

DENNYS CORP  
Form DEF 14A  
April 20, 2005  
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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**SCHEDULE 14A INFORMATION**

**Proxy Statement Pursuant to Section 14(a)**  
**of the Securities Exchange Act of 1934**  
**(Amendment No.    )**

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

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| <input type="checkbox"/> Preliminary Proxy Statement                 | <input type="checkbox"/> Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2)) |
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| <input type="checkbox"/> Definitive Additional Materials             |  |
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**Denny s Corporation**

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

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(1) Amount Previously Paid:

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(2) Form, Schedule or Registration Statement No.:

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(3) Filing Party:

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(4) Date Filed:



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203 East Main Street  
Spartanburg, South Carolina 29319

April 15, 2005

Dear Stockholder:

You are cordially invited to attend the Annual Meeting of Stockholders of Denny's Corporation to be held at 9:00 a.m. on Wednesday, May 25, 2005, at the Spartanburg Marriott at Renaissance Park, 299 North Church Street, Spartanburg, South Carolina. If you plan to attend, we ask that you please (1) detach, sign and return the self-addressed, postage prepaid Attendance Card, and (2) detach and bring with you to the meeting the Admittance Card. These cards are attached together and enclosed with the form of proxy for the meeting.

The accompanying formal Notice of Meeting and Proxy Statement describe the matters on which action will be taken at the meeting.

Whether or not you attend in person, **it is important** your shares be represented and voted at the meeting. I urge you to sign, date and return the enclosed proxy, or vote via telephone or the Internet as set forth in the proxy, at your earliest convenience.

On Behalf of the Board of Directors,

Sincerely,

Robert E. Marks

*Chairman*

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**NOTICE OF MEETING**

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Spartanburg, SC

April 15, 2005

The Annual Meeting of Stockholders of Denny's Corporation will be held at the Spartanburg Marriott at Renaissance Park, 299 North Church Street, Spartanburg, South Carolina on Wednesday, May 25, 2005 at 9:00 a.m. for the following purposes as described in the accompanying Proxy Statement:

1. To elect nine (9) directors.
2. To consider and vote upon a proposal to ratify the selection of KPMG LLP as the principal independent registered public accounting firm of Denny's Corporation and its subsidiaries for the year ending December 28, 2005.
3. To consider and vote upon a proposal to approve an amendment to the Denny's Corporation 2004 Omnibus Incentive Plan.
4. To transact such other business as may properly come before the meeting.

Only holders of record of Denny's Corporation common stock at the close of business on March 29, 2005 will be entitled to notice of, and to vote at, this meeting.

Whether or not you plan to attend the meeting, you are urged to promptly complete, sign, date and return the enclosed proxy in the envelope provided (or follow the instructions set forth in the enclosed proxy to vote by telephone or the Internet). Returning your proxy as described above does not deprive you of your right to attend the meeting and to vote your shares in person. However, in order to vote your shares in person at the meeting, you must be a stockholder of record or hold a valid proxy from your broker permitting you to vote at the meeting.

RHONDA J. PARISH

*Executive Vice President,*

*Chief Administrative Officer,*

*General Counsel and Secretary*

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**PROXY STATEMENT**

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April 15, 2005

**GENERAL**

**Introduction**

The Annual Meeting of Stockholders of Denny's Corporation, a Delaware corporation, will be held on Wednesday, May 25, 2005, at 9:00 a.m. at the Spartanburg Marriott at Renaissance Park, 299 North Church Street, Spartanburg, South Carolina (the Annual Meeting), for the purposes set forth in the accompanying Notice of Meeting. This Proxy Statement is furnished by Denny's Corporation to stockholders of Denny's Corporation in connection with the upcoming Annual Meeting. The information provided herein concerns not only Denny's Corporation, but also Denny's, Inc. (Denny's), a subsidiary which it wholly owns through another wholly-owned subsidiary, Denny's Holdings, Inc., since substantially all operations of Denny's Corporation are currently conducted through Denny's.

**Stockholder Voting**

Proxies in the form enclosed will be voted at the Annual Meeting (including adjournments) if properly executed, returned prior to the meeting, and not revoked, or if voted by telephone or the Internet in accordance with the instructions set forth in the enclosed proxy and not revoked. Stockholders who execute proxies may revoke them at any time before they are exercised by delivering a written notice to Rhonda J. Parish, the Executive Vice President, Chief Administrative Officer, General Counsel and Secretary of Denny's Corporation, either at the Annual Meeting or prior to the meeting date at the Denny's Corporation principal executive offices at 203 East Main Street, Spartanburg, South Carolina 29319, by executing and delivering a later-dated proxy, or by attending the meeting and voting in person. Please note that if you plan to vote at the meeting in person, you must be a stockholder of record or hold a valid proxy from your broker permitting you to vote at the meeting.

Only holders of record of common stock of Denny's Corporation, par value \$.01 per share (the Common Stock) as of the close of business on March 29, 2005 (the Record Date) will be entitled to notice of, and to vote at, the Annual Meeting. This Proxy Statement will be mailed to each such stockholder on or about April 22, 2005.

As of the close of business on the Record Date, there were issued and outstanding and entitled to be voted at the Annual Meeting, 90,600,460 shares of Common Stock. At the meeting, holders of Common Stock will have one vote per share and a quorum, consisting of a majority of the outstanding shares of Common Stock as of the Record Date, represented in person or by proxy, will be required for the transaction of business by stockholders. A quorum being present, directors will be elected and the other actions proposed in the accompanying Notice of Meeting will become effective by majority vote. Votes withheld from nominees for director, abstentions and broker non-votes will be counted for purposes of determining whether a quorum has been reached, but will not be counted in determining the number of shares voted for any director-nominee or

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for or against any proposal.

Proxies in the accompanying form, properly executed and duly returned and not revoked, or if voted by telephone or the Internet in accordance with the instructions set forth in the enclosed proxy and not revoked, will be voted at the Annual Meeting (including adjournments). Where stockholders have appropriately specified how their proxies are to be voted, they will be voted accordingly. If no specifications are made, proxies will be voted (i) in favor of the nine (9) nominees to the Board of Directors, (ii) in favor of the selection of KPMG LLP as the principal independent registered public accounting firm of Denny's Corporation and its subsidiaries (collectively, the Company) for the year ending December 28, 2005, and (iii) in favor of the proposal to approve an amendment to the Denny's Corporation 2004 Omnibus Incentive Plan (the 2004 Omnibus Plan). The Company does not know of any matter that is not referred to herein to be presented for action at the Annual Meeting. If any other matter or business is brought before the Annual Meeting, the proxy holders may vote the proxies at their discretion.



**Table of Contents****Denny s 401(k) Plan Participant Voting**

Under the Denny s 401(k) Plans (the Plans ), shares of Common Stock attributable to certain plan participants who have selected the Denny s Corporation stock fund investment option under the Plans will be voted by the Plan Trustee in accordance with the employee s instructions and, absent such instructions, in accordance with the instruction of the Plan Administrator (a Board-appointed committee responsible for the administration of the Plans). It is currently anticipated that the Plan Administrator will vote For each director-nominee and each of the other proposals herein.

**Equity Security Ownership****Principal Stockholders**

The following table sets forth the beneficial ownership of Common Stock by each stockholder known by the Company as of March 29, 2005 to own more than 5% of the outstanding shares. As of March 29, 2005, there were 90,600,460 shares of the Common Stock issued and outstanding.

<u>Name and Address</u>	<u>Amount and Nature of Beneficial Ownership</u>	<u>Percentage of Common Stock</u>
Trafelet & Company, LLC (and related entities) 900 Third Avenue, 5 <sup>th</sup> Floor New York, NY 10022	14,681,315(1)	16.2
Mellon HBV Alternative Strategies LLC (and related entities) 200 Park Avenue, Suite 3300 New York, NY 10166-3399	8,719,773(2)	9.6
Joseph L. Dowling, III 540 Madison Avenue, 38 <sup>th</sup> Floor New York, NY 10022	8,392,105(3)	9.3
Morgan Stanley 1585 Broadway New York, NY 10036	4,498,942(4)	5.0

- (1) Based upon information provided to us and filings with the Commission by Trafelet & Company, LLC ( Trafelet ), Mr. Remy W. Trafelet, Delta Institutional, LP, Delta Offshore, Ltd., Delta Pleiades, LP and Delta Onshore, Ltd. Includes 6,010,300 shares owned by Delta Institutional, LP with respect to which Trafelet and Mr. Remy Trafelet may each be deemed to share voting and investment power. Also includes 6,468,215 shares owned by Delta Offshore, Ltd. (c/o BNY Alternative Investment Services Ltd., 18 Church Street, Skandia House, Hamilton HM11, Bermuda), with respect to which Trafelet and Mr. Remy Trafelet may each be deemed to share voting and investment power. Also includes 1,075,000 shares owned by Delta Pleiades, LP with respect to which Trafelet and Mr. Remy Trafelet may each be deemed to share voting and investment power. Also includes 1,127,800 shares owned by Delta Onshore, Ltd., with respect to which Trafelet and Mr. Remy Trafelet may be deemed to share voting and investment power.
- (2) Based upon filings with the Commission and other information provided to us by Mellon HBV Alternative Strategies LLC. Mellon HBV Alternative Strategies LLC serves as investment advisor and agent of Mellon HBV Master Rediscovered Opportunities Fund L.P., Mellon

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HBV Master Multi-Strategy Fund L.P., Axis RDO Ltd., Mellon HBV Capital Partners L.P., Distressed Recovery Master Fund Ltd., Mellon HBV Leveraged Multi-Strategy Fund L.P., Mellon HBV Master U.S. Event Driven Fund L.P., Lyxor/Mellon HBV Rediscovered Opportunity Fund Ltd., and HFR DS Performance Master Trust and has sole voting and investment power with respect to those shares reported as beneficially owned. Mellon HBV II, LLC is the general partner of certain funds managed by Mellon HBV Alternative Strategies LLC, as investment advisor, and may be deemed to be the beneficial owner of the shares owned by those funds based on the

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- definition of beneficial ownership provided in Rules 16a-1(a)(1) and 13d-3 under the Securities Exchange Act of 1934, as amended (the Exchange Act ), but is not deemed to beneficially own the reported shares based on the definition of beneficial ownership provided in Rule 16a-1(a)(2) under the Exchange Act. Each of Mellon HBV Alternative Strategies Holdings LLC and Mellon HBV II, LLC disclaims beneficial ownership of the reported shares. Mellon HBV Alternative Strategies Holdings LLC is a wholly owned, indirect subsidiary of Mellon Financial Corporation and a direct parent of Mellon HBV Alternative Strategies LLC. Each of Mellon Financial Corporation and Mellon HBV Alternative Strategies Holdings LLC may be deemed to beneficially own the reported shares based on the definition of beneficial ownership provided in Rules 16a-1(a)(1) and 13d-3 under the Exchange Act but is not deemed to beneficially own the reported shares based on the definition of beneficial ownership provided in Rule 16a-1(a)(2) under the Exchange Act. Additionally, Mellon Capital Management Corporation and Mellon Trust of New England N.A. beneficially own 45,545 shares and 8,140 shares, respectively, which shares are not reflected in this table.
- (3) Based upon the Schedule 13G filed with the Commission on July 15, 2004 by Mr. Joseph L. Dowling, III. By virtue of his status as the sole managing member of entities that have the power to control the investment decisions of Narragansett I, L.P. (which owns 2,853,316 or 3.2% of the outstanding shares of common stock) and Narragansett Offshore, Ltd. (which owns 5,538,789 or 6.2% of the outstanding shares of common stock), Mr. Dowling may be deemed to be the beneficial owner of shares owned by Narragansett I, L.P. and Narragansett Offshore, Ltd., and may be deemed to have sole power to vote or direct the vote of and sole power to dispose or direct the disposition of such securities.
- (4) Based upon filings with the Commission by Morgan Stanley. Morgan Stanley has sole voting and dispositive power with respect to 4,412,913 shares and shared voting and dispositive power with respect to 6,129 shares. Morgan Stanley indicates that it files reports solely in its capacity as the parent company of, and indirect beneficial owner of shares held by, one of its business units. The percentage of shares of Common Stock beneficially owned by Morgan Stanley, as of March 29, 2005, amounted to 4.97% and has been rounded to 5.0% for purposes of this table.

**Management**

The following table sets forth, as of March 29, 2005 except as noted, the beneficial ownership of Common Stock by: (i) each current member of the Board of Directors (the Board ) of Denny s Corporation, (ii) each additional nominee for election to the Board not currently serving as a director, (iii) each executive officer of the Company included in the Summary Compensation Table on page 22, and (iv) all directors and executive officers of Denny s Corporation as a group. Except as otherwise noted, the persons named in the table below have sole voting and investment power with respect to all shares shown as beneficially owned by them.

Name	Amount and Nature of Beneficial Ownership(1)(2)	Percentage of Common Stock
Vera K. Farris	82,794	*
Vada Hill	16,941	*
Brenda J. Lauderback		
Nelson J. Marchioli	2,679,954	2.9
Robert E. Marks	92,393	*
Michael Montelongo		
Henry J. Nasella	8,100	*
Elizabeth A. Sanders	84,794	*
Donald R. Shepherd	82,979	*
Debra Smithart-Oglesby	26,540	*
Rhonda J. Parish	478,345	*
Margaret L. Jenkins	156,785	*
Andrew F. Green	398,416	*
Janis S. Emplit	361,337	*
All current directors and executive officers as a group (14 persons)	4,595,886	4.9



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\* Less than one (1) percent.

- (1) The Common Stock listed as beneficially owned by the following individuals includes shares of Common Stock which such individuals have the right to acquire (within sixty (60) days of March 29, 2005) through the exercise of stock options: (i) Mss. Farris and Sanders and Messrs. Marks and Shepherd (21,000 shares each), (ii) Mr. Marchioli (2,333,334 shares), (iii) Ms. Parish (446,667 shares), (iv) Mr. Green (326,667 shares), (v) Ms. Jenkins (130,001 shares), (vi) Ms. Emplit (336,667 shares), and (vii) all current directors and executive officers as a group (3,756,168 shares).
- (2) The Common Stock listed as beneficially owned by the following individuals includes shares of Common Stock which such individuals have the vested right to acquire (within sixty (60) days of March 29, 2005) through the conversion of deferred stock units upon termination of service as a director of Denny's Corporation: (i) Mss. Farris and Sanders and Mr. Hill (16,941 shares each), (ii) Mr. Marks and Ms. Smithart-Oglesby (16,540 shares each), (iii) Mr. Shepherd (17,126 shares), and (iv) Mr. Nasella (8,100 shares).

**Equity Compensation Plan Information**

The following table sets forth information as of December 29, 2004 with respect to compensation plans of the Company under which equity securities of Denny's Corporation are authorized for issuance.

<u>Plan Category</u>	<u>Number of securities to be issued upon exercise of outstanding options, warrants and rights</u>	<u>Weighted-average exercise price of outstanding options, warrants and rights</u>	<u>Number of securities remaining available for future issuance under equity compensation plans(2)</u>
Equity compensation plans approved by security holders(1)	12,701,650	\$ 1.86	3,781,880
Equity compensation plans not approved by security holders			
<b>Total</b>	<b>12,701,650</b>	<b>\$ 1.86</b>	<b>3,781,880</b>

- (1) Includes the 2004 Omnibus Plan, the Denny's, Inc. Omnibus Incentive Compensation Plan for Executives (the 2002 Omnibus Plan), the Advantica Stock Option Plan and the Advantica Restaurant Group Director Stock Option Plan. For a description of these plans, see Note 12 to the Company's Consolidated Financial Statements in its Annual Report on Form 10-K for the fiscal year ended December 29, 2004.
- (2) Includes shares of Common Stock available for issuance as awards of restricted stock, restricted stock units, deferred stock units and performance awards, under the 2004 Omnibus Plan.

