SBEEG has timely delivered an Objection Notice to Parent and the Surviving Company, Parent, on the one hand, and SBEEG, on the other hand, will endeavor to resolve any disagreements noted in the Objection Notice in good faith as soon as practicable after the delivery of such notice, but if they do not obtain a final resolution within 30 days after Parent has received the Objection Notice, SBEEG or Parent may submit the matter for resolution to a nationally recognized independent accounting firm mutually agreed upon by Parent and SBEEG (the "Firm") to resolve any remaining disagreements. Parent, on the one hand, and SBEEG, on the other hand, will direct the Firm to use its commercially reasonable efforts to render a determination within 30 days of submitting the matters to it for resolution and the Surviving Company, SBEEG and Parent and their respective agents will cooperate with the Firm during its resolution of any disagreements included in the Objection Notice. The Firm will consider only those items and amounts set forth in the Objection Notice that Parent, on the one hand, and SBEEG, on the other hand, are unable to resolve. SBEEG and Parent shall furnish or cause to be furnished to the Firm such work papers and other documents and information relating to such disputed items as the Firm may request and are available to that party or its agents and shall be afforded the opportunity to present to the Firm any material relating to such disputed items. In resolving any disputed item, the Firm may not assign a value to any item greater than the greatest value for such item claimed by any Party or less than the smallest value for such item claimed by any Party. The fees and expenses of the Firm incurred pursuant to this Section 3.03(c), shall be paid by Parent and the Manager out of the Escrow Account in inverse proportion as they may prevail on matters resolved by the Firm (by way of example, if Parent is 80% successful in the dispute, Parent would be responsible for 20% of the fees and expenses of the Firm), which proportionate allocation shall be determined by the Firm. The determination of the Firm as to any disputed matters (and the reasons therefor) shall be set forth in a written statement delivered to Parent, the Surviving Company, the Manager and SBEEG and shall be final, conclusive and binding on the parties, absent manifest error. The Parties agree that judgment may be entered for purposes of enforcement upon the determination of the Firm in any court of competent jurisdiction.

(d) The Aggregate Closing Merger Consideration, Merger Consideration Components, including the Closing Balance Sheet and Working Capital as agreed to by SBEEG and Parent or as determined by the Firm, as applicable, shall be conclusive and binding on all of the Parties and shall be deemed the "Final Aggregate Merger Consideration", "Final Closing Balance Sheet" and "Final Working Capital," respectively, for all purposes herein.

(e) The Merger Consideration Components, the Estimated Closing Balance Sheet and Final Closing Balance Sheet shall be prepared, and the Estimated Working Capital and the Final Working Capital shall be calculated pursuant to this Section 3.03 on a basis consistent with the Company's Accounting Practices and Procedures.

(f) If the Final Aggregate Merger Consideration is less than the Estimated Aggregate Merger Consideration, then an amount equal to such shortfall shall be satisfied out of the Escrow Amount by withdrawal from the Escrow Account, and Parent and SBEEG shall promptly and in any event within two (2) Business Days provide joint written instructions to the Escrow Agent directing that such shortfall amount be disbursed to the payee and account(s) specified by Parent. If the Final Aggregate Merger Consideration is greater than the Estimated Aggregate Merger Consideration, payment of such excess amount shall be made promptly and in any event within two (2) Business Days in the same manner as the payments made pursuant to Section 3.02(a) and (b).

ARTICLE IV
CLOSING CONDITIONS

4.01 Conditions to the Parent's and Merger Sub's Obligations

The obligations of the Parent and Merger Sub to consummate the transactions contemplated by this Agreement are subject to the satisfaction, or to the extent permitted by Law, waiver by the Parent and Merger Sub, of each of the following conditions to the Closing:

(a) Each of the representations and warranties of the Manager in Article VI and of the Company, SBEEG and the Manager in Article VII that is qualified by "materiality" "Business Material Adverse Effect" or a similar qualifier shall be true and correct in all respects, and each of such representations and warranties that is not so qualified shall be true and correct in all material respects, in each case, as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (except for representations and warranties made as of a specified date, the accuracy of which will be determined only as of the specified date), in all cases after giving effect to any supplement to the Disclosure Schedule.

(b) The Company, the Members and SBEEG shall have performed or complied with in all material respects all of the covenants and agreements required to be performed or complied with by them under this Agreement at or prior to the Closing;

(c) No Action will be pending or threatened in writing wherein an unfavorable judgment, decree or order would (i) prevent the performance of this Agreement or the consummation of any of the transactions contemplated hereby, (ii) declare unlawful the transactions contemplated by this Agreement or (iii) would reasonably be expected to cause such transactions to be rescinded;

(d) The Certificate of Merger shall have been duly executed and delivered on behalf of the Company and filed with each of the Delaware Secretary of State and the California Secretary of State, and accepted for filing, and the Merger shall have become effective under applicable Law;

(e) Parent shall have received the Escrow Agreement duly executed by SBEEG, the Manager and the Escrow Agent (along with the wire transfer instructions for payment of the Escrow Amount to the Escrow Agent);

(f) The Company and SBEEG shall have delivered to the Parent each of the following:

(i) A certificate, dated as of the Closing Date, signed by an officer of the Manager or the Company certifying as to the conditions specified in subsections (a), (b), (c) (to its knowledge), (k) and (l) to this Section 4.01;

(ii) Copies of all material governmental or third party consents listed on Schedule 6.04, 7.02 or 7.03 relating to the consummation of the transactions contemplated hereby, including, without limitation, the consent of the lessor of any Facility Lease to the modification of the guarantees made by Sam Nazarian and any other guarantors of such Facility Leases (or the Facility Leases themselves) (the "Guaranty Modifications") such that the act or omissions of Sam Nazarian or any other applicable guarantor (or their Affiliates) cannot cause an event of default of breach by the tenant under the applicable Facility Leases); and all such consents shall be in form and substance reasonably satisfactory to the Parent and shall be in full force and effect and not subject to any condition or waiver that has not been satisfied;

(iii) All payoff letters and lien release documentation (or other evidence of payment in full satisfaction where applicable) reasonably satisfactory to the Parent and their counsel and lenders relating to any Indebtedness being paid off at Closing and the termination of all Liens on any assets securing any such Indebtedness shall have been provided by the lenders related thereto;

(iv) All existing minute books, ledgers and registers, schedules of members, corporate seals, if any, and other corporate records relating to the organization, ownership and maintenance of the Company, if not already located on the premises of the Company;

(v) Resignations effective as of the Closing Date from the Manager and all officers of the Company;

(vi) A copy of the Organizational Documents of the Company, and a certificate of good standing from the Secretary of State of the state of formation for the Company dated within fifteen (15) days of the Closing Date, a listing of all the names and incumbency of each of the officers of the Manager executing this Agreement on behalf of itself and the Company or any Related Agreement and all resolutions adopted by the Manager or any of the Members of the Company in connection with this Agreement and the transactions contemplated hereby, in each case, certified by an appropriate officer of the Manager; and

(vii) A certification dated as of the Closing Date, conforming to the requirements of the Treasury Regulations promulgated under Section 1445 of the Code that eliminates the obligation of Buyer to withhold on the transactions contemplated hereunder pursuant to Section 1445 of the Code;

(g) Parent shall have received the Landlord Consent duly executed by the Company and the applicable lessor party thereto;

(h) Any management agreements in effect relating to the operation of the Business or other agreements between the Company and any Affiliate of SBEEG shall have been terminated;

(i) This Agreement shall have been approved and adopted by the requisite affirmative vote of the members of the Company in accordance with the LLC Act and the Company's Organizational Documents;

(j) All of the conditions set forth in Sections 6.1 and 6.2 of the Asset Purchase Agreement have been satisfied or waived (other than any such conditions that by their terms cannot be satisfied until the "Closing Date" set forth in the Asset Purchase Agreement, which conditions shall be required to be so satisfied or waived on the "Closing Date" set forth in the Asset Purchase Agreement);

(k) All of the conditions set forth in Section 4.01 of the Other Merger Agreements have been satisfied or waived (other than any such conditions that by their terms cannot be satisfied until the "Closing Date" set forth in the Other Merger Agreements, which conditions shall be required to be so satisfied or waived on the "Closing Date" set forth in the Other Merger Agreements); and

(l) Since the date of this Agreement, there shall not have occurred a Material Adverse Change, it being acknowledged that any disclosure of a matter in the Disclosure Schedule indicating that a matter might have a Material Adverse Change shall not limit the Buyer's or Parent's ability to assert that such matter has had a Material Adverse Change for purposes of this Section 4.01(l).

4.02 Conditions to the Company's, SBEEG's and the Manager's Obligations

The obligations of the Company, SBEEG and the Manager to consummate the transactions contemplated by this Agreement are subject to the satisfaction, or to the extent permitted by Law, waiver by the Company, SBEEG and the Manager of the following conditions to the Closing:

(a) Each of the representations and warranties of the Parent and Merger Sub in Article VIII that is qualified by "materiality" "material adverse effect" or a similar qualifier shall be true and correct in all respects, and each of such representations and warranties that is not so qualified shall be true and correct in all material respects, in each case, as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (except for representations and warranties made as of a specified date, the accuracy of which will be determined only as of the specified date), in all cases after giving effect to any supplement to the Disclosure Schedule;

(b) The Parent shall have performed in all material respects all of the covenants and agreements required to be performed by it under this Agreement at or prior to the Closing;

(c) No Action will be pending wherein an unfavorable judgment, decree or order would (i) prevent the performance of this Agreement or the consummation of any of the transactions contemplated hereby, (ii) declare unlawful the transactions contemplated by this Agreement or (iii) would reasonably be expected to cause such transactions to be rescinded;

(d) SBEEG shall have received a copy of the Escrow Agreement duly executed by Parent and the Escrow Agent and Parent shall be ready, willing and able to fund the Escrow Amount at Closing;

(e) The Parent shall have delivered to SBEEG each of the following:

(i) A certificate of Parent attaching copies of the resolutions duly adopted by the Parent's board of directors authorizing the execution, delivery and performance of this Agreement and the other agreements contemplated hereby, and the consummation of all transactions contemplated hereby and thereby;

(ii) An officer certificate of Parent, dated as of the Closing Date, certifying as to the conditions specified in subsections (a) and (b) of this Section 4.02 have been satisfied;

(iii) A certificate of good standing from the Secretary of State of the state of incorporation of the Parent dated within fifteen (15) days of the Closing Date; and

(iv) Copies of all material governmental or third party consents relating to the consummation of the transactions contemplated hereby, (except that the requirement to obtain the Landlord Consent and the Guaranty Modifications shall be sole responsibility of the Company and SBEEG and shall not be deemed a condition to closing pursuant to this Section 4.02); and all such consents shall be in form and substance reasonably satisfactory to SBEEG and shall be in full force and effect and not subject to any condition or waiver that has not been satisfied;

(f) All of the conditions set forth in Sections 6.1 and 6.3 of the Asset Purchase Agreement have been satisfied or waived (other than any such conditions that by their terms cannot be satisfied until the "Closing Date" set forth in the Asset Purchase Agreement, which conditions shall be required to be so satisfied or waived on the "Closing Date" set forth in the Asset Purchase Agreement); and

(g) All of the conditions set forth in Section 4.02 of the Other Merger Agreements have been satisfied or waived (other than any such conditions that by their terms cannot be satisfied until the "Closing Date" set forth in the Other Merger Agreements, which conditions shall be required to be so satisfied or waived on the "Closing Date" set forth in the Other Merger Agreements).

ARTICLE V
PRE-CLOSING COVENANTS

5.01 Conduct of the Business

(a) From the date hereof until the Closing Date, or the earlier termination of this Agreement pursuant to Article IX, except to the extent described in Schedule 5.01 or otherwise required or specifically permitted by this Agreement, the Company shall: (i) conduct the Business in the ordinary course of business consistent with past practice in all material respects (including with respect to capital expenditures, the timely making of any budgeted or emergency capital expenditures or capital expenditures that are required to maintain the Business in compliance with any applicable Laws), unless the Parent shall have otherwise consented in writing (which consent will not be unreasonably withheld, conditioned or delayed); (ii) maintain in effect the insurance coverage described on Schedule 7.16 (or reasonably equivalent replacement coverage); (iii) use its commercially reasonable efforts to preserve the present relationships of the Business with suppliers, vendors, licensees and other Persons with which the Business has business relations; (iv) maintain in effect the Business Licenses (if any) in accordance with the terms thereof and renew any Business License that would otherwise expire pursuant to the terms thereof between the date of this Agreement and the Closing; (v) use its commercially reasonable efforts to keep, or to cause Spoonful to keep, available the services of the Business Employees subject to the normal hiring and firing of Business Employees in the ordinary course of business consistent with past practice and (vi) use commercially reasonable efforts to preserve intact its business organization, value as a going concern and relationships with third parties (including lessors, licensors, suppliers, distributors and customers) and employees.

(b) From the date hereof until the Closing Date, or the earlier termination of this Agreement pursuant to Article IX, except to the extent described in Schedule 5.01 or otherwise required or specifically permitted by this Agreement or consented to in writing by the Parent (which consent will not be unreasonably withheld, conditioned or delayed), the Company shall refrain from: (i) issuing, selling or delivering any of its Company LLC Interests or other Equity Interests or issuing or selling any securities convertible into, or options with respect to, or warrants to purchase or rights to subscribe for, any of its Company LLC Interests or other Equity Interests (or amending any term of any of the foregoing); (ii) effecting any recapitalization, reclassification, dividend, split or like change in its capitalization other than dividends in the in the ordinary course of business consistent with past practice and the terms and conditions of the Company's Organizational Documents; (iii) amending its Organizational Documents; (iv) making any redemption or purchase of any of its of its Company LLC Interests or other Equity Interests; (v) (A) merging, consolidating or combining with any Person or (B) acquiring any material assets, except for acquisitions of inventory, equipment and supplies in the ordinary course of business consistent with past practice; (vi) permitting any of the assets of the Company to become subject to a Lien (other than a Permitted Lien) or selling, leasing, licensing or otherwise disposing of any assets or securities, including by merger, consolidation, asset sale or other business combination, other than in the ordinary course of business consistent with past practice; (vii) making any loans or advances to, or any investments in, any other Person (in the case of loans or advances to employees, in excess of $100,000 in the aggregate for all such loans and advances); (viii) pledging or otherwise encumbering of its Company LLC Interests or other Equity Interests; (ix) excepting as required or specifically permitted by this Agreement, entering into or amending any Contract with the Manager or any officer of the Company; (x) increasing any benefits under any Employee Benefit Plan or increasing the compensation payable or paid, whether conditionally or otherwise, to any employee, officer, manager or consultant of Company (other than (A) any increase adopted in the ordinary course of business consistent with past practice in respect of the compensation of any employee whose annual base compensation does not exceed $125,000 after giving effect to such increase or (B) any increase in benefits or compensation required by Law or required pursuant to the terms of an existing Employee Benefit Plan); (xi) becoming liable in respect of any guarantee (other than a guarantee by the Company of a Liability of the Company that is made in the ordinary course of business consistent with past practice) or incur, assume or otherwise become liable in respect of any Indebtedness; (xii) repaying, prepaying or otherwise discharging or satisfying any Indebtedness or other material Liabilities, other than in the ordinary course of business consistent with past practice, or waiving, cancelling or assigning any claims or rights of substantial value other than in the ordinary course of business consistent with past practice; (xiii) making any capital expenditures that are in the aggregate in excess of $100,000 (other than capital expenditures contemplated by the capital expenditure budget attached to Schedule 5.01, emergency capital expenditures or capital expenditures that are required to maintain the Business in compliance with any applicable Laws); (xiv) making any change in its methods of accounting or accounting practices (including with respect to reserves) or any Tax election; filing any amended Tax Return; electing or changing any method of accounting for Tax purposes; settling any Action or claim in respect of Taxes; or consenting to any extension or waiver of the limitations period for the assessment of any Tax; (xv) settling, agreeing to settle, waiving or otherwise compromising any pending or threatened Actions or claims (A) involving potential payments by or to the Company of more than $100,000 in aggregate, (B) that admit Liability or consent to non-monetary relief, or (C) that otherwise are or would reasonably be expected to be material to the Company or the Business; (xvi) entering into, adopt, terminate, modify, renew or amend in any material respect (including by accelerating material rights or benefits under) any Contract unless such Contract requires payments by the Company of less than $10,000 per month and that can be terminated by the Company upon 60 days' or less notice without penalty; (xvii) writing up or writing down any of its material assets of the Company or revalue its inventory or reserves in respect of its accounts receivable; (xviii) taking any action or failing to take any action that would result in any of the representations and warranties set forth in this Agreement becoming false or inaccurate in any material respect; or (xix) authorizing, agreeing or committing or entering into a Contract to do any of the foregoing.

5.02 Regulatory Filings

(a) The Company shall, as soon as reasonably practical after the date hereof (it being the objective of the Parties to do so within two Business Days of the date hereof), make all necessary filings and submissions under any Laws applicable to the Company for the consummation of the transactions contemplated herein and the operation of the Business following the Closing. Subject to Section 5.05 and the restrictions of applicable Law, the Company shall coordinate and cooperate with the Parent in exchanging such information and providing such assistance as the Parent may reasonably request in connection with the foregoing and Parent's efforts described in 5.02(b).

(b) The Parent shall, as soon as reasonably practical after the date hereof (it being the objective of the Parties to do so within two Business Days of the date hereof), make or cause to be made all filings and submissions required under any Laws applicable to the Parent for the consummation of the transactions contemplated herein and the operation of the business following the Closing. The Parent shall comply with any additional requests for information, including requests for production of documents and production of witnesses for interviews or depositions by any Governmental Authority. In addition, the Parent shall cooperate in good faith with all such governmental authorities and undertake promptly any and all action required to complete lawfully the transactions contemplated by this Agreement (including, without limitation, divestitures of its assets).

5.03 Closing Conditions

(a) Subject to the terms and conditions of this Agreement, from the date of this Agreement to the Closing or the earlier termination of this Agreement pursuant to Article IX, the Manager and the Company shall use commercially reasonable efforts to take or cause to be taken all actions, to file or cause to be filed all documents, to give or cause to be given all notices to Governmental Authorities or other Persons, to obtain or cause to be obtained all authorizations, consents, waivers, approvals, permits or orders from Governmental Authorities or other Persons, and to do or cause to be done all other things necessary, proper or advisable, in order to cause the conditions set forth in Section 4.01 to be satisfied and to consummate the transactions contemplated herein as soon as reasonably practicable after the satisfaction of the conditions set forth in Section 4.01 (other than those to be satisfied at the Closing) and allow the Business to be operated immediately following the Closing in the same manner as it is operated prior to the Closing; provided that neither the Company nor the Manager shall be required to expend any funds to obtain any governmental or third party consents required under Section 4.01(d), other than de minimis amounts and fees and expenses of their Representatives.

(b) Subject to the terms and conditions of this Agreement (including Section 5.02 above), from the date of this Agreement to the Closing or the earlier termination of this Agreement pursuant to Article IX, the Parent shall use commercially reasonable efforts to take or cause to be taken all actions, to file or cause to be filed all documents, to give or cause to be given all notices to Governmental Authorities or other Persons, to obtain or cause to be obtained all authorizations, consents, waivers, approvals, permits or orders from Governmental Authorities or other Persons, and to do or cause to be done all other things necessary, proper or advisable, in order to cause the conditions set forth in Section 4.02 to be satisfied and to consummate the transactions contemplated herein as soon as reasonably practicable after the satisfaction of the conditions set forth in Section 4.02 (other than those to be satisfied at the Closing).

5.04 Notification.

(a) From the date hereof until the Closing Date or the earlier termination of this Agreement pursuant to Article IX, the Company and SBEEG shall promptly after discovery thereof (and in any event prior to the Closing) disclose to the Parent in writing any (i) material variances from the representations and warranties contained in Article VI and Article VII, as applicable, together with updated and corrected Schedules, (ii) other fact or event that would constitute a breach of the covenants in this Agreement made by the Members or the Company, (iii) commencement or initiation or threat of commencement or initiation of any Action (or any material development in any pending Action) regarding the transactions contemplated hereby or otherwise involving the Company or the Business, (iv) notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated hereby, or (v) notice or other communication from any Governmental Authority in connection with the transactions contemplated. The delivery of any notice pursuant to this Section 5.04 shall not cure any breach of any representation or warranty requiring disclosure of such matter or any breach of any covenant contained in this Agreement or any Related Agreement. For the avoidance of doubt, (x) the closing conditions shall be read after giving effect to any update to the Schedules or other written notices delivered pursuant to this Section 5.04, and (y) the indemnification provisions of this Agreement shall be read without giving effect to any update to the Schedules or other written notices delivered pursuant to this Section 5.04.

(b) From the date hereof until the Closing Date or the earlier termination of this Agreement pursuant to Article IX, the Parent shall promptly (and in any event prior to the Closing) notify the Company and SBEEG after discovery by the Parent and Merger Sub of (i) any material variances from the representations and warranties contained in Article VIII and (ii) any other fact or event that would cause or constitute a breach of the covenants in this Agreement made by the Parent, if, in each case, such variance or breach would have a material adverse effect on the ability of the Parent to consummate the transactions contemplated hereby.

5.05 Contact with Providers, Suppliers, Employees and Others

From the date hereof until the Closing Date or the earlier termination of this Agreement pursuant to Article IX, the Parent and its authorized Representatives shall contact and communicate with the employees of Spoonful working at the Company, providers, customers, suppliers or any other Person with a material business relationship with the Company only after prior consultation with and oral or written approval of SBEEG or its authorized Representatives; provided, that SBEEG will consent to any reasonable request by the Parent, prospective providers of financing or their respective Representatives to contact any such employees, providers, customers, suppliers or other Persons and no such contact shall be made prior to the granting of such consent by SBEEG. Notwithstanding the foregoing, this Section 5.05 shall not prohibit any contacts or communications to the extent not related to the Company or the Merger.

5.06 No Negotiation

From the date of this Agreement until the Closing or the earlier termination of this Agreement pursuant to Article IX, the Company and the Manager shall not, and the Manager shall require the Company not to, directly or indirectly (a) solicit, initiate, encourage, negotiate or discuss any inquiries, proposals, discussions or offers from or with any Person (other than Parent) or enter into any agreement with any such Person (other than Parent) relating to, or consummate any transaction involving the sale of the business or assets of either the Company, or any of the Equity Interests of the Company, or any merger, consolidation, business combination, or similar transaction involving the Company, or any recapitalization transaction or any other transaction that would prevent the transactions contemplated by this Agreement from being consummated or (b) participate in any discussions or negotiations that any of them or any of their respective Representatives have been having with any Person (other than Parent) that relate to such matters (it being understood that any such discussions or negotiations shall immediately terminate on the date hereof) and shall not provide any such Person any additional information related to such matters or otherwise assist or participate in, or facilitate in any other manner, any effort or attempt by any Person to do or seek any of the foregoing. Additionally, SBEEG will notify the Parent as soon as practicable if any Person makes any proposal, offer, inquiry to or contact with the Company or any Member with respect to any such matter.

5.07 Financing and Other Cooperation

From the date of this Agreement until the Closing or the earlier termination of this Agreement pursuant to Article IX, the Company shall permit, the Parent and its Affiliates and lenders and its and their Representatives to have reasonable access (at reasonable times following reasonable notice) to the Company's premises, properties, books, records and personnel, and provide to the foregoing Persons (a) such contracts, financial and operating data and other information and documents of, or pertaining to, the Company, the Assets or the Business, as the Parent, any prospective providers of debt financing or their respective Representatives may reasonably request from time to time and (b) such cooperation in connection with the arrangement of any debt financing as may be reasonably requested by the Parent and Merger Sub; provided, that in the cases of clauses (a) and (b) such access shall not unreasonably interfere with the conduct by the Company of its businesses in the ordinary course of business. The Company shall make available to the Representatives of Parent upon the reasonable request of Parent and during normal working hours all officers, employees, accountants, counsel and other Representatives of the Company and its Affiliates as Parent may reasonably request. The Company shall use its best efforts to make available to the Representatives of Parent, upon the reasonable request of Parent, such suppliers of the Business and the Company or other Persons with whom the Company or any of its Affiliates maintains a similar business or commercial relationship with respect to the Company or the Business.

5.08 Parent Financing

The Parent shall use commercially reasonable efforts to take, or cause to be taken, all actions and do, or cause to be done, all thing necessary, proper or advisable to arrange the financing necessary to close the transactions contemplated hereby, including, without limitation, using all commercially reasonable efforts to consummate the financing necessary to consummate the transactions contemplated herein at or prior to the Closing.

5.09 Update Financials.

The Company shall prepare and furnish to the Parent, promptly after becoming available and in any event within fifteen (15) Business Days of the end of each calendar month, an unaudited balance sheet and unaudited statements of income and cash flow with respect to the Company (the "Update Financials") for each month following the date of the Latest Balance Sheet Date through the Closing Date.

5.10 Employment Matters.

(a) The Surviving Company shall offer employment to all Business Employees who are employed by Spoonful (or, in the case of independent contractors, offer to continue to engage such independent contractors who are under contract to perform services for the Company) on the Closing Date at a salary or wage and commission and bonus opportunity at least comparable to that in effect immediately prior to Closing. The Company and SBEEG hereby consents, and shall cause Spoonful to consent, to the hiring of the Transferred Employees of Spoonful working at the Company by the Surviving Company and waives in perpetuity, with respect to the employment or engagement by the Surviving Company of the Transferred Employees, any claims or rights the Company, SBEEG or Spoonful may have against the Surviving Company or Parent, any of their respective Affiliates or any such Transferred Employees under any non-competition, confidentiality, employment, assignment of inventions or similar Contract with the Transferred Employees. The Company and SBEEG, and SBEEG on behalf of Spoonful, acknowledge and agree that neither the Surviving Company nor Parent shall have any liability relating to or arising out of the employment of any Business Employee up to Closing and with respect to the termination on or before the Closing Date of any employee of Spoonful working at the Business on or before the Closing Date. Neither the Surviving Company nor Parent shall have any liability with respect to any current or former Business Employee of Spoonful working at the Company or any of its Affiliates, including any Transferred Employee, arising from such Business Employee's employment or engagement with Spoonful or any its Affiliates or the termination of such Business Employee's employment or engagement with the Company or Spoonful or any of its Affiliates on or before Closing. Without limiting the generality of the foregoing, from and after the Closing Date, Spoonful shall retain liability and remain responsible for any and all Liabilities in respect of the Business Employees and their beneficiaries and dependents relating to or arising in connection with or as a result of (i) the employment or engagement or the termination of employment or engagement of any such Business Employee by Spoonful or any of their Affiliates (including, without limitation, in connection with the consummation of the transactions contemplated by this Agreement); (ii) the participation in or accrual of benefits or compensation under, or the failure to participate in or to accrue compensation or benefits under, or the operation and administration of, any Employee Benefit Plan; and (iii) accrued but unpaid salaries, wages, bonuses, commissions, incentive compensation, vacation or sick pay or other compensation or payroll items (including, without limitation, deferred compensation) relating to such individual's engagement with Spoonful or its Affiliates on or before Closing. Further, SBEEG and Spoonful, as applicable, shall remain responsible for the payment of any and all retention, change in control, severance or other similar compensation or benefits which are or may become payable under an Employee Benefit Plan in connection with the consummation of the transactions contemplated by this Agreement. Subject to the first sentence of this section, nothing in this Agreement shall obligate Parent or the Surviving Company to retain any Transferred Employee in its employ for any specific time period. The Surviving Company may (i) unilaterally change the salary (either by increase or decrease) and/or the title and duties of any Transferred Employee at any time on or after the Closing Date and (ii) at the Surviving Company's sole discretion, change or eliminate any of the plans, policies or arrangements of the Surviving Company applicable to the Transferred Employees. Notwithstanding the foregoing, Parent acknowledges and agrees that any Employee Benefit Plan, including any vacation plan, which provides for benefits determined with reference to the date an employee's employment began shall be determined based upon each Transferring Employees original employment date with the Company or Spoonful.

(b) The Company and SBEEG shall be, and SBEEG shall cause Spoonful to be, responsible for timely compliance with all federal, state and local Laws with respect to the effect to any of its employees on or before Closing of the transactions contemplated by this Agreement or by any Related Agreement, including, without limitation, the Worker Adjustment and Retraining and Notification Act of 1988, as amended ("WARN") and the California Worker Adjustment and Retraining Notification Act, California Labor Code Section 1400 ("California WARN"). The Company and SBEEG agree, and SBEEG shall cause Spoonful to agree, and each of Parent and the Surviving Company agree, that it will not take any action that causes the notice provisions of WARN or any state or local analog to WARN, including, without limitation, the California WARN, to be applicable to the transactions contemplated by this Agreement or by any Related Agreement.

(c) SBEEG and its respective ERISA Affiliates (if any) shall make available COBRA Coverage in accordance with Treasury Regulation §54.4980B-9 to all "M&A qualified beneficiaries" associated with the transactions contemplated by this Agreement who have a "qualifying event" within the meaning hereof.

(d) Prior to the Closing Date, the Company and SBEEG shall have, and SBEEG shall cause Spoonful to have, with respect to any compensation or benefits contemplated by this Agreement to be received by a "disqualified individual" in connection with the transactions contemplated by this Agreement that may be deemed to constitute "parachute payments" pursuant to Code Section 280G ("Potential 280G Benefits"), provided to the members: (i) adequate disclosure of all material facts concerning any Potential 280G Benefits as provided in Code Section 280G(b)(5)(B) and (ii) provided a disqualified individual has executed a waiver of Potential 280G Benefits, a written consent seeking member approval of all such Potential 280G Benefits by the requisite vote such that all such Potential 280G Benefits resulting from the transaction contemplated hereby shall not be deemed to be "parachute payments" pursuant to Code Section 280G or shall be exempt from such treatment under such Section 280G (the "280G Vote").

(e) None of the provisions of this Section 5.10 are intended to be for the benefit of, or otherwise enforceable by, any third party, including, without limitation, any Business Employee, and no Business Employees (or any dependents of such employees) will be treated as third party beneficiaries in or under this Agreement. None of the provisions of this Section 5.10 shall be construed to amend any Employee Benefit Plan.

(f) Participation of Transferred Employees in the Employee Benefit Plans shall end as of the Closing Date. Surviving Company shall not assume sponsorship of or any Liability for any Employee Benefit Plan, including, but not limited to, any accrued, unused vacation, sick and other paid time off of the Transferred Employees.

ARTICLE VI
REPRESENTATIONS AND WARRANTIES CONCERNING THE MANAGER

Except as set forth in the Schedules attached as Schedule IV to this Agreement (each a "Schedule" and collectively, the "Disclosure Schedules") which shall be prepared in accordance with and qualify the representations and warranties herein to the extent and in the manner set forth in Section 11.01, the Manager hereby represents and warrants solely as to itself that:

6.01 Authority; Power

The Manager has all requisite power and authority to execute and deliver this Agreement and the Related Agreements to which the Manager is, or will be at Closing, a party and to perform its obligations hereunder and thereunder.

6.02 Organization

The Manager is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation. The execution and delivery of this Agreement and the Related Agreements to which it is or will be at Closing a party, as applicable, by it and the performance by it of all of its obligations under this Agreement and such Related Agreements, as applicable, have been duly approved prior to the date of this Agreement by it by all requisite action of its board of directors, shareholders, partners, managers, members, trustees or the like, as the case may be. Neither the execution and delivery of this Agreement by it, nor the consummation by it of the transactions contemplated hereby will conflict with or constitute a breach of the terms, conditions or provisions of its Organizational Documents.

6.03 Execution and Delivery; Valid and Binding Agreement

This Agreement, and each Related Agreement to which the Manager is, or will be at Closing, a party (a) have been (or, in the case of Related Agreements to be entered at Closing, will be when executed and delivered) duly executed and delivered by it, and (b) assuming that this Agreement and such Related Agreements are the valid and binding obligation of the Parent and Merger Sub, this Agreement constitutes (or in the case of Related Agreements to be entered into at Closing, will constitute when executed and delivered) the legal, valid and binding obligation of the Manager, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies.

6.04 Noncontravention

Except as set forth on Schedule 6.04, neither the execution and the delivery by the Manager of this Agreement or any Related Agreement to which it is, or will be at Closing, a party, nor the consummation of the transactions contemplated hereby or thereby by the Manager will (a) violate any Law or (b) conflict with or result in a breach or violation of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in termination of, or accelerate the performance required by, or result in a right of termination or acceleration under, or require any action by (including any authorization, consent or approval) or notice to any Person, or result in the creation of any Lien upon any Company LLC Interests of the Manager under, any of the terms, conditions or provisions of (i) any material Contract of it or (ii) any provision of its Organizational Documents, as the case may be.

6.05 Ownership of Equity Interests

Except as set forth on Schedule 6.05, the Manager is and will be at Closing the record and beneficial owner of the Equity Interests set forth by its name on the Merger Consideration Schedule, free and clear of all Liens.

ARTICLE VII
REPRESENTATIONS AND WARRANTIES
CONCERNING THE COMPANY

Except as set forth in the Disclosure Schedules (which shall be prepared in accordance with and qualify such representations and warranties to the extent and in the manner set forth in Section 11.01), the Company, SBEEG and the Manager, on a joint and several basis, make the following representations and warranties to the Parent and the Merger Sub:

7.01 Organization, Corporate Power and Authorization.

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and the Company has all requisite limited liability company power and authority and all authorizations, licenses and permits necessary to own or lease and operate its properties and to use the Assets and to carry on its businesses as now conducted. The Company is qualified to do business and in good standing in every jurisdiction in which its ownership or leasing of property or the conduct of its businesses as now conducted requires it to qualify.

(b) The Company has all requisite power and authority necessary for the execution, delivery and performance by it of this Agreement and each such Related Agreement. The Company has duly authorized by all necessary action on the part of its Manager (or equivalent) and the Members the execution, delivery and performance of this Agreement and each such Related Agreement, and the consummation of the Merger and the other transactions contemplated hereby. This Agreement and each Related Agreement to which the Company is, or will be at Closing, a party (i) have been (or, in the case of Related Agreements to be entered into at Closing, will be when executed and delivered) duly executed and delivered by each such Person that is, or will be at Closing, a party thereto and (ii) is (or in the case of Related Agreements to be entered into at the Closing, will be when executed and delivered) a legal, valid and binding obligation of each such Person, enforceable against each such Person in accordance with its terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies.

(c) The affirmative vote of the holders of a majority of the Company LLC Interests outstanding (the "Required Vote") are the only votes or consents of the holders of any class or series of the Company's Equity Interests necessary (under applicable Law or Contracts or under the Company's Organizational Documents or otherwise) to adopt this Agreement and to consummate the Merger and perform the other transactions contemplated hereby. The Required Vote has been obtained as of the date of this Agreement in compliance with all applicable Laws and the Organization Documents of the Company.

(d) The Manager, by written consent, has determined that this Agreement and the transactions contemplated hereby, including the Merger, are advisable and fair to and in the best interests of the Company and the Members and has approved the same.

(e) No "fair price," "moratorium," "control share acquisition," "business combination" or other anti-takeover statute or regulation enacted under the Laws of any State is applicable to the Merger.

7.02 Consents and Approvals

Except as set forth in Schedule 7.02, the execution and delivery by the Company (and, if applicable, one or more of its Affiliates) of this Agreement, the Related Agreements or any other instrument or document required by this Agreement or any Related Agreement to be executed and delivered by the Company (and, if applicable, one or more of its Affiliates) do not, and the performance of this Agreement, the Related Agreements and any other instrument or document required by this Agreement or any Related Agreement to be executed and delivered by the Company (and, if applicable, one or more of its Affiliates) shall not require the Company (or, if applicable, one or more of its Affiliates) to provide notice to, obtain any consent of or take any other action in respect of any Person or obtain Approval of, observe any waiting period imposed by, make any filing with or notification to, or take any other action in respect of any Governmental Authority.

7.03 Noncontravention

Except as listed on Schedule 7.03, the authorization, execution, delivery and performance of this Agreement or any Related Agreement by the Company or the Manager and the consummation of the Merger and other transactions contemplated hereby and thereby do not and will not conflict with or result in any breach of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in a violation or termination of (or right of termination in respect of), or accelerate the performance required by (or result in a right of acceleration under), or require any action by (including any authorization, consent or approval) or notice to any Person, or require any offer to purchase or prepayment of any Indebtedness or Liability under, or result in the creation of any Lien upon or forfeiture of any of the rights, properties or any assets of the Company under (a) the provisions of the Company's Organizational Documents; (b) any Lease, Employee Benefit Plan, insurance policy or other Contract that is listed or required to be listed in the Disclosure Schedules or that is otherwise material to the Company; or (c) assuming the taking of each action by (including the obtaining of each necessary authorization, consent or approval), or in respect of, and the making of all necessary filings with, Governmental Authorities, in each case, as disclosed on Schedule 7.03, any Order or material Permit applicable to or otherwise affecting the Company or any other Law to which the Company is subject.

7.04 Equity Interests

The authorized outstanding Company LLC Interests are set forth on Schedule 7.04 and such Company LLC Interests are owned of record by the Persons in the respective amounts set forth in such Schedule. All of the outstanding Company LLC Interests have been duly authorized. Except as set forth on Schedule 7.04, the Company does not have any other Equity Interests or other securities containing any equity features authorized, issued or outstanding, and there are no agreements, options, warrants or preemptive or other rights or arrangements existing or outstanding which provide for the sale or issuance of any of the foregoing by the Company. Except as set forth on Schedule 7.04, there are no agreements or other obligations (contingent or otherwise) which require the Company to repurchase, redeem or otherwise acquire, or make any payment (including any dividend or distribution) in respect of any Equity Interests and there are no existing rights with respect to registration under the Securities Act of any Equity Interests in the Company. There are no outstanding or authorized stock appreciation, phantom stock, or similar rights with respect to the Company. There are no voting trusts, proxies, stockholder agreements or any other agreements or understandings with respect to the voting or transfer of Equity Interests of the Company. The Company has made available to the Parent accurate and complete copies of the stock ledger (or equivalent records) of the Company, which records reflect all issuances, transfers, repurchases and cancellations of Equity Interests of the Company. The Company has not violated the Securities Act, any state “blue sky” or securities Laws, any other similar Law or any preemptive or other similar rights of any Person in connection with the issuance, repurchase or redemption of any of its Equity Interests.