**ELECTION OF DIRECTORS****Nominees for Election as Directors of Denny's Corporation**

As permitted under Denny's Corporation Bylaws, the Board has set at nine (9) the number of directors to constitute the Board of Directors of Denny's Corporation. Accordingly, it is intended that proxies in the accompanying form will be voted at the Annual Meeting for the election of nine (9) nominees to the Board of Denny's Corporation. These nominees are: Vera K. Farris, Vada Hill, Brenda J. Lauderback, Nelson J. Marchioli, Robert E. Marks, Michael Montelongo, Henry J. Nasella, Donald R. Shepherd and Debra Smithart-Oglesby, each of whom has consented to serve and will serve as a director, if elected, until the 2006 Annual Meeting of Stockholders and until his or her successor shall be elected and shall qualify, except as otherwise provided in Denny's Corporation's Restated Certificate of Incorporation and Bylaws, as amended. Each nominee, with the exception of Ms. Lauderback and Mr. Montelongo, currently serves as a director. As previously disclosed, Ms. Sanders,

who currently serves as a director, has elected not to stand for re-election to the Board.

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If for any reason any nominee named above is not a candidate when the election occurs, it is intended that proxies in the accompanying form will be voted for the election of the other nominees named above and may be voted for any substitute nominee or, in lieu thereof, the Board may reduce the number of directors in accordance with the Denny's Corporation Restated Certificate of Incorporation and Bylaws. Holders of Common Stock voting by proxy may withhold votes as to any director-nominee by writing the name of such nominee in the space provided on the proxy card or, if voting by telephone or the Internet, by following the instructions provided in connection therewith.

**Business Experience**

The name, age, present principal occupation or employment, directorships and the material occupations, positions, offices or employments for at least the past five years, of each current director and director nominee to the Board of Directors of Denny's Corporation are set forth below. Unless otherwise indicated, each such person has held the occupation listed opposite his or her name for at least the past five years.

<b>Name</b>	<b>Age</b>	<b>Current Principal Occupation or Employment and Five-Year Employment History</b>	<b>Director Since</b>
Vera K. Farris	64	Director of Denny's Corporation; President Emerita and Distinguished Professor, The Richard Stockton College of New Jersey (1983-June, 2003); Professor, University of Pennsylvania (2003-present); Hesburgh Judge for TIAA CREF.	1993
Vada Hill	45	Director of Denny's Corporation; Senior Vice President and Chief Marketing Officer of Federal National Mortgage Association (Fannie Mae) (1999-present); Chief Marketing Officer of Taco Bell Corporation (1997-1999).	2003
Brenda J. Lauderback	54	Retired; President of Wholesale and Retail Group of Nine West Group, Inc., a footwear manufacturer and distributor (1995-1998); President of Wholesale Division of U.S. Shoe Corporation, a footwear manufacturer and distributor (1993-1995); Vice President and General Merchandise Manager of Target Corporation (formerly Dayton Hudson) (1982-1993). Director of Big Lots, Inc., Wolverine World Wide, Inc., Irwin Financial Corporation and Select Comfort Corporation.	
Nelson J. Marchioli	55	Chief Executive Officer, President and Director of Denny's Corporation and Denny's, Inc. (2001-present); President of El Pollo Loco, Inc. (a subsidiary of the Company until 1999) (1997-2001).	2001
Robert E. Marks	53	Director of Denny's Corporation; Chairman of Denny's Corporation; President of Marks Ventures, LLC, a private equity investment firm (1994-present); Director of Soluol, Inc. and Brandrud Furniture Company, as well as a member of the Board of Trustees of the Fisher House Foundation and The International Rescue Committee.	1998
Henry J. Nasella	58	Director of Denny's Corporation; Venture Partner at Apax Partners, Inc., an international private equity investment group (2001-present); Chairman/Co-Founder of Online Retail Partners, Inc. (1999-2000); Chairman and Chief Executive Officer of Star Markets Co., Inc., a New England food retailer, (1994-1999), President and Chief Operating Officer of Staples, Inc. (1988-1993). Director of Phillips-Van Heusen Corporation and Spyder Active Sports, Inc. as well as a member of the Board of Trustees at Northeastern University.	2004

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<b>Name</b>	<b>Age</b>	<b>Current Principal Occupation or Employment and Five-Year Employment History</b>	<b>Director Since</b>
Michael Montelongo	49	Senior Vice President for Strategic Marketing of Sodexo, Inc., a provider of food and facilities management services (March 2005-present); Assistant Secretary to the United States Air Force for Financial Management and Comptroller (2001-March, 2005); Sales Executive and Senior Project Manager for Capgemini Group, a provider of consulting, technology and outsourcing services (1999-2001). Member of the Council on Foreign Relations and the Association of West Point Graduates Minority Outreach Committee.	
Donald R. Shepherd	68	Director of Denny's Corporation; Retired; Chairman of Loomis, Sayles & Company, L.P., an investment management firm (1992-1995); Chief Executive Officer and Chief Investment Officer of Loomis Sayles & Company, L.P. (1990-1995). Member of Investment Committee of Scripps Research Institute and various University of Michigan advisory committees.	1998
Debra Smithart-Oglesby	50	Director of Denny's Corporation; President of O/S Partners, an investment capital and consulting services firm (2000-present); Chief Financial Officer of Dekor, Inc., a home improvement and decorating retail company (2000); President of Corporate Services and Chief Financial Officer of First America Automotive, Inc. (1997-1999). A member of the Editorial Advisory Board of CFO Magazine and director of Noodles & Company.	2003

**Involvement in Certain Legal Proceedings**

On February 14, 2001, FRD Acquisition Co. ( "FRD" ), a former wholly-owned subsidiary of Advantica Restaurant Group, Inc. ( "Advantica" ), now Denny's Corporation, filed a voluntary petition under Chapter 11 of the Bankruptcy Code (the "FRD Chapter 11 Proceeding" ) to facilitate the divestiture of its Coco's and Carrows brands and to preserve their going concern value. Mss. Farris and Sanders and Messrs. Marchioli, Marks, and Shepherd were each directors of FRD and Ms. Parish and Mr. Green served as executive officers of FRD during the FRD Chapter 11 Proceeding, which concluded with Advantica's divestiture of FRD and the Coco's and Carrows brands on July 10, 2002. Upon the completion of the divestiture of FRD, Advantica, on July 11, 2002, changed its name to Denny's Corporation.

In 2000, two proceedings were filed in the United States Bankruptcy Court for the Central District of California under Chapter 13 of the Bankruptcy Code naming Margaret L. Jenkins, Denny's Senior Vice President and Chief Marketing Officer, Marketing and Franchise Development, as debtor (case 00-35060, filed September 1, 2000, dismissed November 16, 2000; and case 00-43703 filed December 5, 2000, dismissed January 12, 2001). Both cases were dismissed shortly after they were filed, and no debts were discharged or otherwise affected by the proceedings.

**Information Regarding Committees of the Boards of Directors**

There are three standing committees of the Board of Directors of Denny's Corporation, the Audit and Finance Committee, the Compensation and Incentives Committee and the Corporate Governance and Nominating Committee. The Audit and Finance Committee currently consists of Messrs. Marks, Nasella, Shepherd and Ms. Smithart-Oglesby, with Ms. Smithart-Oglesby serving as chair. The Compensation and Incentives Committee is comprised of Mss. Farris and Sanders and Messrs. Hill and Shepherd, with Ms. Farris serving as chair. Mss. Farris, Sanders and Smithart-Oglesby and Messrs. Hill and Marks currently make up the Corporate Governance and Nominating Committee, with Ms. Sanders serving as chair. As noted above, Ms.



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Sanders has elected not to stand for re-election to the Board at the Annual Meeting. In conjunction with the election of directors at the Annual Meeting, the Board will make committee assignments for the upcoming year.

Set forth below is a summary of the principal functions of each committee.

**Audit and Finance Committee.** The Audit and Finance Committee (the Audit Committee), which held sixteen (16) meetings in 2004, is responsible for: the appointment of the Company's independent registered public accounting firm and monitoring and evaluating such firm's independence and performance; at least annually, preapproving all audit and permitted nonaudit services to be provided to the Company by the firm, reviewing the planned scope of the annual audit; reviewing the conclusions of such firm and reporting the findings and recommendations thereof to the Board; reviewing with the Company's independent registered public accounting firm the adequacy of the Company's system of internal controls and procedures and the role of management in connection therewith; reviewing and discussing the Company's annual financial statements with management and the independent registered public accounting firm and, based on these discussions, recommending that the Board approve the financial statements for publication and filing; reviewing with the independent registered public accounting firm the Company's interim financial results to be included in the Company's quarterly reports to be filed with the Securities and Exchange Commission (the SEC or Commission) and matters related thereto; reviewing the adequacy of the Audit Committee's Charter on an annual basis; understanding the Company's risk profile and overseeing the Company's risk assessment and management practices; reviewing and discussing with management and the independent registered public accounting firm the Company's critical accounting policies and the quality of accounting judgments and estimates made by management; developing and maintaining procedures for the receipt, retention and treatment of complaints received by the Company (including confidential and or anonymous submissions by employees) regarding questionable accounting or audit matters; overseeing the Company's finance activities including monitoring the Company's financing needs; preparing annually a report to shareholders to be included in the Company's proxy statement and performing such other functions and exercising such other powers as the Board from time to time may determine. For a complete description of the Audit Committee's powers, duties and responsibilities see the charter of the Audit Committee attached to the Proxy Statement for the Company's 2004 Annual Meeting.

The Audit Committee was established in accordance with Section 3(a)(58)(A) of the Exchange Act. Each member of the Audit Committee meets the definition of independence for audit committee members set forth under NASDAQ listing standards. For additional required disclosure regarding the Audit Committee, see the Audit Committee Report for the fiscal year ended December 29, 2004 on page 19 of this Proxy Statement.

**Compensation and Incentives Committee.** The Compensation and Incentives Committee (the Compensation Committee), is responsible for overseeing (and advising the Board on) the compensation of Company officers; reviewing and making recommendations to the Board concerning compensation practices, policies, procedures and retirement benefit plans and programs for the employees of the Company; evaluating the performance of the Chief Executive Officer; and overseeing the activities of plan administrators and trustees and other fiduciaries under the Company's various employee benefit plans. It is also responsible for administering the Company's stock option plans and such other incentive compensation plans as may from time to time be adopted by the Company; monitoring and receiving periodic reports from the Company's human resources and diversity affairs departments regarding the Company's minority hiring and diversity promotional efforts; reviewing and making recommendations to the Board regarding compensation practices, policies and procedures for members of the Board; and performing such other functions and exercising such other powers as the Board from time to time may determine. In 2004, the Compensation Committee held seven (7) meetings.

**Corporate Governance and Nominating Committee.** The Corporate Governance and Nominating Committee (the Corporate Governance Committee) is primarily responsible for developing and monitoring for compliance the Company's Corporate Governance Policy as well as ensuring that it is made



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available to security holders and potential investors. In connection with this responsibility, the committee is responsible for monitoring and safeguarding the independence of the Board, overseeing and reviewing the Company's processes for providing information to the Board, overseeing the evaluation of the Board and management and monitoring and overseeing the planning for CEO and senior management succession. Additionally, the Corporate Governance Committee is responsible for recommending nominees to the Board, as well as recommending directors for appointment to committees of the Board and to the chairs of such committees. These responsibilities include establishing criteria for Board and committee membership, considering rotation of committee members, reviewing candidates' qualifications and any potential conflicts with the Company's interest, assessing the contributions of current directors in connection with their re-nomination, reviewing and approving related party transactions of directors and making recommendations to the full Board regarding the position of chairman and lead director, when appropriate. The Corporate Governance Committee was formed by the Board on November 20, 2002. It held five (5) meetings in 2004. Each member of the Corporate Governance Committee meets the definition of independence set forth under NASDAQ listing standards. The Corporate Governance Committee will consider nominees recommended by stockholders. For more information regarding the process for shareholders to submit recommendations of Board nominees to the Corporate Governance Committee for consideration, please see "Director Nominations" on page 9. For further information and a description of the Company's Corporate Governance Policy, see "Corporate Governance."

### **Lead Director; Board Meeting Information.**

In addition to the above-mentioned committee assignments, in January 1999 the Board began appointing, from among its members, a Lead Director. The Lead Director role was designed generally to include regularly meeting by telephone with the Chief Executive Officer to discuss the financial and operational status of the Company and staying abreast of Company issues in a more in-depth manner than required of other Board members. In 2002, with the appointment of an independent director as the Company's Chairman of the Board of Directors, the Board determined that there would not be a need to designate a Lead Director so long as the Chairman of the Board was an independent director.

During 2004, there were eight (8) meetings of the Board of Directors of Denny's Corporation. Each director of Denny's Corporation attended at least 75% of the meetings of the Board (and, as applicable committees thereof) during 2004.

### **Compensation of Directors**

Each director of Denny's Corporation, other than Nelson J. Marchioli, will receive the following compensation: (i) a \$45,000 annual cash retainer (paid in equal installments on a quarterly basis), (ii) an annual award of 8,100 deferred stock units, and (iii) an annual grant of options to purchase 18,900 shares of common stock. Such options typically have a term of 10 years, become exercisable at a rate of 33 1/3% per annum for three consecutive years beginning on the first anniversary of the date of grant and have an exercise price equal to the fair market value of the common stock of Denny's Corporation on the date of grant. Such deferred stock units typically will be settled on a 1-for-1 basis in common stock of Denny's Corporation upon termination of service as a director of Denny's Corporation. Rather than the \$45,000 annual cash retainer paid to other directors, the Chairman of the Board will receive \$100,000 on an annual basis for his service as Chairman of the Board. The Chair of the Audit and Finance Committee will receive additional compensation annually of \$20,000 and the Chair of the Corporate Governance and Nominating Committee and the Compensation and Incentives Committee each will receive additional compensation annually of \$15,000 for their service as the committee chair. In addition, each member of the Board of Directors will receive deferred stock units for attendance at or participation in any unscheduled, specially-called meeting (i.e., any meeting called in addition to the typically five regularly scheduled board and committee meetings). The number of deferred stock units earned by directors for specially-called meetings shall be determined on a quarterly basis using a rate of \$1,000 for attendance in person and \$500 for telephonic participation and shall be calculated by dividing the total dollar value earned for

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such meeting attendance for the quarter by the closing price of Denny's Corporation common stock on the last day of the quarter.

### **Audit Committee Financial Experts**

The Board has determined that at least two Board members currently serving on the Audit Committee of Denny's Corporation, Robert E. Marks and Debra Smithart-Oglesby, are Audit Committee Financial Experts, as that term is defined by the SEC, based upon their respective business experience and educational backgrounds which includes Mr. Marks' experience analyzing and evaluating financial statements (of the same or greater complexity as the Company's) as a part of his over 20 years of work experience in the field of private equity investments, in more than 15 different industries.

### **Director Nominations**

The Corporate Governance Committee has a written charter which is available on Denny's website at [www.dennys.com](http://www.dennys.com). All members of this committee are deemed independent within the meaning of the listing standards.

The Corporate Governance Committee will consider director-nominees recommended by shareholders. A shareholder who wishes to recommend to the committee a person or persons for consideration as a nominee for election to the Board of Directors must send a written notice to the committee by mail addressed to the attention of the Secretary of Denny's Corporation at the corporate offices in Spartanburg, South Carolina. The written notice must set forth (i) the name of each person whom the shareholder recommends be considered as a nominee, (ii) a business address and telephone number for each nominee (e-mail address is optional), and (iii) biographical information regarding each nominee, including the person's employment and other relevant experience. To be considered by the committee, a shareholder recommendation must be received no later than the 120<sup>th</sup> calendar day before the first anniversary date of Denny's Corporation's proxy statement prepared in connection with the previous year's annual meeting.

The Corporate Governance Committee believes that a nominee recommended for a position on the Board must meet the following minimum qualifications:

he or she must be 21 years of age;

he or she must have experience in a position with a high degree of responsibility in a business or other organization;

he or she must be able to read and understand basic financial statements;

he or she must possess integrity and have high moral character;

he or she must be willing to apply sound, independent business judgment;

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he or she must have sufficient time to devote to being a member of the Denny's Corporation Board; and

he or she must be fluent in the English language.

Annually, the Corporate Governance Committee of the Board of Directors of Denny's Corporation will identify the areas of expertise or skill needed on the Board for the upcoming Board term. The Committee will identify potential nominees for director from (1) the slate of current directors, (2) referrals from professional search firms, typically in those instances when the committee identifies a needed skill or expertise not possessed by the current slate of directors, and (3) recommendations from shareholders.

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The committee will evaluate a potential nominee by considering whether the potential nominee meets the minimum qualifications identified by the committee, as well as considering the following factors:

whether the potential nominee has leadership, strategic, or policy setting experience in a complex organization, including any scientific, governmental, educational, or other non-profit organization;

whether the potential nominee has experience and expertise that is relevant to Denny's business including any specialized business experience, technical expertise, or other specialized skills, and whether the potential nominee has knowledge regarding issues affecting Denny's;

whether the potential nominee is highly accomplished in his or her respective field;

whether the potential nominee has high ethical character and a reputation for honesty, integrity, and sound business judgment;

whether the potential nominee is independent, as defined by listing standards, whether he or she is free of any conflict of interest or the appearance of any conflict of interest, and whether he or she is willing and able to represent the interests of all Denny's Corporation shareholders; and

any factor affecting the ability or willingness of the potential nominee to devote sufficient time to the Board's activities and to enhance his or her understanding of Denny's business.

Additionally, with respect to an incumbent director whom the committee is considering as a potential nominee for re-election, the committee will review and consider the incumbent director's service to Denny's Corporation during his or her term, including the number of meetings attended, level of participation, and overall contribution to the Company. The manner in which the committee evaluates a potential nominee will not differ based on whether the potential nominee is recommended by a Denny's Corporation shareholder.

The Company paid fees in 2004 to a professional search firm to identify potential nominees for director to present to stockholders for election at the 2005 Annual Meeting of Stockholders. Director nominees, Ms. Lauderback and Mr. Montelongo, were identified and recommended by such search firm. The Corporate Governance Committee did not receive, by December 22, 2004 (the 120<sup>th</sup> calendar day before the first anniversary of the date of Denny's Corporation 2004 proxy statement), any recommended nominee from a shareholder who beneficially owns more than 5% of Common Stock or from a group of shareholders who beneficially own, in the aggregate, more than 5% of the Common Stock.

## **Communications Between Security Holders and Board of Directors**

The process for security holders of Denny's Corporation to send communications to the Board is as follows. Security holders may send written communications to the Board or any one or more of the individual members of the Board by directing such communication to the Secretary of Denny's Corporation by mail in the care of the Secretary, at our principal executive offices, or by e-mail to rparish@dennys.com. All written communications will be compiled by the Secretary and promptly submitted to the individual directors being addressed or to the Chair of the committee whose areas of responsibility includes the specific topic addressed by such communication, or in all other cases, to the Chairman of the Board.

**Board Member Attendance at Annual Meetings**

It is the policy of Denny's Corporation that all of the members of the Board and all nominees for election to the Board at the Annual Meeting attend the Annual Meeting except in cases of extraordinary circumstances. All directors of Company attended the 2004 Annual Meeting of Stockholders.

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**SELECTION OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

As a result of the adoption of the Sarbanes-Oxley Act of 2002, and related regulations proposed and adopted by the SEC, and by each national securities exchange and securities association, audit committees of public companies are formally charged with the responsibility for the appointment, compensation, retention and oversight of the independent registered public accounting firm that serves as the Company's independent auditor. The Audit Committee takes this responsibility very seriously and consequently undertook in 2003, with the assistance of senior management, the process of evaluating and interviewing a limited number of national accounting firms, including the independent registered public accounting firm for the 2002 fiscal year, Deloitte & Touche LLP ( Deloitte & Touche ). As a result of this process, the Audit Committee selected the firm of KPMG LLP ( KPMG ) as the principal independent registered public accounting firm of the Company for the year 2003. This selection was subsequently ratified and approved by the stockholders at the 2003 Annual Meeting. The Audit Committee again selected KPMG as the principal independent registered public accounting firm of the Company for the year 2004, and this selection was subsequently ratified and approved by the stockholders at the 2004 Annual Meeting.

For the year 2005, the Audit Committee has selected KPMG as the principal independent registered public accounting firm of the Company. This selection is submitted for ratification of and approval by the stockholders at this Annual Meeting. Representatives of KPMG will attend the Annual Meeting. They will have an opportunity to make a statement, if they so desire, and to respond to appropriate questions. If the stockholders do not ratify this selection, other independent registered public accounting firms will be considered by the Audit Committee. Deloitte & Touche, the Company's principal independent registered public accounting firm for the year 2002, are not expected to be in attendance at the Annual Meeting.

**Changes in Certifying Account ant**

On April 22, 2003, Denny's Corporation notified Deloitte & Touche that it would not be retained by the Company to perform the audit of the financial statements of the Company for the fiscal year ending December 31, 2003. Deloitte & Touche had served as the Company's principal independent accountants since 1986. The decision not to retain Deloitte & Touche was made by the Audit Committee and upon recommendation by that committee was approved by the full Board of Directors.

In connection with the audits of the financial statements of the Company for the fiscal years ended December 25, 2002 and December 26, 2001, the Company had no disagreement with Deloitte & Touche on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreement, if not resolved to the satisfaction of Deloitte & Touche, would have caused them to make reference to such disagreement in their reports for such periods.

The audit reports of Deloitte & Touche on the financial statements of the Company for the fiscal years ended December 25, 2002 and December 26, 2001 contained no adverse opinion or disclaimer of opinion, nor were they qualified or modified as to uncertainty, audit scope, or accounting principles, except for an explanatory paragraph relating to the change in method of accounting for intangible assets in 2002 to conform to Statement of Financial Accounting Standard No. 142, "Goodwill and Other Intangible Assets", as described in Note 2 to the consolidated financial statements. Deloitte & Touche was provided a copy of the above disclosure and was requested to furnish us with a letter addressed to the Commission stating whether it agrees with the above statements and, if not, stating the respects in which it does not agree. A letter from Deloitte & Touche is attached as Exhibit 16 to the Company's Current Report on Form 8-K filed with the Commission as of April 23, 2003.

Subsequently, and as previously disclosed, the Company restated its 2002 consolidated financial statements (as described in Note 2 to the consolidated financial statements), and the audit report of Deloitte & Touche with respect on those financial statements was modified to include



a paragraph relating to that restatement.

On April 22, 2003, the Company engaged the accounting firm of KPMG as the principal independent registered public accounting firm to audit the Company's financial statements for the fiscal year ending December 31, 2003. The decision to engage KPMG was made by the Audit Committee and, upon recommendation by that committee, was approved by the full Board of Directors. As of April 22, 2003, the Company had not on any prior occasions consulted with KPMG regarding any of the matters set forth in Item 304(a)(2) of the Commission's Regulation S-K.

**Table of Contents****2004 Audit Information**

Deloitte & Touche served as the Company's principal independent registered public accounting firm to audit the Company's financial statements for the fiscal year ended December 25, 2002. As discussed above and previously disclosed, as of April 22, 2003 the Audit Committee notified Deloitte & Touche that it would not be retained to perform the audit of the financial statements of the Company for the fiscal year ending December 31, 2003 and determined to engage KPMG as the principal independent registered public accounting firm to audit the Company's financial statements for the fiscal period ended December 31, 2003. The fees billed in the period from December 26, 2002 through April 22, 2003 for Deloitte & Touche's services to the Company and the fees billed in the fiscal years ended December 31, 2003 and December 29, 2004 for KPMG's services to the Company were:

	<b>Deloitte &amp; Touche</b>	<b>KPMG</b>	
	<b>December 26, 2002 through April 22, 2003</b>	<b>Year ended December 31, 2003</b>	<b>Year ended December 29, 2004</b>
Audit Fees	\$	\$ 260,000	\$ 719,500
Audit-Related Fees	79,830	43,000	49,655
Tax Fees	15,717	15,770	20,000
All Other Fees	10,230		
<b>Total Fees</b>	<b>\$ 105,777</b>	<b>\$ 318,770</b>	<b>\$ 789,155</b>

In the above table, in accordance with applicable SEC rules:

audit fees are fees billed by the independent registered public accounting firm for professional services for the audit of the consolidated financial statements included in the Company's Form 10-K and review of financial statements included in the Company's Form 10-Qs, or for services that are normally provided by the independent registered public accounting firm in connection with statutory and regulatory filings or engagements, including comfort letters, consents, registration statements, statutory audits and reports on internal controls required by the Sarbanes Oxley Act of 2002;

audit-related fees are fees billed by the independent registered public accounting firm for assurance and related services that are reasonably related to the performance of the audit or review of the financial statements, and generally include fees for audits of the Company's employee benefit plans and audit or attest services not required by statute or regulation; included in the amount of fees billed by Deloitte & Touche under this category during the interim period ended April 22, 2003 were \$79,830 in fees which were actually incurred after the interim period but that relate to the Company's transition to KPMG as its independent registered public accounting firm;

tax fees are fees billed by the independent registered public accounting firm for professional services for tax compliance, tax advice, and tax planning; and

all other fees are fees billed by the independent registered public accounting firm to the Company for any services not included in the first three categories above, and include fees related to executive financial planning services and the divestiture of FRD.

**Audit Committee's Pre-approval Policies and Procedures**

It is the policy of the Audit Committee to pre-approve all audit and permitted non-audit services proposed to be performed by the Company's independent registered public accounting firm. The process for such pre-approval is typically as follows. Committee pre-approval is sought at one of the committee's regularly scheduled meetings following the presentation of information at such meeting detailing the particular services proposed to be performed. Additionally, the Chair of the Audit Committee has been delegated the authority by the committee to pre-approve, where necessary, such services requiring pre-approval in between regularly scheduled committee meetings. The Chair will report any such decisions at the committee's next scheduled meeting. None of the services described above were approved by the Audit Committee pursuant to the exception provided by Rule 2-01(c)(7)(i)(C) under Regulation S-X.

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**APPROVAL OF AN AMENDMENT TO THE DENNY S CORPORATION**

**2004 OMNIBUS INCENTIVE PLAN**

Stockholders are requested to approve, at the Annual Meeting, an amendment (the Amendment) to the Denny s Corporation 2004 Omnibus Incentive Plan (defined above as the 2004 Omnibus Plan) that supplements the list of qualified business criteria that may be utilized as the basis for establishing performance goals for awards granted under the plan that are intended to constitute fully deductible performance-based compensation under Section 162(m) of the Internal Revenue Code of 1986, as amended (the Code). The total number of shares of Common Stock reserved and available for issuance under the 2004 Omnibus Plan will not be changed by the Amendment.

**Background**

On July 27, 2004, the Board of Directors adopted and on August 25, 2004 the stockholders of Denny s Corporation approved the 2004 Omnibus Plan. The 2004 Omnibus Plan consequently became effective as of the date of the stockholders approval. On April 13, 2005, the Compensation Committee and the Board of Directors adopted the Amendment.

As of December 29, 2004, there were approximately 27,000 of the Company s employees, officers and directors eligible to participate in the plan. The Board has reserved 10,000,000 shares of Common Stock for issuance upon the grant or exercise of awards pursuant to the plan, plus a number of additional shares (not to exceed 1,500,000) underlying awards outstanding under the 2002 Omnibus Plan, the Advantica Stock Option Plan (the Prior Option Plan) or the Advantica Restaurant Group Director Stock Option Plan (the Prior Director Option Plan) that hereafter terminate or expire unexercised, or are cancelled, forfeited or lapse for any reason.

**Purpose of the Amendment**

Pursuant to Section 162(m) of the Code, the Company may not deduct compensation in excess of \$1 million paid to its chief executive officer and its next four most highly compensated executive officers. The 2004 Omnibus Plan is designed to comply with Code Section 162(m) so that the grant of market-priced options and stock appreciation rights, and other awards designated as qualified performance-based awards, will be excluded from the calculation of annual compensation for purposes of Code Section 162(m) and will be fully deductible by the Company. Qualified performance-based awards must be conditioned on achievement of objectively determinable performance goals that are established based upon one or more business criteria set forth and listed in the plan. The purpose of the Amendment is to supplement this list of business criteria to add two (2) additional criteria, total revenue and diversity based targets, in order to maximize the tax deductibility under Section 162(m) of the Code of awards granted under the 2004 Omnibus Plan. If the stockholders do not approve the Amendment, no performance awards for 2005 will be paid to the Company s chief executive officer and its next four most highly compensated executive officers based on achievement of performance goals relating to total revenues or diversity based targets.

A summary of the plan is set forth below. This summary is qualified in its entirety by the full text of the plan, which is attached to this Proxy Statement as Appendix A.

**Summary of the Plan**

**Purpose.** The purpose of the plan is to promote the Company's success by linking the personal interests of its employees, officers, directors and consultants to those of the Company's stockholders, and by providing participants with an incentive for performance.

**Permissible Awards.** The plan authorizes the granting of awards in any of the following forms:

options to purchase shares of Common Stock, which may be non-qualified stock options or incentive stock options under the Code;

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stock appreciation rights, which give the holder the right to receive the difference between the fair market value per share of Common Stock on the date of exercise over the grant price;

performance awards, which are payable in cash or stock upon the attainment of specified performance goals;

restricted stock, which is subject to restrictions on transferability and subject to forfeiture on terms set by the compensation committee;

restricted stock units, which represent the right to receive shares of Common Stock (or an equivalent value in cash or other property) in the future, based upon the attainment of stated vesting or performance criteria;

deferred stock units, which represent the vested right to receive shares of Common Stock (or an equivalent value in cash or other property) in the future;

dividend equivalents, which entitle the participant to payments equal to any dividends paid on the shares of stock underlying an award;

other stock-based awards in the discretion of the compensation committee, including unrestricted stock grants; and

purely cash-based awards.

**Shares Available for Awards.** Subject to adjustment as provided in the plan, the aggregate number of shares of Common Stock reserved and available for issuance pursuant to awards granted under the plan is 10,000,000, plus any shares subject to awards that are currently outstanding under the 2002 Omnibus Plan, Prior Option Plan, or the Prior Director Plan that hereafter terminate or expire unexercised, or are cancelled, forfeited or lapse for any reason. Except for shares retained or surrendered to satisfy tax withholding obligations, only shares actually issued under the plan count against the total number of shares available under the plan.

**Limitations on Awards.** The maximum number of shares of Common Stock that may be covered by options and stock appreciation rights granted under the plan to any one person during any one calendar year is 3,000,000. The maximum number of shares of Common Stock that may be granted under the plan in the form of restricted stock, restricted stock units, deferred stock units, performance shares or other stock-based awards under the plan to any one person during any one calendar year is 3,000,000. The aggregate maximum fair market value (measured as of the grant date) of any other awards that may be granted to any one person (less any consideration paid by the person for such award) during any one calendar year under the plan is \$4,500,000.

**Administration.** The plan will be administered by the Compensation Committee. The Compensation Committee will have the authority to designate participants; determine the type or types of awards to be granted to each participant and the number, terms and conditions thereof; establish, adopt or revise any rules and regulations as it may deem advisable to administer the plan; and make all other decisions and determinations that may be required under the plan. The Board of Directors may at any time administer the plan. If it does so, it will have all the powers of the Compensation Committee under the plan.

**Performance Goals.** The Compensation Committee may designate any award other than a market-priced option or stock appreciation right as a qualified performance-based award in order to make the award fully deductible without regard to the \$1,000,000 deduction limit imposed by

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Code Section 162(m). If an award is so designated, the Compensation Committee must establish objectively determinable performance goals for the award based on one or more of the following business criteria, which may be expressed in terms of company-wide objectives or in terms of objectives that relate to the performance of a division, business unit, affiliate, department or function within the company or an affiliate over a performance term to be designated by the Compensation Committee that may be as short as a calendar quarter or other three-month period:

net earnings;

earnings per share;

net sales growth;

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net income (before or after taxes);

net operating profit;

return measures (including, but not limited to, return on assets, capital, equity, or sales, and cash flow return on assets, capital, equity, or sales);

cash flow (including, but not limited to, operating cash flow and free cash flow);

earnings before or after taxes, interest, depreciation and/or amortization;

internal rate of return or increase in net present value;

dividend payments to parent;

gross margins;

gross margins minus expenses;

operating margin;

share price (including, but not limited to, growth measures and total shareholder return);

expense targets;

working capital targets relating to inventory and/or accounts receivable;

planning accuracy (as measured by comparing planned results to actual results);

comparisons to various stock market indices;

comparisons to the performance of other companies;

same-store sales;

customer counts;



customer satisfaction; and

EVA®.

If the Amendment is approved by the stockholders at the Annual Meeting, this list of business criteria will be supplemented to include:

total revenue; and

diversity-based targets.