7.05 Licenses and Permits

Schedule 7.05 contains a correct and complete list of all Approvals and Orders that are necessary for the ownership or operation of the Assets or the Business, or that have been issued, granted or otherwise made available to the Company or its Affiliates with respect to the Assets or the Business, including, without limitation, any liquor licenses (the "Business Licenses"). Each Business License is valid and in full force and effect, no Business License is subject to any Lien, limitation, restriction, probation or other qualification, and there is no default under any Business License or, to the knowledge of the Company, any basis for the assertion of any default thereunder. There is no Action pending or, to the knowledge of the Company, threatened that would reasonably be expected to result in the termination, cancellation, modification, non-renewal, revocation, limitation, suspension, restriction or impairment of any Business License or the imposition of any fine, penalty or other sanctions for violation of any legal or regulatory requirements relating to any Business License or, to the knowledge of the Company, any basis therefor. The Company or its Affiliates have, and have had at all relevant times, all Approvals and Orders that are or were necessary in order to own and operate the Assets and to operate the Business. None of the Business Licenses will be adversely affected by the consummation of the transactions contemplated hereby. The Company is in material compliance with the terms and conditions of each Business License.

7.06 Title to and Condition of Properties; Sufficiency of Assets.

(a) The Company is the sole and exclusive legal and equitable owner of all right, title and interest in, and has good, valid and marketable title to, all of the Assets, free and clear of all Liens, including, without limitation, the equipment, fixtures and other material Assets listed on Schedule 7.06(a).

(b) All tangible assets and personal property included in the Assets have been maintained in accordance with normal industry practice and are in good operating condition and repair, subject to ordinary wear and tear, and there has not been any interruption of the operations of the Business due to the condition of any such assets or properties.

(c) Except as set forth in Schedule 7.06, the Assets comprise all assets, properties, rights and Contracts used in connection with the operation of the Business, which are all of the assets, properties, rights and Contracts necessary for Parent and the Surviving Company to operate the Business following the Closing in the manner in which the Business historically has been, is currently and is proposed to be conducted. Except as set forth in Schedule 7.06, no other Person, including any Member or other Affiliate, owns or has the right to use any of the assets or property used in connection with the operation of the Business, and no Assets are in the possession of others.

(d) Use of the Leased Spaces in the Business for the sale of food, wine, liquor, and beer is permitted as of right under all applicable zoning legal requirements. The Leased Spaces are in material compliance with all applicable Laws, including those pertaining to zoning, building and the disabled.

7.07 Environmental Matters

The Company has materially complied and is in material compliance with all Environmental Laws relating to the Business, which material compliance includes the possession by the Company of all Approvals required under Environmental Laws and material compliance with the terms and conditions thereof. Schedule 7.07 includes a list of all of the Approvals required under Environmental Laws necessary to own and operate the Assets or the Business as currently conducted. To the knowledge of the Company, there are no past or present facts, circumstances, conditions, activities or incidents that could give rise to any Liability, including any Liability for investigation costs, cleanup costs, response costs, remediation costs, corrective action costs, personal injury, property damage, natural resources damages or attorneys' fees, or result in a claim against the Company, any of its Affiliates or Parent, Merger Sub or any of their respective Affiliates under any Environmental Law, arising from the operation of the Business. There is no Action pending or, to the knowledge of the Company, threatened or other written notice or claim of any violation, formal administrative proceeding or written information request by any Governmental Authority, nor has the Company or any of its Affiliates received written notice of any investigation by any Governmental Authority relating to any Environmental Law nor any other written notice or claim from a Governmental Authority or any Person alleging that the Company or any of its Affiliates is not in compliance with any Environmental Law or Approval required under any Environmental Law in connection with the Business or has any Liability under any Environmental Law or for the remediation of any Materials of Environmental Concern at any property in connection with the Business.

7.08 Financial Statements; No Undisclosed Liabilities.

(a) Schedule 7.08 contains the following consolidated financial statements (collectively, the "Financial Statements"):

(i) the unaudited balance sheet of the Company as of May 31, 2015 (the "Interim Balance Sheet") and the related statements of income and cash flow for the five-month period then ended (the "Interim Financial Statements"); and

(ii) the combined audited balance sheet of the Company, Katsuya-H&V, LLC, Katsu USA, LLC and Katsuya-Downtown L.A., LLC as of December 31, 2013 and December 31, 2014 and the related statements of income, cash flow and members' equity for each twelve (12)-month period then ended.

(b) The Financial Statements were prepared in accordance with the books and records of the Company, are accurate and complete and fairly present in all material respects the financial condition of the Company as of the dates indicated and the results of operations of the Company for the respective periods indicated, and have been prepared in accordance with the Company's Accounting Practices and Procedures, subject to changes resulting from normal, recurring period-end audit adjustments, which adjustments, individually and in the aggregate, shall not be material. Except as and to the extent the amounts are specifically accrued or disclosed in the Interim Balance Sheet, the Company does not have any existing Liabilities, except for Liabilities that were incurred in the ordinary course of the Company consistent with past practice since the date of the Interim Balance Sheet.

7.09 Absence of Certain Events.

Since May 31, 2015, the operation of the Business has been conducted only in the ordinary and usual course and in a manner consistent with past practice and there has not been any change, event, loss, development, damage or circumstance affecting the Assets or the Business which, individually or in the aggregate, has had or could reasonably be expected to have a Business Material Adverse Effect. Without limiting the foregoing, since May 31, 2015, except as set forth on Schedule 7.09, there has not been:

(a) any material decrease in the value of any of the Assets;

(b) any voluntary or involuntary sale, lease, assignment, license, transfer or other disposition of any kind of any asset or property used in connection with the operation of the Business, including the Assets, except the sale of Inventory in the ordinary course of the Business consistent with past practices;

(c) any Lien imposed, incurred or created on any of the Assets;

(d) any damage, destruction or loss of any asset or property used in connection with or relating to the operation of the Business, by fire or other casualty, whether or not covered by insurance;

(e) any capital expenditure or commitment by the Company in excess of $10,000 or series of capital expenditures or commitments in excess of $20,000 in the aggregate in connection with the Business;

(f) any payment, discharge or satisfaction of any Liability of the Business, other than payments made in the ordinary course of the Business or Liabilities reflected or reserved against in the Interim Balance Sheet, or Liabilities incurred since that date in the ordinary course of the Business consistent with past practice;

(g) any assignment, termination, modification, amendment or waiver of, or any failure to comply with any provision of, any Contract or transaction that relates to the Business, or any account receivable relating thereto, whether as a security interest or otherwise, except as would not have a Business Material Adverse Effect;

(h) any discontinuance, termination, receipt of a notice of termination of or other alteration to any relationship with any supplier, vendor or sales or service representative of the Business, except as would not have a Business Material Adverse Effect;

(i) any change in the rate of compensation, commission, bonus or other direct or indirect remuneration payable or to become payable to any Business Employee, or any agreement to pay any bonus or extra compensation or other employee benefit to any Business Employee, other than in the ordinary course of business and not in excess of 5% of such Business Employee's prior compensation;

(j) any failure to pay or discharge when due (after the application of any applicable grace periods) any Liabilities of the Business;

(k) any change in any of the accounting principles adopted by the Company in connection with the Business, or any change in the Company's accounting policies, procedures, practices or methods with respect to applying such principles, other than as required by GAAP;

(l) any material transaction or Contract entered into, or Liability created, assumed, guarantied or incurred outside the ordinary course of business in connection with the Business;

(m) any termination of employment of any employee of the Company or any of its Affiliates who provided services to the Business or any expression of intention by the Company or any of its Affiliates or by any Business Employee to terminate employment with the Company, except as would not have a Business Material Adverse Effect;

(n) any write-off of any accounts receivable or notes receivable of the Company or any portion thereof in excess of $10,000 individually or $50,000 in the aggregate, or any sale, assignment or disposition of any such account or note receivable (including by means of any factoring agreement), in each case that relate to the Business;

(o) any engagement by the Company in any transaction with any Affiliate, employee, officer, director, manager or security holder thereof in connection with the Business, other than (i) the payment of normal wages and salaries to employees in the ordinary course of business and consistent with past practice and advances to employees in the ordinary course of business for travel and similar business expenses and consistent with past practice and (ii) pursuant to written intercompany Contracts among the Company and any of its Affiliates in effect as of the date hereof;

(p) any material change in the manner in which the Company extends or receives discounts or credit from customers, suppliers or vendors of the Business;

(q) any settlement or offer or proposal to settle (i) any Action involving or relating to the Business or (ii) any litigation, arbitration, proceeding or dispute that relates to the transactions contemplated hereby or by the Related Agreements, in each case, that would result in payments in excess of $20,000 individually or $50,000 in the aggregate; or

(r) any agreement, understanding, authorization or proposal, whether in writing or otherwise, for the Company or any of its Affiliates to take any of the actions specified in this Section 7.09.

7.10 Legal Proceedings.

(a) Except as set forth on Schedule 7.10, there is no Action pending or, to the knowledge of the Company, threatened by or against the Company or any of its officers, directors or managers (in their capacities as such) (i) relating to the Business or the Assets, (ii) that, individually or in the aggregate, is reasonably likely to have a Business Material Adverse Effect on the Business or the Assets or (iii) that would (A) give any Person the right to enjoin or rescind the transactions contemplated by this Agreement or (B) otherwise prevent the Company from (x) executing and delivering this Agreement or the Related Agreements or (y) performing its obligations pursuant to, or observing any of the terms and provisions of, this Agreement or the Related Agreements, and neither the Company nor any of its Affiliates has received any claim, complaint, incident, report, threat or notice of any such Action. There is no Action pending or threatened against any other Person by the Company or any of its Affiliates relating to the Business or the Assets.

(b) Schedule 7.10 sets forth all Actions that (i) involved the Business or the Assets at any time during the past five (5) years and (ii) are no longer pending (the "Prior Actions"). All of the Prior Actions have been concluded in their entirety and none of the Assets has and will not have any Liability with respect to the Prior Actions. The Company has provided Parent and Merger Sub with all formal written communications relating to the Prior Actions between the Company and a Governmental Authority and any Orders related thereto.

(c) There are no outstanding Orders against, involving or affecting the Business or the Assets, and the Company is not in default with respect to any such Order of which it has knowledge or was served upon it.

7.11 Compliance with Laws.

(a) The Company has materially complied and is in material compliance with all Laws (excluding Laws specifically addressed elsewhere in this Article VII) applicable to (i) the properties or assets of the Business, including the Assets, and the Company's ownership, use or operation thereof, and (ii) the operation of the Business. The Company has not received any written notice to the effect that, or otherwise been advised that, the Company is not in material compliance with any such Laws, and the Company has no reason to anticipate that any existing circumstances is likely to result in an Action or a violation of any such Law. No investigation or review by any Governmental Authority with respect to the Business or the Assets is pending or, to the knowledge of the Company, threatened, nor has any Governmental Authority indicated an intention to conduct the same. The Company has not received any credible evidence that any Business Employee or agent of the Company has committed a violation of federal criminal law involving fraud, conflict of interest, bribery or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(b) Neither the Company nor any of its Affiliates, executive officers or directors (i) appears on the Specially Designated Nationals and Blocked Persons List of OFAC or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation; (ii) is otherwise a party with whom, or has its principal place of business or the majority of its business operations (measured by revenues) located in a country in which, transactions are prohibited by (A) United States Executive Order 13224, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism; (B) the United States Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001; (C) the United States Trading with the Enemy Act of 1917, as amended; (D) the United States International Emergency Economic Powers Act of 1977, as amended or (E) the foreign asset control regulations of the United States Department of the Treasury; (iii) has been convicted of or charged with a felony relating to money laundering; or (iv) is under investigation by any Governmental Authority for money laundering.

7.12 Employment Matters.

(a) Schedule 7.12 sets forth a complete and accurate list of all current Business Employees who are in employment with Spoonful as of the date hereof and each such Business Employee's (i) rate of pay or annual compensation (including actual or potential bonus payments and the terms of any commission payments or programs), (ii) title(s), (iii) status of employment or engagement, (iv) date of hire or engagement, (v) annual vacation, sick and other paid time off allowance and (vi) amount of accrued vacation, sick and other paid time off and the economic value thereof. Schedule 7.12 also separately identifies each Business Employee who is not fully available to perform his or her duties as a result of disability or other leave and sets forth the anticipated date of return to full service. All Business Employees are employed by Spoonful. As of the date hereof and as of the Closing Date, the Company does not and will not have any employees.

(b) Neither the Company nor Spoonful on behalf of the Company, is, or, as of the Closing Date, will be delinquent in payments to any Business Employee for any wages, salaries, commissions, bonuses, benefits or other compensation for any services performed by them to date or through the Closing Date or any amounts required to be reimbursed to any Business Employee or any post-employment or post-engagement obligations of any type. Upon termination of engagement of any Business Employee on or before Closing, neither Parent, Merger Sub nor any of their respective Affiliates will, by reason of anything done prior to the Closing, be liable to any Business Employee for so-called "severance pay" or any other similar payments, and to the knowledge of the Company, there are no circumstances whereby any current or former Business Employee may demand payment or compensation in connection with the termination of his or her employment on or before Closing.

(c) Neither Spoonful nor the Company is, or has ever been a party to, bound by, or negotiated any collective bargaining agreement or other Contract with a union, works council or labor organization purporting to represent any employee of the Company, Spoonful or SBEEG (collectively, "Union"), and there is not, and has never been any Union representing or purporting to represent any Business Employee. To the knowledge of the Company, no Union or group of employees is seeking or has sought to organize employees for the purpose of engaging in collective bargaining. There is not and has never been any threat of a strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor disruption or dispute affecting the Company or Spoonful. There is no unfair labor practice charge or any other action, complaint, suit, arbitration, inquiry, proceeding or investigation pending before the National Labor Relations Board or any other agency having jurisdiction thereof or, to the knowledge of the Company, threatened.

(d) Schedule 7.12(d) sets forth all Employee Benefit Plans under which current or former Business Employees (or their beneficiaries) are eligible to participate or derive a benefit or for which the Assets may be subject to any Liability. The Company has made available to Parent and Merger Sub correct and complete copies of all Employee Benefit Plans listed in Schedule 7.12(d), and has made available to Parent and Merger Sub accurate, current and complete copies of each of the following: (i) where the Employee Benefit Plan has been reduced to writing, the plan's governing document together with all amendments; (ii) where the Employee Benefit Plan has not been reduced to writing, a written summary of all material plan terms; (iii) where applicable, copies of any adoption agreements, trust agreements, other funding arrangements, custodial agreements, insurance policies and contracts, administration agreements, investment management or investment advisory agreements, or other similar agreements; (iv) the most recent summary plan description and any summaries of material modifications thereto; (v) employee handbooks and any other written communications (or a description of any oral communications) of a Company-wide nature that are currently in effect and material relating to any Employee Benefit Plan; (vi) in the case of any Employee Benefit Plan that is intended to be qualified under Code Section 401(a), a copy of the most recent determination, advisory or opinion letter from the IRS; (vii) in the case of any Employee Benefit Plan for which a Form 5500 is required to be filed, a copy of the filed Form 5500 for each of the most recent prior three (3) plan years, with schedules attached; (viii) actuarial valuations and reports, to the extent applicable, related to any Employee Benefit Plans with respect to the two (2) most recently completed plan years; and (ix) the results of the coverage, non-discrimination and other qualification related tests under Code Sections 401, 410, 411, 414 and 416 for each of the two (2) most recent plan years and any documents related to any required corrective actions taken by the Company within the past three (3) plan years, as to any plan qualified under Code Section 401(a). Each Employee Benefit Plan intended to be qualified under Code Section 401(a), and the trust (if any) forming a part thereof, is so qualified and has received a favorable determination letter from the IRS or, with respect to a prototype or volume submitted plan, can rely on an opinion letter or advisory letter from the IRS to the prototype or volume submitted plan sponsor. To the knowledge of the Company, nothing has occurred that would reasonably be expected to cause the loss of such qualification. There are no correction filings, petitions or applications pending with respect to the Employee Benefit Plans with the IRS, the U.S. Department of Labor or any other Governmental Authority. Each Employee Benefit Plan has been operated in all material respects in accordance with applicable Law and such plan's governing documents. The parties acknowledge and agree that the transactions contemplated by this Agreement are an "asset sale" (within the meaning of Treas. Reg. § 54.4980B-9, Q&A 4), which also results in "qualifying event" (i.e., termination of employment") with respect to Transferred Employees. The Company or its applicable ERISA Affiliate shall be responsible for complying with the requirements of the health care continuation coverage requirements of Code Section 4980B and Subtitle B of Title I of ERISA in connection with the transactions contemplated by this Agreement with respect to all Transferred Employees who are "M&A Qualifying Beneficiaries" (within the meaning of Treas. Reg. § 54.4980B-7, Q&A 4(a)).

(e) Except as provided in Schedule 7.12(e), the Company is not and has never been (i) a member of a "controlled group of corporations," under "common control" or an "affiliated service group" within the meaning of Code Section 414(b), (c) or (m), or (ii) required to be aggregated under Code Section 414(o) or (iii) under "common control," within the meaning of Section 4001(a)(14) of ERISA, or any regulations promulgated or proposed under any of the foregoing Sections, in each case with any other entity (an "ERISA Affiliate"). Except as provided in Schedule 7.12(e), none of the Employee Benefit Plans is and neither the Company nor any of its ERISA Affiliates have at any time sponsored, contributed to or been obligated to contribute to: (i) a "defined benefit plan" as defined in ERISA Section 3(35); (ii) a pension plan subject to the funding standards of ERISA Section 302 or Code Section 412; (iii) a "multiemployer plan" as such term is defined in ERISA Section 3(37) or Code Section 414(f); (iv) a "multiple employer plan" within the meaning of ERISA Section 201(a) or Code Section 413(a); or (v) a multiple employer welfare arrangement within the meaning of ERISA Section 3(40). There are no Employee Benefit Plans under which welfare benefits are provided to the Company's employees beyond their retirement or other termination of service, other than coverage mandated by Code Section 4980B, Subtitle B of Title I of ERISA or similar state group health plan continuation Laws, the cost of which is fully paid by such Employees or their dependents.

(f) Neither SBEEG, the Company nor any other "disqualified person" or "party in interest," as defined in Code Section 4975 and Section 3(14) of ERISA, respectively, has engaged in any "prohibited transaction," as defined in Code Section 4975 or Section 406 of ERISA (which is not otherwise exempt), with respect to any Employee Benefit Plan, nor, to the knowledge of the Company, has there been any fiduciary violations under ERISA that could subject the Company (or any other Person) to any material penalty or tax under Section 502(i) of ERISA or Code Section 4975.

(g) Except as provided in Schedule 7.12(g), neither the execution and delivery of this Agreement nor the approval or consummation of the transactions contemplated herein will (either alone or in conjunction with any other event) (i) result in any payment becoming due to any Transferred Employee in connection with their employment with Spoonful or SBEEG on or before Closing, (ii) increase any payments or benefits otherwise payable under any Employee Benefit Plan, (iii) result in the acceleration of the time of payment, funding or vesting of any payments or benefits under any Employee Benefit Plan, (iv) result in the forgiveness in whole or in part of any outstanding loans made by the Company to any person, or (v) result in any compensation payable to any individual in connection with the transactions contemplated herein being nondeductible to the Company under Code Section 280G or subject to the excise tax imposed by Code Section 4999. The Company does not have any obligation to any person to provide any indemnification, "gross up" or similar payment to any Person in the event any excise tax is imposed on such person under Code Sections 409A or 4999 or similar state laws.

(h) No Representative of the Company, Spoonful or any of their respective Affiliates has made any representation, promise or guarantee to any of the Business Employees (i) that Parent or the Surviving Company intends to retain or offer to retain any such individual, or (ii) regarding the terms and conditions on which Parent or the Surviving Company may retain or offer to retain any such individual. There are no Actions pending or, to the knowledge of the Company, threatened against or involving the Company or any of its Affiliates by any Business Employee. To the knowledge of the Company, no Business Employee is in violation of any term of any employment, consulting, independent contractor, non-disclosure, non-competition, non-solicitation, inventions assignment or any other Contract (or any other legal obligation such as a trade secrets statute or common law duty of loyalty) with Spoonful. Each of the Company and Spoonful has complied in all material respects with all its obligations under Law with respect to any aspect of the employment or engagement of all Business Employees, including with respect to employment practices, the requirements of the Immigration Reform and Control Act of 1968, as amended, terms and conditions of employment, wage and hours, and the health and safety at work of their employees, and there are no claims pending or, to the knowledge of the Company, threatened by any Person in respect of employment or engagement or any accident or injury.

7.13 Taxes.

(a) All Taxes payable by the Company or any of its Affiliates (or any affiliated, consolidated, combined unitary or similar group of which the Company is or was a member), including but not limited to in respect of the Assets or the Business, have been timely paid, including but not limited to any Taxes the non-payment of which would result in a Lien on any Asset or as would otherwise adversely affect the Assets or would result in Parent, Merger Sub or the Surviving Company becoming liable or responsible therefor.

(b) All material Tax Returns required to be filed by or on behalf of the Company or any of its Affiliates (or any affiliated, consolidated, combined unitary or similar group of which the Company is or was a member), including with respect to the Assets or the Business, have been timely filed, and all such Tax Returns are true, complete and correct in all material respects and have been filed in accordance with all applicable Law; neither the Company nor any of its Affiliates has been informed in writing by any jurisdiction that such jurisdiction believes that the Company or any of its Affiliates is or was required to file any Tax Return in respect of the Business or the Assets.

(c) All Taxes that the Company or any of its Affiliates is or was required by Law to have withheld, including in connection with the Assets or the Business, to any employee, independent contractor, creditor, stockholder, or other third party have been duly withheld or collected and timely paid to the proper Governmental Authority, and the Company and its Affiliates have complied with all reporting and recordkeeping requirements. The Company has properly classified all personnel as either employees or independent contractors.

(d) No unpaid Tax deficiency has been asserted against or with respect to the Assets or the Business and neither the Company nor any of its Affiliates has received notice of any such assertion.

(e) The Company is not and has never been a partnership the disposition of an interest in which would be subject to withholding under Code Section 1445(e)(5) or Code Section 897(g) and no withholding pursuant to Code Section 1445 will be required in connection with this Agreement or the transactions contemplated hereby.

(f) Neither the Company nor its Affiliates maintains a “permanent establishment” or “fixed base” in any foreign jurisdiction as such terms are defined in any applicable income Tax treaty and the Company does not have any requirement to file any Tax Return or pay any Tax Liability to any foreign Governmental Authority.

(g) Neither Parent nor Merger Sub will be required to include any amount in taxable income for any taxable period or portion thereof ending after the Closing Date with respect to any (i) cash or cash equivalents received on or prior to the Closing Date or (ii) income economically accrued on or prior to the Closing Date.

(h) Neither the Company nor any of its Affiliates is or has been required to make any adjustment to any Tax accounting method used with respect to the Assets or the Business and there is no application pending with any Governmental Authority requesting permission for any changes in any of its accounting methods for Tax purposes currently nor has there been in the past four (4) years. No Governmental Authority has proposed in writing any such adjustment or change in accounting method of, or that is being used with respect to, the Assets or the Business.

(i) None of the Assets is treated for federal, state, local or other applicable income Tax purposes as an equity interest in an entity or other Person.

(j) The Company (i) has never been a member of any "affiliated group" within the meaning of Code Section 1504(a) filing a consolidated federal income Tax Return or any other consolidated, combined, or unitary group for federal, state, local or foreign Tax purposes; (ii) is not a party to any contractual obligation relating to Tax sharing, Tax allocation or any similar arrangement; or (iii) does not have any liability for the income Taxes of any person under Treasury Regulation Section 1.1502-6 (or any similar or analogous law or administrative provision of federal, state, local or foreign Tax law), as a transferee or successor, or by contract or otherwise.

(k) No Tax Return in respect of any Assets or the Business is currently being audited by any Governmental Authority and no examination or audit of any such Tax Return is currently threatened in writing by any Governmental Authority.

(l) There is no pending or threatened Action in writing concerning any Tax Liability of the Company, any of its Affiliates, or otherwise concerning the Assets or the Business. No assessment or deficiency for any Tax or adjustment to any Tax item has been proposed or threatened in writing against the Company. The Company has made available to Parent and Merger Sub accurate and complete copies of all Tax Returns, examination reports and statements of deficiencies filed, assessed against or agreed to by the Company or any of its Affiliates since June 30, 2012.

(m) Neither the Company nor its Affiliates has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency. Neither the Company nor its Affiliates has executed any power of attorney with respect to any Tax, other than powers of attorney that are no longer in force. No closing agreements, private letter rulings, technical advice memoranda or similar agreements or rulings relating to Taxes have been entered into or issued by any Governmental Authority with or in respect of the Company or any of its Affiliates.

(n) The Company has never engaged in or promoted any "listed transaction" (within the meaning of Code Section 6707(A)(c)(2) and Treasury Regulation 1.6011-4).

(o) The Company is a "partnership" for U.S. federal income Tax, and applicable state and local Tax, purposes. The Company has not made any election to be treated as a corporation for U.S. federal income Tax, or state and local Tax, purposes.

7.14 Contracts.

(a) Schedule 7.14 sets forth a complete and accurate list of all of the following Contracts to which the Company or any of its Affiliates is a party or is otherwise bound relating to the Business or the Company (and with respect to any oral Contract provides a complete description of the terms of such Contract):

(i) all operating and capital leases for any assets used in connection with the Business;

(ii) all Contracts of employment with Business Employees and service Contracts with independent contractors and consultants of the Business providing for annual compensation in excess of $75,000;

(iii) all Contracts involving an annual payment from or to any Person in excess of $10,000 individually or $50,000 in the aggregate with respect to all Contracts with such Person that relate to the Business;

(iv) all Contracts for capital expenditures or the purchase or sale of any asset or property in excess of $10,000 individually for any Person or $50,000 in the aggregate for all Contracts with such Person that relate to the Business;

(v) all Contracts between the Company and any of its Affiliates that relate to the Business;

(vi) all Contracts (other than Employee Benefit Plans) with any Affiliate, director, manager, officer or employee of the Company or any family member or relative or Affiliate of any such director, manager, officer or employee that relate to the Business;

(vii) all joint venture, partnership or other Contracts relating to the Business involving a share of profits or losses with another Person;

(viii) all Contracts relating to the Business that contain a covenant not to compete or other covenant restricting the marketing, sale, commercialization or other similar activities relating to any products or services of the Business;

(ix) all Contracts pursuant to which the Company or any of its Affiliates has granted or received most favored nation pricing provisions or exclusive marketing in connection with the Business or other rights relating to Asset or the operation of the Business;

(x) all Contracts with any Governmental Authority relating to the Business;

(xi) all sales, agency, representative, distributor, franchise or similar Contracts relating to the Business;

(xii) all Contracts under which the Company subcontracts services to a third party in connection with the Business;

(xiii) all Contracts granting or permitting any Lien on any of the Assets;

(xiv) any (A) Contract pursuant to which the Company or any of its Affiliates is granted by any other Person, or grants to any other Person, any license or other right to use, or a covenant not to sue with respect to, or assigns to any Person, or is assigned by any Person, any Business Intellectual Property, or otherwise to the Business (other than shrink wrap agreements for off-the-shelf software with a replacement cost and/or annual license fees of less than $25,000), and (B) any other Contract relating in whole or in part to any Business Intellectual Property; and

(xv) any other agreement, Contract, lease, license, commitment or instrument relating to the Business to which the Company or any of its Affiliates is a party and by or to which the Business or any of the Assets is bound or subject, which has an aggregate future liability to any Person in excess of $25,000 and is not terminable by the Company or any of its Affiliates, as applicable, by notice of not more than thirty (30) days for a cost of less than $25,000.

The Company has made available to Parent and Merger Sub complete and accurate copies of all Contracts and all Contracts listed in Schedule 7.14, including all amendments and other changes thereto.

(b) Neither the Company nor its Affiliates is in breach or default under the terms of any Contract, and there exists no event, condition or occurrence that (with or without due notice or lapse of time, or both) would constitute such a breach or default, nor has the Company received any written notice of any breach or default or alleged breach or default under any Contract. To the knowledge of the Company, no other party to any Contract is in breach or default under the terms thereof, and, to the knowledge of the Company, there exists no event, condition or occurrence that (with or without due notice or lapse of time, or both) would constitute such a breach or default by any such party, nor has the Company received any notice of any breach or default by any such party.

(c) The Contracts have been entered into in the ordinary course of the operation of the Business consistent with past practice, are in full force and effect and are valid and binding obligations of the Company or an Affiliate thereof and, to the knowledge of the Company, the other parties thereto. The Company has not received any written notice from any other party to a Contract of the termination or threatened termination thereof, or of any claim, dispute or controversy with respect thereto, nor, to the knowledge of the Company, is there any basis therefor.

(d) Except as set forth on Schedule 7.02, no consent of, or notice to, any third party is required under any Contract as a result of or in connection with, and neither the enforceability nor any of the terms or provisions of any Contract will be affected in any manner by, the execution, delivery and performance of this Agreement or any Related Agreement, or the transactions contemplated hereby or thereby.

7.15 Transactions with Affiliates

Schedule 7.15 lists all Contracts or transactions relating to the Business or the Assets to or by which the Company or any of its Affiliates, on the one hand, and any of its members, officers, directors, managers or employees or, to the knowledge of the Company, any family member or Affiliate of any such member, officer, director, manager or employee, on the other hand, are or have been a party or otherwise bound or affected and that are currently pending or in effect. Except as set forth on Schedule 7.15, neither the Company nor any of its Affiliates, nor any officer, director, manager or employee of the Company or any of its Affiliates, nor, to the knowledge of the Company, any family member or Affiliate of any such officer, director, manager or employee, (a) owns, directly or indirectly, any interest in (i) any asset or other property used in or held for use in connection with the operation of the Business or (ii) any Person that is a supplier, vendor or competitor of the Business, (b) serves as an officer, director, manager or employee of any Person that is a supplier, vendor or competitor of the Business or (c) is a debtor or creditor of the Business.

7.16 Insurance

Schedule 7.16 lists each insurance policy to which the Company is a party, a named insured, or otherwise the beneficiary of coverage at any time within the past year. Schedule 7.16 lists each person or entity required to be listed as an additional insured under each such policy, provided that such Section does not include persons or entities that required to be listed as an additional insured in connection with a specific venue event. Each such policy is in full force and effect and by its terms and with the payment of the requisite premiums thereon will continue to be in full force and effect following the Closing. All such insurance policies provide reasonably adequate coverage for all material risks incident to the Business and the Assets. Neither the Company nor its Affiliates is in breach or default (including with respect to the payment of premiums or the giving of notices) under any such policy, and to the knowledge of the Company, no event has occurred which, with notice or the lapse of time, would constitute such a breach or default or permit termination or modification under such policy; and none of the Affiliates and none of its Affiliates has received any written notice or to the knowledge of the Company, oral notice, from the insurer disclaiming coverage or reserving rights with respect to a particular claim or such policy in general. Neither the Company nor its Affiliates has incurred any material loss, damage, expense or liability covered by any such insurance policy for which it has not properly asserted a claim under such policy.

7.17 [Reserved]

7.18 Accounts Receivable; Accounts Payable.

(a) All accounts receivable relating to the Business, including all accounts receivable included in the Assets (i) have arisen from bona fide transactions in the ordinary course of the Business consistent with past practice, (ii) represent valid and enforceable obligations, (iii) is presently expected to be fully collected in the aggregate face amounts thereof when due without resort to litigation and without offset or counterclaim (subject to any reserve for bad debts reflected in the Financial Statements), and (iv) are owned by the Company free and clear of all Liens. No discount or allowance from any such receivable has been made or agreed to and none represents billings prior to actual sale of goods or provision of services other than in the ordinary course of business consistent with past practice and in a manner consistent with the applicable provisions of GAAP. There is no obligor of any such account receivable that has refused or, to the knowledge of the Company, threatened to refuse to pay its obligations for any reason and, to the knowledge of the Company, no such obligor has been declared bankrupt by a Court of competent jurisdiction or is subject to any bankruptcy proceeding. Schedule 7.18(a) sets forth a complete and accurate accounts receivable aging report as of the date hereof.

(b) All accounts payable and accrued expenses of the Business have arisen only from bona fide transactions in the ordinary course of the Business consistent with past practice, and no such account payable or accrued expense is, or as of the Closing Date will be, delinquent in its payment by more than 45 days, except as otherwise set forth on Schedule 7.18(b). Schedule 7.18(b) is a complete and accurate accounts payable aging report as of the date hereof.

7.19 Absence of Restrictions on Business Activities

There is no Contract or Order binding upon the Business or any of the Assets that has had or could reasonably be expected to have the effect of prohibiting or impairing any business practice of Parent, Merger Sub or the Surviving Company, any acquisition of property (tangible or intangible) by Parent, Merger Sub or the Surviving Company, the operation of the Business by Parent or the Surviving Company or otherwise limiting the freedom of Parent or the Surviving Company to engage in any line of business or to compete with any Person.

7.20 Inventory

All Inventory is owned exclusively by the Company, free and clear of any Liens, has not been pledged as collateral, is not held by the Company on consignment from others, conforms in all material respects to all standards applicable to its use or sale imposed by any Governmental Authority, is fit for its intended purpose (and, if applicable, is not adulterated, misbranded, mispackaged or mislabeled) and is of a quality that is suitable, usable or (in the case of finished goods and products) saleable in the ordinary course of the Business. Schedule 7.20 lists all Inventory, the location of such Inventory and the approximate values of the amount of Inventory held in each such location as of the date of the Interim Balance Sheet. The quantity of the Inventory on hand, in transit and on order as of the Closing will be at levels substantially customary for the Company for that time of year in which the Closing occurs; such quantity representing Company's good faith estimate of quantity required by the Business to continue to operate in the ordinary course of Business and without interruption. Items of such Inventory which are not of a quality usable and saleable in the ordinary course have been written down to net realizable value.

7.21 Regulatory Approvals.

(a) In connection with the Business, the Company and its Affiliates are now and have at all times been in material compliance with all requirements of Regulatory Authorities with jurisdiction over the Business. The Company and its Affiliates have filed, obtained, maintained or submitted all material notices, reports, documents and records required by all applicable Laws and Regulations with respect to the Business, and all such notices, reports, documents and records were complete and correct on the date filed or submitted.

(b) Except as set forth in Schedule 7.21, neither the Company nor any of its Affiliates has received any warning letter or other written communication from any domestic or foreign Regulatory Authority regarding any failure or alleged failure by the Company or any of its Affiliates to comply with any applicable Law or Regulation or any licenses, certifications, approvals or clearances in connection with the operation of the Business, and to the knowledge of the Company, no Governmental Authority is considering any action with respect to any such failure or alleged failure to comply. The Leased Spaces contain adequate warnings, presented in a reasonably prominent manner, in accordance with applicable, Laws, Orders or requirements of any Governmental Authority and current industry practice with respect to their contents and use.

7.22 Suppliers.

(a) Schedule 7.22(a) sets forth a true, correct and complete list of the top 99 suppliers and vendors of the Business in order of net expense for the twelve (12) month period ending on the date hereof.

(b) There are not, and have not been during the two (2)-year period preceding the date hereof, any disputes with any supplier or vendor of the Company.

(c) No supplier or vendor has (i) cancelled or otherwise terminated any Contract with the Company prior to the expiration of such Contract's term (or elected not to renew such Contract at the expiration of such term), (ii) cancelled or has threatened in writing to cancel or otherwise terminate its relationship with the Company, (iii) reduced or has threatened in writing to reduce its sales to the Company or (iv) has sought or is seeking to change the amounts payable by the Company or any of its Affiliates in connection with the sale of their products or services to the Business, or has notified the Company or any of its Affiliates in writing of any intention to do any of the foregoing, including after the consummation of the transactions contemplated hereby.

(d) Neither the Company nor its Affiliates has, in the past twelve (12) months, (i) cancelled or otherwise terminated any Contract with a supplier or vendor of the Company prior to the expiration of such Contract's term (or elected not to renew such Contract at the expiration of such term), (ii) cancelled or has threatened in writing to cancel or otherwise terminate its relationship with any such supplier or vendor, (iii) reduced or has threatened in writing to reduce its purchases from any such supplier or vendor or (iv) has sought or is seeking to change the amounts payable by the Company or any of its Affiliates in connection with the purchase of products or services for the Business, or has notified such supplier or vendor in writing of any intention to do any of the foregoing, including after the consummation of the transactions contemplated hereby.

(e) Neither the Company nor its Affiliates, in the past twelve (12) months, observed any quality or delivery issues with any seller or vendor in connection with the Business.

(f) The Company does not have any single source suppliers or vendors.

7.23 No Brokers

Except as set forth in Schedule 7.23, neither the Company nor its Affiliates nor any of their respective Representatives has employed or engaged, either directly or indirectly, or incurred or will incur any Liability to or is subject to any claim of, any broker, finder, investment banker or other agent or intermediary in connection with the transactions contemplated by this Agreement.

7.24 Gift Card Liability

The Company represents that it has a Liability for unredeemed gift cards or gift certificates, some of which may or may not have an expiration date. The amount of outstanding gift cards and gift certificates does not exceed $82,283.

7.25 Leases.

(a) The Company has made available to Parent and Merger Sub a true, correct and complete copy of the leases, subleases, assignments, modification agreements, easements, licenses and other occupancy agreements relating to the Leased Spaces to which the Company or any Affiliate of the Company (or any predecessor in interest thereto) is a party (the "Facility Leases") listed in Schedule 7.25(a) (which Facility Leases comprise all of the Contracts inclusive of any amendments, addenda and/or supplements relating to (i) real property and/or immovable property to which the Company is a party is a party and (ii) the Leased Spaces to which any Affiliate of the Company is a party). The Company has made available to Parent and Merger Sub a true, correct and complete copy of any guarantees or other security agreements for the Facility Leases (the "Facility Guarantees") listed in Schedule 7.25(a) (which Facility Guarantees comprise all of the guarantees and security agreements relating to real property and/or immovable property related to the Facility Leases).

(b) Schedule 7.25(b) sets forth (i) the name and address of the lessor or sublessor, as applicable, under the Facility Leases, (ii) the street address of the premises leased thereunder (the "Leased Spaces"), (iii) the square footage for the Leased Spaces, (iv) the commencement and termination dates of such Facility Leases and the rent commencement date for such Facility Leases, (v) the (A) current fixed rent, percentage rent, if any (along with the applicable breakpoint), and all other charges currently payable under the Facility Leases, including, without limitation, tenant's proportionate share of common area maintenance charges, utility payments, promotional fees, real estate taxes and insurance charges and (B) future fixed rent and percentage rent, if any (along with the applicable breakpoint), including during any options to renew, (vi) the security posted thereunder (including, without limitation, any cash deposits, letters of credit and/or bonds), (vii) all options to renew, if any, and (viii) a description of and reference to lessor's or sublessor's rights to terminate or not renew such Facility Leases for any reason other than "tenant's default", casualty, condemnation or bankruptcy.