For purposes of the plan, EVA means the positive or negative value determined by net operating profits after taxes over a charge for capital, or any other financial measure, as determined by the Compensation Committee in its sole discretion. (EVA is a registered trademark of Stern Stewart & Co.).

The Compensation Committee must establish such goals prior to the beginning of the period for which such performance goal relates (or such later date as may be permitted under applicable tax regulations) and the Compensation Committee may not increase any award or, except in the case of certain qualified terminations of employment, waive the achievement of any specified goal. Mid-term adjustments of a performance formula are permitted only in the case of a corporate transaction or other event of the type that would also trigger an adjustment in stock based awards (as discussed below under Adjustments ), or the in case of unusual and non-recurring financial events such as asset write-downs; litigation settlements; the effect of changes in tax laws or accounting principles affecting reported results; accruals for reorganization and restructuring programs; extraordinary nonrecurring items meriting special accounting treatment, as determined under generally accepted accounting principles; acquisitions or divestitures; and foreign exchange gains and losses. Any payment of an award granted with performance goals will be conditioned on the written certification of the Compensation Committee in each case that the performance goals and any other material conditions were satisfied.

**Limitations on Transfer; Beneficiaries.** No award will be assignable or transferable by a participant other than by will or the laws of descent and distribution or (except in the case of an incentive stock option) pursuant to a qualified domestic relations order; provided, however, that the Compensation Committee may permit other transfers where it concludes that such transferability does not result in accelerated taxation, does not cause any

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option intended to be an incentive stock option to fail to qualify as such, and is otherwise appropriate and desirable, taking into account any factors deemed relevant, including without limitation, any state or federal tax or securities laws or regulations applicable to transferable awards. A participant may, in the manner determined by the Compensation Committee, designate a beneficiary to exercise the rights of the participant and to receive any distribution with respect to any award upon the participant's death.

**Acceleration Upon Certain Events.** Unless otherwise provided in an award certificate, if a participant's service terminates by reason of death or disability or (with respect to market-priced options or stock appreciation rights and awards that are not intended to be qualified as performance-based awards under Code Section 162(m)) retirement, all of such participant's outstanding options, stock appreciation rights and other awards in the nature of rights that may be exercised will become fully vested and exercisable, all time-based vesting restrictions on his or her outstanding awards will lapse, and any performance-based criteria with respect to his or her awards shall be deemed to be satisfied at the greater of target or actual performance as of the date of such termination. If a participant is terminated without cause or resigns for good reason (as such terms are defined in the plan) within two years after a change in control of the Company, all of such participant's outstanding options, stock appreciation rights and other awards in the nature of rights that may be exercised will become fully vested and exercisable and shall remain exercisable for a period of 60 months from such date or until the earlier expiration of the award, and all time-based vesting restrictions on his or her outstanding awards will lapse. Except as otherwise provided in an award certificate, upon the occurrence of a change in control, the target payout opportunities attainable under all outstanding performance-based awards will be deemed to have been fully earned as of the effective date of the change in control and there shall be pro rata payout to participants within 30 days after the effective date of the change in control based upon an assumed achievement of all relevant targeted performance goals and upon the length of time within the performance period that has elapsed prior to the change in control. In addition, subject to limitations applicable to certain qualified performance-based awards, the Compensation Committee may in its discretion accelerate awards for any other reason in its discretion. The Compensation Committee may discriminate among participants or among awards in exercising such discretion.

**Adjustments.** In the event of a stock split, a dividend payable in shares of Common Stock, or a combination or consolidation of the Common Stock into a lesser number of shares, the share authorization limits under the plan will automatically be adjusted proportionately, and the shares then subject to each award will automatically be adjusted proportionately without any change in the aggregate purchase price for such award. If the Company is involved in another corporate transaction or event that affects the Common Stock, such as an extraordinary cash dividend, recapitalization, reorganization, merger, consolidation, split-up, spin-off, combination or exchange of shares, the share authorization limits under the plan will be adjusted proportionately, and the Compensation Committee may adjust outstanding awards to preserve the benefits or potential benefits of the awards.

## **Termination and Amendment**

The Board of Directors or the Compensation Committee may, at any time and from time to time, terminate or amend the plan, but if an amendment to the plan would materially increase the number of shares of stock issuable under the plan, expand the types of awards provided under the plan, materially expand the class of participants eligible to participate in the plan, materially extend the term of the plan or otherwise constitute a material amendment requiring stockholder approval under applicable listing requirements, laws, policies or regulations, then such amendment will be subject to stockholder approval. In addition, the Board of Directors or the Compensation Committee may condition any amendment on the approval of the stockholders for any other reason. No termination or amendment of the plan may adversely affect any award previously granted under the plan without the written consent of the participant.

The Compensation Committee may amend or terminate outstanding awards. However, such amendments may require the consent of the participant and, unless approved by the stockholders or otherwise permitted by the antidilution provisions of the plan, the exercise price of an outstanding option may not be reduced, directly or indirectly, and the original term of an option may not be extended.



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### **Prohibition on Repricing**

As indicated above under Termination and Amendment, outstanding stock options cannot be repriced, directly or indirectly, without the prior consent of the Company's stockholders. The exchange of an underwater option (i.e., an option having an exercise price in excess of the current market value of the underlying stock) for another award would be considered an indirect repricing and would, therefore, require the prior consent of the Company's stockholders.

### **Certain Federal Tax Effects**

**Nonstatutory Stock Options.** There will be no federal income tax consequences to the optionee or to the Company upon the grant of a nonstatutory stock option under the plan. When the optionee exercises a nonstatutory option, however, he or she will recognize ordinary income in an amount equal to the excess of the fair market value of the Common Stock received upon exercise of the option at the time of exercise over the exercise price, and the Company will be allowed a corresponding deduction, subject to any applicable limitations under Code Section 162(m). Any gain that the optionee realizes when he or she later sells or disposes of the option shares will be short-term or long-term capital gain, depending on how long the shares were held.

**Incentive Stock Options.** There typically will be no federal income tax consequences to the optionee or to the Company upon the grant or exercise of an incentive stock option. If the optionee holds the option shares for the required holding period of at least two years after the date the option was granted or one year after exercise, the difference between the exercise price and the amount realized upon sale or disposition of the option shares will be long-term capital gain or loss, and the Company will not be entitled to a federal income tax deduction. If the optionee disposes of the option shares in a sale, exchange, or other disqualifying disposition before the required holding period ends, he or she will recognize taxable ordinary income in an amount equal to the excess of the fair market value of the option shares at the time of exercise over the exercise price, and the Company will be allowed a federal income tax deduction equal to such amount. While the exercise of an incentive stock option does not result in current taxable income, the excess of the fair market value of the option shares at the time of exercise over the exercise price will be an item of adjustment for purposes of determining the optionee's alternative minimum taxable income.

**Stock Appreciation Rights.** A participant receiving a stock appreciation right will not recognize income, and the Company will not be allowed a tax deduction, at the time the award is granted. When the participant exercises the stock appreciation right, the amount of cash and the fair market value of any shares of Common Stock received will be ordinary income to the participant and the Company will be allowed as a corresponding federal income tax deduction at that time, subject to any applicable limitations under Code Section 162(m).

**Restricted Stock.** Unless a participant makes an election to accelerate recognition of the income to the date of grant as described below, a participant will not recognize income, and the Company will not be allowed a tax deduction, at the time a restricted stock award is granted, provided that the award is subject to restrictions on transfer and is subject to a substantial risk of forfeiture. When the restrictions lapse, the participant will recognize ordinary income equal to the fair market value of the Common Stock as of that date (less any amount he or she paid for the stock), and the Company will be allowed a corresponding federal income tax deduction at that time, subject to any applicable limitations under Code Section 162(m). If the participant files an election under Code Section 83(b) within 30 days after the date of grant of the restricted stock, he or she will recognize ordinary income as of the date of grant equal to the fair market value of the stock as of that date (less any amount paid for the stock), and the Company will be allowed a corresponding federal income tax deduction at that time, subject to any applicable limitations under Code Section 162(m). Any future appreciation in the stock will be taxable to the participant at capital gains rates. However, if the stock is later forfeited, the participant will not be able to recover the tax previously paid pursuant to the Code Section 83(b) election.

**Restricted Stock Units.** A participant will not recognize income, and the Company will not be allowed a tax deduction, at the time a restricted stock unit award is granted. Upon issuance of shares of Common Stock in settlement of a restricted stock unit award, a participant will recognize ordinary income equal to the fair market

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value of the Common Stock as of that date (less any amount he or she paid for the stock), and the Company will be allowed a corresponding federal income tax deduction at that time, subject to any applicable limitations under Code Section 162(m).

**Deferred Stock Units.** A participant will not recognize income, and the Company will not be allowed a tax deduction, at the time a deferred stock unit award is granted. Upon receipt of shares of Common Stock (or the equivalent value in cash or other property) in settlement of a deferred stock unit award, a participant will recognize ordinary income equal to the fair market value of the Common Stock or other property as of that date (less any amount he or she paid for the stock or property), and the Company will be allowed a corresponding federal income tax deduction at that time, subject to any applicable limitations under Code Section 162(m).

**Performance Awards.** A participant generally will not recognize income, and the Company will not be allowed a tax deduction, at the time performance awards are granted. When the participant receives payment of cash or shares under the performance award, the cash amount or the fair market value of the shares of stock will be ordinary income to the participant, and the Company will be allowed a corresponding federal income tax deduction at that time, subject to any applicable limitations under Code Section 162(m).

**Benefits to Named Executive Officers and Others**

In 2004, the Compensation Committee approved a grant under the 2004 Omnibus Plan of approximately 4,000,000 stock options and 3,400,000 restricted stock units to the Company's officers and employees of the rank of senior manager and above, including the following persons and groups. These awards were granted as of August 25, 2004. Any future awards will be made at the discretion of the Compensation Committee. Therefore, it is not presently possible to determine the benefits or amounts that will be received by such persons or groups pursuant to the plan in the future.

**2004 Omnibus Incentive Plan**

Name and Position	Stock Option		Restricted Stock	
	Grants(1)		Unit Awards(3)	
	Dollar Value of Options	Number of Options	Dollar Value of Awards	Target Award (# Units)
Nelson J. Marchioli President and Chief Executive Officer	(2)	1,000,000	\$ 2,700,000(4)	1,000,000
Rhonda J. Parish Executive Vice President, General Counsel and Secretary	(2)	300,000	\$ 810,000(4)	300,000
Margaret L. Jenkins(4)	(2)	270,000	\$ 729,000(4)	270,000

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Senior Vice President, Marketing and Franchise Development, Chief Marketing Officer				
Andrew F. Green	(2)	270,000	\$ 729,000(4)	270,000
Senior Vice President and Chief Financial Officer				
Janis S. Emplit	(2)	270,000	\$ 729,000(4)	270,000
Senior Vice President, Strategic Services and Chief Information Officer				
All Executive Officers as a Group	(2)	2,615,000	\$ 7,060,500(4)	2,615,000
All Non-Executive Directors as a Group		0		0
All Non-Executive Officer Employees as a Group	(2)	1,385,000	\$ 2,119,500(4)	785,000

(1) The options have an exercise price of the lesser of (i) \$2.42 per share, or (ii) the fair market value of the Common Stock as of the grant date, and will vest as to 33.33% of the shares on December 29, 2004,

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- December 28, 2005 and December 27, 2006. Because \$2.42 is less than the fair market value on the grant date, the vesting of the options granted to executive officers is also subject to the achievement of certain objectively determinable performance measures established by the Compensation Committee at the time of grant.
- (2) The dollar value of the options ultimately will be dependent on the difference between the exercise price and the fair market value of the underlying shares on the date of exercise. As of March 29, 2005, the fair market value of the shares was \$4.65, based on the closing price of the Common Stock on that day.
  - (3) The restricted stock units will be earned in 1/3 increments (from 0% to 100% of the target award for each such increment) based on the total shareholder return of the Common Stock (measured as increase of stock price plus reinvested dividends, divided by beginning stock price) over a 1-year performance period, the first such period beginning in July 2004 (with any amounts not earned carried over to possibly be earned over a 2-year or 3-year period), as compared to the total shareholder return of a peer group of restaurant companies over the same period. The full award will be considered earned after 5 years based on continued employment. Once earned, the restricted stock units will vest over a period of two years based on continued employment of the holder. On each of the first two anniversaries of the end of the performance period, 50% of the earned restricted stock units will be paid to the holder (one half of the value will be paid in cash and one-half in shares of Common Stock), provided that the holder is then still employed with the Company or an affiliate.
  - (4) The dollar value of the restricted stock units is dependent on the fair market value of the underlying shares. As of March 29, 2005, the fair market value of the shares was \$4.65, based on the closing price of the Common Stock on that day.

**AUDIT COMMITTEE REPORT**

A formal written charter was originally adopted by the Audit Committee on March 14, 2000, and subsequently approved and adopted by the Board on May 24, 2000 and thereafter amended on November 12, 2003. The Audit Committee fulfilled its responsibilities under and remained in compliance with the charter during the fiscal year ended December 29, 2004. Additionally, the Audit Committee has prepared the following report on its activities with respect to the audit of the Company's annual financial statements for the fiscal year ended December 29, 2004.

The Audit Committee has reviewed and discussed the audited financial statements with management of the Company and KPMG, the Company's independent registered public accounting firm.

The Audit Committee has discussed with KPMG, the matters required to be discussed by Statement on Auditing Standards No. 61.

The Audit Committee has received the written disclosure and the letter from KPMG, required by Independence Standards Board Standard No. 1, and has discussed with KPMG its independence from the Company.

Based on and pursuant to the review and discussions described above, the Audit Committee has recommended to the Board that the audited financial statements be included in the Company's Annual Report on Form 10-K for the fiscal year ended December 29, 2004 for filing with the Commission.

**Audit and Finance Committee**

Debra Smithart-Oglesby, Chair

Robert E. Marks

Henry J. Nasella

Donald R. Shepherd





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**EXECUTIVE COMPENSATION**

**Compensation and Incentives Committee Report**

*Compensation Philosophy and Practice*

A Compensation program for executive officers has been developed by the Company, under the oversight and direction of the Compensation Committee, with the goal of designing a compensation package that attracts and retains top quality leadership talent while ensuring senior leaders' interests are sufficiently aligned with the interests of stockholders.

Hewitt Associates LLC (Hewitt), an international human resources consulting firm, has been selected by the Compensation Committee to assist them and the Company, as needed, in the development and design of an executive compensation package which appropriately responds to research data (discussed further below) and addresses the following goals set forth for the Company's long-term incentive and overall compensation program; (i) promote retention, (ii) reward achievement of the business strategy, (iii) complement the short-term incentive program, and (iv) be simple and easily understood.

Periodically, at the Compensation Committee's request, Hewitt completes a study of the Company's compensation program for its top executive and management positions. For the most recent study, in order to form a comparison, Hewitt conducted a compensation measurement study against a custom group of 18 restaurant, food service, entertainment, retail and hospitality companies. The study concluded that while cash compensation (i.e., base salary and incentive bonus) for executives was generally in line with the market, long-term incentives and target benefits provided by the Company were below market resulting in the Company's total overall compensation package for its senior management being generally below the current market. Consequently, the Company, consistent with the findings of the Hewitt study, initiated a move toward a greater emphasis on equity-based long-term incentive compensation by (1) establishing omnibus incentive plans (i.e., the 2002 and 2004 Omnibus Plans) designed to add needed flexibility for compensating Company executives (and other employees) through stock ownership and other rights while promoting the financial success and growth of the Company and the interests of stockholders, (2) implementing total shareholder return programs offered under the omnibus plans which provide incentive vehicles for selected executives (including the named executive officers, as defined below) that utilize total shareholder returns versus peer comparisons as the performance measure (discussed further below under the 2004 Executive Officer Compensation Program), and (3) adjusting the Company's incentive bonus programs to provide greater flexibility and better matching of payouts to desired performance and by providing for quarterly payouts for certain measures, compensation for over-performance, and team/department targets.

For 2005, additional measures have been taken to further enhance executive compensation which include (1) the Company's hiring in late 2004 of a Senior Director of Compensation, whose responsibilities include further developing and enhancing the Company's executive compensation program in line with the objectives mentioned above, and (2) further enhancing the Company's short-term incentive compensation program. In support of the Company's growth objectives for 2005, the program now allows for partial incentive payouts based on Company performance that is above established threshold levels but below target levels and also includes a change to its over-performance feature which has been structured along the lines of a profit sharing incentive.

**2004 Executive Officer Compensation Program**

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The 2004 executive officer compensation program of the Company had three primary components: (1) *Base Salary*, (2) *Short-term Incentives*, and (3) *Long-term Incentives*.

***Base Salary*** is established on the basis of (i) annual quantitative market data in the form of salary comparisons to peer position groupings as described above, and (ii) Company-specific factors such as positions of responsibility and authority, years of experience and job performance.

***Short-term Incentives*** in 2004 were provided under the Company's 2004 Corporate Incentive Program and were based primarily upon the achievement of certain Company quarterly and annual quantitative performance

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goals that included: (i) same store customer counts, (ii) same store sales by Company-owned units, (iii) same store sales by franchise units, (iv) EBITDA (i.e., earnings before interest, taxes, depreciation and amortization), (v) cash flow, and (vi) Company team/department objectives. For 2004, all of the quantitative performance goals set forth immediately above were achieved, resulting in payouts of 100% for all such quarterly and annual awards. Additionally, for 2004, as result of exceeding the Company same store sales and EBITDA targets, over-performance awards of an additional 45% were paid out to executives an amount in direct relation to the amount of the goal over-performance. The 2004 Company team/department objectives were also achieved for all named executive officers resulting in payouts of 100% for that component of the program. (Compensation earned in 2004 by the named executive officers under the 2004 Company's Incentive Program is set forth in the Summary Compensation Table on page 22 under the Annual Compensation-Bonus Column).

*Long-term Incentives* in 2004 consisted of stock options and restricted stock unit awards. The stock options granted to executive officers in 2004 were awarded pursuant to the 2004 Omnibus Plan and vest in 33 1/3% increments on December 29, 2004, December 25, 2005 and December 27, 2006, contingent upon the achievement of an increase in Company same store sales for the fourth quarter of 2004 and certain individual employee performance goals. (The fourth quarter same store sales target was achieved and each named executive officer achieved their respective employee performance goals.) The restricted stock unit awards were awarded under a Total Shareholder Return Program pursuant to the 2004 Omnibus Plan. Up to 33 1/3% of the restricted stock awards to executive officers may vest on June 20, 2005, 2006 and 2007 based on total shareholder return compared with a peer group over the 12-month period preceding the vesting date. The entire amount of the restricted stock unit awards to executive officers, however, will vest after five years of continued employment with the Company. Vested units will be settled 50% on the one-year anniversary of the vesting date and 50% on the two-year anniversary of the vesting date and will be paid 50% in cash and 50% in stock upon a 1-for-1 conversion basis. The Compensation Committee, in administering these plans and programs, allocated awards to the Company's executive officers and others based on an evaluation of their relative levels of responsibility for and their potential contribution to the Company's operating results in order to provide them incentives to enhance stockholder value as well as taking into consideration the aforementioned compensation study and market analysis.

Additionally, Company executives are eligible to participate in certain Company retirement and savings plans, as well as various other benefit plans intended to provide a safety net of coverage against various events, such as death, disability and retirement.

***Deductibility of Executive Compensation***

With respect to Section 162(m) of the Code and underlying regulations pertaining to the deductibility of compensation to certain executive officers in excess of \$1 million, the Compensation Committee has adopted a policy to comply with such limitations, to the extent practicable, including its presentation of the Company's annual incentive compensation plans to the stockholders for prior approval. However, the Compensation Committee has also determined that some flexibility is required, notwithstanding these statutory and regulatory provisions, in negotiating and implementing the Company's incentive compensation programs. It has, therefore, retained the discretion to award some bonus payments based on non-quantitative performance objectives and other criteria which it may determine, in its discretion, from time to time.

***Chief Executive Officer Compensation***

Compensation received by Mr. Marchioli in 2004, in the form of base salary, bonus payments and other payments, is reflected and described in the Summary Compensation Table set forth on page 22. Such compensation to Mr. Marchioli was in accordance with the terms of his employment agreement, as amended and as described elsewhere herein, and followed generally the philosophy and programs described above for the Company's executive officers. Mr. Marchioli's compensation in 2004 related to the Company's performance in that (i) incentive compensation he earned in 2004 under the Company's 2004 corporate incentive program (as



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discussed elsewhere herein) resulted from the Company's achievement of certain targeted performance goals based upon financial measures such as EBITDA, same store sales, customer counts and cash flow, (ii) stock options awarded in 2004 vested partially as a result of the achievement of targeted same store sales for the fourth quarter of 2004, and (iii) restricted stock units awarded under his employment agreement were earned in 2004 as a result of the Company's achievement of certain targeted financial results (see Employment Agreements-Marchioli Employment Agreements for further detail).

**Compensation and Incentives Committee**

Vera K. Farris, Chair

Vada Hill

Elizabeth A. Sanders

Donald R. Shepherd

**Compensation of Officers**

The following summary compensation table sets forth, for the Company's last three (3) completed fiscal years, the compensation provided by the Company to any individual serving the Company at any time during 2004 as its Chief Executive Officer as well as the four most highly compensated executive officers, other than the Chief Executive Officer, who were serving as executive officers at the end of 2004 (the named executive officers).

**Summary Compensation Table**

Name and Principal Position as of December 29, 2004	Year	Annual Compensation(1)		Restricted Stock Units(4)	Long-Term Compensation Awards	All Other Compensation (5)(6)(7)
		Salary(2)	Bonus(3)		Number of Securities Underlying Options	
Nelson J. Marchioli President and Chief Executive Officer	2004	\$ 645,524	\$ 942,500	\$ 4,220,000	1,000,000	\$ 352,300
	2003	603,243	45,000			256,301
	2002	597,233	453,945			121,514
Rhonda J. Parish	2004	352,047	336,757	1,266,000	300,000	200,666
	2003	337,688	21,970		40,000	110,486

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Executive Vice President, Chief Administrative Officer, General Counsel and Secretary (8)	2002	335,676	190,125		20,000	108,475
Margaret L. Jenkins	2004	310,986	296,888	1,139,400	270,000	179,904
	2003	302,409	97,500		40,000	89,246
Senior Vice President, Marketing and Franchise Development, Chief Marketing Officer	2002	157,346(9)	6,963		20,000	441,727
Andrew F. Green	2004	308,558	301,600	1,139,400	270,000	180,037
	2003	278,950	17,420		40,000	94,082
Senior Vice President and Chief Financial Officer	2002	261,835	152,100		20,000	106,738
Janis S. Emplit	2004	289,954	278,038	1,139,400	270,000	167,937
	2003	272,382	17,233		40,000	89,674
Senior Vice President, Strategic Services and Chief Information Officer	2002	264,042	147,713		20,000	106,096

- (1) The amounts shown for each named executive officer exclude perquisites and other personal benefits that did not exceed, in the aggregate, the lesser of either \$50,000 or 10% of the total of annual salary and bonus reported for the named executive officer for any year included in this table.

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- (2) The amounts in this column include certain costs and credits to the named executive officers relating to certain life, health and disability insurance coverage provided through the Company.
- (3) The amounts shown in this column for 2002 and 2003 reflect bonus payments received in the respective year by the named executive officers under the Company's incentive programs which relate to the prior fiscal year.
- (4) The amounts shown in this column reflect the dollar value (based on the closing price of the common stock of Denny's Corporation on the date of grant) of restricted stock units awarded to the named executive officers in 2004 pursuant to our 2004 Total Shareholder Return Program (the 2004 TSR Program) under the 2004 Omnibus Plan. Under the 2004 TSR Program, up to one-third of each award may vest on June 30, 2005, 2006 and 2007 based on total shareholder return compared with a peer group over the 12-month period preceding the vesting date. The entire award, however, will vest after five years of continued employment with Denny's Corporation. Vested units will be settled 50% on the one-year anniversary of the vesting date and 50% on the two-year anniversary of the vesting date, and will be paid one-half in cash and one-half in common stock of Denny's Corporation, on a 1-for-1 conversion basis. The number of the aggregate restricted stock units held as of December 29, 2004 by Messrs. Marchioli and Green and Mss. Parish, Jenkins and Emplit is 1,000,000, 270,000, 300,000, 270,000 and 270,000, respectively. The value of the aggregate restricted stock units held as of December 29, 2004 by Messrs. Marchioli and Green and Mss. Parish, Jenkins and Emplit are \$4,400,000, \$1,188,000, \$1,320,000, \$1,188,000 and \$1,188,000, respectively.
- (5) The amounts for Mr. Marchioli for 2004, 2003 and 2002 were made pursuant to his employment agreement and include payments made in connection with his relocation to South Carolina in the amounts of \$-0-, \$110,399 and \$94,429, respectively, reimbursement of certain professional fees in the amounts of \$1,600, \$2,000 and \$3,500, respectively, and automobile allowances of \$13,200 for each such year. Additionally, the 2003 and 2002 amounts reflect Company contributions totaling \$18,202 and \$10,385, respectively, to his account under the Company's deferred compensation plan. For additional information see Employment Agreements-Marchioli Employment Agreements.
- (6) The amounts for Mss. Parish, Jenkins and Emplit and Mr. Green include Company contributions to their Company deferred compensation accounts which for 2004 amounted to \$10,541, \$11,154, \$10,437 and \$11,287, and for 2003 amounted to \$10,140, \$0, \$8,177 and \$8,520, respectively, and for 2002 amounted to \$5,850, \$0, \$4,639 and \$4,638 respectively, as well as Company contributions made to such officers' accounts under the Advantica Secured Savings Plan, which for 2002 amounted to \$2,625, \$0, \$1,457 and \$2,100, respectively. Additionally, the 2002 amounts for Mss. Parish and Emplit and Mr. Green reflect leadership retention payments in the amount of \$100,000 each. Amounts for Ms. Jenkins include payments made in connection with her hiring and relocation to South Carolina which for 2002 amounted to \$441,727.
- (7) 2004 and 2003 amounts for each named executive officer include stay bonus payments, which amounted to \$337,500 and \$112,500, respectively, for Mr. Marchioli, \$190,125 and \$63,375, respectively, for Ms. Parish, \$168,750 and \$56,250, respectively, for Mr. Green and Ms. Jenkins, and \$157,500 and \$52,500, respectively, for Ms. Emplit. Also, for each named executive officer, with the exception of Mr. Marchioli, 2003 amounts include stock and cash payouts received by such officers in 2003 under the 2002 TSR Program, the fair market value of which amounted to \$36,971 for Ms. Parish, \$32,996 for Ms. Jenkins, \$29,312 for Mr. Green and \$28,997 for Ms. Emplit.
- (8) Ms. Parish was named Chief Administrative Officer in January 2005.
- (9) This amount reflects base salary paid for only the portion of the year in which the named executive officer was employed by the Company.



**Table of Contents****Stock Options**

The following table sets forth information regarding all options to acquire shares of the Common Stock of Denny's Corporation granted to the named executive officers during the fiscal year ended December 29, 2004.

**Option Grants in 2004****Individual Grants**

Name	Number of Securities Underlying Options Granted (#)(1)(3)	% of Total Options Granted to Employees in 2004	Exercise or Base Price (\$/Sh)	Market Price on Date of Grant(2)	Expiration Date	Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term		
						0%	5%	10%
Nelson J. Marchioli	1,000,000	24.70%	\$ 2.42	\$ 4.22	11/10/14	\$ 1,800,000	\$ 4,453,935	\$ 8,525,593
Rhonda J. Parish	300,000	7.41%	\$ 2.42	\$ 4.22	11/10/14	\$ 540,000	\$ 1,336,181	\$ 2,557,678
Margaret L. Jenkins	270,000	6.67%	\$ 2.42	\$ 4.22	11/10/14	\$ 486,000	\$ 1,202,563	\$ 2,301,910
Andrew F. Green	270,000	6.67%	\$ 2.42	\$ 4.22	11/10/14	\$ 486,000	\$ 1,202,563	\$ 2,301,910
Janis S. Emplit	270,000	6.67%	\$ 2.42	\$ 4.22	11/10/14	\$ 486,000	\$ 1,202,563	\$ 2,301,910

- (1) Such options listed for the named executive officers were granted under the 2004 Omnibus Plan. All options listed expire ten years from the date of the grant.
- (2) The market price equals the closing price of Common Stock on the date of the grant.
- (3) These options vest and become exercisable in 33 1/3% increments on each of December 29, 2004, December 28, 2005 and December 27, 2006, provided (1) the Company achieved an increase in same store sales for the fourth quarter of the 2004 fiscal year, and (2) the named executive officer received a favorable rating on such officer's 2004 employee performance evaluation. The Company achieved the required increase in same store sales, and each named executive officer received the required rating on such performance evaluation.

The following table sets forth information with respect to the 2004 year-end values of unexercised options granted by the Company pursuant to the 2004 Omnibus Plan, the 2002 Omnibus Plan and the Advantica Stock Option Plan, held by each of the persons named in the Summary Compensation Table at fiscal year-end.

**Aggregated Option Exercises in 2004 and****Fiscal Year-End Option Values**

Number of Securities	Value of Unexercised In-the-Money Options at
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	Underlying Unexercised Options at	Fiscal Year-End(\$)
	Fiscal Year-End(#)	
	Exercisable/Unexercisable	Exercisable/Unexercisable
Nelson J. Marchioli	2,333,334/666,666	\$ 6,672,501/\$1,319,999
Rhonda J. Parish	426,668/233,332	\$ 786,872/\$ 522,128
Margaret L. Jenkins	116,668/213,332	\$ 274,872/\$ 481,929
Andrew F. Green	306,668/213,332	\$ 677,072/\$ 482,528
Janis S. Emplit	316,668/213,332	\$ 677,072/\$ 482,528

No options held by the above named executive officers were exercised in 2004.

**Table of Contents****Retirement Plans**

The Advantica Pension Plan (the Pension Plan), a tax qualified defined benefit retirement plan, is maintained by Denny's. Such plan is described below.

The following table shows the estimated annual benefits for a single life annuity that could be payable under the Pension Plan, as amended, and the ancillary plan described below upon a person's normal retirement at age 65 if that person were in one of the following classifications of assumed compensation and years of credited service.

Average Annual Remuneration Over a Five-Year Period	Years of Service				
	15	20	25	30	35
\$ 200,000	\$ 41,529	\$ 55,372	\$ 69,215	\$ 83,057	\$ 96,900
250,000	52,779	70,372	87,965	105,557	123,150
300,000	64,029	85,372	106,715	128,057	149,400
350,000	75,279	100,372	125,465	150,557	175,000
400,000	86,529	115,372	144,215	173,057	200,000
500,000	109,029	145,372	181,715	218,057	250,000
600,000	131,529	175,372	219,215	263,057	300,000
700,000	154,029	205,372	256,715	308,057	350,000
800,000	176,529	235,372	294,215	353,057	400,000
900,000	199,029	265,372	331,715	398,057	450,000
1,000,000	221,529	295,372	369,215	443,057	500,000
1,200,000	266,529	355,372	444,215	533,057	600,000
1,400,000	311,529	415,372	519,215	623,057	700,000
1,600,000	356,529	475,372	594,215	713,057	800,000

The Pension Plan is noncontributory and covers a limited number of employees of Denny's, Inc. In 1999, the Pension Plan was amended to effect the following changes (1) no new participants are allowed into the plan after December 31, 1999; (2) all future pension benefit accruals for highly compensated employees are earned beginning January 1, 2000 under the ancillary plan described below; and (3) all benefit accruals earned under the plan and ancillary plan were frozen as of December 31, 2004. Participants in the Pension Plan, therefore, are limited to those employees who, on or prior to December 31, 1999, had attained the age of 21 and had completed one thousand hours of service, and no participant accrues any benefit after December 31, 2004. A participant's annual retirement benefit under the Pension Plan at normal retirement age is calculated by multiplying the number of years of participation in the Pension Plan (not to exceed 35 years, and not including years after 1999 for highly compensated participants or years after 2004 for other participants) by the sum of one percent of the average Compensation (as defined below) paid during 60 consecutive calendar months chosen to produce the highest average through 1999 for highly compensated participants or through 2004 for other participants (Average Compensation for the purposes of this paragraph) plus an additional one-half of one percent of the Average Compensation in excess of the average Social Security wage base. Benefits payable cannot exceed 50% of the Average Compensation. Plan benefits are normally paid in the form of a life annuity or, if the retiree is married, a joint and survivor annuity.