(c) With respect to each such Facility Lease, except as may otherwise be set forth on Schedule 7.25(c):

(i) The Facility Leases are legal, valid, binding and enforceable against the Company, and to the knowledge of the Company, enforceable against the lessors and any sublessors thereunder in accordance with its terms;

(ii) All rentals or other monies due or required to be paid thereunder, including without limitation, all fixed and/or base rent, percentage rent, common area maintenance charges and all other fees, expenses and other items of additional rental, have been paid in full and will have been paid in full through the Closing Date;

(iii) No portion of the security deposit has been used or offset by the lessors or sublessors under the Facility Leases;

(iv) There are no assessments or other charges, ordinary or extraordinary, currently assessed or, to the knowledge of the Company, threatened by any lessors, sublessors, governmental authorities or other third parties against the Leased Space and, to the knowledge of the Company, there is no state of facts that will (or are likely to) cause an increase in the rentals listed in Schedule 7.25(b);

(v) Subject to obtaining the Landlord Consent as set forth on Schedule 7.02, all necessary consents required under the Facility Leases as a result of the transaction contemplated hereby have been or will be obtained and the Facility Leases will continue to be legal, valid, binding and enforceable as written, against the lessors or sublessors following the Closing;

(vi) Subject to obtaining the Landlord Consent as set forth on Schedule 7.02 following the Closing, (x) the lessors or sublessors under the Facility Leases shall not be entitled to any recapture or other termination rights, (y) the lessors or sublessors shall not be entitled to any increase in the current rental under any Facility Lease, and (z) no options to renew, exclusivity or use preferences or abatements shall be voided or otherwise terminated and no other rights of the "tenant" shall be affected or obligations of "tenant" increased, in each case as a result of the transactions contemplated hereby;

(vii) To the Company's knowledge, no lessors or any sublessors under the Facility Leases are cancelling or terminating the Facility Leases (or, to the Company's knowledge, intend to cancel or terminate such Facility Leases) or are exercising (or intend to exercise) any option to cancel or terminate thereunder;

(viii) (a) Neither the Company nor, to the knowledge of the Company, any lessors or sublessors under the Facility Leases is in breach or default thereunder and, to the knowledge of the Company, there has been no such breach or default thereunder with the last eighteen (18) months, and (b) no event has occurred that, with notice or lapse of time or both, would constitute a breach or default or permit termination, modification or acceleration thereunder;

(ix) Neither the Company nor, to the Company's knowledge, any lessor under the Facility Leases has a claim against the other, and no offset or defense to enforcement of any of the terms of the Facility Leases exists;

(x) To the Company's knowledge, no mortgagee, over-lessor, ground-lessor or other superior interest holder for the Leased Space or the buildings and/or lands on which the same are situated ("Superior Interest Holder") is foreclosing on its interest (or, to the Company's knowledge, intends to foreclose on its interest) and, in connection therewith or otherwise, is cancelling or terminating (or, to the Company's knowledge, intends to cancel or terminate) the Facility Leases, and the Company has not been made a party to a foreclosure actions (or received a notice that it may be made a party to a foreclosure action) involving the Facility Leases or its interest in the Leased Space;

(xi) Neither the Company nor, to the knowledge of the Company, any lessors or sublessors under the Facility Leases is in breach or default under any Contract with a Superior Interest Holder, and no event has occurred that, with notice or lapse of time or both, would constitute a breach or default or permit termination, modification or acceleration thereunder;

(xii) To the Company's knowledge, no Actions (voluntary or involuntary) are pending against Landlord under the bankruptcy laws of the United States or any state thereof;

(xiii) Neither the Company nor, to knowledge of the Company, any lessors or sublessors of the Facility Leases has repudiated any provision thereof;

(xiv) To the Company's knowledge, there are no easements, restrictions or other agreements (whether or not of record) which interfere (or could interfere) with the use of the Leased Spaces for the purposes permitted under the Facility Leases (whether or not such agreements easements, restrictions or other agreements are referenced in such Facility Leases);

(xv) The Company has complied with all maintenance obligations in accordance with the terms of the respective Facility Leases including, without limitation, the roof, plumbing, gasoline pumps, lines and equipment, gasoline tanks, electrical systems located thereon and the same are in good repair;

(xvi) The Company has not received any noise, vibration or nuisance complaints from any party (including from any lessors or sublessors, any other commercial or residential tenants or any community boards) with respect to any activity going on in or about the Leased Spaces within the last twenty-four (24) months;

(xvii) The Company has not made any noise, vibration or nuisance complaints against any party (including any lessors or sublessors or any other commercial or residential tenants) with respect to any activity going on in the proximity of the Leased Space and there are no state of facts which the Company is aware that is (or is likely to) materially interfere with business operations in the Leased Spaces;

(xviii) The Company's possession and quiet enjoyment of the Leased Space is not currently being disturbed;

(xix) Except as otherwise set forth in the Facility Leases, there are no refurbishments, renovations or other upgrades required to be performed by Tenant under any of the Facility Leases at any time during the term thereof, including any options to renew, and the Company has not received any written requests from any lessors or sublessors to refurbish, renovate or otherwise upgrade the Leased Spaces;

(xx) The Company has not received notice of any pending or threatened condemnation or expropriation proceedings, lawsuits or administrative actions relating to the Facility Leases that would adversely affect the current use, occupancy or value of the Facility Leases;

(xxi) The Company has not assigned, pledged, transferred or conveyed any interest in the leasehold and is not aware of any such assignment, transfer or conveyance.

7.26 Mailing Lists

All (a) lists of customers, (b) lists of suppliers and vendors, (c) depletion data, and (d) trade mailing lists of the Business, in any format, in the possession of the Company, which will be delivered to Parent and Merger Sub at the Closing (collectively, the "Mailing List"), are true, correct and complete copies of all of the lists owned, held or used by the Company in connection with the Business

7.27 Certain Payments

During the last three (3) years, neither the Company nor any director, officer, manager, partner, agent, or employee acting for or on behalf of the Company has, directly or indirectly, with respect to the Business (a) made any payment not in the ordinary course (including any bribes, payoffs or kickbacks), whether in money, property, or services (i) to obtain favorable treatment in securing business, (ii) to pay for favorable treatment for business secured, or (iii) to obtain special concessions or for special concessions already obtained, or (b) established or maintained any material fund or asset that has not been recorded in the books and records of the Company.

7.28 Indebtedness

Except as set forth on the Indebtedness Schedule, the Company has no outstanding Indebtedness. For each item of Indebtedness, Schedule 7.28 correctly sets forth the debtor, the Contract governing the Indebtedness, the principal amount of the Indebtedness as of the date of this Agreement, the creditor, the maturity date, the collateral, if any, securing the Indebtedness (and all Contracts governing all related Liens).

7.29 Books and Records

The books and records relating to the Business and the Company which have been made available to Parent are complete and accurate.

7.30 Disclosure

Neither this Agreement nor the Disclosure Schedule contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary, including with respect to the Business or the Assets, in order to make the statements contained herein or therein not misleading in light of the circumstances under which they were made.

ARTICLE VIII
REPRESENTATIONS AND WARRANTIES CONCERNING PARENT AND MERGER SUB

The Parent represents and warrants to the Members that:

8.01 Organization and Power

The Parent is a Delaware corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware, with full corporate power and authority to enter into this Agreement and perform its obligations hereunder. The Merger Sub is a Delaware limited liability company duly formed, validly existing and in good standing under the Laws of the State of Delaware, with full corporate power and authority to enter into this Agreement and perform its obligations hereunder.

8.02 Authorization; Valid and Binding Agreement

The execution, delivery and performance of this Agreement by each of the Parent and Merger Sub and the consummation of the transactions contemplated hereby have been duly and validly authorized by all requisite corporate action and no other proceedings on its part are necessary to authorize its execution, delivery or performance of this Agreement. This Agreement has been duly executed and delivered by the Parent and Merger Sub and, assuming the due authorization, execution and delivery by the other Parties, constitutes a legal, valid and binding obligation of the Parent and Merger Sub, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies.

8.03 No Breach

Neither the Parent nor Merger Sub is subject to or obligated under its Organizational Documents any applicable Law, or any material Contract, which would be breached or violated in any material respect by the Parent's or Merger Sub's execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby.

8.04 Governmental Consents, etc

Except as set forth on Schedule 8.04, neither the Parent nor Merger Sub is required to submit any notice, report or other filing with any Governmental Authority in connection with the execution, delivery or performance by it of this Agreement or the consummation of the transactions contemplated hereby. No consent, approval or authorization of any Governmental Authority or any other Person is required to be obtained by the Parent or Merger Sub in connection with its execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby. Neither the Parent nor Merger Sub is subject to any Order.

8.05 Litigation

There are no Actions pending or, to the Parent's or Merger Sub's knowledge, threatened against or affecting the Parent or Merger Sub at law or in equity, or before or by any Governmental Authority, which would materially and adversely affect the Parent's or Merger Sub's performance under this Agreement or the consummation of the transactions contemplated hereby.

8.06 Broker's Fees

There are no brokerage commissions, finders' fees or similar compensation payable in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of the Parent or its Affiliates.

ARTICLE IX
TERMINATION

9.01 Termination

This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of the Parent and SBEEG; or

(b) Upon Termination of the Asset Purchase Agreement.

9.02 Effect of Termination

In the event of a termination of this Agreement by either the Parent or SBEEG, on behalf of the Members as provided above, the provisions of this Agreement shall immediately become void and of no further force and effect (other than this Section 9.02 (Effect of Termination), Article XII (Miscellaneous), Sections 6.06 (Broker's Fees), 7.21 (Broker's Fees) and 8.06 (Broker's Fees), and Section 10.08 (Jurisdiction; Venue; Service of Process) hereof which shall survive the termination of this Agreement) and there shall be no Liability on the part of the Parent, Merger Sub, any of the Company, SBEEG or the Members to one another, except to the extent otherwise provided in the Asset Purchase Agreement.

ARTICLE X
INDEMNIFICATION

10.01 Survival; Notice of Indemnification Claims.

(a) The representations, warranties and Pre-Closing Covenants in this Agreement shall survive the Closing and shall terminate on the date that is eighteen (18) months after the Closing Date (the "General Survival Period"); provided that (A) the representations and warranties in Section 6.01 (Authority; Power), Section 6.02 (Organization), 6.03 (Execution and Delivery; Valid and Binding Agreement), Section 6.04(b)(ii) (Breach of Organizational Documents), Section 6.05 (Ownership of Equity Interests), Section 7.01 (Organization, Corporate Power and Authorization), Section 7.02 (Consents and Approvals), Section 7.03(a) (Breach of Organizational Documents), Section 7.04 (Equity Interests), Section 7.15 (Transactions with Affiliates), Section 7.23 Error! Reference source not found. (No Brokers), Section 7.25 (Leases), Section 7.28 (Indebtedness), Section 8.01 (Organization and Power), Section 8.02 (Authorization; Valid and Binding Agreement) and Section 8.03 (No Breach) shall survive indefinitely, and (B) the representations and warranties in Section 7.12 (Employment Matters) and Section 7.13 (Taxes) shall survive until the 30th day following the termination of the applicable statutes of limitation (as extended by any tolling periods and other extensions) with respect to the liabilities in question). Post-Closing Covenants in this Agreement shall survive the Closing in accordance with their terms and claims in respect thereof must be brought prior to the expiration of the applicable statute of limitations in respect of such claims. No claim for indemnification hereunder for breach of any such representations, warranties, covenants, agreements and other provisions may be made after the expiration of the survival period set forth in the immediately preceding sentences; provided that (x) any representation, warranty, covenant, agreement or other provision in respect of which indemnity may be sought under Section 10.02(a) or under Section 10.03, and the indemnity with respect thereto, shall survive (with respect to any claim that has been made) the time at which it would otherwise terminate pursuant to this Section 10.01 if timely written notice thereof shall have been given to the Person against whom such indemnity may be sought prior to such time of termination and (y) claims for indemnification based on upon fraud are not subject to the time limitations set forth in this Section 10.01. For the avoidance of doubt, with respect to any claim for indemnity that is made under Section 10.02(a) or Section 10.03 based on a breach of or inaccuracy in any statement, representation or warranty contained in any certificate delivered by or on behalf of a Party thereto at the Closing (each a "Closing Certificate"), such statements, representations and warranties shall survive for the General Survival Period (except that the statements, representations and warranties contained in the Closing Certificates to be delivered pursuant to Sections 4.01(f)(i) and 4.02(e)(ii) (the "Bring Down Certificates") shall survive for the same periods as the underlying representations, warranties or covenants set forth in this Agreement to which they relate). For the avoidance of doubt, claims for indemnification based on Section 10.02(a)(ii), (iv), (v), (vi) or (vii) shall not be subject to the time limitations set forth in this Section 10.01.

(b) If an Indemnified Person (as defined below) wishes to make a claim for indemnification under this Article X, the Indemnified Person shall give written notice of such claim to the Indemnifying Person (as defined below). Such written notice shall describe the basis for such claim for indemnification and the amount of Losses involved (if quantifiable), in each case, in reasonable detail in light of the facts then known to the Indemnified Person; provided, that the failure to so notify the Indemnifying Person shall not relieve the Indemnifying Person of its obligations hereunder except to the extent that (and only to the extent that) such failure shall have caused the damages for which the Indemnifying Person is obligated to be greater than such damages would have been had the Indemnified Person given the Indemnifying Person adequate notice hereunder. SBEEG shall give and receive all notices on behalf of all Seller Indemnified Persons in the case of all claims for indemnification under this Article X.

10.02 Indemnification by SBEEG for the Benefit of the Parent Indemnified Persons.

(a) Provided that timely notice has been made within the prescribed survival period set forth in Section 10.01 above, from and after the Closing, the Parent, Merger Sub and each of their respective Affiliates (including, following the Closing, the Company) and each director, officer, employee, agent, manager, consultant, advisor, or other representative (each a "Representative") of such Person, including their respective legal counsel, accountants, and financial advisors, and all of the successors, assigns and legal representatives of the foregoing (each, a "Parent Indemnified Person"), shall be indemnified and held harmless by the Manager by means of the payment to such Parent Indemnified Persons of escrow funds from time to time held in the Escrow Account maintained pursuant to the Escrow Agreement ("Escrow Funds") and, from and after the time that the Escrow Funds have been fully distributed or are otherwise no longer available for such purposes, the Parent Indemnified Persons shall be indemnified and held harmless by SBEEG, in each case, from, against and in respect of any and all actual Losses (whether or not such Losses relate to a Third Party Claim (as defined below)), which all or any of such Parent Indemnified Persons may suffer or sustain as a result of, directly or indirectly relating to, or arising out of:

(i) any inaccuracy in or breach of any representation or warranty contained in Article VII, in each case, without giving effect to any update to the Disclosure Schedules;

(ii) any nonfulfillment or breach of any covenant, agreement or other provision by the Company contained in this Agreement or the Escrow Agreement;

(iii) any nonfulfillment or breach of any Pre-Closing Covenant by the Company contained in this Agreement;

(iv) any claim or Action brought by any of the Members that relates to the allocation of the aggregate purchase price among the Members pursuant to this Agreement or among any of the Parties (other than Buyer, Merger Sub or Wasabi Holdings, LLC) to this Agreement, the Other Merger Agreements or the Asset Purchase Agreement;

(v) the lawsuit currently filed in the Superior Court of the State of California, County of Los Angeles, Case No. BC 585265 and any and all substantially similar matters, including further litigation, that may arise out of substantially similar facts to those set forth in Los Angeles, Case No. BC 585265;

(vi) any claim or Action arising out of or related to the Exempted Litigation; or

(vii) any claim or Action brought by any holder of Company LLC Interests, or any other Person alleging to own Equity Interests of the Company or otherwise having an interest in the Company to the extent such claim or Action relates to (A) this Agreement, the Merger or any other event, action, omission or condition (or series of events, actions, omissions or conditions) occurring or existing on or prior to the Closing Date) other than claims arising out of conditional Per LLC Interest Closing Merger Consideration pursuant to Section 3.02(c), which, for the avoidance of doubt, shall be the liability of Buyer and Parent; or (B) any assertion of dissenters, appraisal or similar rights.

(b) Provided that timely notice has been made within the prescribed survival period set forth in Section 10.01 above, from and after the Closing, each Parent Indemnified Person, shall be indemnified and held harmless by SBEEG, in each case, from, against and in respect of any and all actual Losses (whether or not such Losses relate to a Third Party Claim (as defined below)), which all or any of such Parent Indemnified Persons may suffer or sustain as a result of, directly or indirectly relating to, or arising out of:

(i) any inaccuracy in or breach of any representation or warranty made by the Manager under Article VI without giving effect to any update to the Disclosure Schedules; or

(ii) any nonfulfillment or breach of any covenant, agreement or other provision by the Manager or SBEEG contained in this Agreement.

(c) Notwithstanding anything to the contrary contained in this Agreement or in any Related Agreement: (i)(A) in the case of any representation or warranty made by the Manager in Article VI, or any breach by SBEEG or the Manager of a covenant of SBEEG or the Manager contained herein, SBEEG and the Manager shall be liable for the indemnifiable Losses associated with such breach, and (ii)(B) the other Members shall have no liability in connection therewith; (ii) in the case of any breach of a representation or warranty made by the Company in Article VII or a breach of a Pre-Closing Covenant of the Company, SBEEG and the Manager shall be severally and not jointly liable for such indemnifiable Losses associated with such breach; (iii) neither SBEEG nor the Manager shall have liability under Section 10.02(a)(i) unless and until the aggregate of all Losses relating thereto, for which they would, but for this Section 10.02(c), be liable exceeds on a cumulative basis an amount equal to $300,000 **(**the "Deductible"), the calculation of which will include all Losses paid pursuant to the Asset Purchase Agreement (as Losses is defined therein) and the Other Merger Agreements (as Losses is defined therein), and then only to the extent such Losses exceed the Deductible; (iv) except as set forth in Section 10.02(f), the aggregate liability under Section 10.02(a)(i) shall in no event exceed $7,500,000 (the "Cap"), the calculation of which will include all Losses paid pursuant to the Asset Purchase Agreement (as Losses is defined therein) and the Other Merger Agreements (as Losses is defined therein).

(d) Notwithstanding anything to the contrary contained in this Agreement or in any Related Agreement: (i) the amount of indemnity payable pursuant to this Section 10.01(b) with respect to any Losses shall be reduced (A) by any reserves or accruals reflected on the face of the Latest Balance Sheet (as opposed to merely being disclosed in the notes thereto, if any) to the extent specifically and relating to the subject matter of the applicable Losses or (B) to the extent any such Loss amount has already been taken into account in making any adjustment to the Aggregate Closing Merger Consideration contemplated in Section 3.03; and (ii) no Member shall be liable for any indemnifiable Losses.

(e) [Reserved.]

(f) Notwithstanding Section 10.02(a), neither the Deductible nor the Cap shall apply to any claims based on fraud or intentional misrepresentation or claims for indemnification pursuant to Section 10.01(a) in respect of breach of representations and warranties set forth in Section 6.01 (Authority; Power), Section 6.02 (Organization), Section 6.03 (Execution and Delivery; Valid and Binding Agreement), Section 6.04(b)(ii) (Breach of Organizational Documents), Section 6.05 (Ownership of Equity Interests), Section 6.06 (Broker's Fees), Section 7.01 (Organization, Corporate Power and Authorization), Section 7.03(a) (Breach of Organizational Documents), Section 7.04 (Equity Interests), Section 7.13 (Taxes), Section 7.15 (Transactions with Affiliates), Section 7.23 Error! Reference source not found. (No Brokers), Section 7.25 (Leases) and Section 7.28 (Indebtedness) (or any breach of or inaccuracy in any statement, representation or warranty contained in any Bring Down Certificate to the extent relating to any of the foregoing representations and warranties). For the avoidance of doubt, claims for indemnification based on any of Sections 10.02(a)(ii) through (vii) shall not be subject to the monetary limitations set forth in Section 10.02(c).

(g) The right of any Parent Indemnified Person to indemnification pursuant to this Article X or Article XI will not be affected by any investigation conducted or knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing, with respect to the accuracy of any representation or warranty, or performance of or compliance with any covenant or agreement, referred to herein. The waiver of any condition contained in this Agreement based on the breach of any such representation or warranty, or on the performance of or compliance with any such covenant or agreement, will not affect the right of any Parent Indemnified Person to indemnification pursuant to this Article X or Article XI based on such representation, warranty, covenant or agreement.

(h) Each of the Manager and SBEEG hereby agrees that it shall not make, and shall not permit his, her or its Affiliates or Representatives to make any claim for indemnification against any of the Parent Indemnified Persons, the Company by reason of the fact it or any of its Affiliates or Representatives was a controlling person, director, employee or Representative of the Company thereof or was serving as such for another Person at the request of the Company (whether such claim is made pursuant to any Law, Organizational Document, Contract or otherwise) with respect to any indemnification claim brought by a Parent Indemnified Person under this Agreement. With respect to any indemnification claim brought by a Parent Indemnified Person under this Agreement, each of the Manager and SBEEG expressly waives any right of subrogation, contribution, advancement, indemnification or other claim against the Company with respect to any amounts owed by it pursuant to this Agreement or otherwise in respect of the transactions contemplated by this Agreement.

10.03 Indemnification by the Parent for the Benefit of the Members

From and after the Closing, the Parent shall indemnify each of the Members and each of their respective Affiliates (each, a "Seller Indemnified Person") and hold them harmless against any Losses which the Members may suffer or sustain, as a result of: (a) any breach of any representation or warranty of the Parent under this Agreement, and (b) any breach of any covenant, agreement or other provision of this Agreement by the Parent; provided, however, that (i) the Parent shall have no liability under Section 10.02(a) unless and until the aggregate of all Losses relating thereto, for which the Parent would, but for this Section 10.03(a), be liable exceeds on a cumulative basis an amount equal to the Deductible, the calculation of which will include all Losses paid pursuant to the Asset Purchase Agreement (as Losses is defined therein) and the Other Merger Agreements (as Losses is defined therein), and then only to the extent such Losses exceed the Deductible and (ii) the aggregate liability under Section 10.02(a) shall in no event exceed the Cap, the calculation of which will include all Losses paid pursuant to the Asset Purchase Agreement (as Losses is defined therein) and the Other Merger Agreements (as Losses is defined therein). Except (i) as contemplated in Sections 3.03 (Adjustment to Aggregate Closing Merger Consideration) and 12.16 (Specific Performance), (ii) for remedies for breach of any Related Agreement and (iii) in cases of fraud, from and after the Closing, recovery pursuant to this Article X constitutes the Seller Indemnified Persons' sole and exclusive remedy for any and all Losses or other claims relating to or arising from this Agreement and the transactions contemplated hereby and the Seller Indemnified Persons may not avoid the limitations on liability set forth in this Section 10.01(b) by seeking damages for breach of contract, tort or pursuant to any other theory of liability.

10.04 Determination of Loss Amount

The amount of any Loss subject to indemnification under Section 10.01(b) shall be calculated net of any insurance proceeds actually received in cash by the Indemnified Person on account of such Loss and paid within ninety (90) days of the submission of a claim relating thereto, net of the present value of any reasonably probable increase in insurance premiums or other charges paid or to be paid by the Indemnified Person resulting from such Loss and all costs and expenses incurred by any Indemnified Person in recovering such proceeds from its insurers. The Indemnified Person shall use commercially reasonable efforts to seek full recovery under all insurance policies covering any Loss to the same extent as it would if such Loss were not subject to indemnification hereunder, provided, however, that, for the avoidance of doubt, in no event shall Indemnified Person be required to bring an action against the provider of any such insurance policies for such recovery. In the event that an insurance recovery is received by any Indemnified Person with respect to any Loss for which any such Person has been indemnified hereunder, then a refund equal to the aggregate amount of the recovery shall be made promptly to the Person or Persons that provided such indemnity payments to such Indemnified Person.

10.05 Mitigation

Each Person entitled to indemnification hereunder shall take all commercially reasonable steps to mitigate all Losses (other than matters concerning Taxes) after becoming aware of any event which could reasonably be expected to give rise to any Losses that are indemnifiable or recoverable hereunder or in connection herewith.

10.06 Manner of Payment

Any indemnification of the Parent pursuant to Section 10.01(b) shall be effected by release of Escrow Funds and when the Escrow Funds are depleted thereafter, but only to the extent applicable, by SBEEG to Parent by wire transfer of immediately available funds to an account designated by each applicable Indemnified Person within 10 days after the final determination thereof; provided, however, that Parent may, at its election, choose to seek payment directly from SBEEG with respect to any indemnification pursuant to Section 10.02(a)(v) or (vi) and shall not be required to seek release of such amounts from the Escrow Funds. Any indemnification of the Members pursuant to Section 10.03 shall be effected by Parent's wire transfer of immediately available funds to an account designated by each applicable Indemnified Person within 10 days after the final determination thereof. Each indemnification payment made pursuant to this Article X shall, with respect to the Members and the Parent, be deemed to be an adjustment to the Aggregate Closing Merger Consideration.

10.07 Indemnification Process

(a) Any Person entitled to make a claim for indemnification under Section 10.01(b) or Section 10.03 (an "Indemnified Person") shall notify the indemnifying party (an "Indemnifying Person") in writing (the "Notice of Claim") which such Indemnified Person has determined has given rise to or would reasonably be expected to give rise to a right of indemnification under this Agreement, stating the amount of the Loss, if known (a "Loss Estimate"), describing the breach or inaccuracy and other material facts and circumstances upon which such claim is based and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed or arises as promptly as practicable after becoming aware of such matter; provided, however, that the failure so to provide such Notice of Claim or any defect in such Notice of Claim will not affect the rights of any Indemnified Persons to obtain indemnification hereunder, except to the extent such failure to include information actually and materially prejudices such Indemnifying Person. Notwithstanding the foregoing, no claim shall be brought under this Article X with respect to an event of indemnification described in Section 10.02(a)(i), (iii), or Section 10.02(b)(i) or (ii), unless the Indemnified Person, at any time prior to the end of the General Survival Period, gives the Indemnifying Person(s) a Notice of Claim with respect to such claim. If a Notice of Claim has been given on or prior to the end of the General Survival Period, the relevant representations and warranties shall survive as to such claim until the claim has been finally resolved.

(b) Except as provided below, the Indemnifying Person may elect to assume the defense of any Claims for indemnification hereunder resulting from the assertion of liability by third parties (each, a "Third Party Claim") with counsel reasonably satisfactory to the Indemnified Person by (i) giving notice to the Indemnified Person of its election to assume the defense of the Third Party Claim and (ii) giving the Indemnified Person evidence acceptable to the Indemnified Person that the Indemnifying Person has adequate financial resources to defend against the Third Party Claim and fulfill its obligations under this Article X, in each case no later than 10 days after the Indemnified Person gives notice of the assertion of a Third Party Claim. If the Indemnifying Person elects to assume the defense of a Third Party Claim:

(i) it shall diligently conduct the defense and shall not be liable to the Indemnified Person for any Indemnified Person's fees or expenses subsequently incurred in connection with the defense of the Third Party Claim other than reasonable costs of investigation;

(ii) the election will conclusively establish for purposes of this Agreement that the Indemnified Person is entitled to relief under this Agreement for any Loss arising from or in connection with the Third Party Claim (subject to the provisions of this Article X;

(iii) no compromise or settlement of such Third Party Claim may be effected by the Indemnifying Person without the Indemnified Person's consent unless (A) there is no finding or admission of any violation by the Indemnified Person of any Law or any rights of any Person, (B) the Indemnified Person receives a full release of and from any other claims that may be made against the Indemnified Person by the third party bringing the Third Party Claim, and (C) the sole relief provided is monetary damages that are paid in full by the Indemnifying Person; and

(iv) the Indemnifying Person shall have no liability with respect to any compromise or settlement of such claims effected without its consent.

(c) If the Indemnifying Person does not assume the defense of a Third Party Claim in the manner and within the period provided above, the Indemnified Person may conduct the defense of the Third Party Claim at the expense of the Indemnifying Person. Indemnifying Person will be bound by any determination resulting from such Third Party Claim or, upon the consent of Indemnifying Person, which consent shall not be unreasonably withheld, conditioned or delayed, any compromise or settlement effected by the Indemnified Person.

(d) With respect to any Third Party Claim subject to this Article X:

(i) any Indemnified Person and any Indemnifying Person, as the case may be, shall keep the other Person fully informed of the status of such Third Party Claim and any related Action at all stages thereof where such Person is not represented by its own counsel; and

(ii) both the Indemnified Person and the Indemnifying Person, as the case may be, shall render to each other such assistance as they may reasonably require of each other and shall cooperate in good faith with each other in order to ensure the proper and adequate defense of any Third Party Claim.

(e) With respect to any Third Party Claim subject to this Article X, the parties shall cooperate in a manner to preserve in full (to the extent possible) the confidentiality of all confidential information and the attorney-client and work-product privileges, including making reasonable best efforts to comply with the provisions of Section 12.16. In connection therewith, each party agrees that:

(i) it will use its best efforts, in respect of any Third Party Claim in which it has assumed or participated in the defense, to avoid production of Confidential Information (consistent with applicable Law and rules of procedure); and

(ii) all communications between any party and counsel responsible for or participating in the defense of any Third Party Claim shall, to the extent possible, be made so as to preserve any applicable attorney-client or work-product privilege.

10.08 Governing Law; Jurisdiction; Venue; Service of Process.

(a) This Agreement shall be governed by the Laws of the State of Delaware without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause application of the Laws of any jurisdiction other than the State of Delaware.

(b) All Actions arising out of or relating to this Agreement shall be heard and determined in any state or federal Court sitting in the State of New York. Each of the parties to this Agreement irrevocably submits to the exclusive jurisdiction of the state Courts of New York and to the jurisdiction of the United States District Court for the Southern District of New York, for the purpose of any Action arising out of or relating to this Agreement and each of the parties to this Agreement irrevocably agrees that all claims in respect of such Action may be heard and determined exclusively in any New York state or federal Court sitting in the State of New York. Each of the parties to this Agreement consents to service of process by delivery pursuant to Section 9.8 and agrees that a final judgment in any Action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

10.09 Limitation on Recourse

Other than in the case of fraud, no claim shall be brought or maintained by any Parent Indemnified Person against any officer, director, employee (present or former) or Affiliate of a Member which is not otherwise expressly identified as a Party hereto, and no recourse shall be brought or granted against any of them, by virtue of or based upon any alleged misrepresentation or inaccuracy in or breach of any of the representations, warranties or covenants of any party hereto set forth or contained in this Agreement or any exhibit or schedule hereto or any certificate delivered hereunder. For the avoidance of doubt and subject to the rights of Parent under the terms of any debt commitment letters with any lender, none of the parties hereto, nor or any of their respective Affiliates, solely in their respective capacities as parties to this Agreement, shall have any rights or claims against any such lender or any Affiliate thereof (collectively, the "Debt Financing Sources"), solely in their respective capacities as lenders or arrangers in connection with the transactions contemplated by this Agreement, including any related financing.

ARTICLE XI
ADDITIONAL COVENANTS AND AGREEMENTS

11.01 Disclosure Generally

The Disclosures Schedules attached hereto are incorporated herein and expressly made a part of this Agreement as though completely set forth herein. All references to this Agreement herein or in any of the Disclosures Schedules shall be deemed to refer to this entire Agreement.

11.02 Acknowledgment of Parent

The Parent acknowledges that it has conducted an independent investigation of the financial condition, results of operations, assets, liabilities, properties and projected operations of the Company and, in making its determination to proceed with the transactions contemplated by this Agreement, the Parent has relied on the results of its own independent investigation, the representations and warranties of the Company expressly and specifically set forth in this Agreement including the Disclosure Schedules and the representations and warranties of SBEEG and the Manager expressly and specifically set forth in this Agreement, the Asset Purchase Agreement and the Other Merger Agreements including the disclosure schedules thereto. **SUCH REPRESENTATIONS AND WARRANTIES BY THE COMPANY, SBEEG AND THE MANAGER CONSTITUTE THE SOLE AND EXCLUSIVE REPRESENTATIONS AND WARRANTIES OF THE COMPANY, SBEEG AND THE MANAGER TO PARENT IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, AND PARENT UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED (INCLUDING, BUT NOT LIMITED TO, ANY RELATING TO THE FUTURE FINANCIAL CONDITION, RESULTS OF OPERATIONS, ASSETS OR LIABILITIES OF THE COMPANY) ARE SPECIFICALLY DISCLAIMED BY THE COMPANY, SBEEG AND THE MANAGER.**

11.03 Tax Matters.

(a) The Parent Indemnified Persons shall be indemnified and held harmless by the Members by means of the payment to such Parent Indemnified Persons of Escrow Funds and, from and after the time that the Escrow Funds have been fully distributed or are otherwise no longer available for such purposes, by the Members, in each case, from, against and in respect of any and all actual Losses (whether or not such Losses relate to a Third Party Claim), which all or any of such Parent Indemnified Persons may suffer or sustain as a result of, directly or indirectly relating to, or arising out of: (i) all Taxes (or the non-payment thereof) of the Company or assessed on the Assets for all taxable periods ending on or before the Closing Date and the portion through the end of the Closing Date for any Straddle Period (as defined in Section 11.02(c) of this Agreement); (ii) all Taxes (or the non-payment thereof) of the Company attributable to any breach or violation of, or failure to fully perform (as applicable), any representations or covenants set forth in Section 7.13 or this Section 11.02 of this Agreement; (iii) all income Taxes (or the non-payment thereof) of any member of any Affiliated Group of which the Company (or any predecessor thereof) is or was a member on or prior to the Closing Date, including pursuant to Treasury Regulation section 1.1502-6 or any analogous or similar state, local, or non-U.S. Law or regulation; (iv) all income Taxes (or the non-payment thereof) of the Company attributable to any election under section 108(i) of the Code made with respect to a Pre-Closing Tax Period or Straddle Period; and (v) any and all income Taxes of any Person (other than the Company) imposed on the Company as a transferee or successor, by Contract or pursuant to any Law, which Taxes relate to an event, transaction or other circumstances occurring before the Closing; provided, however, that the Parent Indemnified Persons shall be indemnified and held harmless for Taxes described in this sentence only to the extent that such Taxes exceed the amount, if any, reserved for such Taxes (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax income and after reduction for any estimated Tax payments made prior to the Closing) on the face of the Final Closing Balance Sheet or shown as a liability for Taxes in Working Capital as finally determined under this Agreement. The Parent Indemnified Parties shall be reimbursed for any Taxes of the Company pursuant to this Section 11.03(a) at least five days prior to the payment of such Taxes by the Parent, the Company; provided that the Parent shall provide notice of such responsibility (and the amount) no less than 15 days prior to the payment of such Taxes by the Parent. Notwithstanding anything herein to the contrary, no limitations on indemnification contained in Article X shall apply to this Section 11.02. For all purposes of this Article XI, any indemnification obligation owing to any Parent Indemnified Person shall be satisfied by means of the payment to such Parent Indemnified Person out of the Escrow Funds and, from and after the time that the Escrow Funds have been fully distributed or are otherwise no longer available for such purposes, by SBEEG.

(b) SBEEG shall prepare all income Tax Returns for the Company that are required to be filed for all periods ending on or prior to the Closing Date (any such taxable period, a "Pre-Closing Tax Period") which have not yet been filed as of the Closing Date (collectively, "Seller Returns"). SBEEG shall timely cause to be paid any Taxes due and payable with respect to such Seller Returns in the manner provided in Section 11.03(a) above and Section 11.03(f) below. All Seller Returns shall be prepared on a basis consistent with past practice to the extent consistent with applicable Tax Law, and shall be true, correct and complete in all material respects. Not later than thirty (30) days prior to the due date for the filing of any Seller Return, SBEEG shall provide the Parent with a copy of such Seller Return and the Parent shall have the right to review, comment on, and approve any such Seller Return. SBEEG shall make such changes to such Seller Return as the Parent may reasonably request, and the Company shall file such Seller Return after SBEEG has made such changes, if any, to the reasonable satisfaction of the Parent. The Parent shall prepare and file all Tax Returns of the Company other than Seller Returns. In the case of any Tax Return of the Company prepared by Parent that concerns a Straddle Period and is not an income Tax Return (a "Buyer Return"), not later than thirty (30) days prior to the due date for the filing of any Buyer Return, Parent shall provide SBEEG with a copy of any such Buyer Return and SBEEG shall have the right to review and comment on any such Buyer Return. Parent shall consider in good faith any comments made by SBEEG to any such Buyer Return but shall not be obligated to make the changes proposed by SBEEG.

(c) In the case of Taxes that are payable with respect to a taxable period that begins on or before the Closing Date and ends after the Closing Date (a "Straddle Period"), the portion of any such Tax that is allocable to the portion of the period ending on and including the Closing Date shall be:

(i) in the case of Taxes that are either (x) based upon or related to income or receipts or (y) imposed in connection with any sale or other transfer or assignment of property (real or personal, tangible or intangible), deemed equal to the amount which would be payable if the taxable year ended on and included the Closing Date (an interim closing of the books); and

(ii) in the case of Taxes imposed on a periodic basis with respect to the assets of the Company, or otherwise measured by the level of any item, deemed to be the amount of such Taxes for the entire period (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period), multiplied by a fraction the numerator of which is the number of calendar days in the period ending on and including the Closing Date and the denominator of which is the number of calendar days in such Straddle Period.

(d) All transfer, documentary, sales, lease, use stamp, registration and other such Taxes, and any conveyance fees or recording charges imposed on the Company or the Members as a result of the transactions contemplated by this Agreement (collectively, "Transfer Taxes"), and any penalties, interest and filing fees or cost with respect to the Transfer Taxes shall be borne 50% by Parent and 50% by the Members. The Parent agrees to cooperate with SBEEG in the filing of any returns with respect to the Transfer Taxes, including promptly supplying any information in its possession reasonably requested by SBEEG that is reasonably necessary to complete such returns. If SBEEG fails to file any returns with respect to Transfer Taxes, the Parent, at SBEEG's expense, may file such returns.