Compensation for the purpose of this paragraph generally consists of all remuneration paid by the employer to the employee for services rendered as reported or reportable on Form W-2 for federal income tax withholding purposes (including the amount of any year-end bonus paid), excluding reimbursements and other expense allowances, fringe benefits, moving expenses, deferred compensation and welfare benefits (such exclusions including, without limitation, severance pay, leadership retention payments, relocation allowance, gross-up pay to compensate for taxable reimbursements, hiring bonuses, cost of living differentials, special overseas premiums, compensation resulting from participation in, or cancellation of, stock option plans, contributions by the employer to the Pension Plan or any other benefits plan and imputed income resulting from the use of Company property or services). Compensation also includes employee elective contributions under a Section 401(k) plan maintained by the employer and salary reduction amounts under a



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Section 125 plan maintained by the employer. The funding of the Pension Plan is based on actuarial determinations. The Pension Plan was amended early in 2004 to revise the definition of actuarial equivalent and to clarify that benefits generally will not be paid until after an employee notifies the employer and applies for benefits, as required by recent regulatory changes. The changes do not affect the calculation of benefits.

Ancillary to the Pension Plan is a non-qualified plan for a select group of management and highly compensated employees that provides for benefits limited by the limits on benefits and compensation under the Code. Compensation and Average Compensation are defined in this ancillary plan the same way they are defined in the Pension Plan. Consequently, the accrual of all further benefits under the ancillary plan ceased on December 31, 2004. Benefits payable under the ancillary plan are included in the table above.

The maximum annual pension benefit payable under the Pension Plan for 2004 was \$165,000 (or, if greater, the participant's 1982 accrued benefit).

Except for the accrual of certain non-qualified benefits as described herein, the Compensation included under the Pension Plan (including the ancillary non-qualified plan) generally corresponds with the annual compensation of the named executive officers in the Summary Compensation Table above. Includable Compensation for 2004 for Mss. Parish, Jenkins and Emplit and Messrs. Marchioli and Green was \$421,037, \$371,810, \$347,910, \$845,000, and \$384,669, respectively.

As of December 31, 2004 the estimated credited years of service under the Advantica Pension Plan and the ancillary plan for Mss. Parish, Jenkins and Emplit and Messrs. Marchioli and Green, were 9, 0, 8, 0, and 8, respectively.

Employees may retire as early as age 55 with five years of service. Employees with age and service equaling or exceeding 85 and who are within five years of the normal retirement age will receive no reduction of accrued benefits. Employees who are at least 55 years of age with 15 years of service will receive a reduction of three percent in accrued benefits for the first five years prior to normal retirement date and six percent for the next five years. Accrued benefits for employees retiring with less than 15 years of service will be actuarially reduced. Retirement benefits are fully vested after a participant completes five years of service.

## **Employment Agreements**

### ***Marchioli Employment Agreements***

Mr. Marchioli and Denny's Corporation entered into an employment agreement (the Marchioli Employment Agreement I) effective February 5, 2001 (the Agreement I Effective Date) which provided that the Company would employ Mr. Marchioli as President and Chief Executive Officer of Denny's Corporation and Denny's, Inc., for a period of three (3) years from the Agreement I Effective Date unless terminated earlier by reason of his death, permanent disability, voluntary termination or involuntary termination with or without cause. The Marchioli Employment Agreement I prohibited Mr. Marchioli from soliciting for employment the employees of the Company or its affiliates and from engaging in certain competitive activities generally during his term of employment and for a period of one year after the later of the termination of his employment or the date on which the Company is no longer required to make certain termination benefits. The Marchioli Employment Agreement I further prohibits Mr. Marchioli from using or disclosing certain confidential or proprietary information for purposes other than carrying out his duties with the Company.

During 2003 and near the end of the three (3) year term of the Marchioli Employment Agreement I, Mr. Marchioli and Denny's Corporation negotiated and entered into a new employment agreement (the Marchioli Employment Agreement II), effective November 1, 2003 through December 31, 2005 (the Agreement II Effective Date), which contains generally the provisions described immediately above for the Marchioli Employment Agreement I as well as other provisions described further below for the Marchioli Employment Agreement II.

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The material terms of the Marchioli Employment Agreement I, were as follows: (i) an annual base salary that shall be as determined by the Board but shall not be less than \$600,000, (ii) an annual performance bonus at an annual rate of at least 75% of his annual base salary if the Company and Mr. Marchioli achieve budgeted financial and other performance targets which shall be established by the Compensation Committee, with the payment of the performance bonus for the year 2001 being guaranteed by the Company, (iii) a grant of an option (the Marchioli Option ) as of the Agreement I Effective Date under the Company's stock option plan, to purchase, for a ten year period, 2,000,000 shares of the Common Stock (at an exercise price of \$1.03, the fair market value per share of the Common Stock on the Agreement I Effective Date, with respect to 1,250,000 shares and \$2.00 per share with respect to the remaining 750,000 shares) which vests at a rate of 33 1/3% per year beginning on the first anniversary date of the grant and which becomes 100% vested in the event of (a) termination without cause in which case the option shall be exercisable for 36 months following the effective date of such termination, (b) a dissolution or liquidation of the Company, (c) a sale of all or substantially all of the Company's assets, (d) a merger or consolidation involving the Company where Denny's Corporation is not a surviving corporation or where holders of the Common Stock receive securities or other property from another corporation, or (e) a tender offer for at least a majority of the outstanding Common Stock and (iv) a sign-on bonus within five (5) days of the Agreement Effective Date in the amount of \$1,623,264. The Marchioli Employment Agreement entitled Mr. Marchioli to certain other privileges and benefits, including participation in all of the Company's benefit plans, generally applicable to the Company's executive officers.

The material terms of the Marchioli Employment Agreement II are as follows: (i) an annual base salary of \$650,000, (ii) an annual performance bonus at an annual rate of at least 100% of the base salary payable if Denny's and Mr. Marchioli achieve the budgeted financial and other performance targets established by the Compensation Committee, with Mr. Marchioli being entitled to participate and receive the full benefits established for management employees for over-performance, (iii) an award of performance-based restricted stock units worth \$300,000 and valued as of the day prior to the Agreement II Effective Date (the units will vest over a one-year period; one-half of the total award was earned when the Company achieved its EBITDA target for the twelve-month calendar period beginning January 1, 2004 and the other-half of the total award was earned when the Company achieved its customer count growth target for that same period), (iv) an annual car allowance and participation in all of the Company's benefit plans generally applicable to the Company's executive officers, and (v) reimbursement of all normal and reasonable expenses Mr. Marchioli incurs during his employment term in connection with his responsibilities to the Company, including his travel expenses. In addition to the compensation described above, in the event of Mr. Marchioli's termination of employment during the term of the Marchioli Employment Agreement II, the Company is required to make payments as follows based upon the cause of such termination: (i) if by reason of death, Mr. Marchioli's surviving spouse is entitled to be paid an amount equal to Mr. Marchioli's base salary and annual bonus and his eligible family dependents are entitled to receive certain health and welfare benefits for a one-year period after his death; (ii) if by reason of permanent disability, Mr. Marchioli is entitled to be paid one-half of his base salary and annual bonus and he and his eligible family dependents are entitled to receive certain health and welfare benefits for a period of two years after termination of employment; and (iii) if by the Company other than for cause, Mr. Marchioli is, in general, entitled to (a) a lump sum in an amount equal to two year times his then current annual base salary and annual bonus, and (b) continuation of certain benefits and other contract rights. In the event Mr. Marchioli's termination without cause is within one (1) year following a change of control of the Company, Mr. Marchioli shall be entitled to a lump sum payment equal to 299% of the sum of his current base salary and target bonus. In the event of termination for cause or voluntary termination, the Company shall pay Mr. Marchioli the portion of his annual base salary earned through his termination date and generally the benefits due him under the Company's benefit plans for his services rendered to the Company through his date of termination.

**Other Employment Agreements**

Each of the named executive officers, other than Mr. Marchioli and Ms. Jenkins, are parties to separate letter agreements with the Company which provide, for the named executive officers, the following compensation and benefits. Each named executive officer will be entitled to the payment of severance benefits, in

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the event (A) the executive is terminated without cause, or (B) the executive elects to terminate his/her employment because (i) the Company has in effect reduced the executive's base salary or the executive's responsibilities, or (ii) the executive is required to relocate greater than 100 miles from the current Company headquarters in Spartanburg, South Carolina, equal to the sum of (a) two times the named executive's then current base pay and targeted annual bonus, (b) an amount, grossed up for applicable taxes, equal to actual benefit credits for an eighteen-month period and vested benefits under the ancillary non-qualified pension plan, (c) a lump sum amount equal to two (2) times the named executive's annual car allowance and (d) an amount equal to any accrued but unused vacation time. Such severance payment shall be guaranteed by certain subsidiaries of the Company. The letter agreements further provide that the named executive officers will receive career placement benefits upon a termination without cause and that all stock options granted by the Company to the named executive officer shall become 100% exercisable in the event of (a) termination without cause, (b) a dissolution or liquidation of the Company, (c) a sale of all or substantially all of the Company's assets, (d) a merger or consolidation involving the Company in which Denny's Corporation is not the surviving corporation or in which holders of the Common Stock receive securities from another corporation, or (e) a tender offer for at least a majority of the outstanding Common Stock.

In connection with an announcement in November, 2003 that the Company had begun a process of exploring possible alternatives to improve its long-term liquidity and capital structure, the Company awarded to certain members of management including Mr. Marchioli and the other named executive officers, retention bonuses which amounted to a total of 75% of the named executive officer's base salary paid in three designated installments throughout the above described exploration and implementation of alternatives period (such period having concluded during 2004), provided the named officers were employed by the Company on such designated dates.

In connection with her employment, the Company agreed to pay Ms. Jenkins in addition to her base salary and incentive bonus plan participation (i) an annual housing allowance of \$24,000 with gross-up, (ii) an \$8,000 annual travel allowance (grossed-up) for a two (2) year period beginning with her employment date (provided she has not exercised the Company provided executive relocation package), (iii) a severance payment (if her employment is terminated without cause) in an amount equal to the sum of 100% of her current annual base pay amount, or, in the event of a termination without cause within one year of a change in control, in an amount equal to 200% of her current annual salary and her targeted annual bonus.

## **Compensation Committee Interlocks and Insider Participation**

The following persons served as members of the Compensation Committee during the fiscal year ended December 29, 2004: Vera K. Farris, Vada Hill, Elizabeth A. Sanders and Donald R. Shepherd. None of the members of the committee were officers or employees of the Company or had any relationship, directly or indirectly, with the Company requiring disclosure under SEC regulations.



**Table of Contents****Stockholder Return Performance Graph**

Set forth below is a line graph comparing the cumulative total stockholders' return on the Common Stock against the cumulative total return of the Russell 2000® Index and a peer group index for the Company's fiscal years 2000, 2001, 2002, 2003 and 2004. The Common Stock was transferred from the NASDAQ National Market to the NASDAQ SmallCap Market on December 27, 1999 and later moved to the Over-the-Counter Bulletin Board on January 9, 2001. The graph and table assume that \$100 was invested on December 30, 1999 (the first day of fiscal year 2000) in each of the Company's Common Stock, the Russell 2000 Index and the peer group index and that all dividends were reinvested.

	<u>12/30/99</u>	<u>12/27/00</u>	<u>12/26/01</u>	<u>12/25/02</u>	<u>12/31/03</u>	<u>12/29/04</u>
Russell 2000® Index(1)	100	97.09	99.64	79.23	116.68	138.07
Peer Group Index(2)	100	145.56	225.29	211.44	290.06	294.64
Denny's Corporation	100	34.78	39.65	41.04	28.52	313.04

- (1) A broad equity market index of 2,000 companies (including Denny's Corporation, through May 31, 2000). The average market capitalization of companies within the index was approximately \$607 million with the median market capitalization being approximately \$496 million.
- (2) This peer group index consists of the following six other leading public companies in the family-style restaurant category: Bob Evans Farms, Inc. (BOBE), CBRL Group, Inc. (CBRL), Friendly Ice Cream Corporation (FRND), IHOP Corp. (IHOP), FRISCH's Restaurants, Inc. (FRS) and Ryan's Restaurant Group, Inc. (RYAN).

**SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE**

Section 16(a) of the Exchange Act requires the Company's executive officers, directors and persons who own more than ten percent (10%) of the Common Stock to file initial reports of ownership and changes in ownership with the SEC. Additionally, SEC regulations require that the Company identify any individuals for whom one of the referenced reports was not filed on a timely basis during the most recent fiscal year or prior fiscal years. To the Company's knowledge, based solely on review of reports furnished to it and written representations that no other reports were required during and with respect to the fiscal year ended December 29, 2004, the Company's officers, directors and 10% stockholders complied with their Section 16(a) filing requirements for such year.

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**CERTAIN TRANSACTIONS**

During the Company's last fiscal year, except as described below, there were no transactions occurring or relationships that existed between the Company and its management that require disclosure under SEC regulations.

On July 7, 2004, Denny's Corporation sold 48.4 million shares of its Common Stock in a private placement (the Private Placement) to various institutional investors, including various funds advised by or affiliated with Mellon HBV Alternative Strategies, LLC, which beneficially owned approximately 9.6% of the Common Stock at the time of the Private Placement, and various funds advised by or affiliated with Trafelet & Company, LLC, which beneficially owned approximately 7.5% of the Common Stock at the time of the Private Placement. Those entities and their affiliated funds increased their beneficial ownership of the Common Stock to 22.0% and 16.2%, respectively, by purchasing shares of the Common Stock in the Private Placement for an aggregate purchase price of approximately \$30.0 million and \$20.0 million, respectively. Since July 7, 2004, the Company repurchased \$18.0 million aggregate principal amount of the Denny's Corporation 11¼% Senior Notes Due 2008 held by various funds advised by or affiliated with Mellon HBV Alternative Strategies, LLC. See General-Equity Security Ownership-Principal Stockholders for further information on the current holdings of our significant stockholders.

**CORPORATE GOVERNANCE**

The Board and management clearly recognize the importance of a firm commitment to key corporate governance standards. Consequently, it is the goal of the Board and management to develop and adhere to a set of standards, that not only complies to the letter with all applicable regulatory guidance, but implements best practices of corporate governance.

In 2002, the Corporate Governance Committee of the Board was developed and charged with, among other things, the development of a set of corporate governance standards for the Company. In January 2003, the Board, upon the recommendation of the Corporate Governance Committee, adopted the Denny's Corporate Governance Policy. This policy may be viewed in detail at the Company's website, [www.dennys.com](http://www.dennys.com). Highlights of the Company's current corporate governance practices include:

Board committees consist of only independent board members.

Independent directors have the opportunity to meet in executive session regularly (i.e., at each regularly scheduled Board/Board committee meeting).

All Board committees may retain outside advisors, as they deem appropriate.

Board effectiveness and performance is reviewed annually by the Corporate Governance Committee.

A commitment to continue to adhere to the corporate governance listing standards of NASDAQ, even though such standards do not currently apply to the Company.

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Additionally, during 2002, 2003 and 2004 the Company's goal of maintaining a Board made up of a majority of independent directors was achieved with all members, with the exception of the Chief Executive Officer, being independent of the Company under NASDAQ listing standards.

### **Code of Ethics**

Denny's Corporation has adopted a code of ethics entitled "Denny's Corporation Standards of Business Conduct" which is applicable to the Company's Chief Executive Officer, Chief Financial Officer, Controller, all other executive officers and key financial and accounting personnel as well as each salaried employee of the Company. The Denny's Corporation Standards of Business Conduct is posted on the Denny's website at [www.dennys.com](http://www.dennys.com).

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Denny's will post on its website any amendments to, or waivers from, a provision of the Denny's Corporation Standards of Business Conduct that applies to the Chief Executive Officer, Chief Financial Officer, Controller or persons performing similar functions, and that relates to (i) honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships; (ii) full, fair, accurate, timely, and understandable disclosure in reports and documents that Denny's Corporation files with, or submits to, the SEC and in other public communications made by Denny's Corporation; (iii) compliance with applicable governmental laws, rules and regulations; (iv) the prompt internal reporting of violations of Denny's Corporation Standards of Business Conduct to an appropriate person or persons identified in the standards; or (v) accountability to adherence to the standards.

## **OTHER MATTERS**

### **Expenses of Solicitation**

The Company will pay the costs of solicitation of proxies, including the cost of assembling and mailing this Proxy Statement and the material enclosed herewith. In addition to the use of the mails, proxies may be solicited personally, by telephone or facsimile or by corporate officers and employees of the Company without additional compensation. The Company intends to request brokers and banks holding stock in their names or in the names of nominees to solicit proxies from their customers who own such stock, where applicable, and will reimburse them for their reasonable expenses of mailing proxy materials to their customers.

### **Discretionary Proxy Voting**

In the event that any matters other than those referred to in the accompanying notice should properly come before and be considered at the Annual Meeting, it is intended that proxies in the accompanying form will be voted thereon in accordance with the judgment of the person or persons voting such proxies.

### **2006 Stockholder Proposals**

In order for stockholder proposals intended to be presented at the year 2006 Annual Meeting of Stockholders to be eligible for inclusion in the Denny's Corporation proxy statement and the form of proxy for such meeting, they must be received by the Company at its principal offices in Spartanburg, South Carolina no later than December 23, 2005. Regarding stockholder proposals intended to be presented at the year 2006 Annual Meeting but not included in the proxy statement, pursuant to the Denny's Corporation Bylaws, written notice of such proposals, to be timely, must be received by the Company no more than 90 days and no less than 60 days prior to the meeting. However, in the event that less than 70 days public notice of the date of the meeting is given, notice of such a stockholder proposal, to be timely, must be received not later than the close of business on the 10th day following the day on which the public notice of meeting was made. All such proposals for which timely notice is not received in the manner described above will be ruled out of order at the meeting, resulting in the proposal's underlying business not being eligible for transaction at the meeting.

### **Electronic Access to Future Proxy Materials and Annual Reports**

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Most stockholders may elect to view future proxy statements and annual reports over the Internet instead of receiving paper copies in the mail. If you are a stockholder of record, you can choose this option for future proxy statements and annual reports by marking the appropriate box on your proxy card or by following the instructions provided for you if you vote over the Internet or by telephone. If you hold your Common Stock through a bank, broker or other holder of record, please refer to the information provided by that entity for instructions on how to elect to view future proxy statements and annual reports over the Internet.

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If you choose to view future proxy statements and annual reports only over the Internet, next year you will receive a proxy card in the mail with instructions containing the Internet address of those materials. Your choice will remain in effect indefinitely until you give notification otherwise by following the instructions to be provided.

**FORM 10-K**

**A copy of the Company's Form 10-K as filed with the SEC is available, without charge, upon written request directed to S. Alex Lewis, Assistant Treasurer and Director of Investor Relations, at the corporate address set forth above.**

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**Appendix A**

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**DENNY S CORPORATION**  
**2004 OMNIBUS INCENTIVE PLAN**

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**DENNY S CORPORATION**  
**2004 OMNIBUS INCENTIVE PLAN**

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**DENNY S CORPORATION**  
**2004 OMNIBUS INCENTIVE PLAN**

**ARTICLE 1**

**PURPOSE**

1.1. *GENERAL.* The purpose of the Denny s Corporation 2004 Omnibus Incentive Plan (the Plan ) is to promote the success, and enhance the value, of Denny s Corporation (the Company ), by linking the personal interests of employees, officers, directors and consultants of the Company or any Affiliate (as defined below) to those of Company stockholders and by providing such persons with an incentive for performance. The Plan is further intended to provide flexibility to the Company in its ability to motivate, attract, and retain the services of employees, officers, directors and consultants upon whose judgment, interest, and special effort the successful conduct of the Company s operation is largely dependent. Accordingly, the Plan permits the grant of incentive awards from time to time to selected employees, officers, directors and consultants of the Company and its Affiliates.

**ARTICLE 2**

**DEFINITIONS**

2.1. *DEFINITIONS.* When a word or phrase appears in this Plan with the initial letter capitalized, and the word or phrase does not commence a sentence, the word or phrase shall generally be given the meaning ascribed to it in this Section or in Section 1.1 unless a clearly different meaning is required by the context. The following words and phrases shall have the following meanings:

(a) *Affiliate* means (i) any Subsidiary or Parent, or (ii) an entity that directly or through one or more intermediaries controls, is controlled by or is under common control with, the Company, as determined by the Committee.

(b) *Award* means any Option, Stock Appreciation Right, Restricted Stock Award, Restricted Stock Unit Award, Deferred Stock Unit Award, Performance Award, Dividend Equivalent Award, or Other Stock-Based Award, Performance-Based Cash Awards, or any other right or interest relating to Stock or cash, granted to a Participant under the Plan.

(c) *Award Certificate* means a written document, in such form as the Committee prescribes from time to time, setting forth the terms and conditions of an Award. Award Certificates may be in the form of individual award agreements or certificates or a program document describing the terms and provisions of an Awards or series of Awards under the Plan.

(d) *Board* means the Board of Directors of the Company.

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(e) Cause as a reason for a Participant's termination of employment shall have the meaning assigned such term in the employment agreement, if any, between such Participant and the Company or an Affiliate, provided, however that if there is no such employment agreement in which such term is defined, and unless otherwise defined in the applicable Award Certificate, Cause shall mean any of the following acts by the Participant, as determined by the Board: gross neglect of duty, prolonged absence from duty without the consent of the Company, intentionally engaging in any activity that is in conflict with or adverse to the business or other interests of the Company, or willful misconduct, misfeasance or malfeasance of duty which is reasonably determined to be detrimental to the Company.

(f) Change in Control shall be deemed to have occurred as of the first day that any one or more of the following conditions shall have been satisfied:

(i) any person is or becomes a beneficial owner (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such Person any securities acquired directly from the Company or its Affiliates, other than in

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connection with the acquisition by the Company or its Affiliates of a business) representing 30% or more of either the then outstanding Shares of Stock or the combined voting power of the Company's then outstanding securities; or

(ii) The following individuals cease for any reason to constitute at least two-thirds (2/3) of the number of directors then serving on the Board: individuals who, on the Effective Date hereof, constitute the Board and any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including but not limited to a consent solicitation, relating to the election of directors of the Company (as such terms are used in Rule 14A-11 of the 1934 Act) whose appointment or election by the Board or nomination or election by the Company's stockholders was approved by a vote of at least two-thirds (2/3) of the Company's directors then still in office who either were directors on the Effective Date of the Plan, or whose appointment, election, or nomination for election was previously approved); or

(iii) the consummation of an agreement, including all necessary governmental approvals, in which the Company agrees to merge or consolidate with any other entity, other than (i) a merger or consolidation which would result in (A) the voting securities of the Company then outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or any parent thereof), in combination with the ownership of any trustee or other fiduciary holding securities under an employee benefit plan of the Company, greater than 50% of the combined voting power of the voting securities of the Company or such surviving entity or any parent thereof outstanding immediately after such merger or consolidation, and (B) individuals described in Section 2.1(f)(ii) above constitute more than one-half of the members of the board of directors of the surviving entity or ultimate parent thereof; or (ii) a merger or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no Person is or becomes the beneficial owner, directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such Person any securities acquired directly from the Company or its Affiliates, other than in connection with the acquisition by the Company or its Affiliates of a business) representing 30% or more of either the then outstanding shares of the Company or the combined voting power of the Company's then outstanding securities; or

(iv) the consummation of (i) a plan of complete liquidation or dissolution of the Company; or (ii) an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets, other than a sale or disposition by the Company of all or substantially all of the Company's assets to an entity, greater than 50% of the combined voting power of the voting securities of which are owned by Persons in substantially the same proportions as their ownership of the Company immediately prior to such sale or disposition; or

(v) the adoption of a resolution by the Board to the effect that any Person has acquired effective control of the business and affairs of the Company.

Notwithstanding the foregoing, a Change in Control shall not be deemed to have occurred if there is consummated any transaction or series of integrated transactions immediately following which the record holders of the voting securities of the Company immediately prior to such transaction or series of transactions continue to have substantially the same proportionate ownership in an entity which owns all or substantially all of the assets of the Company immediately following such transaction or series of transactions.

Furthermore, notwithstanding the foregoing, a Change in Control will not be deemed to have occurred by reason of a distribution of the voting securities of any of the Company's Subsidiaries to the stockholders of the Company, or by means of an initial public offering of such securities.

(g) Code means the Internal Revenue Code of 1986, as amended from time to time, and includes a reference to the underlying final regulations.

(h) Committee means the committee of the Board described in Article 4.

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(i) **Company** means Denny s Corporation, a Delaware corporation or any successor corporation.

(j) **Continuous Status as a Participant** means the absence of any interruption or termination of service as an employee, officer, consultant or director of the Company or any Affiliate, as applicable; provided, however, that for purposes of an Incentive Stock Option, or a Stock Appreciation Right issued in tandem with an Incentive Stock Option, **Continuous Status as a Participant** means the absence of any interruption or termination of service as an employee of the Company or any Parent or Subsidiary, as applicable. **Continuous Status as a Participant** shall continue to the extent provided in a written severance or employment agreement during any period for which severance compensation payments are made to an employee, officer, consultant or director and shall not be considered interrupted in the case of any leave of absence authorized in writing by the Company prior to its commencement.

(k) **Covered Employee** means a covered employee as defined in Code Section 162(m)(3).

(l) **Disability** or **Disabled** shall mean any physical or mental condition which would qualify a Participant for a disability benefit under the long-term disability plan maintained by the Company and applicable to that particular Participant, and if no such disability plan exists, then at the discretion of the Committee. Notwithstanding the above, with respect to an Incentive Stock Option, **Disability** shall mean Permanent and Total Disability as defined in Section 22(e)(3) of the Code.

(m) **Deferred Stock Unit** means a right granted to a Participant under Article 11.

(n) **Dividend Equivalent** means a right granted to a Participant under Article 12.

(o) **Effective Date** has the meaning assigned such term in Section 3.1.

(p) **Eligible Participant** means an employee, officer, consultant or director of the Company or any Affiliate.

(q) **Exchange** means the Nasdaq National Market or any national securities exchange on which the Stock may from time to time be listed or traded.

(r) **Fair Market Value** , on any date, means (i) if the Stock is listed on a securities exchange or is traded over the Nasdaq National Market, the closing sales price on such exchange or over such system on such date or, in the absence of reported sales on such date, the closing sales price on the immediately preceding date on which sales were reported, or (ii) if the Stock is not listed on a securities exchange or traded over the Nasdaq National Market, the closing sales price as quoted on the OTC Bulletin Board for such trading date or, in the absence of quoted sales on such date, the closing sales price on the immediately preceding date on which sales were quoted, provided that if it is determined that the fair market value is not properly reflected by such OTC Bulletin Board quotations, **Fair Market Value** will be determined by such other method as the Committee determines in good faith to be reasonable.

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(s) **Good Reason** has the meaning assigned such term in the employment agreement, if any, between a Participant and the Company or an Affiliate, provided, however that if there is no such employment agreement in which such term is defined, and unless otherwise defined in the applicable Award Certificate, **Good Reason** shall mean any of the following acts by the Company or an Affiliate, without the consent of the Participant (in each case, other than an isolated, insubstantial and inadvertent action not taken in bad faith and which is remedied by the Company or the Affiliate promptly after receipt of notice thereof given by the Participant): (i) the assignment to the Participant of duties materially inconsistent with, or a material diminution in, the Participant's position, authority, duties or responsibilities as in effect immediately prior to a Change in Control, (ii) a reduction by the Company or an Affiliate in the Participant's base salary, (iii) the Company or an Affiliate requiring the Participant, without his or her consent, to be based at any office or location more than 35 miles from the location at which the Participant was stationed immediately prior to a Change in Control, or (iv) the continuing material breach by the Company or an Affiliate of any employment agreement between the Participant and the Company or an Affiliate after the expiration of any applicable period for cure.

(t) **Grant Date** means the date an Award is made by the Committee.



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(u) Incentive Stock Option means an Option that is intended to be an incentive stock option and meets the requirements of Section 422 of the Code or any successor provision thereto.

(v) Non-Employee Director means a director of the Company who is not a common law employee of the Company or an Affiliate.

(w) Nonstatutory Stock Option means an Option that is not an Incentive Stock Option.

(x) Option means a right granted to a Participant under Article 7 of the Plan to purchase Stock at a specified price during specified time periods. An Option may be either an Incentive Stock Option or a Nonstatutory Stock Option.

(y) Other Stock-Based Award means a right, granted to a Participant under Article 13, that relates to or is valued by reference to Stock or other Awards relating to Stock.

(z) Parent means a corporation, limited liability company, partnership or other entity which owns or beneficially owns a majority of the outstanding voting stock or voting power of the Company. Notwithstanding the above, with respect to an Incentive Stock Option, Parent shall have the meaning set forth in Section 424(e) of the Code.

(aa) Participant means a person who, as an employee, officer, director or consultant of the Company or any Affiliate, has been granted an Award under the Plan; provided that in the case of the death of a Participant, the term Participant refers to a beneficiary designated pursuant to Section 14.5 or the legal guardian or other legal representative acting in a fiduciary capacity on behalf of the Participant under applicable state law and court supervision.

(bb) Performance Award means Performance Shares, Performance Units or Performance-Based Cash Awards granted pursuant to Article 9.

(cc) Performance-Based Cash Award means a right granted to a Participant under Article 9 to a cash award to be paid upon achievement of such performance goals as the Committee establishes with regard to such Award.

(dd) Performance Share means any right granted to a Participant under Article 9 to a unit to be valued by reference to a designated number of Shares to be paid upon achievement of such performance goals as the Committee establishes with regard to such Performance Share.

(ee) Performance Unit means a right granted to a Participant under Article 9 to a unit valued by reference to a designated amount of cash or property other than Shares, to be paid to the Participant upon achievement of such performance goals as the Committee establishes with regard to such Performance Unit.

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(ff) **Person** means any individual, entity or group, within the meaning of Section 3(a)(9) of the 1934 Act and as used in Section 13(d)(3) or 14(d)(2) of the 1934 Act.

(gg) **Plan** means the Denny s Corporation 2004 Omnibus Incentive Plan, as amended from time to time.

(hh) **Qualified Performance-Based Award** means an Award that is either (i) intended to qualify for the Section 162(m) Exemption and is made subject to performance goals based on Qualified Business Criteria as set forth in Section 14.11, or (ii) an Option or SAR having an exercise price equal to or greater than the Fair Market Value of the underlying Stock as of the Grant Date.

(ii) **Qualified Business Criteria** means one or more of the Business Criteria listed in Section 14.11(b) upon which performance goals for certain Qualified Performance-Based Awards may be established by the Committee.

(jj) **Restricted Stock Award** means Stock granted to a Participant under Article 10 that is subject to certain restrictions and to risk of forfeiture.

(kk) **Restricted Stock Unit Award** means the right granted to a Participant under Article 10 to receive shares of Stock (or the equivalent value in cash or other property if the Committee so provides) in the future, which right is subject to certain restrictions and to risk of forfeiture.

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(ll) **Retirement** means the voluntary termination of employment from the Company or an Affiliate for any reason other than a leave of absence, death or Disability on or after attainment of the age of fifty-five.

(mm) **Section 162(m) Exemption** means the exemption from the limitation on deductibility imposed by Section 162(m) of the Code that is set forth in Section 162(m)(4)(C) of the Code or any successor provision thereto.

(nn) **Shares** means shares of the Company's Stock. If there has been an adjustment or substitution pursuant to Section 15.1, the term **Shares** shall also include any shares of stock or other securities that are substituted for Shares or into which Shares are adjusted pursuant to Section 15.1.

(oo) **Stock** means the \$.01 par value common stock of the Company and such other securities of the Company as may be substituted for Stock pursuant to Article 15.

(pp) **Stock Appreciation Right** or **SAR** means a right granted to a Participant under Article 8 to receive a payment equal to the difference between the Fair Market Value of a Share as of the date of exercise of the SAR over the grant price of the SAR, all as determined pursuant to Article 8.

(qq) **Subsidiary** means any corporation, limited liability company, partnership or other entity of which a majority of the outstanding voting stock or voting power is beneficially owned directly or indirectly by the Company. Notwithstanding the above, with respect to an Incentive Stock Option, Subsidiary shall have the meaning set forth in Section 424(f) of the Code.