(e) The Parent shall promptly notify SBEEG if the Parent receives notice of a claim by a Governmental Authority in respect of Taxes of the Company that could give rise to a liability of the Members under this Section 11.02 (a "Tax Claim"). SBEEG shall have the right to defend the Company against any such Tax Claim to the extent such Tax Claim principally concerns a taxable period ending on or prior to the Closing Date (a "Pre-Closing Tax Period"); provided that SBEEG provides the Parent with written notice of its intent to assume the defense of such Tax Claim. The Parent and its counsel shall be allowed to participate in the defense of any Tax Claim over which SBEEG has assumed the defense under the preceding sentence on a face-to-face basis at the Parent's own expense. SBEEG will not settle any Tax Claim over which SBEEG has assumed the defense under the second-preceding sentence without the prior written consent of the Parent, such consent not to be unreasonably withheld, conditioned or delayed. SBEEG shall have the right to participate at its own expense in the defense of any Tax Claim not discussed in the third preceding sentence that concerns a Pre-Closing Tax Period.

(f) To the extent not accrued as an asset in Working Capital, the Parent shall promptly pay or cause prompt payment to be made to SBEEG, on behalf of the Members, within ten (10) days after receipt thereof or entitlement thereto by the Parent, the Company or any Affiliate on behalf of the Members, of all refunds of Taxes and interest thereon received by, or credited against the Tax liability of the Parent, any Affiliate of the Parent, the Company (but only to the extent that any such credit actually reduces the Taxes paid by the Company for any Tax period (or the portion of any Straddle Period) beginning after the Closing Date) to the extent such refunds or credits are attributable to Taxes paid by the Company in a Pre-Closing Tax Period (and not due to the carry-back of any Tax attributes generated in a period other than a Pre-Closing Tax Period).

(g) Parent, Merger Sub, and the Company will cooperate fully, as and to the extent reasonably requested by the other party, in connection with any Tax matters relating to the Company (including by the provision of reasonably relevant records or information). The party requesting such cooperation will pay the reasonable out-of-pocket expenses of the other party.

(h) The Aggregate Closing Merger Consideration, and any assumption of liabilities as determined for U.S. federal income tax purposes, shall be allocated among the Assets of the Company in accordance with Code Section 1060 (and any similar provisions of state or local Law, as appropriate) and shall be set forth in a schedule delivered by Parent to SBEEG within forty-five (45) days following the Closing Date (the "Allocation Schedule"). SBEEG shall have an opportunity to review the Allocation Schedule for a period of thirty (30) days after the receipt of the Allocation Schedule and Parent will not finalize the Allocation Schedule until such thirty (30) day period has elapsed or Parent has received the consent of the Seller Entities (such consent not to be unreasonably withheld, conditioned or delayed) The Parties and their respective Affiliates shall file all Tax Returns (including IRS Form 8594) consistent with the final Allocation Schedule as determined hereunder (as reasonably adjusted to account for events occurring after the determination of the final allocation of the Purchase Price) and none of the Parties or their respective Affiliates shall take any Tax position inconsistent with the final Allocation Schedule determined hereunder unless required to do so by a change in applicable Laws or a good faith resolution of a Tax contest.

11.04 Further Assurances

From time to time, as and when requested by any Party hereto and at such Party's expense, any other Party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further actions as the requesting Party may reasonably deem necessary or desirable to evidence and effectuate the transactions contemplated by this Agreement.

11.05 Access to Books and Records

From and after the Closing, the Parent shall, and shall cause the Company to, provide SBEEG and its authorized Representatives with reasonable access, at their own cost and expense, during normal business hours and upon reasonable notice, to the books and records and, with the consent of the Parent (not to be unreasonably withheld, conditioned or delayed), any relevant personnel of the Company with respect to periods prior to the Closing Date in connection with the preparation of any financial statements or Tax Returns of the Members or any claim or Action brought against a Seller Indemnified Person relating to the Company (other than a claim or Action brought by a Parent Indemnified Person relating to or arising out of this Agreement or the transactions contemplated hereby).

11.06 Employee Matters.

(a) SBEEG shall be responsible for, and the Parent Indemnified Persons shall be indemnified and held harmless by the Members from, against and in respect of any and all actual Losses (whether or not such Losses relate to a Third Party Claim), which all or any of such Parent Indemnified Persons may suffer or sustain as a result of, directly or indirectly relating to, or arising out of any notices, payments, benefits, fines, penalties, backpay, and damages required under WARN relating to any "plant closing" or "mass layoff" (as defined in WARN) (or similar triggering event) caused in part by the termination of employees of Spoonful working at the Company before the Closing.

(b) From and after the Closing Date, the Surviving Company shall not be liable for any claims and liabilities under any welfare plans, regardless of when such claims or liabilities arise or are asserted. To the extent the Surviving Company provides any substantially similar welfare plans as those maintained by Spoonful with respect to the Business Employees providing services to the Company, the Surviving Company shall use commercially reasonable efforts to cause credit to be given (without duplication; and not to an extent greater than counted immediately before the Closing Date for comparable purposes) to all employees of the Company and their eligible dependents and beneficiaries for any premiums, co-payments and deductibles paid on or prior to the Closing Date in satisfying any deductible and out-of-pocket expense requirements under any new group medical plan for the current plan year.

(c) Effective as of the Closing Date, the Parent will use commercially reasonable efforts to count (without duplication; and not to an extent greater than counted immediately before the Closing Date for comparable purposes) the service of all employees with the Company under the Surviving Company's vacation policy and welfare benefit plans to the extent applicable to such employees. In addition, the Surviving Company shall use commercially reasonable efforts to count (without duplication; and not to an extent greater than counted immediately before the Closing Date for comparable purposes) such service but only in determining each employee's eligibility to participate in, and each such employee's vested percentage in, each of the Surviving Company's employee benefit plans (as defined in Section 3(3) of ERISA) which are subject to ERISA and are applicable to such employee, but, for the avoidance of doubt, not for benefit accrual purposes.

(d) It is expressly acknowledged, understood and agreed that nothing herein is intended to or does or shall constitute an amendment to or requirement to establish any employee benefit or other plan or grant any Person any rights as a third party beneficiary of this Agreement.

11.07 SBEEG as the Members' Representative.

(a) SBEEG shall serve as the representative of the Members and act in any and all capacities to do and perform every act and thing required or permitted to be done in connection with the transactions contemplated by this Agreement and the Related Agreements, including, without limitation:

(i) determine the presence (or absence) of claims for indemnification against the Parent and its Affiliates pursuant to Article X or Article XI above;

(ii) deliver all notices required to be delivered under this Agreement or the Related Agreements, including, without limitation, any notice of a claim for which indemnification is sought under Article X or Article XI above or any notice in respect of Section 3.03, and make all filings, enter into all Contracts, make all decisions, prosecute, defend, settle or otherwise compromise all Actions and claims and take all other actions in connection therewith, and execute any amendments to the Agreement or any Related Agreements, and provide any consents or waivers to any of the foregoing;

(iii) receive all notices required or permitted to be delivered to SBEEG, the Manager or the Members under this Agreement or Related Agreements, including, without limitation, any notice of or relating to a claim for which indemnification is sought under Article X or Article XI;

(iv) take any and all actions as SBEEG may deem necessary or desirable to resolve or settle claims under this Agreement or any Related Agreement or otherwise relating to this Agreement, any Related Agreement or Merger or other transactions contemplated hereby or otherwise as permitted or required to be taken by or on behalf of SBEEG, the Manager or the Members under this Agreement, the Escrow Agreement or other Related Agreements and exercise any rights that SBEEG, the Manager or the Members are permitted or required to do or exercise under this Agreement, the Escrow Agreement or the other Related Agreements; and

(v) in connection with the Closing, execute and receive all documents, instruments, certificates and agreements on behalf of and in the name of SBEEG, the Manager or the Company necessary to effectuate the Closing and consummate the contemplated transactions.

The Company, the Manager and SBEEG hereby acknowledge and agree that upon execution of this Agreement, any delivery by SBEEG of any waiver, amendment, agreement, certificate or other documents in respect of this Agreement, the Escrow Agreement or the other Related Agreements executed by SBEEG (in its capacity as the Members' representative hereunder), such party shall be bound by such documents as fully as if such holder had executed and delivered such documents. All decisions and actions by SBEEG within the scope of the authorization granted in this Section, including, without limitation, any agreement between SBEEG and Parent or Merger Sub relating to the resolution of disputes relating to Section 3.03, or the defense or settlement of any indemnity claims by any Indemnifying Person pursuant to Article X or Article XI hereof, shall be final and binding upon SBEEG, the Manager and, to the extent permitted by law, the Members, and no such party shall have the right to object, dissent, protest or otherwise contest the same. All expenses and other fees incurred by SBEEG shall be paid by SBEEG.

(b) Parent shall be entitled to rely on any action taken by SBEEG, on behalf of the Members, pursuant to Section 11.07(a) above (each, an "Authorized Action"). SBEEG and the Manager, jointly and severally, shall pay to and indemnify and hold harmless the Parent and the other Parent Indemnified Persons from and against any Losses which it or any of them may suffer, sustain, or become subject to, as the result of any claim by any Member that an Authorized Action is not binding on, or enforceable against, the Members.

11.08 Confidentiality.

The Manager acknowledges that the success of the Company after the Closing depends upon the continued preservation of the confidentiality of certain information it possesses, that the preservation of the confidentiality of such information by it is an essential premise of the bargain between the Manager and the Parent and Merger Sub, and that the Parent and Merger Sub would be unwilling to enter into this Agreement in the absence of this Section 11.08. Accordingly, the Manager hereby severally agrees with the Parent and Merger Sub that it, its Affiliates and its and its Affiliate's Representatives shall not, and that it shall cause its Affiliates and such Representatives not to, at any time on or after the Closing Date, directly or indirectly, without the prior written consent of Parent, disclose or use, any information involving or relating to the Business or the Company (other than in the course of fulfilling its duties to the Company in such capacity); provided, that the information subject to this Section 11.08) will not include any information generally available to, or known by, the public (other than as a result of disclosure in violation hereof); provided, further, that the provisions of this Section 11.08 will not prohibit any retention of copies of records or disclosure (A) required by any applicable Law so long as reasonable prior notice is given to Parent and the Company of such disclosure and a reasonable opportunity is afforded Parent and the Company to contest the same or (B) made in connection with the enforcement of any right or remedy relating to this Agreement or the transactions contemplated hereby. The Manager agrees that it shall be responsible for any breach or violation of the provisions of this Section 11.08 by any of its Affiliates or its or its Affiliates' Representatives.

11.09 Landlord Agreement; SNDA.

The Company shall use commercially reasonable efforts to (i) obtain the Landlord Agreement signed by the applicable lessor and (ii) a subordination, non-disturbance and attornment agreement from each mortgagee, groundlessee and superior interest holder of any Facility Lease in a form reasonably acceptable to the Parent. In addition, the Company shall use commercially reasonable efforts to cause the Facility Lease to be amended such that the net sales requirement to exercise the option to renew, as set forth in Section 2.4.2 of the Facility Lease, is reduced from $10,000,000 to a number reasonably approved by the Parent. Any such amendment shall be in a form reasonably acceptable to Parent.

11.10 Percentage Rent True-Up.

On or before February 15, 2016 (or if rent is payable based on a year which is not a calendar year, within forty-five (45) days of the expiration of the lease year in which the Closing Date occurs), Parent and the Surviving Entity shall provide SBEEG with written notice of its calculation of the portion of the rent payable pursuant to any Facility Leases for the Leased Spaces relating to the period on or prior to the Closing (the "Pre-Closing Rent Portion") and the period after the Closing through December 31, 2015. With respect to any calculation of percentage rent, the parties shall calculate the Pre-Closing Rent Portion by multiplying (i) the total percentage rent payable for said year by (ii) the fraction (x) the numerator of which is gross sales made at the Leased Space (as calculated in accordance with the Facility Leases) for the portion of the year occurring prior to the Closing Date and (y) the denominator of which is total gross sales made at the Leased Space for said year. Parent shall respond within ten (10) days indicating that it agrees with such calculation or objects to such calculation. In the event Parent fails to respond within such period, it will be deemed to have accepted the calculation. In the event Parent objects to the calculation, such dispute shall be resolved in accordance with the provisions in Section 3.02(c) with respect to the determination of the Final Working Capital. In the event that the Pre-Closing Rent Portion exceeds the amount of rent reflected in the Final Balance Sheet with respect to such period, Parent shall make payment of such difference within two (2) business days of the final determination of the Pre-Closing Rent Portion. In the event that the Pre-Closing Rent Portion is less than the amount of rent reflected in the Final Balance Sheet with respect to such period, SBEEG shall make payment of such difference within two (2) business days of the final determination of the Pre-Closing Rent Portion.

11.11 Lease Modification.

The Parent shall use commercially reasonable efforts to obtain the release of the lessor of any Facility Lease to the termination of the guarantees made by Sam Nazarian and any other guarantors of such Facility Leases (each, a "Guarantor"). If the Parent is unable to obtain the release of any Guarantor, then the Parent shall not have any obligation to obtain the release of such Guarantor and shall instead provide an indemnification agreement, in a form mutually agreed by the parties and pursuant to which the Parent shall indemnify such Guarantor for all payments and other liabilities of such Guarantor thereunder on a dollar-for-dollar basis.

11.12 Gift Cards.

The Company shall pay (and the Parent shall cause the Company to pay) SBEEG for the face amount of each gift card that is included in the calculation of Working Capital as of the Closing which are subsequently redeemed at any property owned or managed by SBEEG or any of its Affiliates following the Closing within fifteen (15) days after receipt by the Company or the Parent of an invoice therefor.

ARTICLE XII
MISCELLANEOUS

12.01 Press Releases and Communications

No press release or public announcement related to this Agreement or the transactions contemplated herein, or prior to the Closing, any other announcement or communication to the employees, providers, patients, customers or suppliers of the Company, shall be issued or made by any Party without the joint written approval of the Parent and SBEEG, unless (a) required by Law (in the reasonable opinion of counsel) in which case the Parent and SBEEG shall have the right to review such press release, announcement or communication prior to its issuance, distribution or publication or (b) any disclosure made in connection with the enforcement of any right or remedy relating to this Agreement or any Related Agreement or the transactions contemplated hereby.

12.02 Expenses

Except as otherwise expressly provided herein, each Party shall pay all of its own expenses (including attorneys' and accountants' fees and expenses) in connection with the negotiation of this Agreement, the performance of its obligations hereunder and the consummation of the transactions contemplated by this Agreement (whether consummated or not).

12.03 Knowledge Defined

For purposes of this Agreement, the term “the Company's knowledge” or similar references to knowledge as used herein shall mean in the case of the Members and the Company, the actual knowledge of Richard Acosta, Sam Nazarian and John Kolaski after reasonably inquiry.

12.04 Notices

All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given when personally delivered or delivered by facsimile, one day after deposit with Federal Express or similar reputable overnight courier service or three days after being mailed by first class mail, return receipt requested or transmitted via electronic mail (including by PDF format). Notices, demands and communications to the Parent, the Company, and the Members shall, unless another address is specified in writing, be sent to the addresses indicated below:

Notices to the Parent and the Company (after the Closing), to it:

The ONE Group, LLC
411 West 14th Street
New York, New York 10014
Fax: (212) 255-9715
Attention: Jonathan Segal
Sam Goldfinger
Sonia Low

with a copy (which shall not constitute notice) to:

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111
Fax: (617) 542-2241
Attention: Sahir Surmeli, Esq.

Notices to SBEEG and the Company (prior to the Closing):

SBEEG Holdings, LLC
5900 Wilshire Blvd., 31st Floor
Los Angeles, CA 90036
Fax: 323 655-8001
Attention: Legal Department

with copies to (which shall not constitute notice):

Venable LLP
505 Montgomery Street, Suite 1400
San Francisco, CA 94111
Fax: (415) 653-3755
Attention: Brandt U. Mori, Esq.

Venable LLP
750 East Pratt Street, Suite 900
Baltimore, MD 21202
Fax: (410) 244-7742
Attention: W. Bryan Rakes, Esq.

12.05 Assignment

Neither the Company, SBEEG or the Manager may assign, delegate or otherwise transfer this Agreement or any of such party's rights, interests or obligations hereunder, without the prior written consent of Parent and Buyer, and any attempt to do so will be null and void ab initio. Neither Buyer nor Parent may assign, delegate or otherwise transfer this Agreement or any of such party's rights, interests or obligations hereunder, without the prior written consent of the Company, SBEEG and the Manager and any attempt to do so will be null and void ab initio, provided, however, that Buyer or Parent may, without the approval of any other party to this Agreement, but with prior notice to SBEEG, make a collateral assignment of this Agreement to its Debt Financing Source. If either Buyer or Parent assigns this Agreement or any of its rights, interests or obligations hereunder, Buyer and Parent shall remain liable for all obligations of Buyer and Parent pursuant to this Agreement. Upon any such permitted assignment, the references in this Agreement to Parent shall refer to such assignee unless the context otherwise requires. Subject to this Section 12.05, this Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon the parties hereto, and each party's successors, heirs, estates, executors, administrators and permitted assigns.

12.06 Severability

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

12.07 References; Interpretation

The table of contents and the section and other headings and subheadings contained in this Agreement and the exhibits hereto are solely for the purpose of reference, are not part of the agreement of the Parties, and shall not in any way affect the meaning or interpretation of this Agreement or any exhibit hereto. All references to days (as opposed to Business Days) or months shall be deemed references to calendar days or months. All references to "$" shall be deemed references to United States dollars. Unless the context otherwise requires, any reference to a "Section," "Exhibit," or "Schedule" shall be deemed to refer to a section of this Agreement, Exhibit to this Agreement or a Schedule to this Agreement, as applicable. The words "hereof," "herein" and "hereunder" and words of similar import referring to this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The word "including" means including without limitation. Unless the context clearly requires otherwise, when used herein "or" shall not be exclusive (i.e., "or" shall mean "and/or").

12.08 No Strict Construction

The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Person.

12.09 Amendment and Waiver

Any provision of this Agreement or the Schedules or Exhibits may be amended or waived only in a writing signed by the Parent, the Company and SBEEG. No waiver of any provision hereunder or any breach or default thereof shall extend to or affect in any way any other provision or prior or subsequent breach or default, and no failure or delay to enforce, or partial enforcement of, any provision hereof shall operate as a waiver of such provision or of any other provision. Notwithstanding the foregoing, Section 10.09, Section 12.05, Section 12.08, Section 12.09, Section 12.12 and Section 12.13 hereof may not be amended in any manner that would be adverse to a Debt Financing Source without such Debt Financing Source's written consent.

12.10 Complete Agreement

This Agreement, the Disclosure Schedules, Exhibits, the Related Agreements, and the other documents referred to herein (including, prior to the Closing, the Nondisclosure Agreement, dated March 27, 2015 (the "Confidentiality Agreement")) contain the complete agreement between the Parties and supersede any prior understandings, agreements or representations by or between the parties, written or oral, which may have related to the subject matter hereof in any way.

12.11 Counterparts

This Agreement may be executed in multiple counterparts (including by means of facsimile or PDF signature pages), any one of which need not contain the signatures of more than one Party, but all such counterparts taken together shall constitute one and the same instrument.

12.12 No Third-Party Beneficiaries

Other than (a) in respect of Parent Indemnified Persons (in their capacities as such) and Seller Indemnified Persons (in their capacities as such) and (b) as otherwise provided in Section 10.09, Section 12.05 and Section 12.09, no party hereto (each of whom is an express third party beneficiary hereof), this Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

12.13 Waiver of Jury Trial

TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, EACH OF THE PARTIES HEREBY WAIVES, AND COVENANTS THAT NONE OF THE PARTIES WILL ASSERT ANY RIGHT TO TRIAL BY JURY ON ANY ISSUE IN ANY ACTION, WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE, IN RESPECT OF ANY ISSUE, CLAIM, DEMAND OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE SUBJECT MATTER HEREOF OR IN ANY WAY CONNECTED WITH, RELATED OR INCIDENTAL TO THE DEALINGS OF THE COMPANY, PARENT AND MEMBERS HEREUNDER, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER IN TORT OR CONTRACT OR OTHERWISE. Each of the Parties hereto acknowledges that it has been informed by the other Parties that the provisions of this Section 12.13 constitute a material inducement upon which such other Parties are relying and will rely in entering into this Agreement. Any of the Parties may file an original counterpart or a copy of this Section 12.13 with any court as written evidence of the consent of the other Parties to the waiver of its right to trial by jury.

12.14 Delivery by Facsimile or PDF.

This Agreement and any signed agreement or instrument entered into in connection with this Agreement, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine or PDF email, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any Party hereto or to any such agreement or instrument, each other Party hereto or thereto shall re-execute original forms thereof and deliver them to all other Parties. No Party hereto or to any such agreement or instrument shall raise the use of a facsimile machine or PDF email to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine or PDF email as a defense to the formation of a Contract and each such Party forever waives any such defense.

12.15 Specific Performance.

In furtherance and not in limitation of Section 9.02, each of the Parties acknowledges and agrees that the other Parties would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached or violated. Accordingly, each of the Parties agrees that, without posting a bond or other undertaking, the other Parties will be entitled to an injunction or injunctions to prevent breaches or violations of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any Action instituted in any court of the United States or any state thereof having jurisdiction over the Parties and the matter in addition to any other remedy to which it may be entitled, at Law or in equity. Each Party further agrees that, in the event of any action for specific performance in respect of such breach or violation, it will not assert that the defense that a remedy at Law would be adequate. Notwithstanding the foregoing and for the avoidance of doubt, in no event shall the Parent or Merger Sub have any obligation to seek or consummate a financing transaction in connection with the transactions contemplated by this Agreement.

12.16 Attorney-Client Privilege; Continued Representation.

The parties hereto hereby acknowledge that Venable LLP has acted as counsel to the Company, the Manager and SBEEG from time to time prior to the transactions contemplated by this Agreement as well as with respect thereto. The following provisions in this Section 12.17 apply to the attorney-client relationship between (a) the Company and Venable LLP prior to the Closing and (b) the Manager and SBEEG and Venable LLP following the Closing. Each of the parties hereto agrees that: (i) it will not seek to disqualify Venable LLP, based solely on its prior representation of the Company, the Manager and SBEEG, from acting and continuing to act as counsel to the Manager and SBEEG either in the event of a dispute hereunder or in the course of the defense or prosecution of any claim relating to the transactions contemplated by this Agreement; (ii) the Manager and SBEEG have a reasonable expectation of privacy with respect to their and the Company's communications (including any e-mail communications using the Company's email system) with Venable LLP prior to Closing to the extent that such communications concern the transactions contemplated herein and were confidential between the Manager, SBEEG and/or the Company and Venable LLP; and (iii) the Manager and SBEEG (and, following the Closing, not Parent or any of its Affiliates, including, without limitation, the Company) shall have access to all such privileged communications.

* * * *

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first written above.

PARENT:

ONE GROUP HOSPITALITY, INC.

By: /s/ Jonathan Segal
Name: Jonathan Segal
Title: Chief Executive Officer

MERGER SUB:

WASABI ACQUISITION GLENDALE, LLC

By: Wasabi Holdings, LLC, its sole member

By: The ONE Group, LLC, its sole member

By: The ONE Group Hospitality, Inc.
(f/k/a Committed Capital Acquisition Corporation),
its sole member

By: /s/ Jonathan Segal
Name: Jonathan Segal
Title: Chief Executive Officer

SBEEG:

SBEEG HOLDINGS, LLC

By: /s/ Sam Nazarian
Name: Sam Nazarian
Title: Authorized Person

COMPANY:

KATSUYA-GLENDALE, LLC

By: /s/ Sam Nazarian
Name: Sam Nazarian
Title: Authorized Person

MANAGER:

SBE/KATSUYA USA, LLC

By: /s/ Sam Nazarian
Name: Sam Nazarian
Title: Authorized Person

Exhibit 2.5

EXECUTION VERSION

AGREEMENT AND PLAN OF MERGER

DATED AS OF JULY 9, 2015

by and among

KATSUYA-DOWNTOWN L.A., LLC,

SBEEG HOLDINGS, LLC,

SBE/KATSUYA USA, LLC,

THE ONE GROUP HOSPITALITY, INC.,

and

WASABI ACQUISITION DOWNTOWN, LLC,

TABLE OF CONTENTS

INDEX OF EXHIBITS

Exhibit	Description
Exhibit A	Operating Agreement
Exhibit B	Escrow Agreement
Exhibit C	Form of Landlord Agreement
Exhibit D	Form of Landlord Consent and Acknowledgment

INDEX OF SCHEDULES

	Description
Schedule I	List of Members and Company LLC Interests
Schedule II	Permitted Liens Schedule
Schedule III	Merger Consideration Schedule
Schedule IV	Disclosure Schedules

AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger (the "Agreement") is made as of July 9, 2015 by and among Katsuya-Downtown L.A., LLC, a Delaware limited liability company (the "Company"), SBEEG Holdings, LLC, a Delaware limited liability company ("SBEEG"), SBE/Katsuya USA, LLC, the manager of the Company (the "Manager"), The ONE Group Hospitality, Inc., a Delaware corporation ("Parent"), and Wasabi Acquisition Downtown, LLC, a Delaware limited liability company and a wholly owned subsidiary of Parent ("Merger Sub"). The Company, Parent, Merger Sub and SBEEG are collectively referred to herein as the "Parties" and individually each as a "Party."

WHEREAS, upon the terms and subject to the conditions of this Agreement and in accordance with the Limited Liability Company Act of the State of Delaware (the "LLC Act"), Parent, Merger Sub and the Company will consummate a business combination transaction pursuant to which Merger Sub will merge (the "Merger") with and into the Company, with the Company continuing as the surviving company (the "Surviving Company"); and

WHEREAS, the Manager has determined that the Merger is consistent with and in furtherance of the long-term business strategy of the Company and fair to, and in the best interests of, the Company and its Members and has approved this Agreement, the Merger, the Related Agreements to which the Company is a party and the transactions contemplated hereby and thereby;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, and intending to be legally bound hereby, the Company, Parent, Merger Sub, the Manager and SBEEG hereby agree as follows:

ARTICLE I
DEFINITIONS

1.01 Definitions.

For purposes hereof, the following terms, when used herein with initial capital letters, shall have (a) the respective meanings set forth herein or (b) if not otherwise defined herein, the meaning set forth in the Asset Purchase Agreement:

"Action" means any suit, action, arbitration, cause of action, claim, complaint, prosecution, audit, inquiry, investigation, governmental or other proceeding, whether civil, criminal, administrative, investigative or informal, at law or at equity, before or by any Court, Governmental Authority, arbitrator or other tribunal.

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the first mentioned Person, including any partnership or joint venture in which one Person (either alone, or through or together with any other subsidiary) has, directly or indirectly, an interest of ten percent (10%), or more; and "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of stock or other securities, as trustee or executor, by contract or credit arrangement or otherwise.

"Affiliated Group" means an affiliated group as defined in Section 1504 of the Code (or any analogous combined, consolidated or unitary group defined under state, local or foreign income Tax Law) of which either the Company are or have been a member.

"Aggregate Closing Merger Consideration" means an amount equal to the Base Purchase Price in cash minus (a) Indebtedness of the Company plus (b) the amount (if any) by which the Estimated Working Capital is greater than the Target Working Capital minus (c) the amount (if any) by which the Estimated Working Capital is less than the Target Working Capital.

"Asset Purchase Agreement" means that certain asset purchase agreement dated as of the date hereof by and among the Parent, SBEEG, the Manager and the other parties thereto.

"Assets" means all of the assets, properties, rights, interests and goodwill of every kind and nature whatsoever, whether tangible or intangible, wherever located, owned, used or held for use by the Company in connection with the Business, whether now owned, used or held for use or acquired prior to the Closing.

"Base Purchase Price" means $8,000,000.00.

"Business" means the ownership, operation, promotion and development of Katsuya Hollywood.

"Business Day" means any day other than a Saturday, Sunday or day on which banks are permitted to close in the State of Delaware.

"Business Employee" means any employee of Spoonful who currently provides services primarily to the Business.

"Business Material Adverse Effect" means a material adverse effect on the Company, condition (financial or otherwise), properties, prospects, operations or results of operation of the Business or the ability of the Company, SBEEG or the Manager to perform its obligations as contemplated in this Agreement or any Related Agreement.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

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

"Company LLC Interests" means the limited liability company membership interests of the Company, and with respect to each member of the Company, such number of Company LLC Interests as are set forth next to such member's name on Schedule I hereto.

"Company's Accounting Practices and Procedures" means the accounting methods, policies, practices and procedures, including classification and estimation methodology (but taking into account all available information as of the time of preparation of the applicable financial statements or calculations) used by the Company in the preparation of the Audited Financial Statements for the year ended December 31, 2014.

"Contract" means any loan agreement, indenture, letter of credit (including related letter of credit applications and reimbursement obligations), mortgage, security agreement, pledge agreement, deed of trust, bond, note, guarantee, surety obligation, warranty, license, franchise, permit, power of attorney, invoice, quotation, purchase order, sales order, lease, endorsement agreement, and any other agreement, contract, instrument, obligation, offer, commitment, plan, arrangement, understanding or undertaking, written or oral, express or implied, to which a Person is a party or by which any of its properties, assets or Intellectual Property may be bound or affected, in each case as amended, supplemented, waived or otherwise modified.

"Court" means any court or arbitration tribunal of any country or territory, or any state, province or other subdivision thereof.

"Employee Benefit Plan" means any employee benefit plan (as defined in Section 3(3) of ERISA) and any bonus, option, interest purchase, interest ownership, stock appreciation right, restricted stock, phantom stock, equity or equity-based, incentive compensation, pension, profit-sharing, deferred compensation, health, medical, dental, vision, retiree medical or other retirement benefit, welfare, accident, disability or life insurance, workmen's compensation or other insurance, vacation, day or dependent care, legal services, cafeteria benefit, dependent care, disability, director, leave of absence, layoff, employee or independent contractor loan, fringe benefit, sabbatical, supplemental retirement, severance, separation, termination, change of control, collective bargaining, or other benefit plan, program, policy or arrangement, and all employment, termination, severance, consulting or other contract or agreement which the Company maintains, administers, sponsors, or contributes to, or with respect to which the Company has or may have any obligation, whether written or oral, and whether or not subject to ERISA.

"Environmental Law" means any Law or Order relating to the environment or occupational health and safety, including any Law or Order pertaining to (i) treatment, storage, disposal, generation and transportation of Materials of Environmental Concern; (ii) air, water and noise pollution; (iii) the protection of groundwater, surface water or soil; (iv) the release or threatened release into the environment of Materials of Environmental Concern, including emissions, discharges, injections, spills, escapes or dumping; (v) storage tanks, vessels, containers, abandoned or discarded barrels, and other closed receptacles used for Materials of Environmental Concern; or (vi) occupational health and safety. As used above, the terms "release" and "environment" shall have the meaning set forth in CERCLA.

"Equity Interest" means, with respect to any Person, (a) any capital stock, partnership or membership interest, unit of participation or other similar interest (however designated) in such Person and (b) any option, warrant, purchase right, conversion right, exchange right or other Contract which would entitle any other Person to acquire any such interest in such Person or otherwise entitle any other Person to share in the equity, profits, earnings, losses or gains of such Person (including stock appreciation, phantom stock, profit participation or other similar rights).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Escrow Agent" means Continental Stock Transfer & Trust Company, or any successor escrow agent appointed pursuant to the Escrow Agreement.

"Escrow Amount" means an amount equal to (A) $2,000,000 multiplied by (B) (i) the Base Purchase Price divided by (ii) $27,600,000. One-half of the Escrow Amount shall be released twelve (12) months after the Closing Date (less the amount of any pending or resolved claims as of such date) and the remainder shall be released at eighteen (18) months (less the amount of any pending or resolved claims as of such date), as further described and upon the terms set forth in the Escrow Agreement.

"GAAP" means United States generally accepted accounting principles applied in a consistent manner throughout the periods involved.

"Governmental Authority" means any (i) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (ii) federal, state, local, municipal, foreign or other government; and (iii) governmental or quasi-governmental body, agency or instrumentality of any nature (including any governmental division, authority, program, plan, office, bureau, board, directorate, political subdivision, department, agency, commission, instrumentality, official, organization, unit, body or entity or any court or other tribunal, taxing authority, arbitrator or arbitral body).

"Indebtedness" means Liabilities (including Liabilities for principal, accrued interest, penalties, fees and premiums) (i) for borrowed money, or with respect to deposits or advances of any kind, (ii) evidenced by bonds, debentures, notes or similar instruments, (iii) upon which interest charges are customarily paid, (iv) under conditional sale or other title retention agreements, (v) issued or assumed as the deferred purchase price of property or services (other than all accounts payable incurred in the ordinary course of the Business to the extent included in the calculation of Working Capital), (vi) of others secured by (or for which the holder of such Liabilities has an existing right, contingent or otherwise, to be secured by) any Lien or security interest on property owned or acquired by the Person in question whether or not the obligations secured thereby have been assumed, and (vii) under leases required to be accounted for as capital leases under GAAP.

"Intellectual Property" means (i) worldwide trademarks, service marks, trade names, trade dress, designs, logos, slogans and general intangibles of like nature, together with all goodwill related to the foregoing (whether registered or not, but including any registrations and applications for any of the foregoing) (collectively, "Trademarks"); (ii) patents (including the ideas, inventions and discoveries described therein, any pending applications, any registrations, patents or patent applications based on applications that are continuations, continuations-in-part, divisional, reexamination, reissues, renewals of any of the foregoing and applications and patents granted on applications that claim the benefit of priority to any of the foregoing) (collectively, "Patents"); (iii) works of authorship or copyrights (including any registrations, applications and renewals for any of the foregoing) and other rights of authorship (collectively, "Copyrights"); (iv) trade secrets and other confidential or proprietary information, know-how, confidential or proprietary technology, processes, work flows, formulae, algorithms, models, user interfaces, customer, supplier, vendor, distributor and user lists, databases, pricing and marketing information, inventions, marketing materials, inventions and discoveries (whether patentable or not) (collectively, "Trade Secrets"); (v) computer programs and other Software, macros, scripts, source code, object code, binary code, methodologies, processes, work flows, architecture, structure, display screens, layouts, development tools, instructions and templates; (vi) published and unpublished works of authorship, including audiovisual works, databases and literary works; (vii) rights in, or associated with a person's name, voice, signature, photograph or likeness, including rights of personality, privacy and publicity; (viii) rights of attribution and integrity and other moral rights; (ix) Uniform Resource Locators ("URLs") and Internet domain names and applications therefor (and all interest therein), IP addresses, adwords, key word associations and related rights; and (x) (a) all other proprietary, intellectual property and other rights relating to any or all of the foregoing, (b) all copies and tangible embodiments of any or all of the foregoing (in whatever form or medium, including electronic media) and (c) all rights to sue for and any and all remedies for past, present and future infringements of any or all of the foregoing and rights of priority and protection of interests therein under the Laws of any jurisdiction.

"IRS" means the Internal Revenue Service.

"Law" means any United States federal, state, local, municipal, or any foreign law, statute, constitution, principle of common law, standard, ordinance, code, edict, decree, rule, regulation, resolution, promulgation, ruling or requirement, or any Order, or any Permit granted under any of the foregoing, or any similar provision having the force or effect of law.

"Landlord Agreement" means the Landlord Agreement in the form attached hereto as Exhibit C.

"Landlord Consent" means the Landlord Consent and Acknowledgment to be entered into by the Company and the lessor of any Facility Lease, in the form attached hereto as Exhibit D, or in such other form as shall be acceptable to the Parent in its reasonable discretion.

"Liability" means any debts, liabilities, obligations, claims, charges, Taxes, damages, demands and assessments of any kind, including those with respect to any Governmental Authority, whether accrued or not, known or unknown, disclosed or undisclosed, fixed or contingent, asserted or unasserted, liquidated or unliquidated, whenever or however arising (including, those arising out of any Contract or tort based on negligence or strict liability) and whether or not the same would be required by GAAP to be reflected in financial statements or disclosed in the notes thereto.

"Liens" means any mortgage, easement, right of way, charge, claim, community property interest, condition, equitable interest, lien, option, pledge, security interest, right of first refusal, or restriction or adverse claim of any kind, including any restriction on use, voting, transfer, receipt of income, or exercise of any other attribute of ownership, or any other encumbrance or exception to title of any kind.

"Losses" means any loss, damage, Liability, encumbrance, Tax, fine, penalty, cost or expense, including but not limited to the costs and expenses of any investigation, defense or settlement of an Action or claim, the costs and expenses associated with the enforcement of this Agreement or any Related Agreement and any reasonable, actual and documented fees or expenses of attorneys, accountants or other experts or consultants retained in connection with any such Action or claim or the enforcement of this Agreement; provided, that Losses shall not include any punitive damages, consequential damages, exemplary damages or special damages except to the extent any such damages are reasonably foreseeable and incurred as a result of a Third Party Claim.

"Material Adverse Change" means an event, change or effect, that has or would be reasonably likely to have a material adverse effect or a material adverse change to (a) the financial condition, business, results of operations, assets or liabilities of the Company and its Affiliates party to and merging pursuant to the Other Merger Agreements (collectively, the "Merger Entities"), on a combined basis; (b) the ability of each of the Merger Entities to consummate the transactions contemplated by this Agreement or any Other Merger Agreement, as applicable, or to perform any of its respective obligations under this Agreement or any Other Merger Agreement, as applicable; or (c) the ability of any Affiliate of the Company that is party to the Asset Purchase Agreement (collectively, the "Seller Entities") to consummate the transactions contemplated by the Asset Purchase Agreement or perform any of its obligations under the Asset Purchase Agreement; provided, however, that any adverse effects attributable to any of the following shall not be deemed to constitute, and the following shall not be taken into account in determining whether there has been or will be, a Material Adverse Change: (i) conditions affecting the industries in which the Merger Entities or Seller Entities participate or the U.S. economy as a whole (other than those that disproportionately affect the Merger Entities or Seller Entities); (ii) actions taken by the Seller Entities and Merger Entities at Buyer or Parent's express written direction or with Buyer or Parent's express written consent; (iii) the announcement of this Agreement, any Other Merger Agreement or the Asset Purchase Agreement; (iv) compliance with the provisions of this Agreement, any Other Merger Agreement or the Asset Purchase Agreement; (v) conditions resulting from the outbreak or escalation of hostilities, including acts of war or terrorism (other than those that disproportionately affect Seller Entities and Merger Entities); (vi) conditions resulting from any breach by Buyer or Parent of any provisions of this Agreement, any Other Merger Agreement or the Asset Purchase Agreement; and (vii) change in GAAP.

"Materials of Environmental Concern" means any substances, chemicals, compounds, solids, liquids, gases, materials, pollutants or contaminants, hazardous substances (including as such term is defined under CERCLA), solid wastes and hazardous wastes (including as such terms are defined under the Resource Conservation and Recovery Act), toxic materials, oil or petroleum and petroleum products, asbestos or substances containing asbestos, polychlorinated biphenyls or any other material subject to regulation under any Environmental Law.

"Members" or "Member" means the members of the Company that are from time to time listed on Schedule I hereto.

"Order" means any order, writ, judgment, injunction, decree, stipulation, ruling, decision, verdict, determination, settlement, agreement, or award made, issued or entered into by or with any Governmental Authority.

"Organizational Documents" means, with respect to any Person (other than an individual), (a) the certificate or articles of incorporation or organization and any joint venture, limited liability company, operating or partnership agreement and other similar documents adopted or filed in connection with the creation, formation or organization of such Person and (b) all by-laws, voting agreements and similar documents, instruments or agreements relating to the organization or governance of such Person, in each case, as amended or supplemented.

"Other Merger Agreements" means those certain agreements and plans of merger dated as of the date hereof by and among the Parent, SBEEG, the Manager and the other parties thereto.

"Permitted Liens" means (i) statutory Liens for current Taxes or other governmental charges not yet due and payable or the amount or validity of which is being contested in good faith by appropriate proceedings by the Company and for which appropriate reserves have been established in accordance with GAAP; (ii) mechanics', carriers', workers', repairers' and similar statutory Liens arising or incurred in the ordinary course of business for amounts which are not delinquent and which are not, individually or in the aggregate, material; (iii) purchase money Liens and Liens securing rental payments under capital or operating lease arrangements so long as such leases were disclosed in the Schedules to this Agreement; (iv) other Liens arising in the ordinary course of business and not incurred in connection with the borrowing of money and which are not, individually or in the aggregate, material; and (v) the items set forth on the Permitted Liens Schedule attached as Schedule II hereto.

"Per LLC Interest Equivalent Escrow Amount" means an amount equal to the quotient of (a) the Escrow Amount divided by (b) the total number of Company LLC Interests of the Company as of immediately prior to the Closing.

"Per LLC Interest Closing Merger Consideration" means (a) the Aggregate Closing Merger Consideration, divided by (b) the total number of Company LLC Interests of the Company immediately prior to Closing.

"Permits" means, with respect to any Person, any license, franchise, permit, permission, variance, clearance, registration, accreditation, qualification, consent, approval, right, privilege, certificate or other similar authorization issued by, or otherwise granted by, any Governmental Authority or pursuant to any Law to which or by which such Person is subject or bound or to which or by which any property, business, operation or right of such Person is subject or bound.

"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 Authority.

"Post-Closing Covenant" means any covenant or agreement on the part of any Party hereto that is required to be performed in whole or in part from and after the Closing Date.

"Pre-Closing Covenant" means any covenant or agreement on the part of any Party hereto that is required to be performed in its entirely on or prior to the Closing Date.

"Pro Rata Share" means, with respect to any Member, the percentage set forth opposite such Member's name on the Merger Consideration Schedule attached as Schedule III hereto.

"Related Agreements" means the Asset Purchase Agreement, the Escrow Agreement, and each of the other agreements, certificates, instruments and documents to be executed and delivered in connection with the consummation of the Merger and the other transactions contemplated hereby.

"Release" means any spill, discharge, leak, emission, escape, injection, dumping, or other release by the Company of any Materials of Environmental Concern into the environment.

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

"Spoonful" means Spoonful Management LLC.

"Target Working Capital" means Zero Dollars ($0).

"Tax" or "Taxes" means any and all taxes whatsoever, including any interest, penalties or other additions to tax that may become payable in respect thereof, whether disputed or not, imposed by any Governmental Authority, which taxes shall include all federal, state, local or foreign income taxes, profits taxes, taxes on gains, gross receipts taxes, goods and services taxes, franchise taxes, estimated taxes, alternative minimum taxes, sales taxes, use taxes, ad valorem taxes, transfer taxes, real or personal property taxes, land transfer taxes, registration taxes, value added taxes, escheat or unclaimed property assessments, excise taxes, natural resources taxes, severance taxes, stamp taxes, occupation taxes, premium taxes, workers' compensation taxes, windfall taxes, environmental taxes, taxes on stock, social security or similar taxes (including FICA), welfare taxes, unemployment insurance taxes, disability taxes, payroll taxes, license charges, employee or other withholding taxes, net worth taxes, and other taxes, fees, duties, levies, customs, tariffs, imposts, assessments, obligations and any charges of any kind in the nature of (or similar to) taxes.

"Tax Returns" means any and all returns, reports, information returns, declarations, statements, certificates, bills, schedules, claims for refund or other written information (including any and all schedules, attachments, amendments or related or supporting information thereto) of or with respect to any Tax filed or required to be filed with any Governmental Authority in connection with the determination, assessment or collection of any Tax or the administration of any laws, regulations or administrative requirements relating to any Tax.

"Transferred Employees" means each employee of Spoonful hired by the Surviving Company.

"Working Capital" means the excess of (a) the current assets of the Company determined in accordance with the Company's Accounting Practices and Procedures minus (b) the current liabilities of the Company determined in accordance with the Company's Accounting Practices and Procedures.

ARTICLE II
THE MERGER

2.01 The Merger

On the terms and subject to the conditions set forth in this Agreement, and in accordance with the LLC Act, at the Effective Time, Merger Sub shall be merged with and into the Company. At the Effective Time, the separate corporate existence of Merger Sub shall cease and the Company shall continue as the Surviving Company.

2.02 Closing

Subject to the terms and conditions hereof, the closing of the transactions contemplated by this Agreement (the "Closing") will take place on the third (3rd) Business Day following the date on which all of the conditions set forth in Article IV have been satisfied or waived (other than any such conditions that by their terms cannot be satisfied until the Closing Date, which conditions shall be required to be so satisfied or waived on the Closing Date), unless another time and/or date is agreed to in writing by the Company and Parent (the "Closing Date"). The Closing shall be held at the offices of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, Massachusetts, unless another place is agreed to in writing by the Company and Parent (it being understood that the Closing may be effected by the delivery of documents via e-mail, facsimile and/or overnight courier). The consummation of the transactions contemplated by this Agreement to occur at the Closing shall be deemed to occur at 12:01 a.m. (EST) on the Closing Date. The Closing shall occur simultaneously with the "Closings" of the transactions contemplated in each of the Asset Purchase Agreement and the Other Merger Agreement.

2.03 Effective Time

Prior to the Closing, Parent shall prepare, and on the Closing Date, the Parties shall cause a certificate of merger (the "Certificate of Merger") to be filed with the Secretary of State of the State of Delaware, in such form as is required by, and executed and acknowledged in accordance with, the relevant provisions of the LLC Act and shall make all other filings or recordings required under the LLC Act in connection with the Merger. The Merger shall become effective at the time upon which the Certificate of Merger is duly filed and accepted with such Secretary of State, or at such other time as Parent and the Company shall agree and specify in the Certificate of Merger (the time the Merger becomes effective being the "Effective Time").

2.04 Effect of the Merger

At the Effective Time, the effect of the Merger shall be as provided in this Agreement, the Certificate of Merger and the applicable provisions of the LLC Act.

2.05 Operating Agreement.

The Operating Agreement of the Surviving Company shall be amended at the Effective Time to be in the form of Exhibit A attached hereto and, as so amended, such Operating Agreement shall be the operating agreement of the Surviving Company until thereafter changed or amended as provided therein and by applicable law.

2.06 Managing Member.

Wasabi Holdings, LLC shall be the managing member of the Surviving Company in accordance with the Operating Agreement of the Surviving Company.

ARTICLE III
EFFECT ON THE CONSTITUENT ENTITIES; PAYMENT OF MERGER CONSIDERATION

3.01 Effect on Equity Interests

At the Effective Time, by virtue of the Merger and without any action on the part of Merger Sub, the Company or the Members:

(a) Each outstanding unit of limited liability company membership interest of Merger Sub shall be converted into and become one unit of limited liability company membership interest of the Surviving Company.

(b) Subject to Section 3.01(e), the Company LLC Interests outstanding immediately prior to the Effective Time shall be converted into the right to receive, (A) the Per LLC Interest Closing Merger Consideration in cash minus the Per LLC Interest Equivalent Escrow Amount, payable to the holder thereof upon the Closing in the manner provided in Section 3.02, plus (B) subject to adjustment as provided in the Escrow Agreement, an amount equal to the quotient of (i) the aggregate amount, if any, of the distributions to the Members of any portion of the Escrow Amount from the Escrow Account divided by (ii) the total number of Company LLC Interests.

(c) The consideration paid in accordance with the terms of Sections 3.01(b) and 3.02 shall be deemed to have been paid in full satisfaction of all rights pertaining to such Company LLC Interests, and after the Effective Time there shall be no further registration of transfers on the transfer books of the Surviving Company of Company LLC Interests that were outstanding immediately prior to the Effective Time.

(d) Notwithstanding anything to the contrary contained herein, Parent, the Company, Merger Sub, the Surviving Company or any other applicable withholding agent, as applicable, and after adequate notice to and discussion with SBEEG as to the appropriateness of withholding shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement such amounts as may be required to be deducted and withheld under the Code, or under any provision of applicable state, local or foreign Tax Law, with respect to the making of such payment and any amounts so deducted or withheld shall be treated for all purposes of this Agreement as having been paid to the holder of Company LLC Interests in respect of which such deduction or withholding was made.

(e) Notwithstanding anything to the contrary contained herein, in no event shall the aggregate amounts payable at the Closing in connection with the Merger under this Article III exceed the Aggregate Closing Merger Consideration less the Escrow Amount.

3.02 Payment of Merger Consideration and Other Amounts.

(a) At the Closing, Parent shall pay or cause to be paid, by wire transfer of immediately available funds to the accounts specified by SBEEG in writing to Parent not less than two (2) Business Days prior to the Closing, to each Member (subject to Section 3.01) the amount specified in Section 3.01(b)(A) with respect to the Company LLC Interests held by such Member.

(b) At the Closing, Parent or Merger Sub shall pay or cause to be paid, by wire transfer of immediately available funds to the escrow account to be maintained pursuant to the Escrow Agreement (the "Escrow Account"), an amount equal to the Escrow Amount pursuant to the terms of an escrow agreement, in form and substance reasonably satisfactory to the Parent, SBEEG and the Escrow Agent, and which will be attached hereto as Exhibit B (the "Escrow Agreement"), which Escrow Amount shall be distributed to Parent or SBEEG in the manner specified in the Escrow Agreement, and, if applicable, distributed to the Members by SBEEG in accordance with this Article III.

(c) Notwithstanding anything to the contrary contained herein, Parent shall not be required to deliver to any Member any consideration for any Member's outstanding Company LLC Interests, or any other payments pursuant to this Article III, until such Member has delivered to Parent evidence of ownership of such Member's Company LLC Interests, a letter of transmittal, which shall include a general release of all claims by such Member against the Company, Parent, Merger Sub and the Surviving Company (other than claims arising out of or in connection with this Agreement or the transaction contemplated hereby), or such other documentation as may be reasonably satisfactory to Parent, or such other documentation as may be reasonably satisfactory to Parent.

(d) Not less than two (2) Business Days prior to the Closing, SBEEG shall deliver to Parent a schedule setting forth a true and complete list of all the Members, the number of Company LLC Interests held by each such holder, the amount of the Aggregate Closing Merger Consideration to be paid to each such holder on the Closing Date, and the Parent and Merger Sub shall be entitled to rely on such schedule.

(e) Notwithstanding anything to the contrary contained herein, in the case of any Member who, as of the Effective Time, owes any Indebtedness (including accrued interest) to the Company (each, a "Member Loan Amount"), Parent or Merger Sub and the Surviving Company, as the case may be, shall deduct and withhold such holder's Member Loan Amount from the Aggregate Closing Merger Consideration otherwise payable to such holder pursuant to the Merger and, if such Member Loan Amount has been paid in full, any instrument evidencing such Member Loan Amount shall be promptly returned to the applicable Member. To the extent a Member Loan Amount is so withheld by Parent, Merger Sub or the Surviving Company, as the case may be, the withheld amount shall be treated for all purposes of this Agreement as having been paid to the Member in respect of which the deduction and withholding was made, and such Member Loan Amount shall to such extent be deemed paid.

3.03 Adjustment to Aggregate Closing Merger Consideration.

(a) At least two (2) Business Days prior to the Closing, the Company will, in good faith and in accordance with the terms of this Section 3.03, prepare and deliver to Parent a written estimate (which shall be subject to review and the reasonable approval of the Parent) setting forth a calculation of the Aggregate Closing Merger Consideration (the "Estimated Aggregate Merger Consideration") and calculations of the components thereof together with an estimated closing balance sheet of the Company determined as of 11:59 p.m. (EST) on the day immediately preceding the Closing Date (the "Estimated Closing Balance Sheet"), calculated in a manner consistent with the Company's Accounting Practices and Procedures; provided, that such Closing Balance Sheet shall include (i) an estimation of Working Capital as of 11:59 p.m. (EST) on the day immediately preceding the Closing Date ("Estimated Working Capital"), and (ii) an Indebtedness Schedule setting forth the amount of Indebtedness of the Company (the "Estimated Indebtedness" and, together with the Estimated Working Capital, the "Merger Consideration Components").

(b) Within 60 days following the Closing, the Surviving Company will, in good faith and in accordance with the terms of this Section 3.03, prepare and deliver to SBEEG a calculation of the Aggregate Closing Merger Consideration and the Merger Consideration Components (the "Merger Consideration Statement"), calculated in a manner consistent with the Company's Accounting Practices and Procedures.

(c) SBEEG shall have 45 days from the date of receipt of the Merger Consideration Statement to review the computation of the Aggregate Closing Merger Consideration and the Merger Consideration Components. In connection with the review of the Merger Consideration Statement: (i) Parent and the Surviving Company will make available to SBEEG and its auditors and other advisors (if any) all records and work papers that SBEEG and its auditors and other advisors (if any) reasonably request in reviewing the Merger Consideration Statement; (ii) SBEEG and its auditors and other advisors (if any) shall be entitled to make copies thereof; and (iii) upon reasonable request of SBEEG, for copies thereof to be made and sent to SBEEG and its auditors and other advisors (if any) at the reasonable expense of SBEEG. In the event that SBEEG disagrees with the Merger Consideration Statement or the amount of any Merger Consideration Component as calculated, SBEEG shall deliver written notice of such disagreement to Parent and the Surviving Company (an "Objection Notice"). The Merger Consideration Statement and the Merger Consideration Components, as calculated, shall be final, conclusive and binding on the parties if no Objection Notice is timely delivered prior to such 45th day following delivery of the Merger Consideration Statement. If SBEEG has timely delivered an Objection Notice to Parent and the Surviving Company, Parent, on the one hand, and SBEEG, on the other hand, will endeavor to resolve any disagreements noted in the Objection Notice in good faith as soon as practicable after the delivery of such notice, but if they do not obtain a final resolution within 30 days after Parent has received the Objection Notice, SBEEG or Parent may submit the matter for resolution to a nationally recognized independent accounting firm mutually agreed upon by Parent and SBEEG (the "Firm") to resolve any remaining disagreements. Parent, on the one hand, and SBEEG, on the other hand, will direct the Firm to use its commercially reasonable efforts to render a determination within 30 days of submitting the matters to it for resolution and the Surviving Company, SBEEG and Parent and their respective agents will cooperate with the Firm during its resolution of any disagreements included in the Objection Notice. The Firm will consider only those items and amounts set forth in the Objection Notice that Parent, on the one hand, and SBEEG, on the other hand, are unable to resolve. SBEEG and Parent shall furnish or cause to be furnished to the Firm such work papers and other documents and information relating to such disputed items as the Firm may request and are available to that party or its agents and shall be afforded the opportunity to present to the Firm any material relating to such disputed items. In resolving any disputed item, the Firm may not assign a value to any item greater than the greatest value for such item claimed by any Party or less than the smallest value for such item claimed by any Party. The fees and expenses of the Firm incurred pursuant to this Section 3.03(c), shall be paid by Parent and the Members out of the Escrow Account in inverse proportion as they may prevail on matters resolved by the Firm (by way of example, if Parent is 80% successful in the dispute, Parent would be responsible for 20% of the fees and expenses of the Firm), which proportionate allocation shall be determined by the Firm. The determination of the Firm as to any disputed matters (and the reasons therefor) shall be set forth in a written statement delivered to Parent, the Surviving Company and SBEEG and shall be final, conclusive and binding on the parties, absent manifest error. The Parties agree that judgment may be entered for purposes of enforcement upon the determination of the Firm in any court of competent jurisdiction.

(d) The Aggregate Closing Merger Consideration, Merger Consideration Components, including the Closing Balance Sheet and Working Capital as agreed to by SBEEG and Parent or as determined by the Firm, as applicable, shall be conclusive and binding on all of the Parties and shall be deemed the "Final Aggregate Merger Consideration", "Final Closing Balance Sheet" and "Final Working Capital," respectively, for all purposes herein.

(e) The Merger Consideration Components, the Estimated Closing Balance Sheet and Final Closing Balance Sheet shall be prepared, and the Estimated Working Capital and the Final Working Capital shall be calculated pursuant to this Section 3.03 on a basis consistent with the Company's Accounting Practices and Procedures.

(f) If the Final Aggregate Merger Consideration is less than the Estimated Aggregate Merger Consideration, then an amount equal to such shortfall shall be satisfied out of the Escrow Amount by withdrawal from the Escrow Account, and Parent and SBEEG shall promptly and in any event within two (2) Business Days provide joint written instructions to the Escrow Agent directing that such shortfall amount be disbursed to the payee and account(s) specified by Parent. If the Final Aggregate Merger Consideration is greater than the Estimated Aggregate Merger Consideration, payment of such excess amount shall be made promptly and in any event within two (2) Business Days in the same manner as the payments made pursuant to Section 3.02(a) and (b).

ARTICLE IV
CLOSING CONDITIONS

4.01 Conditions to the Parent's and Merger Sub's Obligations

The obligations of the Parent and Merger Sub to consummate the transactions contemplated by this Agreement are subject to the satisfaction, or to the extent permitted by Law, waiver by the Parent and Merger Sub, of each of the following conditions to the Closing:

(a) Each of the representations and warranties of the Manager in Article VI and of the Company, SBEEG and the Manager in Article VII that is qualified by "materiality" "Business Material Adverse Effect" or a similar qualifier shall be true and correct in all respects, and each of such representations and warranties that is not so qualified shall be true and correct in all material respects, in each case, as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (except for representations and warranties made as of a specified date, the accuracy of which will be determined only as of the specified date), in all cases after giving effect to any supplement to the Disclosure Schedule.

(b) The Company, the Members and SBEEG shall have performed or complied with in all material respects all of the covenants and agreements required to be performed or complied with by them under this Agreement at or prior to the Closing;

(c) No Action will be pending or threatened in writing wherein an unfavorable judgment, decree or order would (i) prevent the performance of this Agreement or the consummation of any of the transactions contemplated hereby, (ii) declare unlawful the transactions contemplated by this Agreement or (iii) would reasonably be expected to cause such transactions to be rescinded;

(d) The Certificate of Merger shall have been duly executed and delivered on behalf of the Company and filed with the Delaware Secretary of State, and accepted for filing, and the Merger shall have become effective under applicable Law;

(e) Parent shall have received the Escrow Agreement duly executed by SBEEG (on behalf of the Members) and the Escrow Agent (along with the wire transfer instructions for payment of the Escrow Amount to the Escrow Agent);

(f) The Company and SBEEG shall have delivered to the Parent each of the following:

(i) A certificate, dated as of the Closing Date, signed by an officer of the Manager or the Company certifying as to the conditions specified in subsections (a), (b), (c) (to its knowledge), (k) and (l) to this Section 4.01;

(ii) Copies of all material governmental or third party consents listed on Schedule 6.04, 7.02 or 7.03 relating to the consummation of the transactions contemplated hereby, including, without limitation, the consent of the lessor of any Facility Lease to the modification of the guarantees made by Sam Nazarian and any other guarantors of such Facility Leases (or the Facility Leases themselves) (the "Guaranty Modifications") such that the act or omissions of Sam Nazarian or any other applicable guarantor (or their Affiliates) cannot cause an event of default of breach by the tenant under the applicable Facility Leases); and all such consents shall be in form and substance reasonably satisfactory to the Parent and shall be in full force and effect and not subject to any condition or waiver that has not been satisfied;

(iii) All payoff letters and lien release documentation (or other evidence of payment in full satisfaction where applicable) reasonably satisfactory to the Parent and their counsel and lenders relating to any Indebtedness being paid off at Closing and the termination of all Liens on any assets securing any such Indebtedness shall have been provided by the lenders related thereto;

(iv) All existing minute books, ledgers and registers, schedules of members, corporate seals, if any, and other corporate records relating to the organization, ownership and maintenance of the Company, if not already located on the premises of the Company;

(v) Resignations effective as of the Closing Date from the Manager and all officers of the Company;

(vi) A copy of the Organizational Documents of the Company, and a certificate of good standing from the Secretary of State of the state of formation for the Company dated within fifteen (15) days of the Closing Date, a listing of all the names and incumbency of each of the officers of the Manager executing this Agreement on behalf of itself and the Company or any Related Agreement and all resolutions adopted by the Manager or any of the Members of the Company in connection with this Agreement and the transactions contemplated hereby, in each case, certified by an appropriate officer of the Manager; and

(vii) A certification dated as of the Closing Date, conforming to the requirements of the Treasury Regulations promulgated under Section 1445 of the Code that eliminates the obligation of Buyer to withhold on the transactions contemplated hereunder pursuant to Section 1445 of the Code;

(g) Parent shall have received the Landlord Consent duly executed by the Company and the applicable lessor party thereto;

(h) Any management agreements in effect relating to the operation of the Business or other agreements between the Company and any Affiliate of SBEEG shall have been terminated;

(i) This Agreement shall have been approved and adopted by the requisite affirmative vote of the members of the Company in accordance with the LLC Act and the Company's Organizational Documents;

(j) All of the conditions set forth in Sections 6.1 and 6.2 of the Asset Purchase Agreement have been satisfied or waived (other than any such conditions that by their terms cannot be satisfied until the "Closing Date" set forth in the Asset Purchase Agreement, which conditions shall be required to be so satisfied or waived on the "Closing Date" set forth in the Asset Purchase Agreement);

(k) All of the conditions set forth in Section 4.01 of the Other Merger Agreements have been satisfied or waived (other than any such conditions that by their terms cannot be satisfied until the "Closing Date" set forth in the Other Merger Agreements, which conditions shall be required to be so satisfied or waived on the "Closing Date" set forth in the Other Merger Agreements); and

(l) Since the date of this Agreement, there shall not have occurred a Material Adverse Change, it being acknowledged that any disclosure of a matter in the Disclosure Schedule indicating that a matter might have a Material Adverse Change shall not limit the Buyer's or Parent's ability to assert that such matter has had a Material Adverse Change for purposes of this Section 4.01(l).

4.02 Conditions to the Company's, SBEEG's and the Manager's Obligations

The obligations of the Company, SBEEG and the Manager to consummate the transactions contemplated by this Agreement are subject to the satisfaction, or to the extent permitted by Law, waiver by the Company, SBEEG and the Manager of the following conditions to the Closing:

(a) Each of the representations and warranties of the Parent and Merger Sub in Article VIII that is qualified by "materiality" "material adverse effect" or a similar qualifier shall be true and correct in all respects, and each of such representations and warranties that is not so qualified shall be true and correct in all material respects, in each case, as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (except for representations and warranties made as of a specified date, the accuracy of which will be determined only as of the specified date), in all cases after giving effect to any supplement to the Disclosure Schedule;

(b) The Parent shall have performed in all material respects all of the covenants and agreements required to be performed by it under this Agreement at or prior to the Closing;

(c) No Action will be pending wherein an unfavorable judgment, decree or order would (i) prevent the performance of this Agreement or the consummation of any of the transactions contemplated hereby, (ii) declare unlawful the transactions contemplated by this Agreement or (iii) would reasonably be expected to cause such transactions to be rescinded;

(d) SBEEG shall have received a copy of the Escrow Agreement duly executed by Parent and the Escrow Agent and Parent shall be ready, willing and able to fund the Escrow Amount at Closing;

(e) The Parent shall have delivered to SBEEG each of the following:

(i) A certificate of Parent attaching copies of the resolutions duly adopted by the Parent's board of directors authorizing the execution, delivery and performance of this Agreement and the other agreements contemplated hereby, and the consummation of all transactions contemplated hereby and thereby;

(ii) An officer certificate of Parent, dated as of the Closing Date, certifying as to the conditions specified in subsections (a) and (b) of this Section 4.02 have been satisfied;

(iii) A certificate of good standing from the Secretary of State of the state of incorporation of the Parent dated within fifteen (15) days of the Closing Date; and

(iv) Copies of all material governmental or third party consents relating to the consummation of the transactions contemplated hereby, (except that the requirement to obtain the Landlord Consent and the Guaranty Modifications shall be sole responsibility of the Company and SBEEG and shall not be deemed a condition to closing pursuant to this Section 4.02); and all such consents shall be in form and substance reasonably satisfactory to SBEEG and shall be in full force and effect and not subject to any condition or waiver that has not been satisfied;

(f) All of the conditions set forth in Sections 6.1 and 6.3 of the Asset Purchase Agreement have been satisfied or waived (other than any such conditions that by their terms cannot be satisfied until the "Closing Date" set forth in the Asset Purchase Agreement, which conditions shall be required to be so satisfied or waived on the "Closing Date" set forth in the Asset Purchase Agreement); and

(g) All of the conditions set forth in Section 4.02 of the Other Merger Agreements have been satisfied or waived (other than any such conditions that by their terms cannot be satisfied until the "Closing Date" set forth in the Other Merger Agreements, which conditions shall be required to be so satisfied or waived on the "Closing Date" set forth in the Other Merger Agreements).

ARTICLE V
PRE-CLOSING COVENANTS

5.01 Conduct of the Business

(a) From the date hereof until the Closing Date, or the earlier termination of this Agreement pursuant to Article IX, except to the extent described in Schedule 5.01 or otherwise required or specifically permitted by this Agreement, the Company shall: (i) conduct the Business in the ordinary course of business consistent with past practice in all material respects (including with respect to capital expenditures, the timely making of any budgeted or emergency capital expenditures or capital expenditures that are required to maintain the Business in compliance with any applicable Laws), unless the Parent shall have otherwise consented in writing (which consent will not be unreasonably withheld, conditioned or delayed); (ii) maintain in effect the insurance coverage described on Schedule 7.16 (or reasonably equivalent replacement coverage); (iii) use its commercially reasonable efforts to preserve the present relationships of the Business with suppliers, vendors, licensees and other Persons with which the Business has business relations; (iv) maintain in effect the Business Licenses (if any) in accordance with the terms thereof and renew any Business License that would otherwise expire pursuant to the terms thereof between the date of this Agreement and the Closing; (v) use its commercially reasonable efforts to keep, or to cause Spoonful to keep, available the services of the Business Employees subject to the normal hiring and firing of Business Employees in the ordinary course of business consistent with past practice and (vi) use commercially reasonable efforts to preserve intact its business organization, value as a going concern and relationships with third parties (including lessors, licensors, suppliers, distributors and customers) and employees.

(b) From the date hereof until the Closing Date, or the earlier termination of this Agreement pursuant to Article IX, except to the extent described in Schedule 5.01 or otherwise required or specifically permitted by this Agreement or consented to in writing by the Parent (which consent will not be unreasonably withheld, conditioned or delayed), the Company shall refrain from: (i) issuing, selling or delivering any of its Company LLC Interests or other Equity Interests or issuing or selling any securities convertible into, or options with respect to, or warrants to purchase or rights to subscribe for, any of its Company LLC Interests or other Equity Interests (or amending any term of any of the foregoing); (ii) effecting any recapitalization, reclassification, dividend, split or like change in its capitalization other than dividends in the in the ordinary course of business consistent with past practice and the terms and conditions of the Company's Organizational Documents; (iii) amending its Organizational Documents; (iv) making any redemption or purchase of any of its of its Company LLC Interests or other Equity Interests; (v) (A) merging, consolidating or combining with any Person or (B) acquiring any material assets, except for acquisitions of inventory, equipment and supplies in the ordinary course of business consistent with past practice; (vi) permitting any of the assets of the Company to become subject to a Lien (other than a Permitted Lien) or selling, leasing, licensing or otherwise disposing of any assets or securities, including by merger, consolidation, asset sale or other business combination, other than in the ordinary course of business consistent with past practice; (vii) making any loans or advances to, or any investments in, any other Person (in the case of loans or advances to employees, in excess of $100,000 in the aggregate for all such loans and advances); (viii) pledging or otherwise encumbering of its Company LLC Interests or other Equity Interests; (ix) excepting as required or specifically permitted by this Agreement, entering into or amending any Contract with the Manager or any officer of the Company; (x) increasing any benefits under any Employee Benefit Plan or increasing the compensation payable or paid, whether conditionally or otherwise, to any employee, officer, manager or consultant of Company (other than (A) any increase adopted in the ordinary course of business consistent with past practice in respect of the compensation of any employee whose annual base compensation does not exceed $125,000 after giving effect to such increase or (B) any increase in benefits or compensation required by Law or required pursuant to the terms of an existing Employee Benefit Plan); (xi) becoming liable in respect of any guarantee (other than a guarantee by the Company of a Liability of the Company that is made in the ordinary course of business consistent with past practice) or incur, assume or otherwise become liable in respect of any Indebtedness; (xii) repaying, prepaying or otherwise discharging or satisfying any Indebtedness or other material Liabilities, other than in the ordinary course of business consistent with past practice, or waiving, cancelling or assigning any claims or rights of substantial value other than in the ordinary course of business consistent with past practice; (xiii) making any capital expenditures that are in the aggregate in excess of $100,000 (other than capital expenditures contemplated by the capital expenditure budget attached to Schedule 5.01, emergency capital expenditures or capital expenditures that are required to maintain the Business in compliance with any applicable Laws); (xiv) making any change in its methods of accounting or accounting practices (including with respect to reserves) or any Tax election; filing any amended Tax Return; electing or changing any method of accounting for Tax purposes; settling any Action or claim in respect of Taxes; or consenting to any extension or waiver of the limitations period for the assessment of any Tax; (xv) settling, agreeing to settle, waiving or otherwise compromising any pending or threatened Actions or claims (A) involving potential payments by or to the Company of more than $100,000 in aggregate, (B) that admit Liability or consent to non-monetary relief, or (C) that otherwise are or would reasonably be expected to be material to the Company or the Business; (xvi) entering into, adopt, terminate, modify, renew or amend in any material respect (including by accelerating material rights or benefits under) any Contract unless such Contract requires payments by the Company of less than $10,000 per month and that can be terminated by the Company upon 60 days' or less notice without penalty; (xvii) writing up or writing down any of its material assets of the Company or revalue its inventory or reserves in respect of its accounts receivable; (xviii) taking any action or failing to take any action that would result in any of the representations and warranties set forth in this Agreement becoming false or inaccurate in any material respect; or (xix) authorizing, agreeing or committing or entering into a Contract to do any of the foregoing.

5.02 Regulatory Filings

(a) The Company shall, as soon as reasonably practical after the date hereof (it being the objective of the Parties to do so within two Business Days of the date hereof), make all necessary filings and submissions under any Laws applicable to the Company for the consummation of the transactions contemplated herein and the operation of the Business following the Closing. Subject to Section 5.05 and the restrictions of applicable Law, the Company shall coordinate and cooperate with the Parent in exchanging such information and providing such assistance as the Parent may reasonably request in connection with the foregoing and Parent's efforts described in 5.02(b).

(b) The Parent shall, as soon as reasonably practical after the date hereof (it being the objective of the Parties to do so within two Business Days of the date hereof), make or cause to be made all filings and submissions required under any Laws applicable to the Parent for the consummation of the transactions contemplated herein and the operation of the business following the Closing. The Parent shall comply with any additional requests for information, including requests for production of documents and production of witnesses for interviews or depositions by any Governmental Authority. In addition, the Parent shall cooperate in good faith with all such governmental authorities and undertake promptly any and all action required to complete lawfully the transactions contemplated by this Agreement (including, without limitation, divestitures of its assets).

5.03 Closing Conditions

(a) Subject to the terms and conditions of this Agreement, from the date of this Agreement to the Closing or the earlier termination of this Agreement pursuant to Article IX, the Manager and the Company shall use commercially reasonable efforts to take or cause to be taken all actions, to file or cause to be filed all documents, to give or cause to be given all notices to Governmental Authorities or other Persons, to obtain or cause to be obtained all authorizations, consents, waivers, approvals, permits or orders from Governmental Authorities or other Persons, and to do or cause to be done all other things necessary, proper or advisable, in order to cause the conditions set forth in Section 4.01 to be satisfied and to consummate the transactions contemplated herein as soon as reasonably practicable after the satisfaction of the conditions set forth in Section 4.01 (other than those to be satisfied at the Closing) and allow the Business to be operated immediately following the Closing in the same manner as it is operated prior to the Closing; provided that neither the Company nor the Manager shall be required to expend any funds to obtain any governmental or third party consents required under Section 4.01(d), other than de minimis amounts and fees and expenses of their Representatives.

(b) Subject to the terms and conditions of this Agreement (including Section 5.02 above), from the date of this Agreement to the Closing or the earlier termination of this Agreement pursuant to Article IX, the Parent shall use commercially reasonable efforts to take or cause to be taken all actions, to file or cause to be filed all documents, to give or cause to be given all notices to Governmental Authorities or other Persons, to obtain or cause to be obtained all authorizations, consents, waivers, approvals, permits or orders from Governmental Authorities or other Persons, and to do or cause to be done all other things necessary, proper or advisable, in order to cause the conditions set forth in Section 4.02 to be satisfied and to consummate the transactions contemplated herein as soon as reasonably practicable after the satisfaction of the conditions set forth in Section 4.02 (other than those to be satisfied at the Closing).

5.04 Notification.

(a) From the date hereof until the Closing Date or the earlier termination of this Agreement pursuant to Article IX, the Company and SBEEG shall promptly after discovery thereof (and in any event prior to the Closing) disclose to the Parent in writing any (i) material variances from the representations and warranties contained in Article VI and Article VII, as applicable, together with updated and corrected Schedules, (ii) other fact or event that would constitute a breach of the covenants in this Agreement made by the Members or the Company, (iii) commencement or initiation or threat of commencement or initiation of any Action (or any material development in any pending Action) regarding the transactions contemplated hereby or otherwise involving the Company or the Business, (iv) notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated hereby, or (v) notice or other communication from any Governmental Authority in connection with the transactions contemplated. The delivery of any notice pursuant to this Section 5.04 shall not cure any breach of any representation or warranty requiring disclosure of such matter or any breach of any covenant contained in this Agreement or any Related Agreement. For the avoidance of doubt, (x) the closing conditions shall be read after giving effect to any update to the Schedules or other written notices delivered pursuant to this Section 5.04, and (y) the indemnification provisions of this Agreement shall be read without giving effect to any update to the Schedules or other written notices delivered pursuant to this Section 5.04.

(b) From the date hereof until the Closing Date or the earlier termination of this Agreement pursuant to Article IX, the Parent shall promptly (and in any event prior to the Closing) notify the Company and SBEEG after discovery by the Parent and Merger Sub of (i) any material variances from the representations and warranties contained in Article VIII and (ii) any other fact or event that would cause or constitute a breach of the covenants in this Agreement made by the Parent, if, in each case, such variance or breach would have a material adverse effect on the ability of the Parent to consummate the transactions contemplated hereby.

5.05 Contact with Providers, Suppliers, Employees and Others

From the date hereof until the Closing Date or the earlier termination of this Agreement pursuant to Article IX, the Parent and its authorized Representatives shall contact and communicate with the employees of Spoonful working at the Company, providers, customers, suppliers or any other Person with a material business relationship with the Company only after prior consultation with and oral or written approval of SBEEG or its authorized Representatives; provided, that SBEEG will consent to any reasonable request by the Parent, prospective providers of financing or their respective Representatives to contact any such employees, providers, customers, suppliers or other Persons and no such contact shall be made prior to the granting of such consent by SBEEG. Notwithstanding the foregoing, this Section 5.05 shall not prohibit any contacts or communications to the extent not related to the Company or the Merger.

5.06 No Negotiation

From the date of this Agreement until the Closing or the earlier termination of this Agreement pursuant to Article IX, the Company and the Manager shall not, and the Manager shall require the Company not to, directly or indirectly (a) solicit, initiate, encourage, negotiate or discuss any inquiries, proposals, discussions or offers from or with any Person (other than Parent) or enter into any agreement with any such Person (other than Parent) relating to, or consummate any transaction involving the sale of the business or assets of either the Company, or any of the Equity Interests of the Company, or any merger, consolidation, business combination, or similar transaction involving the Company, or any recapitalization transaction or any other transaction that would prevent the transactions contemplated by this Agreement from being consummated or (b) participate in any discussions or negotiations that any of them or any of their respective Representatives have been having with any Person (other than Parent) that relate to such matters (it being understood that any such discussions or negotiations shall immediately terminate on the date hereof) and shall not provide any such Person any additional information related to such matters or otherwise assist or participate in, or facilitate in any other manner, any effort or attempt by any Person to do or seek any of the foregoing. Additionally, SBEEG will notify the Parent as soon as practicable if any Person makes any proposal, offer, inquiry to or contact with the Company or any Member with respect to any such matter.

5.07 Financing and Other Cooperation

From the date of this Agreement until the Closing or the earlier termination of this Agreement pursuant to Article IX, the Company shall permit, the Parent and its Affiliates and lenders and its and their Representatives to have reasonable access (at reasonable times following reasonable notice) to the Company's premises, properties, books, records and personnel, and provide to the foregoing Persons (a) such contracts, financial and operating data and other information and documents of, or pertaining to, the Company, the Assets or the Business, as the Parent, any prospective providers of debt financing or their respective Representatives may reasonably request from time to time and (b) such cooperation in connection with the arrangement of any debt financing as may be reasonably requested by the Parent and Merger Sub; provided, that in the cases of clauses (a) and (b) such access shall not unreasonably interfere with the conduct by the Company of its businesses in the ordinary course of business. The Company shall make available to the Representatives of Parent upon the reasonable request of Parent and during normal working hours all officers, employees, accountants, counsel and other Representatives of the Company and its Affiliates as Parent may reasonably request. The Company shall use its best efforts to make available to the Representatives of Parent, upon the reasonable request of Parent, such suppliers of the Business and the Company or other Persons with whom the Company or any of its Affiliates maintains a similar business or commercial relationship with respect to the Company or the Business.

5.08 Parent Financing

The Parent shall use commercially reasonable efforts to take, or cause to be taken, all actions and do, or cause to be done, all thing necessary, proper or advisable to arrange the financing necessary to close the transactions contemplated hereby, including, without limitation, using all commercially reasonable efforts to consummate the financing necessary to consummate the transactions contemplated herein at or prior to the Closing.

5.09 Update Financials.

The Company shall prepare and furnish to the Parent, promptly after becoming available and in any event within fifteen (15) Business Days of the end of each calendar month, an unaudited balance sheet and unaudited statements of income and cash flow with respect to the Company (the “Update Financials”) for each month following the date of the Latest Balance Sheet Date through the Closing Date.

5.10 Employment Matters.

(a) The Surviving Company shall offer employment to all Business Employees who are employed by Spoonful (or, in the case of independent contractors, offer to continue to engage such independent contractors who are under contract to perform services for the Company) on the Closing Date at a salary or wage and commission and bonus opportunity at least comparable to that in effect immediately prior to Closing. The Company and SBEEG hereby consents, and shall cause Spoonful to consent, to the hiring of the Transferred Employees of Spoonful working at the Company by the Surviving Company and waives in perpetuity, with respect to the employment or engagement by the Surviving Company of the Transferred Employees, any claims or rights the Company, SBEEG or Spoonful may have against the Surviving Company or Parent, any of their respective Affiliates or any such Transferred Employees under any non-competition, confidentiality, employment, assignment of inventions or similar Contract with the Transferred Employees. The Company and SBEEG, and SBEEG on behalf of Spoonful, acknowledge and agree that neither the Surviving Company nor Parent shall have any liability relating to or arising out of the employment of any Business Employee up to Closing and with respect to the termination on or before the Closing Date of any employee of Spoonful working at the Business on or before the Closing Date. Neither the Surviving Company nor Parent shall have any liability with respect to any current or former Business Employee of Spoonful working at the Company or any of its Affiliates, including any Transferred Employee, arising from such Business Employee's employment or engagement with Spoonful or any its Affiliates or the termination of such Business Employee's employment or engagement with the Company or Spoonful or any of its Affiliates on or before Closing. Without limiting the generality of the foregoing, from and after the Closing Date, Spoonful shall retain liability and remain responsible for any and all Liabilities in respect of the Business Employees and their beneficiaries and dependents relating to or arising in connection with or as a result of (i) the employment or engagement or the termination of employment or engagement of any such Business Employee by Spoonful or any of their Affiliates (including, without limitation, in connection with the consummation of the transactions contemplated by this Agreement); (ii) the participation in or accrual of benefits or compensation under, or the failure to participate in or to accrue compensation or benefits under, or the operation and administration of, any Employee Benefit Plan; and (iii) accrued but unpaid salaries, wages, bonuses, commissions, incentive compensation, vacation or sick pay or other compensation or payroll items (including, without limitation, deferred compensation) relating to such individual's engagement with Spoonful or its Affiliates on or before Closing. Further, SBEEG and Spoonful, as applicable, shall remain responsible for the payment of any and all retention, change in control, severance or other similar compensation or benefits which are or may become payable under an Employee Benefit Plan in connection with the consummation of the transactions contemplated by this Agreement. Subject to the first sentence of this section, nothing in this Agreement shall obligate Parent or the Surviving Company to retain any Transferred Employee in its employ for any specific time period. The Surviving Company may (i) unilaterally change the salary (either by increase or decrease) and/or the title and duties of any Transferred Employee at any time on or after the Closing Date and (ii) at the Surviving Company's sole discretion, change or eliminate any of the plans, policies or arrangements of the Surviving Company applicable to the Transferred Employees. Notwithstanding the foregoing, Parent acknowledges and agrees that any Employee Benefit Plan, including any vacation plan, which provides for benefits determined with reference to the date an employee's employment began shall be determined based upon each Transferring Employees original employment date with the Company or Spoonful.

(b) The Company and SBEEG shall be, and SBEEG shall cause Spoonful to be, responsible for timely compliance with all federal, state and local Laws with respect to the effect to any of its employees on or before Closing of the transactions contemplated by this Agreement or by any Related Agreement, including, without limitation, the Worker Adjustment and Retraining and Notification Act of 1988, as amended ("WARN") and the California Worker Adjustment and Retraining Notification Act, California Labor Code Section 1400 ("California WARN"). The Company and SBEEG agree, and SBEEG shall cause Spoonful to agree, and each of Parent and the Surviving Company agree, that it will not take any action that causes the notice provisions of WARN or any state or local analog to WARN, including, without limitation, the California WARN, to be applicable to the transactions contemplated by this Agreement or by any Related Agreement.

(c) SBEEG and its respective ERISA Affiliates (if any) shall make available COBRA Coverage in accordance with Treasury Regulation §54.4980B-9 to all "M&A qualified beneficiaries" associated with the transactions contemplated by this Agreement who have a "qualifying event" within the meaning hereof.

(d) Prior to the Closing Date, the Company and SBEEG shall have, and SBEEG shall cause Spoonful to have, with respect to any compensation or benefits contemplated by this Agreement to be received by a "disqualified individual" in connection with the transactions contemplated by this Agreement that may be deemed to constitute "parachute payments" pursuant to Code Section 280G ("Potential 280G Benefits"), provided to the members: (i) adequate disclosure of all material facts concerning any Potential 280G Benefits as provided in Code Section 280G(b)(5)(B) and (ii) provided a disqualified individual has executed a waiver of Potential 280G Benefits, a written consent seeking member approval of all such Potential 280G Benefits by the requisite vote such that all such Potential 280G Benefits resulting from the transaction contemplated hereby shall not be deemed to be "parachute payments" pursuant to Code Section 280G or shall be exempt from such treatment under such Section 280G (the "280G Vote").

(e) None of the provisions of this Section 5.10 are intended to be for the benefit of, or otherwise enforceable by, any third party, including, without limitation, any Business Employee, and no Business Employees (or any dependents of such employees) will be treated as third party beneficiaries in or under this Agreement. None of the provisions of this Section 5.10 shall be construed to amend any Employee Benefit Plan.

(f) Participation of Transferred Employees in the Employee Benefit Plans shall end as of the Closing Date. Surviving Company shall not assume sponsorship of or any Liability for any Employee Benefit Plan, including, but not limited to, any accrued, unused vacation, sick and other paid time off of the Transferred Employees.

ARTICLE VI
REPRESENTATIONS AND
WARRANTIES CONCERNING THE MANAGER

Except as set forth in the Schedules attached as Schedule IV to this Agreement (each a "Schedule" and collectively, the "Disclosure Schedules") which shall be prepared in accordance with and qualify the representations and warranties herein to the extent and in the manner set forth in Section 11.01, the Manager hereby represents and warrants solely as to itself that:

6.01 Authority; Power

The Manager has all requisite power and authority to execute and deliver this Agreement and the Related Agreements to which the Manager is, or will be at Closing, a party and to perform its obligations hereunder and thereunder.

6.02 Organization

The Manager is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation. The execution and delivery of this Agreement and the Related Agreements to which it is or will be at Closing a party, as applicable, by it and the performance by it of all of its obligations under this Agreement and such Related Agreements, as applicable, have been duly approved prior to the date of this Agreement by it by all requisite action of its board of directors, shareholders, partners, managers, members, trustees or the like, as the case may be. Neither the execution and delivery of this Agreement by it, nor the consummation by it of the transactions contemplated hereby will conflict with or constitute a breach of the terms, conditions or provisions of its Organizational Documents.

6.03 Execution and Delivery; Valid and Binding Agreement

This Agreement, and each Related Agreement to which the Manager is, or will be at Closing, a party (a) have been (or, in the case of Related Agreements to be entered at Closing, will be when executed and delivered) duly executed and delivered by it, and (b) assuming that this Agreement and such Related Agreements are the valid and binding obligation of the Parent and Merger Sub, this Agreement constitutes (or in the case of Related Agreements to be entered into at Closing, will constitute when executed and delivered) the legal, valid and binding obligation of the Manager, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies.

6.04 Noncontravention

Except as set forth on Schedule 6.04, neither the execution and the delivery by the Manager of this Agreement or any Related Agreement to which it is, or will be at Closing, a party, nor the consummation of the transactions contemplated hereby or thereby by the Manager will (a) violate any Law or (b) conflict with or result in a breach or violation of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in termination of, or accelerate the performance required by, or result in a right of termination or acceleration under, or require any action by (including any authorization, consent or approval) or notice to any Person, or result in the creation of any Lien upon any Company LLC Interests of the Manager under, any of the terms, conditions or provisions of (i) any material Contract of it or (ii) any provision of its Organizational Documents, as the case may be.

6.05 Ownership of Equity Interests

Except as set forth on Schedule 6.05, the Manager is and will be at Closing the record and beneficial owner of the Equity Interests set forth by its name on the Merger Consideration Schedule, free and clear of all Liens.

ARTICLE VII
REPRESENTATIONS AND WARRANTIES
CONCERNING THE COMPANY

Except as set forth in the Disclosure Schedules (which shall be prepared in accordance with and qualify such representations and warranties to the extent and in the manner set forth in Section 11.01), the Company, SBEEG and the Manager, on a joint and several basis, make the following representations and warranties to the Parent and the Merger Sub:

7.01 Organization, Corporate Power and Authorization.

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and the Company has all requisite limited liability company power and authority and all authorizations, licenses and permits necessary to own or lease and operate its properties and to use the Assets and to carry on its businesses as now conducted. The Company is qualified to do business and in good standing in every jurisdiction in which its ownership or leasing of property or the conduct of its businesses as now conducted requires it to qualify.

(b) The Company has all requisite power and authority necessary for the execution, delivery and performance by it of this Agreement and each such Related Agreement. The Company has duly authorized by all necessary action on the part of its Manager (or equivalent) and the Members the execution, delivery and performance of this Agreement and each such Related Agreement, and the consummation of the Merger and the other transactions contemplated hereby. This Agreement and each Related Agreement to which the Company is, or will be at Closing, a party (i) have been (or, in the case of Related Agreements to be entered into at Closing, will be when executed and delivered) duly executed and delivered by each such Person that is, or will be at Closing, a party thereto and (ii) is (or in the case of Related Agreements to be entered into at the Closing, will be when executed and delivered) a legal, valid and binding obligation of each such Person, enforceable against each such Person in accordance with its terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies.

(c) The affirmative vote of the holders of a majority of the Company LLC Interests outstanding (the "Required Vote") are the only votes or consents of the holders of any class or series of the Company's Equity Interests necessary (under applicable Law or Contracts or under the Company's Organizational Documents or otherwise) to adopt this Agreement and to consummate the Merger and perform the other transactions contemplated hereby. The Required Vote has been obtained as of the date of this Agreement in compliance with all applicable Laws and the Organization Documents of the Company.

(d) The Manager, by written consent, has determined that this Agreement and the transactions contemplated hereby, including the Merger, are advisable and fair to and in the best interests of the Company and the Members and has approved the same.

(e) No "fair price," "moratorium," "control share acquisition," "business combination" or other anti-takeover statute or regulation enacted under the Laws of any State is applicable to the Merger.

7.02 Consents and Approvals

Except as set forth in Schedule 7.02, the execution and delivery by the Company (and, if applicable, one or more of its Affiliates) of this Agreement, the Related Agreements or any other instrument or document required by this Agreement or any Related Agreement to be executed and delivered by the Company (and, if applicable, one or more of its Affiliates) do not, and the performance of this Agreement, the Related Agreements and any other instrument or document required by this Agreement or any Related Agreement to be executed and delivered by the Company (and, if applicable, one or more of its Affiliates) shall not require the Company (or, if applicable, one or more of its Affiliates) to provide notice to, obtain any consent of or take any other action in respect of any Person or obtain Approval of, observe any waiting period imposed by, make any filing with or notification to, or take any other action in respect of any Governmental Authority.

7.03 Noncontravention

Except as listed on Schedule 7.03, the authorization, execution, delivery and performance of this Agreement or any Related Agreement by the Company or the Manager and the consummation of the Merger and other transactions contemplated hereby and thereby do not and will not conflict with or result in any breach of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in a violation or termination of (or right of termination in respect of), or accelerate the performance required by (or result in a right of acceleration under), or require any action by (including any authorization, consent or approval) or notice to any Person, or require any offer to purchase or prepayment of any Indebtedness or Liability under, or result in the creation of any Lien upon or forfeiture of any of the rights, properties or any assets of the Company under (a) the provisions of the Company's Organizational Documents; (b) any Lease, Employee Benefit Plan, insurance policy or other Contract that is listed or required to be listed in the Disclosure Schedules or that is otherwise material to the Company; or (c) assuming the taking of each action by (including the obtaining of each necessary authorization, consent or approval), or in respect of, and the making of all necessary filings with, Governmental Authorities, in each case, as disclosed on Schedule 7.03, any Order or material Permit applicable to or otherwise affecting the Company or any other Law to which the Company is subject.

7.04 Equity Interests

The authorized outstanding Company LLC Interests are set forth on Schedule 7.04 and such Company LLC Interests are owned of record by the Persons in the respective amounts set forth in such Schedule. All of the outstanding Company LLC Interests have been duly authorized. Except as set forth on Schedule 7.04, the Company does not have any other Equity Interests or other securities containing any equity features authorized, issued or outstanding, and there are no agreements, options, warrants or preemptive or other rights or arrangements existing or outstanding which provide for the sale or issuance of any of the foregoing by the Company. Except as set forth on Schedule 7.04, there are no agreements or other obligations (contingent or otherwise) which require the Company to repurchase, redeem or otherwise acquire, or make any payment (including any dividend or distribution) in respect of any Equity Interests and there are no existing rights with respect to registration under the Securities Act of any Equity Interests in the Company. There are no outstanding or authorized stock appreciation, phantom stock, or similar rights with respect to the Company. There are no voting trusts, proxies, stockholder agreements or any other agreements or understandings with respect to the voting or transfer of Equity Interests of the Company. The Company has made available to the Parent accurate and complete copies of the stock ledger (or equivalent records) of the Company, which records reflect all issuances, transfers, repurchases and cancellations of Equity Interests of the Company. The Company has not violated the Securities Act, any state “blue sky” or securities Laws, any other similar Law or any preemptive or other similar rights of any Person in connection with the issuance, repurchase or redemption of any of its Equity Interests.

7.05 Licenses and Permits

Schedule 7.05 contains a correct and complete list of all Approvals and Orders that are necessary for the ownership or operation of the Assets or the Business, or that have been issued, granted or otherwise made available to the Company or its Affiliates with respect to the Assets or the Business, including, without limitation, any liquor licenses (the "Business Licenses"). Each Business License is valid and in full force and effect, no Business License is subject to any Lien, limitation, restriction, probation or other qualification, and there is no default under any Business License or, to the knowledge of the Company, any basis for the assertion of any default thereunder. There is no Action pending or, to the knowledge of the Company, threatened that would reasonably be expected to result in the termination, cancellation, modification, non-renewal, revocation, limitation, suspension, restriction or impairment of any Business License or the imposition of any fine, penalty or other sanctions for violation of any legal or regulatory requirements relating to any Business License or, to the knowledge of the Company, any basis therefor. The Company or its Affiliates have, and have had at all relevant times, all Approvals and Orders that are or were necessary in order to own and operate the Assets and to operate the Business. None of the Business Licenses will be adversely affected by the consummation of the transactions contemplated hereby. The Company is in material compliance with the terms and conditions of each Business License.

7.06 Title to and Condition of Properties; Sufficiency of Assets.

(a) The Company is the sole and exclusive legal and equitable owner of all right, title and interest in, and has good, valid and marketable title to, all of the Assets, free and clear of all Liens, including, without limitation, the equipment, fixtures and other material Assets listed on Schedule 7.06(a).

(b) All tangible assets and personal property included in the Assets have been maintained in accordance with normal industry practice and are in good operating condition and repair, subject to ordinary wear and tear, and there has not been any interruption of the operations of the Business due to the condition of any such assets or properties.

(c) Except as set forth in Schedule 7.06, the Assets comprise all assets, properties, rights and Contracts used in connection with the operation of the Business, which are all of the assets, properties, rights and Contracts necessary for Parent and the Surviving Company to operate the Business following the Closing in the manner in which the Business historically has been, is currently and is proposed to be conducted. Except as set forth in Schedule 7.06, no other Person, including any Member or other Affiliate, owns or has the right to use any of the assets or property used in connection with the operation of the Business, and no Assets are in the possession of others.

(d) Use of the Leased Spaces in the Business for the sale of food, wine, liquor, and beer is permitted as of right under all applicable zoning legal requirements. The Leased Spaces are in material compliance with all applicable Laws, including those pertaining to zoning, building and the disabled.

7.07 Environmental Matters

The Company has materially complied and is in material compliance with all Environmental Laws relating to the Business, which material compliance includes the possession by the Company of all Approvals required under Environmental Laws and material compliance with the terms and conditions thereof. Schedule 7.07 includes a list of all of the Approvals required under Environmental Laws necessary to own and operate the Assets or the Business as currently conducted. To the knowledge of the Company, there are no past or present facts, circumstances, conditions, activities or incidents that could give rise to any Liability, including any Liability for investigation costs, cleanup costs, response costs, remediation costs, corrective action costs, personal injury, property damage, natural resources damages or attorneys' fees, or result in a claim against the Company, any of its Affiliates or Parent, Merger Sub or any of their respective Affiliates under any Environmental Law, arising from the operation of the Business. There is no Action pending or, to the knowledge of the Company, threatened or other written notice or claim of any violation, formal administrative proceeding or written information request by any Governmental Authority, nor has the Company or any of its Affiliates received written notice of any investigation by any Governmental Authority relating to any Environmental Law nor any other written notice or claim from a Governmental Authority or any Person alleging that the Company or any of its Affiliates is not in compliance with any Environmental Law or Approval required under any Environmental Law in connection with the Business or has any Liability under any Environmental Law or for the remediation of any Materials of Environmental Concern at any property in connection with the Business.

7.08 Financial Statements; No Undisclosed Liabilities.

(a) Schedule 7.08 contains the following consolidated financial statements (collectively, the "Financial Statements"):

(i) the unaudited balance sheet of the Company as of May 31, 2015 (the "Interim Balance Sheet") and the related statements of income and cash flow for the five-month period then ended (the "Interim Financial Statements"); and

(ii) the combined audited balance sheet of the Company, Katsu USA, LLC, Katsu Glendale, LLC and Katsuya-Downtown L.A., LLC as of December 31, 2013 and December 31, 2014 and the related statements of income, cash flow and members' equity for each twelve (12)-month period then ended.

(b) The Financial Statements were prepared in accordance with the books and records of the Company, are accurate and complete and fairly present in all material respects the financial condition of the Company as of the dates indicated and the results of operations of the Company for the respective periods indicated, and have been prepared in accordance with the Company's Accounting Practices and Procedures, subject to changes resulting from normal, recurring period-end audit adjustments, which adjustments, individually and in the aggregate, shall not be material. Except as and to the extent the amounts are specifically accrued or disclosed in the Interim Balance Sheet, the Company does not have any existing Liabilities, except for Liabilities that were incurred in the ordinary course of the Company consistent with past practice since the date of the Interim Balance Sheet.

7.09 Absence of Certain Events.

Since May 31, 2015, the operation of the Business has been conducted only in the ordinary and usual course and in a manner consistent with past practice and there has not been any change, event, loss, development, damage or circumstance affecting the Assets or the Business which, individually or in the aggregate, has had or could reasonably be expected to have a Business Material Adverse Effect. Without limiting the foregoing, since May 31, 2015, except as set forth on Schedule 7.09, there has not been:

(a) any material decrease in the value of any of the Assets;

(b) any voluntary or involuntary sale, lease, assignment, license, transfer or other disposition of any kind of any asset or property used in connection with the operation of the Business, including the Assets, except the sale of Inventory in the ordinary course of the Business consistent with past practices;

(c) any Lien imposed, incurred or created on any of the Assets;

(d) any damage, destruction or loss of any asset or property used in connection with or relating to the operation of the Business, by fire or other casualty, whether or not covered by insurance;

(e) any capital expenditure or commitment by the Company in excess of $10,000 or series of capital expenditures or commitments in excess of $20,000 in the aggregate in connection with the Business;

(f) any payment, discharge or satisfaction of any Liability of the Business, other than payments made in the ordinary course of the Business or Liabilities reflected or reserved against in the Interim Balance Sheet, or Liabilities incurred since that date in the ordinary course of the Business consistent with past practice;

(g) any assignment, termination, modification, amendment or waiver of, or any failure to comply with any provision of, any Contract or transaction that relates to the Business, or any account receivable relating thereto, whether as a security interest or otherwise, except as would not have a Business Material Adverse Effect;

(h) any discontinuance, termination, receipt of a notice of termination of or other alteration to any relationship with any supplier, vendor or sales or service representative of the Business, except as would not have a Business Material Adverse Effect;

(i) any change in the rate of compensation, commission, bonus or other direct or indirect remuneration payable or to become payable to any Business Employee, or any agreement to pay any bonus or extra compensation or other employee benefit to any Business Employee, other than in the ordinary course of business and not in excess of 5% of such Business Employee's prior compensation;

(j) any failure to pay or discharge when due (after the application of any applicable grace periods) any Liabilities of the Business;

(k) any change in any of the accounting principles adopted by the Company in connection with the Business, or any change in the Company's accounting policies, procedures, practices or methods with respect to applying such principles, other than as required by GAAP;

(l) any material transaction or Contract entered into, or Liability created, assumed, guarantied or incurred outside the ordinary course of business in connection with the Business;

(m) any termination of employment of any employee of the Company or any of its Affiliates who provided services to the Business or any expression of intention by the Company or any of its Affiliates or by any Business Employee to terminate employment with the Company, except as would not have a Business Material Adverse Effect;

(n) any write-off of any accounts receivable or notes receivable of the Company or any portion thereof in excess of $10,000 individually or $50,000 in the aggregate, or any sale, assignment or disposition of any such account or note receivable (including by means of any factoring agreement), in each case that relate to the Business;

(o) any engagement by the Company in any transaction with any Affiliate, employee, officer, director, manager or security holder thereof in connection with the Business, other than (i) the payment of normal wages and salaries to employees in the ordinary course of business and consistent with past practice and advances to employees in the ordinary course of business for travel and similar business expenses and consistent with past practice and (ii) pursuant to written intercompany Contracts among the Company and any of its Affiliates in effect as of the date hereof;

(p) any material change in the manner in which the Company extends or receives discounts or credit from customers, suppliers or vendors of the Business;

(q) any settlement or offer or proposal to settle (i) any Action involving or relating to the Business or (ii) any litigation, arbitration, proceeding or dispute that relates to the transactions contemplated hereby or by the Related Agreements, in each case, that would result in payments in excess of $20,000 individually or $50,000 in the aggregate; or

(r) any agreement, understanding, authorization or proposal, whether in writing or otherwise, for the Company or any of its Affiliates to take any of the actions specified in this Section 7.09.

7.10 Legal Proceedings.

(a) Except as set forth on Schedule 7.10, there is no Action pending or, to the knowledge of the Company, threatened by or against the Company or any of its officers, directors or managers (in their capacities as such) (i) relating to the Business or the Assets, (ii) that, individually or in the aggregate, is reasonably likely to have a Business Material Adverse Effect on the Business or the Assets or (iii) that would (A) give any Person the right to enjoin or rescind the transactions contemplated by this Agreement or (B) otherwise prevent the Company from (x) executing and delivering this Agreement or the Related Agreements or (y) performing its obligations pursuant to, or observing any of the terms and provisions of, this Agreement or the Related Agreements, and neither the Company nor any of its Affiliates has received any claim, complaint, incident, report, threat or notice of any such Action. There is no Action pending or threatened against any other Person by the Company or any of its Affiliates relating to the Business or the Assets.

(b) Schedule 7.10 sets forth all Actions that (i) involved the Business or the Assets at any time during the past five (5) years and (ii) are no longer pending (the "Prior Actions"). All of the Prior Actions have been concluded in their entirety and none of the Assets has and will not have any Liability with respect to the Prior Actions. The Company has provided Parent and Merger Sub with all formal written communications relating to the Prior Actions between the Company and a Governmental Authority and any Orders related thereto.

(c) There are no outstanding Orders against, involving or affecting the Business or the Assets, and the Company is not in default with respect to any such Order of which it has knowledge or was served upon it.

7.11 Compliance with Laws.

(a) The Company has materially complied and is in material compliance with all Laws (excluding Laws specifically addressed elsewhere in this Article VII) applicable to (i) the properties or assets of the Business, including the Assets, and the Company's ownership, use or operation thereof, and (ii) the operation of the Business. The Company has not received any written notice to the effect that, or otherwise been advised that, the Company is not in material compliance with any such Laws, and the Company has no reason to anticipate that any existing circumstances is likely to result in an Action or a violation of any such Law. No investigation or review by any Governmental Authority with respect to the Business or the Assets is pending or, to the knowledge of the Company, threatened, nor has any Governmental Authority indicated an intention to conduct the same. The Company has not received any credible evidence that any Business Employee or agent of the Company has committed a violation of federal criminal law involving fraud, conflict of interest, bribery or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(b) Neither the Company nor any of its Affiliates, executive officers or directors (i) appears on the Specially Designated Nationals and Blocked Persons List of OFAC or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation; (ii) is otherwise a party with whom, or has its principal place of business or the majority of its business operations (measured by revenues) located in a country in which, transactions are prohibited by (A) United States Executive Order 13224, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism; (B) the United States Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001; (C) the United States Trading with the Enemy Act of 1917, as amended; (D) the United States International Emergency Economic Powers Act of 1977, as amended or (E) the foreign asset control regulations of the United States Department of the Treasury; (iii) has been convicted of or charged with a felony relating to money laundering; or (iv) is under investigation by any Governmental Authority for money laundering.

7.12 Employment Matters.

(a) Schedule 7.12 sets forth a complete and accurate list of all current Business Employees who are in employment with Spoonful as of the date hereof and each such Business Employee's (i) rate of pay or annual compensation (including actual or potential bonus payments and the terms of any commission payments or programs), (ii) title(s), (iii) status of employment or engagement, (iv) date of hire or engagement, (v) annual vacation, sick and other paid time off allowance and (vi) amount of accrued vacation, sick and other paid time off and the economic value thereof. Schedule 7.12 also separately identifies each Business Employee who is not fully available to perform his or her duties as a result of disability or other leave and sets forth the anticipated date of return to full service. All Business Employees are employed by Spoonful. As of the date hereof and as of the Closing Date, the Company does not and will not have any employees.

(b) Neither the Company nor Spoonful on behalf of the Company, is, or, as of the Closing Date, will be delinquent in payments to any Business Employee for any wages, salaries, commissions, bonuses, benefits or other compensation for any services performed by them to date or through the Closing Date or any amounts required to be reimbursed to any Business Employee or any post-employment or post-engagement obligations of any type. Upon termination of engagement of any Business Employee on or before Closing, neither Parent, Merger Sub nor any of their respective Affiliates will, by reason of anything done prior to the Closing, be liable to any Business Employee for so-called "severance pay" or any other similar payments, and to the knowledge of the Company, there are no circumstances whereby any current or former Business Employee may demand payment or compensation in connection with the termination of his or her employment on or before Closing.

(c) Neither Spoonful nor the Company is, or has ever been a party to, bound by, or negotiated any collective bargaining agreement or other Contract with a union, works council or labor organization purporting to represent any employee of the Company, Spoonful or SBEEG (collectively, "Union"), and there is not, and has never been any Union representing or purporting to represent any Business Employee. To the knowledge of the Company, no Union or group of employees is seeking or has sought to organize employees for the purpose of engaging in collective bargaining. There is not and has never been any threat of a strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor disruption or dispute affecting the Company or Spoonful. There is no unfair labor practice charge or any other action, complaint, suit, arbitration, inquiry, proceeding or investigation pending before the National Labor Relations Board or any other agency having jurisdiction thereof or, to the knowledge of the Company, threatened.

(d) Schedule 7.12(d) sets forth all Employee Benefit Plans under which current or former Business Employees (or their beneficiaries) are eligible to participate or derive a benefit or for which the Assets may be subject to any Liability. The Company has made available to Parent and Merger Sub correct and complete copies of all Employee Benefit Plans listed in Schedule 7.12(d), and has made available to Parent and Merger Sub accurate, current and complete copies of each of the following: (i) where the Employee Benefit Plan has been reduced to writing, the plan's governing document together with all amendments; (ii) where the Employee Benefit Plan has not been reduced to writing, a written summary of all material plan terms; (iii) where applicable, copies of any adoption agreements, trust agreements, other funding arrangements, custodial agreements, insurance policies and contracts, administration agreements, investment management or investment advisory agreements, or other similar agreements; (iv) the most recent summary plan description and any summaries of material modifications thereto; (v) employee handbooks and any other written communications (or a description of any oral communications) of a Company-wide nature that are currently in effect and material relating to any Employee Benefit Plan; (vi) in the case of any Employee Benefit Plan that is intended to be qualified under Code Section 401(a), a copy of the most recent determination, advisory or opinion letter from the IRS; (vii) in the case of any Employee Benefit Plan for which a Form 5500 is required to be filed, a copy of the filed Form 5500 for each of the most recent prior three (3) plan years, with schedules attached; (viii) actuarial valuations and reports, to the extent applicable, related to any Employee Benefit Plans with respect to the two (2) most recently completed plan years; and (ix) the results of the coverage, non-discrimination and other qualification related tests under Code Sections 401, 410, 411, 414 and 416 for each of the two (2) most recent plan years and any documents related to any required corrective actions taken by the Company within the past three (3) plan years, as to any plan qualified under Code Section 401(a). Each Employee Benefit Plan intended to be qualified under Code Section 401(a), and the trust (if any) forming a part thereof, is so qualified and has received a favorable determination letter from the IRS or, with respect to a prototype or volume submitted plan, can rely on an opinion letter or advisory letter from the IRS to the prototype or volume submitted plan sponsor. To the knowledge of the Company, nothing has occurred that would reasonably be expected to cause the loss of such qualification. There are no correction filings, petitions or applications pending with respect to the Employee Benefit Plans with the IRS, the U.S. Department of Labor or any other Governmental Authority. Each Employee Benefit Plan has been operated in all material respects in accordance with applicable Law and such plan's governing documents. The parties acknowledge and agree that the transactions contemplated by this Agreement are an "asset sale" (within the meaning of Treas. Reg. § 54.4980B-9, Q&A 4), which also results in "qualifying event" (i.e., termination of employment") with respect to Transferred Employees. The Company or its applicable ERISA Affiliate shall be responsible for complying with the requirements of the health care continuation coverage requirements of Code Section 4980B and Subtitle B of Title I of ERISA in connection with the transactions contemplated by this Agreement with respect to all Transferred Employees who are "M&A Qualifying Beneficiaries" (within the meaning of Treas. Reg. § 54.4980B-7, Q&A 4(a)).

(e) Except as provided in Schedule 7.12(e), the Company is not and has never been (i) a member of a "controlled group of corporations," under "common control" or an "affiliated service group" within the meaning of Code Section 414(b), (c) or (m), or (ii) required to be aggregated under Code Section 414(o) or (iii) under "common control," within the meaning of Section 4001(a)(14) of ERISA, or any regulations promulgated or proposed under any of the foregoing Sections, in each case with any other entity (an "ERISA Affiliate"). Except as provided in Schedule 7.12(e), none of the Employee Benefit Plans is and neither the Company nor any of its ERISA Affiliates have at any time sponsored, contributed to or been obligated to contribute to: (i) a "defined benefit plan" as defined in ERISA Section 3(35); (ii) a pension plan subject to the funding standards of ERISA Section 302 or Code Section 412; (iii) a "multiemployer plan" as such term is defined in ERISA Section 3(37) or Code Section 414(f); (iv) a "multiple employer plan" within the meaning of ERISA Section 201(a) or Code Section 413(a); or (v) a multiple employer welfare arrangement within the meaning of ERISA Section 3(40). There are no Employee Benefit Plans under which welfare benefits are provided to the Company's employees beyond their retirement or other termination of service, other than coverage mandated by Code Section 4980B, Subtitle B of Title I of ERISA or similar state group health plan continuation Laws, the cost of which is fully paid by such Employees or their dependents.

(f) Neither SBEEG, the Company nor any other "disqualified person" or "party in interest," as defined in Code Section 4975 and Section 3(14) of ERISA, respectively, has engaged in any "prohibited transaction," as defined in Code Section 4975 or Section 406 of ERISA (which is not otherwise exempt), with respect to any Employee Benefit Plan, nor, to the knowledge of the Company, has there been any fiduciary violations under ERISA that could subject the Company (or any other Person) to any material penalty or tax under Section 502(i) of ERISA or Code Section 4975.

(g) Except as provided in Schedule 7.12(g), neither the execution and delivery of this Agreement nor the approval or consummation of the transactions contemplated herein will (either alone or in conjunction with any other event) (i) result in any payment becoming due to any Transferred Employee in connection with their employment with Spoonful or SBEEG on or before Closing, (ii) increase any payments or benefits otherwise payable under any Employee Benefit Plan, (iii) result in the acceleration of the time of payment, funding or vesting of any payments or benefits under any Employee Benefit Plan, (iv) result in the forgiveness in whole or in part of any outstanding loans made by the Company to any person, or (v) result in any compensation payable to any individual in connection with the transactions contemplated herein being nondeductible to the Company under Code Section 280G or subject to the excise tax imposed by Code Section 4999. The Company does not have any obligation to any person to provide any indemnification, "gross up" or similar payment to any Person in the event any excise tax is imposed on such person under Code Sections 409A or 4999 or similar state laws.

(h) No Representative of the Company, Spoonful or any of their respective Affiliates has made any representation, promise or guarantee to any of the Business Employees (i) that Parent or the Surviving Company intends to retain or offer to retain any such individual, or (ii) regarding the terms and conditions on which Parent or the Surviving Company may retain or offer to retain any such individual. There are no Actions pending or, to the knowledge of the Company, threatened against or involving the Company or any of its Affiliates by any Business Employee. To the knowledge of the Company, no Business Employee is in violation of any term of any employment, consulting, independent contractor, non-disclosure, non-competition, non-solicitation, inventions assignment or any other Contract (or any other legal obligation such as a trade secrets statute or common law duty of loyalty) with Spoonful. Each of the Company and Spoonful has complied in all material respects with all its obligations under Law with respect to any aspect of the employment or engagement of all Business Employees, including with respect to employment practices, the requirements of the Immigration Reform and Control Act of 1968, as amended, terms and conditions of employment, wage and hours, and the health and safety at work of their employees, and there are no claims pending or, to the knowledge of the Company, threatened by any Person in respect of employment or engagement or any accident or injury.

7.13 Taxes.

(a) All Taxes payable by the Company or any of its Affiliates (or any affiliated, consolidated, combined unitary or similar group of which the Company is or was a member), including but not limited to in respect of the Assets or the Business, have been timely paid, including but not limited to any Taxes the non-payment of which would result in a Lien on any Asset or as would otherwise adversely affect the Assets or would result in Parent, Merger Sub or the Surviving Company becoming liable or responsible therefor.

(b) All material Tax Returns required to be filed by or on behalf of the Company or any of its Affiliates (or any affiliated, consolidated, combined unitary or similar group of which the Company is or was a member), including with respect to the Assets or the Business, have been timely filed, and all such Tax Returns are true, complete and correct in all material respects and have been filed in accordance with all applicable Law; neither the Company nor any of its Affiliates has been informed in writing by any jurisdiction that such jurisdiction believes that the Company or any of its Affiliates is or was required to file any Tax Return in respect of the Business or the Assets.

(c) All Taxes that the Company or any of its Affiliates is or was required by Law to have withheld, including in connection with the Assets or the Business, to any employee, independent contractor, creditor, stockholder, or other third party have been duly withheld or collected and timely paid to the proper Governmental Authority, and the Company and its Affiliates have complied with all reporting and recordkeeping requirements. The Company has properly classified all personnel as either employees or independent contractors.

(d) No unpaid Tax deficiency has been asserted against or with respect to the Assets or the Business and neither the Company nor any of its Affiliates has received notice of any such assertion.

(e) The Company is not and has never been a partnership the disposition of an interest in which would be subject to withholding under Code Section 1445(e)(5) or Code Section 897(g) and no withholding pursuant to Code Section 1445 will be required in connection with this Agreement or the transactions contemplated hereby.

(f) Neither the Company nor its Affiliates maintains a “permanent establishment” or “fixed base” in any foreign jurisdiction as such terms are defined in any applicable income Tax treaty and the Company does not have any requirement to file any Tax Return or pay any Tax Liability to any foreign Governmental Authority.

(g) Neither Parent nor Merger Sub will be required to include any amount in taxable income for any taxable period or portion thereof ending after the Closing Date with respect to any (i) cash or cash equivalents received on or prior to the Closing Date or (ii) income economically accrued on or prior to the Closing Date.

(h) Neither the Company nor any of its Affiliates is or has been required to make any adjustment to any Tax accounting method used with respect to the Assets or the Business and there is no application pending with any Governmental Authority requesting permission for any changes in any of its accounting methods for Tax purposes currently nor has there been in the past four (4) years. No Governmental Authority has proposed in writing any such adjustment or change in accounting method of, or that is being used with respect to, the Assets or the Business.

(i) None of the Assets is treated for federal, state, local or other applicable income Tax purposes as an equity interest in an entity or other Person.

(j) The Company (i) has never been a member of any "affiliated group" within the meaning of Code Section 1504(a) filing a consolidated federal income Tax Return or any other consolidated, combined, or unitary group for federal, state, local or foreign Tax purposes; (ii) is not a party to any contractual obligation relating to Tax sharing, Tax allocation or any similar arrangement; or (iii) does not have any liability for the income Taxes of any person under Treasury Regulation Section 1.1502-6 (or any similar or analogous law or administrative provision of federal, state, local or foreign Tax law), as a transferee or successor, or by contract or otherwise.

(k) No Tax Return in respect of any Assets or the Business is currently being audited by any Governmental Authority and no examination or audit of any such Tax Return is currently threatened in writing by any Governmental Authority.

(l) There is no pending or threatened Action in writing concerning any Tax Liability of the Company, any of its Affiliates, or otherwise concerning the Assets or the Business. No assessment or deficiency for any Tax or adjustment to any Tax item has been proposed or threatened in writing against the Company. The Company has made available to Parent and Merger Sub accurate and complete copies of all Tax Returns, examination reports and statements of deficiencies filed, assessed against or agreed to by the Company or any of its Affiliates since June 30, 2012.

(m) Neither the Company nor its Affiliates has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency. Neither the Company nor its Affiliates has executed any power of attorney with respect to any Tax, other than powers of attorney that are no longer in force. No closing agreements, private letter rulings, technical advice memoranda or similar agreements or rulings relating to Taxes have been entered into or issued by any Governmental Authority with or in respect of the Company or any of its Affiliates.

(n) The Company has never engaged in or promoted any "listed transaction" (within the meaning of Code Section 6707(A)(c)(2) and Treasury Regulation 1.6011-4).

(o) The Company is a "partnership" for U.S. federal income Tax, and applicable state and local Tax, purposes. The Company has not made any election to be treated as a corporation for U.S. federal income Tax, or state and local Tax, purposes.

7.14 Contracts.

(a) Schedule 7.14 sets forth a complete and accurate list of all of the following Contracts to which the Company or any of its Affiliates is a party or is otherwise bound relating to the Business or the Company (and with respect to any oral Contract provides a complete description of the terms of such Contract):

(i) all operating and capital leases for any assets used in connection with the Business;

(ii) all Contracts of employment with Business Employees and service Contracts with independent contractors and consultants of the Business providing for annual compensation in excess of $75,000;

(iii) all Contracts involving an annual payment from or to any Person in excess of $10,000 individually or $50,000 in the aggregate with respect to all Contracts with such Person that relate to the Business;

(iv) all Contracts for capital expenditures or the purchase or sale of any asset or property in excess of $10,000 individually for any Person or $50,000 in the aggregate for all Contracts with such Person that relate to the Business;

(v) all Contracts between the Company and any of its Affiliates that relate to the Business;

(vi) all Contracts (other than Employee Benefit Plans) with any Affiliate, director, manager, officer or employee of the Company or any family member or relative or Affiliate of any such director, manager, officer or employee that relate to the Business;

(vii) all joint venture, partnership or other Contracts relating to the Business involving a share of profits or losses with another Person;

(viii) all Contracts relating to the Business that contain a covenant not to compete or other covenant restricting the marketing, sale, commercialization or other similar activities relating to any products or services of the Business;

(ix) all Contracts pursuant to which the Company or any of its Affiliates has granted or received most favored nation pricing provisions or exclusive marketing in connection with the Business or other rights relating to Asset or the operation of the Business;

(x) all Contracts with any Governmental Authority relating to the Business;

(xi) all sales, agency, representative, distributor, franchise or similar Contracts relating to the Business;

(xii) all Contracts under which the Company subcontracts services to a third party in connection with the Business;

(xiii) all Contracts granting or permitting any Lien on any of the Assets;

(xiv) any (A) Contract pursuant to which the Company or any of its Affiliates is granted by any other Person, or grants to any other Person, any license or other right to use, or a covenant not to sue with respect to, or assigns to any Person, or is assigned by any Person, any Business Intellectual Property, or otherwise to the Business (other than shrink wrap agreements for off-the-shelf software with a replacement cost and/or annual license fees of less than $25,000), and (B) any other Contract relating in whole or in part to any Business Intellectual Property; and

(xv) any other agreement, Contract, lease, license, commitment or instrument relating to the Business to which the Company or any of its Affiliates is a party and by or to which the Business or any of the Assets is bound or subject, which has an aggregate future liability to any Person in excess of $25,000 and is not terminable by the Company or any of its Affiliates, as applicable, by notice of not more than thirty (30) days for a cost of less than $25,000.

The Company has made available to Parent and Merger Sub complete and accurate copies of all Contracts and all Contracts listed in Schedule 7.14, including all amendments and other changes thereto.

(b) Neither the Company nor its Affiliates is in breach or default under the terms of any Contract, and there exists no event, condition or occurrence that (with or without due notice or lapse of time, or both) would constitute such a breach or default, nor has the Company received any written notice of any breach or default or alleged breach or default under any Contract. To the knowledge of the Company, no other party to any Contract is in breach or default under the terms thereof, and, to the knowledge of the Company, there exists no event, condition or occurrence that (with or without due notice or lapse of time, or both) would constitute such a breach or default by any such party, nor has the Company received any notice of any breach or default by any such party.

(c) The Contracts have been entered into in the ordinary course of the operation of the Business consistent with past practice, are in full force and effect and are valid and binding obligations of the Company or an Affiliate thereof and, to the knowledge of the Company, the other parties thereto. The Company has not received any written notice from any other party to a Contract of the termination or threatened termination thereof, or of any claim, dispute or controversy with respect thereto, nor, to the knowledge of the Company, is there any basis therefor.

(d) Except as set forth on Schedule 7.02, no consent of, or notice to, any third party is required under any Contract as a result of or in connection with, and neither the enforceability nor any of the terms or provisions of any Contract will be affected in any manner by, the execution, delivery and performance of this Agreement or any Related Agreement, or the transactions contemplated hereby or thereby.

7.15 Transactions with Affiliates

Schedule 7.15 lists all Contracts or transactions relating to the Business or the Assets to or by which the Company or any of its Affiliates, on the one hand, and any of its members, officers, directors, managers or employees or, to the knowledge of the Company, any family member or Affiliate of any such member, officer, director, manager or employee, on the other hand, are or have been a party or otherwise bound or affected and that are currently pending or in effect. Except as set forth on Schedule 7.15, neither the Company nor any of its Affiliates, nor any officer, director, manager or employee of the Company or any of its Affiliates, nor, to the knowledge of the Company, any family member or Affiliate of any such officer, director, manager or employee, (a) owns, directly or indirectly, any interest in (i) any asset or other property used in or held for use in connection with the operation of the Business or (ii) any Person that is a supplier, vendor or competitor of the Business, (b) serves as an officer, director, manager or employee of any Person that is a supplier, vendor or competitor of the Business or (c) is a debtor or creditor of the Business.

7.16 Insurance

Schedule 7.16 lists each insurance policy to which the Company is a party, a named insured, or otherwise the beneficiary of coverage at any time within the past year. Schedule 7.16 lists each person or entity required to be listed as an additional insured under each such policy, provided that such Section does not include persons or entities that required to be listed as an additional insured in connection with a specific venue event. Each such policy is in full force and effect and by its terms and with the payment of the requisite premiums thereon will continue to be in full force and effect following the Closing. All such insurance policies provide reasonably adequate coverage for all material risks incident to the Business and the Assets. Neither the Company nor its Affiliates is in breach or default (including with respect to the payment of premiums or the giving of notices) under any such policy, and to the knowledge of the Company, no event has occurred which, with notice or the lapse of time, would constitute such a breach or default or permit termination or modification under such policy; and none of the Affiliates and none of its Affiliates has received any written notice or to the knowledge of the Company, oral notice, from the insurer disclaiming coverage or reserving rights with respect to a particular claim or such policy in general. Neither the Company nor its Affiliates has incurred any material loss, damage, expense or liability covered by any such insurance policy for which it has not properly asserted a claim under such policy.

7.17 [Reserved]

7.18 Accounts Receivable; Accounts Payable.

(a) All accounts receivable relating to the Business, including all accounts receivable included in the Assets (i) have arisen from bona fide transactions in the ordinary course of the Business consistent with past practice, (ii) represent valid and enforceable obligations, (iii) is presently expected to be fully collected in the aggregate face amounts thereof when due without resort to litigation and without offset or counterclaim (subject to any reserve for bad debts reflected in the Financial Statements), and (iv) are owned by the Company free and clear of all Liens. No discount or allowance from any such receivable has been made or agreed to and none represents billings prior to actual sale of goods or provision of services other than in the ordinary course of business consistent with past practice and in a manner consistent with the applicable provisions of GAAP. There is no obligor of any such account receivable that has refused or, to the knowledge of the Company, threatened to refuse to pay its obligations for any reason and, to the knowledge of the Company, no such obligor has been declared bankrupt by a Court of competent jurisdiction or is subject to any bankruptcy proceeding. Schedule 7.18(a) sets forth a complete and accurate accounts receivable aging report as of the date hereof.

(b) All accounts payable and accrued expenses of the Business have arisen only from bona fide transactions in the ordinary course of the Business consistent with past practice, and no such account payable or accrued expense is, or as of the Closing Date will be, delinquent in its payment by more than 45 days, except as otherwise set forth on Schedule 7.18(b). Schedule 7.18(b) is a complete and accurate accounts payable aging report as of the date hereof.

7.19 Absence of Restrictions on Business Activities

There is no Contract or Order binding upon the Business or any of the Assets that has had or could reasonably be expected to have the effect of prohibiting or impairing any business practice of Parent, Merger Sub or the Surviving Company, any acquisition of property (tangible or intangible) by Parent, Merger Sub or the Surviving Company, the operation of the Business by Parent or the Surviving Company or otherwise limiting the freedom of Parent or the Surviving Company to engage in any line of business or to compete with any Person.

7.20 Inventory

All Inventory is owned exclusively by the Company, free and clear of any Liens, has not been pledged as collateral, is not held by the Company on consignment from others, conforms in all material respects to all standards applicable to its use or sale imposed by any Governmental Authority, is fit for its intended purpose (and, if applicable, is not adulterated, misbranded, mispackaged or mislabeled) and is of a quality that is suitable, usable or (in the case of finished goods and products) saleable in the ordinary course of the Business. Schedule 7.20 lists all Inventory, the location of such Inventory and the approximate values of the amount of Inventory held in each such location as of the date of the Interim Balance Sheet. The quantity of the Inventory on hand, in transit and on order as of the Closing will be at levels substantially customary for the Company for that time of year in which the Closing occurs; such quantity representing Company's good faith estimate of quantity required by the Business to continue to operate in the ordinary course of Business and without interruption. Items of such Inventory which are not of a quality usable and saleable in the ordinary course have been written down to net realizable value.

7.21 Regulatory Approvals.

(a) In connection with the Business, the Company and its Affiliates are now and have at all times been in material compliance with all requirements of Regulatory Authorities with jurisdiction over the Business. The Company and its Affiliates have filed, obtained, maintained or submitted all material notices, reports, documents and records required by all applicable Laws and Regulations with respect to the Business, and all such notices, reports, documents and records were complete and correct on the date filed or submitted.

(b) Except as set forth in Schedule 7.21, neither the Company nor any of its Affiliates has received any warning letter or other written communication from any domestic or foreign Regulatory Authority regarding any failure or alleged failure by the Company or any of its Affiliates to comply with any applicable Law or Regulation or any licenses, certifications, approvals or clearances in connection with the operation of the Business, and to the knowledge of the Company, no Governmental Authority is considering any action with respect to any such failure or alleged failure to comply. The Leased Spaces contain adequate warnings, presented in a reasonably prominent manner, in accordance with applicable, Laws, Orders or requirements of any Governmental Authority and current industry practice with respect to their contents and use.

7.22 Suppliers.

(a) Schedule 7.22(a) sets forth a true, correct and complete list of the top 99 suppliers and vendors of the Business in order of net expense for the twelve (12) month period ending on the date hereof.

(b) There are not, and have not been during the two (2)-year period preceding the date hereof, any disputes with any supplier or vendor of the Company.

(c) No supplier or vendor has (i) cancelled or otherwise terminated any Contract with the Company prior to the expiration of such Contract's term (or elected not to renew such Contract at the expiration of such term), (ii) cancelled or has threatened in writing to cancel or otherwise terminate its relationship with the Company, (iii) reduced or has threatened in writing to reduce its sales to the Company or (iv) has sought or is seeking to change the amounts payable by the Company or any of its Affiliates in connection with the sale of their products or services to the Business, or has notified the Company or any of its Affiliates in writing of any intention to do any of the foregoing, including after the consummation of the transactions contemplated hereby.

(d) Neither the Company nor its Affiliates has, in the past twelve (12) months, (i) cancelled or otherwise terminated any Contract with a supplier or vendor of the Company prior to the expiration of such Contract's term (or elected not to renew such Contract at the expiration of such term), (ii) cancelled or has threatened in writing to cancel or otherwise terminate its relationship with any such supplier or vendor, (iii) reduced or has threatened in writing to reduce its purchases from any such supplier or vendor or (iv) has sought or is seeking to change the amounts payable by the Company or any of its Affiliates in connection with the purchase of products or services for the Business, or has notified such supplier or vendor in writing of any intention to do any of the foregoing, including after the consummation of the transactions contemplated hereby.

(e) Neither the Company nor its Affiliates, in the past twelve (12) months, observed any quality or delivery issues with any seller or vendor in connection with the Business.

(f) The Company does not have any single source suppliers or vendors.

7.23 No Brokers

Except as set forth in Schedule 7.23, neither the Company nor its Affiliates nor any of their respective Representatives has employed or engaged, either directly or indirectly, or incurred or will incur any Liability to or is subject to any claim of, any broker, finder, investment banker or other agent or intermediary in connection with the transactions contemplated by this Agreement.

7.24 Gift Card Liability

The Company represents that it has a Liability for unredeemed gift cards or gift certificates, some of which may or may not have an expiration date. The amount of outstanding gift cards and gift certificates does not exceed $35,283.

7.25 Leases.

(a) The Company has made available to Parent and Merger Sub a true, correct and complete copy of the leases, subleases, assignments, modification agreements, easements, licenses and other occupancy agreements relating to the Leased Spaces to which the Company or any Affiliate of the Company (or any predecessor in interest thereto) is a party (the "Facility Leases") listed in Schedule 7.25(a) (which Facility Leases comprise all of the Contracts inclusive of any amendments, addenda and/or supplements relating to (i) real property and/or immovable property to which the Company is a party is a party and (ii) the Leased Spaces to which any Affiliate of the Company is a party). The Company has made available to Parent and Merger Sub a true, correct and complete copy of any guarantees or other security agreements for the Facility Leases (the "Facility Guarantees") listed in Schedule 7.25(a) (which Facility Guarantees comprise all of the guarantees and security agreements relating to real property and/or immovable property related to the Facility Leases).

(b) Schedule 7.25(b) sets forth (i) the name and address of the lessor or sublessor, as applicable, under the Facility Leases, (ii) the street address of the premises leased thereunder (the "Leased Spaces"), (iii) the square footage for the Leased Spaces, (iv) the commencement and termination dates of such Facility Leases and the rent commencement date for such Facility Leases, (v) the (A) current fixed rent, percentage rent, if any (along with the applicable breakpoint), and all other charges currently payable under the Facility Leases, including, without limitation, tenant's proportionate share of common area maintenance charges, utility payments, promotional fees, real estate taxes and insurance charges and (B) future fixed rent and percentage rent, if any (along with the applicable breakpoint), including during any options to renew, (vi) the security posted thereunder (including, without limitation, any cash deposits, letters of credit and/or bonds), (vii) all options to renew, if any, and (viii) a description of and reference to lessor's or sublessor's rights to terminate or not renew such Facility Leases for any reason other than "tenant's default", casualty, condemnation or bankruptcy.

(c) With respect to each such Facility Lease, except as may otherwise be set forth on Schedule 7.25(c):

(i) The Facility Leases are legal, valid, binding and enforceable against the Company, and to the knowledge of the Company, enforceable against the lessors and any sublessors thereunder in accordance with its terms;

(ii) All rentals or other monies due or required to be paid thereunder, including without limitation, all fixed and/or base rent, percentage rent, common area maintenance charges and all other fees, expenses and other items of additional rental, have been paid in full and will have been paid in full through the Closing Date;

(iii) No portion of the security deposit has been used or offset by the lessors or sublessors under the Facility Leases;

(iv) There are no assessments or other charges, ordinary or extraordinary, currently assessed or, to the knowledge of the Company, threatened by any lessors, sublessors, governmental authorities or other third parties against the Leased Space and, to the knowledge of the Company, there is no state of facts that will (or are likely to) cause an increase in the rentals listed in Schedule 7.25(b);

(v) Subject to obtaining the Landlord Consent as set forth on Schedule 7.02, all necessary consents required under the Facility Leases as a result of the transaction contemplated hereby have been or will be obtained and the Facility Leases will continue to be legal, valid, binding and enforceable as written, against the lessors or sublessors following the Closing;

(vi) Subject to obtaining the Landlord Consent as set forth on Schedule 7.02 following the Closing, (x) the lessors or sublessors under the Facility Leases shall not be entitled to any recapture or other termination rights, (y) the lessors or sublessors shall not be entitled to any increase in the current rental under any Facility Lease, and (z) no options to renew, exclusivity or use preferences or abatements shall be voided or otherwise terminated and no other rights of the "tenant" shall be affected or obligations of "tenant" increased, in each case as a result of the transactions contemplated hereby;

(vii) To the Company's knowledge, no lessors or any sublessors under the Facility Leases are cancelling or terminating the Facility Leases (or, to the Company's knowledge, intend to cancel or terminate such Facility Leases) or are exercising (or intend to exercise) any option to cancel or terminate thereunder;

(viii) (a) Neither the Company nor, to the knowledge of the Company, any lessors or sublessors under the Facility Leases is in breach or default thereunder and, to the knowledge of the Company, there has been no such breach or default thereunder with the last eighteen (18) months, and (b) no event has occurred that, with notice or lapse of time or both, would constitute a breach or default or permit termination, modification or acceleration thereunder;

(ix) Neither the Company nor, to the Company's knowledge, any lessor under the Facility Leases has a claim against the other, and no offset or defense to enforcement of any of the terms of the Facility Leases exists;

(x) To the Company's knowledge, no mortgagee, over-lessor, ground-lessor or other superior interest holder for the Leased Space or the buildings and/or lands on which the same are situated ("Superior Interest Holder") is foreclosing on its interest (or, to the Company's knowledge, intends to foreclose on its interest) and, in connection therewith or otherwise, is cancelling or terminating (or, to the Company's knowledge, intends to cancel or terminate) the Facility Leases, and the Company has not been made a party to a foreclosure actions (or received a notice that it may be made a party to a foreclosure action) involving the Facility Leases or its interest in the Leased Space;

(xi) Neither the Company nor, to the knowledge of the Company, any lessors or sublessors under the Facility Leases is in breach or default under any Contract with a Superior Interest Holder, and no event has occurred that, with notice or lapse of time or both, would constitute a breach or default or permit termination, modification or acceleration thereunder;

(xii) To the Company's knowledge, no Actions (voluntary or involuntary) are pending against Landlord under the bankruptcy laws of the United States or any state thereof;

(xiii) Neither the Company nor, to knowledge of the Company, any lessors or sublessors of the Facility Leases has repudiated any provision thereof;

(xiv) To the Company's knowledge, there are no easements, restrictions or other agreements (whether or not of record) which interfere (or could interfere) with the use of the Leased Spaces for the purposes permitted under the Facility Leases (whether or not such agreements easements, restrictions or other agreements are referenced in such Facility Leases);

(xv) The Company has complied with all maintenance obligations in accordance with the terms of the respective Facility Leases including, without limitation, the roof, plumbing, gasoline pumps, lines and equipment, gasoline tanks, electrical systems located thereon and the same are in good repair;

(xvi) The Company has not received any noise, vibration or nuisance complaints from any party (including from any lessors or sublessors, any other commercial or residential tenants or any community boards) with respect to any activity going on in or about the Leased Spaces within the last twenty-four (24) months;

(xvii) The Company has not made any noise, vibration or nuisance complaints against any party (including any lessors or sublessors or any other commercial or residential tenants) with respect to any activity going on in the proximity of the Leased Space and there are no state of facts which the Company is aware that is (or is likely to) materially interfere with business operations in the Leased Spaces;

(xviii) The Company's possession and quiet enjoyment of the Leased Space is not currently being disturbed;

(xix) Except as otherwise set forth in the Facility Leases, there are no refurbishments, renovations or other upgrades required to be performed by Tenant under any of the Facility Leases at any time during the term thereof, including any options to renew, and the Company has not received any written requests from any lessors or sublessors to refurbish, renovate or otherwise upgrade the Leased Spaces;

(xx) The Company has not received notice of any pending or threatened condemnation or expropriation proceedings, lawsuits or administrative actions relating to the Facility Leases that would adversely affect the current use, occupancy or value of the Facility Leases;

(xxi) The Company has not assigned, pledged, transferred or conveyed any interest in the leasehold and is not aware of any such assignment, transfer or conveyance.

7.26 Mailing Lists

All (a) lists of customers, (b) lists of suppliers and vendors, (c) depletion data, and (d) trade mailing lists of the Business, in any format, in the possession of the Company, which will be delivered to Parent and Merger Sub at the Closing (collectively, the "Mailing List"), are true, correct and complete copies of all of the lists owned, held or used by the Company in connection with the Business

7.27 Certain Payments

During the last three (3) years, neither the Company nor any director, officer, manager, partner, agent, or employee acting for or on behalf of the Company has, directly or indirectly, with respect to the Business (a) made any payment not in the ordinary course (including any bribes, payoffs or kickbacks), whether in money, property, or services (i) to obtain favorable treatment in securing business, (ii) to pay for favorable treatment for business secured, or (iii) to obtain special concessions or for special concessions already obtained, or (b) established or maintained any material fund or asset that has not been recorded in the books and records of the Company.

7.28 Indebtedness

Except as set forth on the Indebtedness Schedule, the Company has no outstanding Indebtedness. For each item of Indebtedness, Schedule 7.28 correctly sets forth the debtor, the Contract governing the Indebtedness, the principal amount of the Indebtedness as of the date of this Agreement, the creditor, the maturity date, the collateral, if any, securing the Indebtedness (and all Contracts governing all related Liens).

7.29 Books and Records

The books and records relating to the Business and the Company which have been made available to Parent are complete and accurate.

7.30 Disclosure

Neither this Agreement nor the Disclosure Schedule contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary, including with respect to the Business or the Assets, in order to make the statements contained herein or therein not misleading in light of the circumstances under which they were made.

ARTICLE VIII
REPRESENTATIONS AND WARRANTIES CONCERNING PARENT AND MERGER SUB

The Parent represents and warrants to the Members that:

8.01 Organization and Power

The Parent is a Delaware corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware, with full corporate power and authority to enter into this Agreement and perform its obligations hereunder. The Merger Sub is a Delaware limited liability company duly formed, validly existing and in good standing under the Laws of the State of Delaware, with full corporate power and authority to enter into this Agreement and perform its obligations hereunder.

8.02 Authorization; Valid and Binding Agreement

The execution, delivery and performance of this Agreement by each of the Parent and Merger Sub and the consummation of the transactions contemplated hereby have been duly and validly authorized by all requisite corporate action and no other proceedings on its part are necessary to authorize its execution, delivery or performance of this Agreement. This Agreement has been duly executed and delivered by the Parent and Merger Sub and, assuming the due authorization, execution and delivery by the other Parties, constitutes a legal, valid and binding obligation of the Parent and Merger Sub, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies.

8.03 No Breach

Neither the Parent nor Merger Sub is subject to or obligated under its Organizational Documents any applicable Law, or any material Contract, which would be breached or violated in any material respect by the Parent's or Merger Sub's execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby.

8.04 Governmental Consents, etc

Except as set forth on Schedule 8.04, neither the Parent nor Merger Sub is required to submit any notice, report or other filing with any Governmental Authority in connection with the execution, delivery or performance by it of this Agreement or the consummation of the transactions contemplated hereby. No consent, approval or authorization of any Governmental Authority or any other Person is required to be obtained by the Parent or Merger Sub in connection with its execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby. Neither the Parent nor Merger Sub is subject to any Order.

8.05 Litigation

There are no Actions pending or, to the Parent's or Merger Sub's knowledge, threatened against or affecting the Parent or Merger Sub at law or in equity, or before or by any Governmental Authority, which would materially and adversely affect the Parent's or Merger Sub's performance under this Agreement or the consummation of the transactions contemplated hereby.

8.06 Broker's Fees

There are no brokerage commissions, finders' fees or similar compensation payable in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of the Parent or its Affiliates.

ARTICLE IX
TERMINATION

9.01 Termination

This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of the Parent and SBEEG; or

(b) Upon Termination of the Asset Purchase Agreement.

9.02 Effect of Termination

In the event of a termination of this Agreement by either the Parent or SBEEG, on behalf of the Members as provided above, the provisions of this Agreement shall immediately become void and of no further force and effect (other than this Section 9.02 (Effect of Termination), Article XII (Miscellaneous), Sections 6.06 (Broker's Fees), 7.21 (Broker's Fees) and 8.06 (Broker's Fees), and Section 10.08 (Jurisdiction; Venue; Service of Process) hereof which shall survive the termination of this Agreement) and there shall be no Liability on the part of the Parent, Merger Sub, any of the Company, SBEEG or the Members to one another, except to the extent otherwise provided in the Asset Purchase Agreement.

ARTICLE X
INDEMNIFICATION

10.01 Survival; Notice of Indemnification Claims.

(a) The representations, warranties and Pre-Closing Covenants in this Agreement shall survive the Closing and shall terminate on the date that is eighteen (18) months after the Closing Date (the "General Survival Period"); provided that (A) the representations and warranties in Section 6.01 (Authority; Power), Section 6.02 (Organization), 6.03 (Execution and Delivery; Valid and Binding Agreement), Section 6.04(b)(ii) (Breach of Organizational Documents), Section 6.05 (Ownership of Equity Interests), Section 7.01 (Organization, Corporate Power and Authorization), Section 7.02 (Consents and Approvals), Section 7.03(a) (Breach of Organizational Documents), Section 7.04 (Equity Interests), Section 7.15 (Transactions with Affiliates), Section 7.23 Error! Reference source not found. (No Brokers), Section 7.25 (Leases), Section 7.28 (Indebtedness), Section 8.01 (Organization and Power), Section 8.02 (Authorization; Valid and Binding Agreement) and Section 8.03 (No Breach) shall survive indefinitely, and (B) the representations and warranties in Section 7.12 (Employment Matters) and Section 7.13 (Taxes) shall survive until the 30th day following the termination of the applicable statutes of limitation (as extended by any tolling periods and other extensions) with respect to the liabilities in question). Post-Closing Covenants in this Agreement shall survive the Closing in accordance with their terms and claims in respect thereof must be brought prior to the expiration of the applicable statute of limitations in respect of such claims. No claim for indemnification hereunder for breach of any such representations, warranties, covenants, agreements and other provisions may be made after the expiration of the survival period set forth in the immediately preceding sentences; provided that (x) any representation, warranty, covenant, agreement or other provision in respect of which indemnity may be sought under Section 10.02(a) or under Section 10.03, and the indemnity with respect thereto, shall survive (with respect to any claim that has been made) the time at which it would otherwise terminate pursuant to this Section 10.01 if timely written notice thereof shall have been given to the Person against whom such indemnity may be sought prior to such time of termination and (y) claims for indemnification based on upon fraud are not subject to the time limitations set forth in this Section 10.01. For the avoidance of doubt, with respect to any claim for indemnity that is made under Section 10.02(a) or Section 10.03 based on a breach of or inaccuracy in any statement, representation or warranty contained in any certificate delivered by or on behalf of a Party thereto at the Closing (each a "Closing Certificate"), such statements, representations and warranties shall survive for the General Survival Period (except that the statements, representations and warranties contained in the Closing Certificates to be delivered pursuant to Sections 4.01(f)(i) and 4.02(e)(ii) (the "Bring Down Certificates") shall survive for the same periods as the underlying representations, warranties or covenants set forth in this Agreement to which they relate). For the avoidance of doubt, claims for indemnification based on Section 10.02(a)(ii), (iv), (v) or (vi) shall not be subject to the time limitations set forth in this Section 10.01.

(b) If an Indemnified Person (as defined below) wishes to make a claim for indemnification under this Article X, the Indemnified Person shall give written notice of such claim to the Indemnifying Person (as defined below). Such written notice shall describe the basis for such claim for indemnification and the amount of Losses involved (if quantifiable), in each case, in reasonable detail in light of the facts then known to the Indemnified Person; provided, that the failure to so notify the Indemnifying Person shall not relieve the Indemnifying Person of its obligations hereunder except to the extent that (and only to the extent that) such failure shall have caused the damages for which the Indemnifying Person is obligated to be greater than such damages would have been had the Indemnified Person given the Indemnifying Person adequate notice hereunder. SBEEG shall give and receive all notices on behalf of all Seller Indemnified Persons in the case of all claims for indemnification under this Article X.

10.02 Indemnification by SBEEG and the Members for the Benefit of the Parent Indemnified Persons.

(a) Provided that timely notice has been made within the prescribed survival period set forth in Section 10.01 above, from and after the Closing, the Parent, Merger Sub and each of their respective Affiliates (including, following the Closing, the Company) and each director, officer, employee, agent, manager, consultant, advisor, or other representative (each a "Representative") of such Person, including their respective legal counsel, accountants, and financial advisors, and all of the successors, assigns and legal representatives of the foregoing (each, a "Parent Indemnified Person"), shall be indemnified and held harmless by the Members by means of the payment to such Parent Indemnified Persons of escrow funds from time to time held in the Escrow Account maintained pursuant to the Escrow Agreement ("Escrow Funds") and, from and after the time that the Escrow Funds have been fully distributed or are otherwise no longer available for such purposes, the Parent Indemnified Persons shall be indemnified and held harmless by SBEEG, in each case, from, against and in respect of any and all actual Losses (whether or not such Losses relate to a Third Party Claim (as defined below)), which all or any of such Parent Indemnified Persons may suffer or sustain as a result of, directly or indirectly relating to, or arising out of:

(i) any inaccuracy in or breach of any representation or warranty contained in Article VII, in each case, without giving effect to any update to the Disclosure Schedules;

(ii) any nonfulfillment or breach of any covenant, agreement or other provision by the Company contained in this Agreement or the Escrow Agreement;

(iii) any nonfulfillment or breach of any Pre-Closing Covenant by the Company contained in this Agreement;

(iv) the allocation of the aggregate purchase price among the Members pursuant to this Agreement or among any of the Parties (other than Buyer, Merger Sub or Wasabi Holdings, LLC) to this Agreement, the Other Merger Agreements or the Asset Purchase Agreement;

(v) the lawsuit currently filed in the Superior Court of the State of California, County of Los Angeles, Case No. BC 585265 and any and all substantially similar matters, including further litigation, that may arise out of substantially similar facts to those set forth in Los Angeles, Case No. BC 585265; and

(vi) any claim or Action brought by any holder of Company LLC Interests, or any other Person alleging to own Equity Interests of the Company or otherwise having an interest in the Company to the extent such claim or Action relates to (A) this Agreement, the Merger or any other event, action, omission or condition (or series of events, actions, omissions or conditions) occurring or existing on or prior to the Closing Date) other than claims arising out of conditional Per LLC Interest Closing Merger Consideration pursuant to Section 3.02(c), which, for the avoidance of doubt, shall be the liability of Buyer and Parent; or (B) any assertion of dissenters, appraisal or similar rights.

(b) Provided that timely notice has been made within the prescribed survival period set forth in Section 10.01 above, from and after the Closing, each Parent Indemnified Person, shall be indemnified and held harmless by SBEEG, in each case, from, against and in respect of any and all actual Losses (whether or not such Losses relate to a Third Party Claim (as defined below)), which all or any of such Parent Indemnified Persons may suffer or sustain as a result of, directly or indirectly relating to, or arising out of:

(i) any inaccuracy in or breach of any representation or warranty made by the Manager under Article VI without giving effect to any update to the Disclosure Schedules; or

(ii) any nonfulfillment or breach of any covenant, agreement or other provision by the Manager or SBEEG contained in this Agreement.

(c) Notwithstanding anything to the contrary contained in this Agreement or in any Related Agreement: (i)(A) in the case of any representation or warranty made by the Manager in Article VI, or any breach by SBEEG or the Manager of a covenant of SBEEG or the Manager contained herein, SBEEG or the Manager shall be liable for the indemnifiable Losses associated with such breach, and (ii)(B) the other Members shall have no liability in connection therewith; (ii) except as otherwise specifically provided in Section 10.02(d)(ii) below, in the case of any breach of a representation or warranty made by the Company in Article VII or a breach of a Pre-Closing Covenant of the Company, the Members shall be severally and not jointly liable (in accordance with their respective Pro Rata Shares) for such indemnifiable Losses associated with such breach; (iii) the Members shall have no liability under Section 10.02(a)(i) unless and until the aggregate of all Losses relating thereto, for which the Members would, but for this Section 10.02(c), be liable exceeds on a cumulative basis an amount equal to $300,000 (the "Deductible"), the calculation of which will include all Losses paid pursuant to the Asset Purchase Agreement (as Losses is defined therein) and the Other Merger Agreements (as Losses is defined therein), and then only to the extent such Losses exceed the Deductible; (iv) except as set forth in Section 10.02(f), the aggregate liability under Section 10.02(a)(i) shall in no event exceed $7,500,000 (the "Cap"), the calculation of which will include all Losses paid pursuant to the Asset Purchase Agreement (as Losses is defined therein) and the Other Merger Agreements (as Losses is defined therein).

(d) Notwithstanding anything to the contrary contained in this Agreement or in any Related Agreement: (i) the amount of indemnity payable pursuant to this Section 10.01(b) with respect to any Losses shall be reduced (A) by any reserves or accruals reflected on the face of the Latest Balance Sheet (as opposed to merely being disclosed in the notes thereto, if any) to the extent specifically and relating to the subject matter of the applicable Losses or (B) to the extent any such Loss amount has already been taken into account in making any adjustment to the Aggregate Closing Merger Consideration contemplated in Section 3.03; and (ii) other than SBEEG, no Member shall be liable for any indemnifiable Losses beyond such Member's Pro Rata Share of the Escrow Funds.

(e) With respect to any Member other than SBEEG, except as contemplated in Section 3.03 (Adjustment to Aggregate Closing Merger Consideration), recovery pursuant to this Article X constitutes the Parent Indemnified Persons' sole and exclusive remedy for any and all Losses or other claims relating to or arising from this Agreement and the transactions contemplated hereby and the Parent Indemnified Persons may not avoid the limitations on liability set forth in this Section 10.01(b) by seeking damages for breach of contract, tort or pursuant to any other theory of liability. With respect to SBE, except (i) as contemplated in Sections 3.03 (Adjustment to Aggregate Closing Merger Consideration) and 12.16 (Specific Performance), (ii) for remedies for breach of any Related Agreement and (iii) in cases of fraud, from and after the Closing, recovery pursuant to this Article X constitutes the Parent Indemnified Persons' sole and exclusive remedy for any and all Losses or other claims relating to or arising from this Agreement and the transactions contemplated hereby and the Parent Indemnified Persons may not avoid the limitations on liability set forth in this Section 10.01(b) by seeking damages for breach of contract, tort or pursuant to any other theory of liability.

(f) Notwithstanding Section 10.02(a), neither the Deductible nor the Cap shall apply to any claims based on fraud or intentional misrepresentation or claims for indemnification pursuant to Section 10.01(a) in respect of breach of representations and warranties set forth in Section 6.01 (Authority; Power), Section 6.02 (Organization), Section 6.03 (Execution and Delivery; Valid and Binding Agreement), Section 6.04(b)(ii) (Breach of Organizational Documents), Section 6.05 (Ownership of Equity Interests), Section 6.06 (Broker's Fees), Section 7.01 (Organization, Corporate Power and Authorization), Section 7.03(a) (Breach of Organizational Documents), Section 7.04 (Equity Interests), Section 7.13 (Taxes), Section 7.15 (Transactions with Affiliates), Section 7.23 Error! Reference source not found.(No Brokers), Section 7.25 (Leases) and Section 7.28 (Indebtedness) (or any breach of or inaccuracy in any statement, representation or warranty contained in any Bring Down Certificate to the extent relating to any of the foregoing representations and warranties). For the avoidance of doubt, claims for indemnification based on any of Sections 10.02(a)(ii) through (vi) shall not be subject to the monetary limitations set forth in Section 10.02(c).

(g) The right of any Parent Indemnified Person to indemnification pursuant to this Article X or Article XI will not be affected by any investigation conducted or knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing, with respect to the accuracy of any representation or warranty, or performance of or compliance with any covenant or agreement, referred to herein. The waiver of any condition contained in this Agreement based on the breach of any such representation or warranty, or on the performance of or compliance with any such covenant or agreement, will not affect the right of any Parent Indemnified Person to indemnification pursuant to this Article X or Article XI based on such representation, warranty, covenant or agreement.

(h) Each Member hereby agrees that he, she or it shall not make, and shall not permit his, her or its Affiliates or Representatives to make any claim for indemnification against any of the Parent Indemnified Persons, the Company by reason of the fact that such Member or any Affiliate or Representative thereof was a controlling person, director, employee or Representative of the Company thereof or was serving as such for another Person at the request of the Company (whether such claim is made pursuant to any Law, Organizational Document, Contract or otherwise) with respect to any indemnification claim brought by a Parent Indemnified Person under this Agreement. With respect to any indemnification claim brought by a Parent Indemnified Person under this Agreement, each Member expressly waives any right of subrogation, contribution, advancement, indemnification or other claim against the Company with respect to any amounts owed by him, her or it pursuant to this Agreement or otherwise in respect of the transactions contemplated by this Agreement.

10.03 Indemnification by the Parent for the Benefit of the Members

From and after the Closing, the Parent shall indemnify each of the Members and each of their respective Affiliates (each, a "Seller Indemnified Person") and hold them harmless against any Losses which the Members may suffer or sustain, as a result of: (a) any breach of any representation or warranty of the Parent under this Agreement, and (b) any breach of any covenant, agreement or other provision of this Agreement by the Parent; provided, however, that (i) the Parent shall have no liability under Section 10.02(a) unless and until the aggregate of all Losses relating thereto, for which the Parent would, but for this Section 10.03(a), be liable exceeds on a cumulative basis an amount equal to the Deductible, the calculation of which will include all Losses paid pursuant to the Asset Purchase Agreement (as Losses is defined therein) and the Other Merger Agreements (as Losses is defined therein), and then only to the extent such Losses exceed the Deductible and (ii) the aggregate liability under Section 10.02(a) shall in no event exceed the Cap, the calculation of which will include all Losses paid pursuant to the Asset Purchase Agreement (as Losses is defined therein) and the Other Merger Agreements (as Losses is defined therein). Except (i) as contemplated in Sections 3.03 (Adjustment to Aggregate Closing Merger Consideration) and 12.16 (Specific Performance), (ii) for remedies for breach of any Related Agreement and (iii) in cases of fraud, from and after the Closing, recovery pursuant to this Article X constitutes the Seller Indemnified Persons' sole and exclusive remedy for any and all Losses or other claims relating to or arising from this Agreement and the transactions contemplated hereby and the Seller Indemnified Persons may not avoid the limitations on liability set forth in this Section 10.01(b) by seeking damages for breach of contract, tort or pursuant to any other theory of liability.

10.04 Determination of Loss Amount

The amount of any Loss subject to indemnification under Section 10.01(b) shall be calculated net of any insurance proceeds actually received in cash by the Indemnified Person on account of such Loss and paid within ninety (90) days of the submission of a claim relating thereto, net of the present value of any reasonably probable increase in insurance premiums or other charges paid or to be paid by the Indemnified Person resulting from such Loss and all costs and expenses incurred by any Indemnified Person in recovering such proceeds from its insurers. The Indemnified Person shall use commercially reasonable efforts to seek full recovery under all insurance policies covering any Loss to the same extent as it would if such Loss were not subject to indemnification hereunder, provided, however, that, for the avoidance of doubt, in no event shall Indemnified Person be required to bring an action against the provider of any such insurance policies for such recovery. In the event that an insurance recovery is received by any Indemnified Person with respect to any Loss for which any such Person has been indemnified hereunder, then a refund equal to the aggregate amount of the recovery shall be made promptly to the Person or Persons that provided such indemnity payments to such Indemnified Person.

10.05 Mitigation

Each Person entitled to indemnification hereunder shall take all commercially reasonable steps to mitigate all Losses (other than matters concerning Taxes) after becoming aware of any event which could reasonably be expected to give rise to any Losses that are indemnifiable or recoverable hereunder or in connection herewith.

10.06 Manner of Payment

Any indemnification of the Parent pursuant to Section 10.01(b) shall be effected by release of Escrow Funds and when the Escrow Funds are depleted thereafter, but only to the extent applicable, by SBEEG to Parent by wire transfer of immediately available funds to an account designated by each applicable Indemnified Person within 10 days after the final determination thereof; provided, however, that Parent may, at its election, choose to seek payment directly from SBEEG with respect to any indemnification pursuant to Section 10.02(a)(v) and shall not be required to seek release of such amounts from the Escrow Funds. Any indemnification of SBEEG pursuant to Section 10.03 shall be effected by Parent's wire transfer of immediately available funds to an account designated by each applicable Indemnified Person within 10 days after the final determination thereof. Each indemnification payment made pursuant to this Article X shall, with respect to the Members and the Parent, be deemed to be an adjustment to the Aggregate Closing Merger Consideration.

10.07 Indemnification Process

(a) Any Person entitled to make a claim for indemnification under Section 10.01(b) or Section 10.03 (an "Indemnified Person") shall notify the indemnifying party (an "Indemnifying Person") in writing (the "Notice of Claim") which such Indemnified Person has determined has given rise to or would reasonably be expected to give rise to a right of indemnification under this Agreement, stating the amount of the Loss, if known (a "Loss Estimate"), describing the breach or inaccuracy and other material facts and circumstances upon which such claim is based and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed or arises as promptly as practicable after becoming aware of such matter; provided, however, that the failure so to provide such Notice of Claim or any defect in such Notice of Claim will not affect the rights of any Indemnified Persons to obtain indemnification hereunder, except to the extent such failure to include information actually and materially prejudices such Indemnifying Person. Notwithstanding the foregoing, no claim shall be brought under this Article X with respect to an event of indemnification described in Section 10.02(a)(i), (iii), or Section 10.02(b)(i) or (ii), unless the Indemnified Person, at any time prior to the end of the General Survival Period, gives the Indemnifying Person(s) a Notice of Claim with respect to such claim. If a Notice of Claim has been given on or prior to the end of the General Survival Period, the relevant representations and warranties shall survive as to such claim until the claim has been finally resolved.

(b) Except as provided below, the Indemnifying Person may elect to assume the defense of any Claims for indemnification hereunder resulting from the assertion of liability by third parties (each, a "Third Party Claim") with counsel reasonably satisfactory to the Indemnified Person by (i) giving notice to the Indemnified Person of its election to assume the defense of the Third Party Claim and (ii) giving the Indemnified Person evidence acceptable to the Indemnified Person that the Indemnifying Person has adequate financial resources to defend against the Third Party Claim and fulfill its obligations under this Article X, in each case no later than 10 days after the Indemnified Person gives notice of the assertion of a Third Party Claim. If the Indemnifying Person elects to assume the defense of a Third Party Claim:

(i) it shall diligently conduct the defense and shall not be liable to the Indemnified Person for any Indemnified Person's fees or expenses subsequently incurred in connection with the defense of the Third Party Claim other than reasonable costs of investigation;

(ii) the election will conclusively establish for purposes of this Agreement that the Indemnified Person is entitled to relief under this Agreement for any Loss arising from or in connection with the Third Party Claim (subject to the provisions of this Article X;

(iii) no compromise or settlement of such Third Party Claim may be effected by the Indemnifying Person without the Indemnified Person's consent unless (A) there is no finding or admission of any violation by the Indemnified Person of any Law or any rights of any Person, (B) the Indemnified Person receives a full release of and from any other claims that may be made against the Indemnified Person by the third party bringing the Third Party Claim, and (C) the sole relief provided is monetary damages that are paid in full by the Indemnifying Person; and

(iv) the Indemnifying Person shall have no liability with respect to any compromise or settlement of such claims effected without its consent.

(c) If the Indemnifying Person does not assume the defense of a Third Party Claim in the manner and within the period provided above, the Indemnified Person may conduct the defense of the Third Party Claim at the expense of the Indemnifying Person. Indemnifying Person will be bound by any determination resulting from such Third Party Claim or, upon the consent of Indemnifying Person, which consent shall not be unreasonably withheld, conditioned or delayed, any compromise or settlement effected by the Indemnified Person.

(d) With respect to any Third Party Claim subject to this Article X:

(i) any Indemnified Person and any Indemnifying Person, as the case may be, shall keep the other Person fully informed of the status of such Third Party Claim and any related Action at all stages thereof where such Person is not represented by its own counsel; and

(ii) both the Indemnified Person and the Indemnifying Person, as the case may be, shall render to each other such assistance as they may reasonably require of each other and shall cooperate in good faith with each other in order to ensure the proper and adequate defense of any Third Party Claim.

(e) With respect to any Third Party Claim subject to this Article X, the parties shall cooperate in a manner to preserve in full (to the extent possible) the confidentiality of all confidential information and the attorney-client and work-product privileges, including making reasonable best efforts to comply with the provisions of Section 12.16. In connection therewith, each party agrees that:

(i) it will use its best efforts, in respect of any Third Party Claim in which it has assumed or participated in the defense, to avoid production of Confidential Information (consistent with applicable Law and rules of procedure); and

(ii) all communications between any party and counsel responsible for or participating in the defense of any Third Party Claim shall, to the extent possible, be made so as to preserve any applicable attorney-client or work-product privilege.

10.08 Governing Law; Jurisdiction; Venue; Service of Process.

(a) This Agreement shall be governed by the Laws of the State of Delaware without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause application of the Laws of any jurisdiction other than the State of Delaware.

(b) All Actions arising out of or relating to this Agreement shall be heard and determined in any state or federal Court sitting in the State of New York. Each of the parties to this Agreement irrevocably submits to the exclusive jurisdiction of the state Courts of New York and to the jurisdiction of the United States District Court for the Southern District of New York, for the purpose of any Action arising out of or relating to this Agreement and each of the parties to this Agreement irrevocably agrees that all claims in respect of such Action may be heard and determined exclusively in any New York state or federal Court sitting in the State of New York. Each of the parties to this Agreement consents to service of process by delivery pursuant to Section 9.8 and agrees that a final judgment in any Action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

10.09 Limitation on Recourse

Other than in the case of fraud, no claim shall be brought or maintained by any Parent Indemnified Person against any officer, director, employee (present or former) or Affiliate of a Member which is not otherwise expressly identified as a Party hereto, and no recourse shall be brought or granted against any of them, by virtue of or based upon any alleged misrepresentation or inaccuracy in or breach of any of the representations, warranties or covenants of any party hereto set forth or contained in this Agreement or any exhibit or schedule hereto or any certificate delivered hereunder. For the avoidance of doubt and subject to the rights of Parent under the terms of any debt commitment letters with any lender, none of the parties hereto, nor or any of their respective Affiliates, solely in their respective capacities as parties to this Agreement, shall have any rights or claims against any such lender or any Affiliate thereof (collectively, the "Debt Financing Sources"), solely in their respective capacities as lenders or arrangers in connection with the transactions contemplated by this Agreement, including any related financing.

ARTICLE XI
ADDITIONAL COVENANTS AND AGREEMENTS

11.01 Disclosure Generally

The Disclosures Schedules attached hereto are incorporated herein and expressly made a part of this Agreement as though completely set forth herein. All references to this Agreement herein or in any of the Disclosures Schedules shall be deemed to refer to this entire Agreement.

11.02 Acknowledgment of Parent

The Parent acknowledges that it has conducted an independent investigation of the financial condition, results of operations, assets, liabilities, properties and projected operations of the Company and, in making its determination to proceed with the transactions contemplated by this Agreement, the Parent has relied on the results of its own independent investigation, the representations and warranties of the Company expressly and specifically set forth in this Agreement including the Disclosure Schedules and the representations and warranties of SBEEG and the Manager expressly and specifically set forth in this Agreement, the Asset Purchase Agreement and the Other Merger Agreements including the disclosure schedules thereto. **SUCH REPRESENTATIONS AND WARRANTIES BY THE COMPANY, SBEEG AND THE MANAGER CONSTITUTE THE SOLE AND EXCLUSIVE REPRESENTATIONS AND WARRANTIES OF THE COMPANY, SBEEG AND THE MANAGER TO PARENT IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, AND PARENT UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED (INCLUDING, BUT NOT LIMITED TO, ANY RELATING TO THE FUTURE FINANCIAL CONDITION, RESULTS OF OPERATIONS, ASSETS OR LIABILITIES OF THE COMPANY) ARE SPECIFICALLY DISCLAIMED BY THE COMPANY, SBEEG AND THE MANAGER.**

11.03 Tax Matters.

(a) The Parent Indemnified Persons shall be indemnified and held harmless by the Members by means of the payment to such Parent Indemnified Persons of Escrow Funds and, from and after the time that the Escrow Funds have been fully distributed or are otherwise no longer available for such purposes, by the Members, in each case, from, against and in respect of any and all actual Losses (whether or not such Losses relate to a Third Party Claim), which all or any of such Parent Indemnified Persons may suffer or sustain as a result of, directly or indirectly relating to, or arising out of: (i) all Taxes (or the non-payment thereof) of the Company or assessed on the Assets for all taxable periods ending on or before the Closing Date and the portion through the end of the Closing Date for any Straddle Period (as defined in Section 11.02(c) of this Agreement); (ii) all Taxes (or the non-payment thereof) of the Company attributable to any breach or violation of, or failure to fully perform (as applicable), any representations or covenants set forth in Section 7.13 or this Section 11.02 of this Agreement; (iii) all income Taxes (or the non-payment thereof) of any member of any Affiliated Group of which the Company (or any predecessor thereof) is or was a member on or prior to the Closing Date, including pursuant to Treasury Regulation section 1.1502-6 or any analogous or similar state, local, or non-U.S. Law or regulation; (iv) all income Taxes (or the non-payment thereof) of the Company attributable to any election under section 108(i) of the Code made with respect to a Pre-Closing Tax Period or Straddle Period; and (v) any and all income Taxes of any Person (other than the Company) imposed on the Company as a transferee or successor, by Contract or pursuant to any Law, which Taxes relate to an event, transaction or other circumstances occurring before the Closing; provided, however, that the Parent Indemnified Persons shall be indemnified and held harmless for Taxes described in this sentence only to the extent that such Taxes exceed the amount, if any, reserved for such Taxes (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax income and after reduction for any estimated Tax payments made prior to the Closing) on the face of the Final Closing Balance Sheet or shown as a liability for Taxes in Working Capital as finally determined under this Agreement. The Parent Indemnified Parties shall be reimbursed for any Taxes of the Company pursuant to this Section 11.03(a) at least five days prior to the payment of such Taxes by the Parent, the Company; provided that the Parent shall provide notice of such responsibility (and the amount) no less than 15 days prior to the payment of such Taxes by the Parent. Notwithstanding anything herein to the contrary, no limitations on indemnification contained in Article X shall apply to this Section 11.02. For all purposes of this Article XI, any indemnification obligation owing to any Parent Indemnified Person shall be satisfied by means of the payment to such Parent Indemnified Person out of the Escrow Funds and, from and after the time that the Escrow Funds have been fully distributed or are otherwise no longer available for such purposes, by SBEEG.

(b) SBEEG shall prepare all income Tax Returns for the Company that are required to be filed for all periods ending on or prior to the Closing Date (any such taxable period, a "Pre-Closing Tax Period") which have not yet been filed as of the Closing Date (collectively, "Seller Returns"). SBEEG shall timely cause to be paid any Taxes due and payable with respect to such Seller Returns in the manner provided in Section 11.03(a) above and Section 11.03(f) below. All Seller Returns shall be prepared on a basis consistent with past practice to the extent consistent with applicable Tax Law, and shall be true, correct and complete in all material respects. Not later than thirty (30) days prior to the due date for the filing of any Seller Return, SBEEG shall provide the Parent with a copy of such Seller Return and the Parent shall have the right to review, comment on, and approve any such Seller Return. SBEEG shall make such changes to such Seller Return as the Parent may reasonably request, and the Company shall file such Seller Return after SBEEG has made such changes, if any, to the reasonable satisfaction of the Parent. The Parent shall prepare and file all Tax Returns of the Company other than Seller Returns. In the case of any Tax Return of the Company prepared by Parent that concerns a Straddle Period and is not an income Tax Return (a "Buyer Return"), not later than thirty (30) days prior to the due date for the filing of any Buyer Return, Parent shall provide SBEEG with a copy of any such Buyer Return and SBEEG shall have the right to review and comment on any such Buyer Return. Parent shall consider in good faith any comments made by SBEEG to any such Buyer Return but shall not be obligated to make the changes proposed by SBEEG.

(c) In the case of Taxes that are payable with respect to a taxable period that begins on or before the Closing Date and ends after the Closing Date (a "Straddle Period"), the portion of any such Tax that is allocable to the portion of the period ending on and including the Closing Date shall be:

(i) in the case of Taxes that are either (x) based upon or related to income or receipts or (y) imposed in connection with any sale or other transfer or assignment of property (real or personal, tangible or intangible), deemed equal to the amount which would be payable if the taxable year ended on and included the Closing Date (an interim closing of the books); and

(ii) in the case of Taxes imposed on a periodic basis with respect to the assets of the Company, or otherwise measured by the level of any item, deemed to be the amount of such Taxes for the entire period (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period), multiplied by a fraction the numerator of which is the number of calendar days in the period ending on and including the Closing Date and the denominator of which is the number of calendar days in such Straddle Period.

(d) All transfer, documentary, sales, lease, use stamp, registration and other such Taxes, and any conveyance fees or recording charges imposed on the Company or the Members as a result of the transactions contemplated by this Agreement (collectively, "Transfer Taxes"), and any penalties, interest and filing fees or cost with respect to the Transfer Taxes shall be borne 50% by Parent and 50% by the Members. The Parent agrees to cooperate with SBEEG in the filing of any returns with respect to the Transfer Taxes, including promptly supplying any information in its possession reasonably requested by SBEEG that is reasonably necessary to complete such returns. If SBEEG fails to file any returns with respect to Transfer Taxes, the Parent, at SBEEG's expense, may file such returns.

(e) The Parent shall promptly notify SBEEG if the Parent receives notice of a claim by a Governmental Authority in respect of Taxes of the Company that could give rise to a liability of the Members under this Section 11.02 (a "Tax Claim"). SBEEG shall have the right to defend the Company against any such Tax Claim to the extent such Tax Claim principally concerns a taxable period ending on or prior to the Closing Date (a "Pre-Closing Tax Period"); provided that SBEEG provides the Parent with written notice of its intent to assume the defense of such Tax Claim. The Parent and its counsel shall be allowed to participate in the defense of any Tax Claim over which SBEEG has assumed the defense under the preceding sentence on a face-to-face basis at the Parent's own expense. SBEEG will not settle any Tax Claim over which SBEEG has assumed the defense under the second-preceding sentence without the prior written consent of the Parent, such consent not to be unreasonably withheld, conditioned or delayed. SBEEG shall have the right to participate at its own expense in the defense of any Tax Claim not discussed in the third preceding sentence that concerns a Pre-Closing Tax Period.

(f) To the extent not accrued as an asset in Working Capital, the Parent shall promptly pay or cause prompt payment to be made to SBEEG, on behalf of the Members, within ten (10) days after receipt thereof or entitlement thereto by the Parent, the Company or any Affiliate on behalf of the Members, of all refunds of Taxes and interest thereon received by, or credited against the Tax liability of the Parent, any Affiliate of the Parent, the Company (but only to the extent that any such credit actually reduces the Taxes paid by the Company for any Tax period (or the portion of any Straddle Period) beginning after the Closing Date) to the extent such refunds or credits are attributable to Taxes paid by the Company in a Pre-Closing Tax Period (and not due to the carry-back of any Tax attributes generated in a period other than a Pre-Closing Tax Period).

(g) Parent, Merger Sub, and the Company will cooperate fully, as and to the extent reasonably requested by the other party, in connection with any Tax matters relating to the Company (including by the provision of reasonably relevant records or information). The party requesting such cooperation will pay the reasonable out-of-pocket expenses of the other party.

(h) The Aggregate Closing Merger Consideration, and any assumption of liabilities as determined for U.S. federal income tax purposes, shall be allocated among the Assets of the Company in accordance with Code Section 1060 (and any similar provisions of state or local Law, as appropriate) and shall be set forth in a schedule delivered by Parent to SBEEG within forty-five (45) days following the Closing Date (the "Allocation Schedule"). SBEEG shall have an opportunity to review the Allocation Schedule for a period of thirty (30) days after the receipt of the Allocation Schedule and Parent will not finalize the Allocation Schedule until such thirty (30) day period has elapsed or Parent has received the consent of the Seller Entities (such consent not to be unreasonably withheld, conditioned or delayed) The Parties and their respective Affiliates shall file all Tax Returns (including IRS Form 8594) consistent with the final Allocation Schedule as determined hereunder (as reasonably adjusted to account for events occurring after the determination of the final allocation of the Purchase Price) and none of the Parties or their respective Affiliates shall take any Tax position inconsistent with the final Allocation Schedule determined hereunder unless required to do so by a change in applicable Laws or a good faith resolution of a Tax contest.

11.04 Further Assurances

From time to time, as and when requested by any Party hereto and at such Party's expense, any other Party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further actions as the requesting Party may reasonably deem necessary or desirable to evidence and effectuate the transactions contemplated by this Agreement.

11.05 Access to Books and Records

From and after the Closing, the Parent shall, and shall cause the Company to, provide SBEEG and its authorized Representatives with reasonable access, at their own cost and expense, during normal business hours and upon reasonable notice, to the books and records and, with the consent of the Parent (not to be unreasonably withheld, conditioned or delayed), any relevant personnel of the Company with respect to periods prior to the Closing Date in connection with the preparation of any financial statements or Tax Returns of the Members or any claim or Action brought against a Seller Indemnified Person relating to the Company (other than a claim or Action brought by a Parent Indemnified Person relating to or arising out of this Agreement or the transactions contemplated hereby).

11.06 Employee Matters.

(a) SBEEG shall be responsible for, and the Parent Indemnified Persons shall be indemnified and held harmless by the Members from, against and in respect of any and all actual Losses (whether or not such Losses relate to a Third Party Claim), which all or any of such Parent Indemnified Persons may suffer or sustain as a result of, directly or indirectly relating to, or arising out of any notices, payments, benefits, fines, penalties, backpay, and damages required under WARN relating to any "plant closing" or "mass layoff" (as defined in WARN) (or similar triggering event) caused in part by the termination of employees of Spoonful working at the Company before the Closing.

(b) From and after the Closing Date, the Surviving Company shall not be liable for any claims and liabilities under any welfare plans, regardless of when such claims or liabilities arise or are asserted. To the extent the Surviving Company provides any substantially similar welfare plans as those maintained by Spoonful with respect to the Business Employees providing services to the Company, the Surviving Company shall use commercially reasonable efforts to cause credit to be given (without duplication; and not to an extent greater than counted immediately before the Closing Date for comparable purposes) to all employees of the Company and their eligible dependents and beneficiaries for any premiums, co-payments and deductibles paid on or prior to the Closing Date in satisfying any deductible and out-of-pocket expense requirements under any new group medical plan for the current plan year.

(c) Effective as of the Closing Date, the Parent will use commercially reasonable efforts to count (without duplication; and not to an extent greater than counted immediately before the Closing Date for comparable purposes) the service of all employees with the Company under the Surviving Company's vacation policy and welfare benefit plans to the extent applicable to such employees. In addition, the Surviving Company shall use commercially reasonable efforts to count (without duplication; and not to an extent greater than counted immediately before the Closing Date for comparable purposes) such service but only in determining each employee's eligibility to participate in, and each such employee's vested percentage in, each of the Surviving Company's employee benefit plans (as defined in Section 3(3) of ERISA) which are subject to ERISA and are applicable to such employee, but, for the avoidance of doubt, not for benefit accrual purposes.

(d) It is expressly acknowledged, understood and agreed that nothing herein is intended to or does or shall constitute an amendment to or requirement to establish any employee benefit or other plan or grant any Person any rights as a third party beneficiary of this Agreement.

11.07 SBEEG as the Members' Representative.

(a) SBEEG shall serve as the representative of the Members and act in any and all capacities to do and perform every act and thing required or permitted to be done in connection with the transactions contemplated by this Agreement and the Related Agreements, including, without limitation:

(i) determine the presence (or absence) of claims for indemnification against the Parent and its Affiliates pursuant to Article X or Article XI above;

(ii) deliver all notices required to be delivered under this Agreement or the Related Agreements, including, without limitation, any notice of a claim for which indemnification is sought under Article X or Article XI above or any notice in respect of Section 3.03, and make all filings, enter into all Contracts, make all decisions, prosecute, defend, settle or otherwise compromise all Actions and claims and take all other actions in connection therewith, and execute any amendments to the Agreement or any Related Agreements, and provide any consents or waivers to any of the foregoing;

(iii) receive all notices required or permitted to be delivered to SBEEG, the Manager or the Members under this Agreement or Related Agreements, including, without limitation, any notice of or relating to a claim for which indemnification is sought under Article X or Article XI;

(iv) take any and all actions as SBEEG may deem necessary or desirable to resolve or settle claims under this Agreement or any Related Agreement or otherwise relating to this Agreement, any Related Agreement or Merger or other transactions contemplated hereby or otherwise as permitted or required to be taken by or on behalf of SBEEG, the Manager or the Members under this Agreement, the Escrow Agreement or other Related Agreements and exercise any rights that SBEEG, the Manager or the Members are permitted or required to do or exercise under this Agreement, the Escrow Agreement or the other Related Agreements; and

(v) in connection with the Closing, execute and receive all documents, instruments, certificates and agreements on behalf of and in the name of SBEEG, the Manager or the Company necessary to effectuate the Closing and consummate the contemplated transactions.

The Company, the Manager and SBEEG hereby acknowledge and agree that upon execution of this Agreement, any delivery by SBEEG of any waiver, amendment, agreement, certificate or other documents in respect of this Agreement, the Escrow Agreement or the other Related Agreements executed by SBEEG (in its capacity as the Members' representative hereunder), such party shall be bound by such documents as fully as if such holder had executed and delivered such documents. All decisions and actions by SBEEG within the scope of the authorization granted in this Section, including, without limitation, any agreement between SBEEG and Parent or Merger Sub relating to the resolution of disputes relating to Section 3.03, or the defense or settlement of any indemnity claims by any Indemnifying Person pursuant to Article X or Article XI hereof, shall be final and binding upon SBEEG, the Manager and, to the extent permitted by law, the Members, and no such party shall have the right to object, dissent, protest or otherwise contest the same. All expenses and other fees incurred by SBEEG shall be paid by the Members based on such Members' Pro Rata Share, provided, however, that other than SBEEG, no Member shall be liable for any expenses or fees incurred by SBEEG beyond an amount equal to (i) such Member's Pro Rata Share of the Escrow Funds, less (ii) any amounts paid by such Member pursuant to Article X.

(b) Parent shall be entitled to rely on any action taken by SBEEG pursuant to Section 11.07(a) above (each, an "Authorized Action"). SBEEG and the Manager, jointly and severally, shall pay to and indemnify and hold harmless the Parent and the other Parent Indemnified Persons from and against any Losses which it or any of them may suffer, sustain, or become subject to, as the result of any claim by any Member that an Authorized Action is not binding on, or enforceable against, the Members.

11.08 Confidentiality.

The Manager acknowledges that the success of the Company after the Closing depends upon the continued preservation of the confidentiality of certain information it possesses, that the preservation of the confidentiality of such information by it is an essential premise of the bargain between the Manager and the Parent and Merger Sub, and that the Parent and Merger Sub would be unwilling to enter into this Agreement in the absence of this Section 11.08. Accordingly, the Manager hereby severally agrees with the Parent and Merger Sub that it, its Affiliates and its and its Affiliate's Representatives shall not, and that it shall cause its Affiliates and such Representatives not to, at any time on or after the Closing Date, directly or indirectly, without the prior written consent of Parent, disclose or use, any information involving or relating to the Business or the Company (other than in the course of fulfilling its duties to the Company in such capacity); provided, that the information subject to this Section 11.08) will not include any information generally available to, or known by, the public (other than as a result of disclosure in violation hereof); provided, further, that the provisions of this Section 11.08 will not prohibit any retention of copies of records or disclosure (A) required by any applicable Law so long as reasonable prior notice is given to Parent and the Company of such disclosure and a reasonable opportunity is afforded Parent and the Company to contest the same or (B) made in connection with the enforcement of any right or remedy relating to this Agreement or the transactions contemplated hereby. The Manager agrees that it shall be responsible for any breach or violation of the provisions of this Section 11.08 by any of its Affiliates or its or its Affiliates' Representatives.

11.09 Landlord Agreement; SNDA.

The Company shall use commercially reasonable efforts to (i) obtain the Landlord Agreement signed by the applicable lessor and (ii) a subordination, non-disturbance and attornment agreement from each mortgagee, groundlessee and superior interest holder of any Facility Lease in a form reasonably acceptable to the Parent.

11.10 Percentage Rent True-Up.

On or before February 15, 2016 (or if rent is payable based on a year which is not a calendar year, within forty-five (45) days of the expiration of the lease year in which the Closing Date occurs), Parent and the Surviving Entity shall provide SBEEG with written notice of its calculation of the portion of the rent payable pursuant to any Facility Leases for the Leased Spaces relating to the period on or prior to the Closing (the "Pre-Closing Rent Portion") and the period after the Closing through December 31, 2015. With respect to any calculation of percentage rent, the parties shall calculate the Pre-Closing Rent Portion by multiplying (i) the total percentage rent payable for said year by (ii) the fraction (x) the numerator of which is gross sales made at the Leased Space (as calculated in accordance with the Facility Leases) for the portion of the year occurring prior to the Closing Date and (y) the denominator of which is total gross sales made at the Leased Space for said year. Parent shall respond within ten (10) days indicating that it agrees with such calculation or objects to such calculation. In the event Parent fails to respond within such period, it will be deemed to have accepted the calculation. In the event Parent objects to the calculation, such dispute shall be resolved in accordance with the provisions in Section 3.02(c) with respect to the determination of the Final Working Capital. In the event that the Pre-Closing Rent Portion exceeds the amount of rent reflected in the Final Balance Sheet with respect to such period, Parent shall make payment of such difference within two (2) business days of the final determination of the Pre-Closing Rent Portion. In the event that the Pre-Closing Rent Portion is less than the amount of rent reflected in the Final Balance Sheet with respect to such period, SBEEG shall make payment of such difference within two (2) business days of the final determination of the Pre-Closing Rent Portion.

11.11 Lease Modification.

The Parent shall use commercially reasonable efforts to obtain the release of the lessor of any Facility Lease to the termination of the guarantees made by Sam Nazarian and any other guarantors of such Facility Leases (each, a "Guarantor"). If the Parent is unable to obtain the release of any Guarantor, then the Parent shall not have any obligation to obtain the release of such Guarantor and shall instead provide an indemnification agreement, in a form mutually agreed by the parties and pursuant to which the Parent shall indemnify such Guarantor for all payments and other liabilities of such Guarantor thereunder on a dollar-for-dollar basis.

11.12 Gift Cards.

The Company shall pay (and the Parent shall cause the Company to pay) SBEEG for the face amount of each gift card that is included in the calculation of Working Capital as of the Closing which are subsequently redeemed at any property owned or managed by SBEEG or any of its Affiliates following the Closing within fifteen (15) days after receipt by the Company or the Parent of an invoice therefor.

ARTICLE XII
MISCELLANEOUS

12.01 Press Releases and Communications

No press release or public announcement related to this Agreement or the transactions contemplated herein, or prior to the Closing, any other announcement or communication to the employees, providers, patients, customers or suppliers of the Company, shall be issued or made by any Party without the joint written approval of the Parent and SBEEG, unless (a) required by Law (in the reasonable opinion of counsel) in which case the Parent and SBEEG shall have the right to review such press release, announcement or communication prior to its issuance, distribution or publication or (b) any disclosure made in connection with the enforcement of any right or remedy relating to this Agreement or any Related Agreement or the transactions contemplated hereby.

12.02 Expenses

Except as otherwise expressly provided herein, each Party shall pay all of its own expenses (including attorneys' and accountants' fees and expenses) in connection with the negotiation of this Agreement, the performance of its obligations hereunder and the consummation of the transactions contemplated by this Agreement (whether consummated or not).

12.03 Knowledge Defined

For purposes of this Agreement, the term “the Company's knowledge” or similar references to knowledge as used herein shall mean in the case of the Members and the Company, the actual knowledge of Richard Acosta, Sam Nazarian and John Kolaski after reasonably inquiry.

12.04 Notices

All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given when personally delivered or delivered by facsimile, one day after deposit with Federal Express or similar reputable overnight courier service or three days after being mailed by first class mail, return receipt requested or transmitted via electronic mail (including by PDF format). Notices, demands and communications to the Parent, the Company, and the Members shall, unless another address is specified in writing, be sent to the addresses indicated below:

Notices to the Parent and the Company (after the Closing), to it:

The ONE Group, LLC
411 West 14th Street
New York, New York 10014
Fax: (212) 255-9715
Attention: Jonathan Segal
Sam Goldfinger
Sonia Low

with a copy (which shall not constitute notice) to:

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111
Fax: (617) 542-2241
Attention: Sahir Surmeli, Esq.

Notices to SBEEG and the Company (prior to the Closing):

SBEEG Holdings, LLC
5900 Wilshire Blvd., 31st Floor
Los Angeles, CA 90036
Fax: 323 655-8001
Attention: Legal Department

with copies to (which shall not constitute notice):

Venable LLP
505 Montgomery Street, Suite 1400
San Francisco, CA 94111
Fax: (415) 653-3755
Attention: Brandt U. Mori, Esq.

Venable LLP
750 East Pratt Street, Suite 900
Baltimore, MD 21202
Fax: (410) 244-7742
Attention: W. Bryan Rakes, Esq.

12.05 Assignment

Neither the Company, SBEEG or the Manager may assign, delegate or otherwise transfer this Agreement or any of such party's rights, interests or obligations hereunder, without the prior written consent of Parent and Buyer, and any attempt to do so will be null and void ab initio. Neither Buyer nor Parent may assign, delegate or otherwise transfer this Agreement or any of such party's rights, interests or obligations hereunder, without the prior written consent of the Company, SBEEG and the Manager and any attempt to do so will be null and void ab initio, provided, however, that Buyer or Parent may, without the approval of any other party to this Agreement, but with prior notice to SBEEG, make a collateral assignment of this Agreement to its Debt Financing Source. If either Buyer or Parent assigns this Agreement or any of its rights, interests or obligations hereunder, Buyer and Parent shall remain liable for all obligations of Buyer and Parent pursuant to this Agreement. Upon any such permitted assignment, the references in this Agreement to Parent shall refer to such assignee unless the context otherwise requires. Subject to this Section 12.05, this Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon the parties hereto, and each party's successors, heirs, estates, executors, administrators and permitted assigns.

12.06 Severability

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

12.07 References; Interpretation

The table of contents and the section and other headings and subheadings contained in this Agreement and the exhibits hereto are solely for the purpose of reference, are not part of the agreement of the Parties, and shall not in any way affect the meaning or interpretation of this Agreement or any exhibit hereto. All references to days (as opposed to Business Days) or months shall be deemed references to calendar days or months. All references to "$" shall be deemed references to United States dollars. Unless the context otherwise requires, any reference to a "Section," "Exhibit," or "Schedule" shall be deemed to refer to a section of this Agreement, Exhibit to this Agreement or a Schedule to this Agreement, as applicable. The words "hereof," "herein" and "hereunder" and words of similar import referring to this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The word "including" means including without limitation. Unless the context clearly requires otherwise, when used herein "or" shall not be exclusive (i.e., "or" shall mean "and/or").

12.08 No Strict Construction

The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Person.

12.09 Amendment and Waiver

Any provision of this Agreement or the Schedules or Exhibits may be amended or waived only in a writing signed by the Parent, the Company and SBEEG. No waiver of any provision hereunder or any breach or default thereof shall extend to or affect in any way any other provision or prior or subsequent breach or default, and no failure or delay to enforce, or partial enforcement of, any provision hereof shall operate as a waiver of such provision or of any other provision. Notwithstanding the foregoing, Section 10.09, Section 12.05, Section 12.08, Section 12.09, Section 12.12 and Section 12.13 hereof may not be amended in any manner that would be adverse to a Debt Financing Source without such Debt Financing Source's written consent.

12.10 Complete Agreement

This Agreement, the Disclosure Schedules, Exhibits, the Related Agreements, and the other documents referred to herein (including, prior to the Closing, the Nondisclosure Agreement, dated March 27, 2015 (the "Confidentiality Agreement")) contain the complete agreement between the Parties and supersede any prior understandings, agreements or representations by or between the parties, written or oral, which may have related to the subject matter hereof in any way.

12.11 Counterparts

This Agreement may be executed in multiple counterparts (including by means of facsimile or PDF signature pages), any one of which need not contain the signatures of more than one Party, but all such counterparts taken together shall constitute one and the same instrument.

12.12 No Third-Party Beneficiaries

Other than (a) in respect of Parent Indemnified Persons (in their capacities as such) and Seller Indemnified Persons (in their capacities as such) and (b) as otherwise provided in Section 10.09, Section 12.05 and Section 12.09, no party hereto (each of whom is an express third party beneficiary hereof), this Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

12.13 Waiver of Jury Trial

TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, EACH OF THE PARTIES HEREBY WAIVES, AND COVENANTS THAT NONE OF THE PARTIES WILL ASSERT ANY RIGHT TO TRIAL BY JURY ON ANY ISSUE IN ANY ACTION, WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE, IN RESPECT OF ANY ISSUE, CLAIM, DEMAND OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE SUBJECT MATTER HEREOF OR IN ANY WAY CONNECTED WITH, RELATED OR INCIDENTAL TO THE DEALINGS OF THE COMPANY, PARENT AND MEMBERS HEREUNDER, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER IN TORT OR CONTRACT OR OTHERWISE. Each of the Parties hereto acknowledges that it has been informed by the other Parties that the provisions of this Section 12.13 constitute a material inducement upon which such other Parties are relying and will rely in entering into this Agreement. Any of the Parties may file an original counterpart or a copy of this Section 12.13 with any court as written evidence of the consent of the other Parties to the waiver of its right to trial by jury.

12.14 Delivery by Facsimile or PDF.

This Agreement and any signed agreement or instrument entered into in connection with this Agreement, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine or PDF email, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any Party hereto or to any such agreement or instrument, each other Party hereto or thereto shall re-execute original forms thereof and deliver them to all other Parties. No Party hereto or to any such agreement or instrument shall raise the use of a facsimile machine or PDF email to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine or PDF email as a defense to the formation of a Contract and each such Party forever waives any such defense.

12.15 Specific Performance.

In furtherance and not in limitation of Section 9.02, each of the Parties acknowledges and agrees that the other Parties would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached or violated. Accordingly, each of the Parties agrees that, without posting a bond or other undertaking, the other Parties will be entitled to an injunction or injunctions to prevent breaches or violations of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any Action instituted in any court of the United States or any state thereof having jurisdiction over the Parties and the matter in addition to any other remedy to which it may be entitled, at Law or in equity. Each Party further agrees that, in the event of any action for specific performance in respect of such breach or violation, it will not assert that the defense that a remedy at Law would be adequate. Notwithstanding the foregoing and for the avoidance of doubt, in no event shall the Parent or Merger Sub have any obligation to seek or consummate a financing transaction in connection with the transactions contemplated by this Agreement.

12.16 Attorney-Client Privilege; Continued Representation.

The parties hereto hereby acknowledge that Venable LLP has acted as counsel to the Company, the Manager and SBEEG from time to time prior to the transactions contemplated by this Agreement as well as with respect thereto. The following provisions in this Section 12.17 apply to the attorney-client relationship between (a) the Company and Venable LLP prior to the Closing and (b) the Manager and SBEEG and Venable LLP following the Closing. Each of the parties hereto agrees that: (i) it will not seek to disqualify Venable LLP, based solely on its prior representation of the Company, the Manager and SBEEG, from acting and continuing to act as counsel to the Manager and SBEEG either in the event of a dispute hereunder or in the course of the defense or prosecution of any claim relating to the transactions contemplated by this Agreement; (ii) the Manager and SBEEG have a reasonable expectation of privacy with respect to their and the Company's communications (including any e-mail communications using the Company's email system) with Venable LLP prior to Closing to the extent that such communications concern the transactions contemplated herein and were confidential between the Manager, SBEEG and/or the Company and Venable LLP; and (iii) the Manager and SBEEG (and, following the Closing, not Parent or any of its Affiliates, including, without limitation, the Company) shall have access to all such privileged communications.

* * * *

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first written above.

PARENT:

ONE GROUP HOSPITALITY, INC.

By: /s/ Jonathan Segal
Name: Jonathan Segal
Title: Chief Executive Officer

MERGER SUB:

WASABI ACQUISITION DOWNTOWN, LLC

By: Wasabi Holdings, LLC, its sole member

By: The ONE Group, LLC, its sole member

By: The ONE Group Hospitality, Inc.
(f/k/a Committed Capital Acquisition Corporation),
its sole member

By: /s/ Jonathan Segal
Name: Jonathan Segal
Title: Chief Executive Officer

SBEEG:

By: /s/ Sam Nazarian
Name: Sam Nazarian
Title: Authorized Person

COMPANY:

KATSUYA-DOWNTOWN L.A., LLC

By: /s/ Sam Nazarian
Name: Sam Nazarian
Title: Authorized Person

MANAGER:

SBE/KATSUYA USA, LLC

By: /s/ Sam Nazarian
Name: Sam Nazarian
Title: Authorized Person