(rr) **1933 Act** means the Securities Act of 1933, as amended from time to time.

(ss) **1934 Act** means the Securities Exchange Act of 1934, as amended from time to time.

**ARTICLE 3**

**EFFECTIVE TERM OF PLAN**

3.1. **EFFECTIVE DATE.** The Plan shall be effective as of the date it is approved by both the Board and the stockholders of the Company (the **Effective Date** ).

3.2. **TERMINATION OF PLAN.** The Plan shall terminate on the tenth anniversary of the Effective Date. The termination of the Plan on such date shall not affect the validity of any Award outstanding on the date of termination.

**ARTICLE 4**

**ADMINISTRATION**

4.1. *COMMITTEE*. The Plan shall be administered by a Committee appointed by the Board (which Committee shall consist of at least two directors) or, at the discretion of the Board from time to time, the Plan may be administered by the Board. It is intended that at least two of the directors appointed to serve on the Committee shall be non-employee directors (within the meaning of Rule 16b-3 promulgated under the 1934 Act) and outside directors (within the meaning of Code Section 162(m)) and that any such members of the Committee who do not so qualify shall abstain from participating in any decision to make or administer Awards that are made to Eligible Participants who at the time of consideration for such Award (i) are persons subject to the short-swing profit rules of Section 16 of the 1934 Act, or (ii) are reasonably anticipated to become Covered Employees during the term of the Award. However, the mere fact that a Committee member shall fail to qualify under either of the foregoing requirements or shall fail to abstain from such action shall not invalidate any Award made by the Committee which Award is otherwise validly made under the Plan. The members of the Committee shall be appointed by, and may be changed at any time and from time to time in the discretion of, the Board. The Board may reserve to itself any or all of the authority and responsibility of the Committee under the Plan or may act as administrator of the Plan for any and all purposes. To the extent the Board has reserved any authority and

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responsibility or during any time that the Board is acting as administrator of the Plan, it shall have all the powers of the Committee hereunder, and any reference herein to the Committee (other than in this Section 4.1) shall include the Board. To the extent any action of the Board under the Plan conflicts with actions taken by the Committee, the actions of the Board shall control.

4.2. *ACTION AND INTERPRETATIONS BY THE COMMITTEE.* For purposes of administering the Plan, the Committee may from time to time adopt rules, regulations, guidelines and procedures for carrying out the provisions and purposes of the Plan and make such other determinations, not inconsistent with the Plan, as the Committee may deem appropriate. The Committee's interpretation of the Plan, any Awards granted under the Plan, any Award Certificate and all decisions and determinations by the Committee with respect to the Plan are final, binding, and conclusive on all parties. Each member of the Committee is entitled to, in good faith, rely or act upon any report or other information furnished to that member by any officer or other employee of the Company or any Affiliate, the Company's or an Affiliate's independent certified public accountants, Company counsel or any executive compensation consultant or other professional retained by the Company to assist in the administration of the Plan.

4.3. *AUTHORITY OF COMMITTEE.* Except as provided below, the Committee has the exclusive power, authority and discretion to:

(a) Grant Awards;

(b) Designate Participants;

(c) Determine the type or types of Awards to be granted to each Participant;

(d) Determine the number of Awards to be granted and the number of Shares or dollar amount to which an Award will relate;

(e) Determine the terms and conditions of any Award granted under the Plan, including but not limited to, the exercise price, grant price, or purchase price, any restrictions or limitations on the Award, any schedule for lapse of forfeiture restrictions or restrictions on the exercisability of an Award, and accelerations or waivers thereof, based in each case on such considerations as the Committee in its sole discretion determines;

(f) Accelerate the vesting, exercisability or lapse of restrictions of any outstanding Award, in accordance with Article 14, based in each case on such considerations as the Committee in its sole discretion determines;

(g) Determine whether, to what extent, and under what circumstances an Award may be settled in, or the exercise price of an Award may be paid in, cash, Stock, other Awards, or other property, or an Award may be canceled, forfeited, or surrendered;

(h) Prescribe the form of each Award Certificate, which need not be identical for each Participant;

(i) Decide all other matters that must be determined in connection with an Award;

(j) Establish, adopt or revise any rules, regulations, guidelines or procedures as it may deem necessary or advisable to administer the Plan;

(k) Make all other decisions and determinations that may be required under the Plan or as the Committee deems necessary or advisable to administer the Plan;

(l) Amend the Plan or any Award Certificate as provided herein; and

(m) Adopt such modifications, procedures, and subplans as may be necessary or desirable to comply with provisions of the laws of non-U.S. jurisdictions in which the Company or any Affiliate may operate, in order to assure the viability of the benefits of Awards granted to participants located in such other jurisdictions and to meet the objectives of the Plan.

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Notwithstanding the foregoing, grants of Awards to Non-Employee Directors hereunder shall be made only in accordance with the terms, conditions and parameters of a plan, program or policy for the compensation of Non-Employee Directors as in effect from time to time, and the Committee may not make discretionary grants hereunder to Non-Employee Directors.

Notwithstanding the above, the Board may expressly delegate to a special committee consisting of one or more officers of the Company some or all of the Committee's authority under subsections (a) through (i) above, except that no delegation of its duties and responsibilities may be made to officers of the Company with respect to Awards to Eligible Participants who as of the Grant Date are persons subject to the short-swing profit rules of Section 16 of the 1934 Act, or who as of the Grant Date are reasonably anticipated to become Covered Employees during the term of the Award. The acts of such delegates shall be treated hereunder as acts of the Committee and such delegates shall report to the Committee regarding the delegated duties and responsibilities.

4.4. *AWARD CERTIFICATES*. Each Award shall be evidenced by an Award Certificate. Each Award Certificate shall include such provisions, not inconsistent with the Plan, as may be specified by the Committee.

## **ARTICLE 5**

### **SHARES SUBJECT TO THE PLAN**

5.1. *NUMBER OF SHARES*. Subject to adjustment as provided in Section 15.1, the aggregate number of Shares reserved and available for issuance pursuant to Awards granted under the Plan shall be 10,000,000, plus a number of additional Shares (not to exceed 1,500,000) underlying awards outstanding as of the Effective Date under the Company's Omnibus Incentive Compensation Plan for Executives, the Advantica Stock Option Plan, or the Advantica Restaurant Group Director Stock Option Plan that thereafter terminate or expire unexercised, or are cancelled, forfeited or lapse for any reason.

#### 5.2. *SHARE COUNTING*.

(a) To the extent that an Award is canceled, terminates, expires, is forfeited or lapses for any reason, any unissued Shares subject to the Award will again be available for issuance pursuant to Awards granted under the Plan.

(b) Shares subject to Awards settled in cash will again be available for issuance pursuant to Awards granted under the Plan.

(c) If the exercise price of an Option is satisfied by delivering Shares to the Company (by either actual delivery or attestation), only the number of Shares issued in excess of the delivery or attestation shall be considered for purposes of determining the number of Shares remaining available for issuance pursuant to Awards granted under the Plan.

(d) To the extent that the full number of Shares subject to an Option is not issued upon exercise of the Option for any reason (other than Shares used to satisfy an applicable tax withholding obligation), only the number of Shares issued and delivered upon exercise of the Option shall be

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considered for purposes of determining the number of Shares remaining available for issuance pursuant to Awards granted under the Plan. Nothing in this subsection shall imply that any particular type of cashless exercise of an Option is permitted under the Plan, that decision being reserved to the Committee or other provisions of the Plan.

5.3. *STOCK DISTRIBUTED*. Any Stock distributed pursuant to an Award may consist, in whole or in part, of authorized and unissued Stock, treasury Stock or Stock purchased on the open market.

5.4. *LIMITATION ON AWARDS*. Notwithstanding any provision in the Plan to the contrary (but subject to adjustment as provided in Section 15.1), the maximum number of Shares with respect to one or more Options and/or SARs that may be granted during any one calendar year under the Plan to any one Participant shall be



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3,000,000. The maximum aggregate grant with respect to Awards of Restricted Stock, Restricted Stock Units, Deferred Stock Units, Performance Shares or other Stock-Based Awards granted in any one calendar year to any one Participant shall be 3,000,000 Shares. The aggregate maximum fair market value (measured as of the Grant Date) of any other Awards that may be granted to any one Participant (less any consideration paid by the Participant for such Award) during any one calendar year under the Plan shall be \$4,500,000.

**ARTICLE 6**

**ELIGIBILITY**

6.1. *GENERAL*. Awards may be granted only to Eligible Participants; except that Incentive Stock Options may be granted to only to Eligible Participants who are employees of the Company or a Parent or Subsidiary as defined in Section 424(e) and (f) of the Code.

**ARTICLE 7**

**STOCK OPTIONS**

7.1. *GENERAL*. The Committee is authorized to grant Options to Participants on the following terms and conditions:

(a) *EXERCISE PRICE*. The exercise price per Share under an Option shall be determined by the Committee, subject to Section 7.2(a) with respect to Incentive Stock Options. Except with respect to the proposed grant of Options to certain officers and employees on or about the Effective Date, as described in the proxy statement for the special meeting of stockholders at which the Plan was adopted, the exercise price of an Option shall not be less than the Fair Market Value as of the Grant Date.

(b) *TIME AND CONDITIONS OF EXERCISE*. The Committee shall determine the time or times at which an Option may be exercised in whole or in part, subject to Section 7.1(d). The Committee shall also determine the performance or other conditions, if any, that must be satisfied before all or part of an Option may be exercised or vested. The Committee may waive any exercise or vesting provisions at any time in whole or in part based upon factors as the Committee may determine in its sole discretion so that the Option becomes exercisable or vested at an earlier date. The Committee may permit an arrangement whereby receipt of Stock upon exercise of an Option is delayed until a specified future date.

(c) *PAYMENT*. The Committee shall determine the methods by which the exercise price of an Option may be paid, the form of payment, including, without limitation, cash, Shares, or other property (including cashless exercise arrangements), and the methods by which Shares shall be delivered or deemed to be delivered to Participants; provided, however, that if Shares are used to pay the exercise price of an Option, such Shares must have been held by the Participant for at least such period of time, if any, as necessary to avoid variable accounting for the Option.

(d) *EXERCISE TERM*. In no event may any Option be exercisable for more than ten years from the Grant Date.

(e) *ADDITIONAL OPTIONS UPON EXERCISE*. The Committee may, in its sole discretion, provide in an original Award Certificate for the automatic grant of a new Option to any Participant who delivers Shares as full or partial payment of the exercise price of the original Option. Any new Option granted in such a case (i) shall be for the same number of Shares as the Participant delivered in exercising the original Option, (ii) shall have an exercise price of 100% of the Fair Market Value of the surrendered Shares on the date of exercise of the original Option (the grant date for the new Option), and (iii) shall have a term equal to the unexpired term of the original Option.

7.2. *INCENTIVE STOCK OPTIONS*. The terms of any Incentive Stock Options granted under the Plan must comply with the following additional rules:

(a) *EXERCISE PRICE*. The exercise price of an Incentive Stock Option shall not be less than the Fair Market Value as of the Grant Date.

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(b) *LAPSE OF OPTION*. Subject to any earlier termination provision contained in the Award Certificate, an Incentive Stock Option shall lapse upon the earliest of the following circumstances; provided, however, that the Committee may, prior to the lapse of the Incentive Stock Option under the circumstances described in subsections (3), (4) or (5) below, provide in writing that the Option will extend until a later date, but if an Option is so extended and is exercised after the dates specified in subsections (3) and (4) below, it will automatically become a Nonstatutory Stock Option:

(1) The expiration date set forth in the Award Certificate.

(2) The tenth anniversary of the Grant Date.

(3) Three months after termination of the Participant's Continuous Status as a Participant for any reason other than the Participant's Disability or death.

(4) One year after the Participant's Continuous Status as a Participant by reason of the Participant's Disability.

(5) One year after the termination of the Participant's death if the Participant dies while employed, or during the three-month period described in paragraph (3) or during the one-year period described in paragraph (4) and before the Option otherwise lapses.

Unless the exercisability of the Incentive Stock Option is accelerated as provided in Article 14, if a Participant exercises an Option after termination of employment, the Option may be exercised only with respect to the Shares that were otherwise vested on the Participant's termination of employment. Upon the Participant's death, any exercisable Incentive Stock Options may be exercised by the Participant's beneficiary, determined in accordance with Section 14.5.

(c) *INDIVIDUAL DOLLAR LIMITATION*. The aggregate Fair Market Value (determined as of the Grant Date) of all Shares with respect to which Incentive Stock Options are first exercisable by a Participant in any calendar year may not exceed \$100,000.00.

(d) *TEN PERCENT OWNERS*. No Incentive Stock Option shall be granted to any individual who, at the Grant Date, owns stock possessing more than ten percent of the total combined voting power of all classes of stock of the Company or any Parent or Subsidiary unless the exercise price per share of such Option is at least 110% of the Fair Market Value per Share at the Grant Date and the Option expires no later than five years after the Grant Date.

(e) *EXPIRATION OF AUTHORITY TO GRANT INCENTIVE STOCK OPTIONS*. No Incentive Stock Option may be granted pursuant to the Plan after the day immediately prior to the tenth anniversary of the date the Plan was adopted by the Board, or the termination of the Plan, if earlier.

(f) *RIGHT TO EXERCISE*. During a Participant's lifetime, an Incentive Stock Option may be exercised only by the Participant or, in the case of the Participant's Disability, by the Participant's guardian or legal representative.

(g) *ELIGIBLE GRANTEES*. The Committee may not grant an Incentive Stock Option to a person who is not at the Grant Date an employee of the Company or a Parent or Subsidiary.

## ARTICLE 8

### STOCK APPRECIATION RIGHTS

8.1. *GRANT OF STOCK APPRECIATION RIGHTS*. The Committee is authorized to grant Stock Appreciation Rights to Participants on the following terms and conditions:

(a) *RIGHT TO PAYMENT*. Upon the exercise of a Stock Appreciation Right, the Participant to whom it is granted has the right to receive the excess, if any, of:

(1) The Fair Market Value of one Share on the date of exercise; over

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(2) The grant price of the Stock Appreciation Right as determined by the Committee, which shall not be less than the Fair Market Value of one Share on the Grant Date in the case of any Stock Appreciation Right related to an Incentive Stock Option.

(b) *OTHER TERMS*. All awards of Stock Appreciation Rights shall be evidenced by an Award Certificate. The terms, methods of exercise, methods of settlement, form of consideration payable in settlement, and any other terms and conditions of any Stock Appreciation Right shall be determined by the Committee at the time of the grant of the Award and shall be reflected in the Award Certificate.

**ARTICLE 9**

**PERFORMANCE AWARDS**

9.1. *GRANT OF PERFORMANCE AWARDS*. The Committee is authorized to grant Performance Shares, Performance Units or Performance-Based Cash Awards to Participants on such terms and conditions as may be selected by the Committee. The Committee shall have the complete discretion to determine the number of Performance Awards granted to each Participant, subject to Section 5.4, and to designate the provisions of such Performance Awards as provided in Section 4.3. All Performance Awards shall be evidenced by an Award Certificate or a written program established by the Committee, pursuant to which Performance Awards are awarded under the Plan under uniform terms, conditions and restrictions set forth in such written program.

9.2. *PERFORMANCE GOALS*. The Committee may establish performance goals for Performance Awards which may be based on any criteria selected by the Committee. Such performance goals may be described in terms of Company-wide objectives or in terms of objectives that relate to the performance of the Participant, an Affiliate or a division, region, department or function within the Company or an Affiliate. If the Committee determines that a change in the business, operations, corporate structure or capital structure of the Company or the manner in which the Company or an Affiliate conducts its business, or other events or circumstances render performance goals to be unsuitable, the Committee may modify such performance goals in whole or in part, as the Committee deems appropriate. If a Participant is promoted, demoted or transferred to a different business unit or function during a performance period, the Committee may determine that the performance goals or performance period are no longer appropriate and may (i) adjust, change or eliminate the performance goals or the applicable performance period as it deems appropriate to make such goals and period comparable to the initial goals and period, or (ii) make a cash payment to the participant in amount determined by the Committee. The foregoing two sentences shall not apply with respect to a Performance Award that is intended to be a Qualified Performance-Based Award.

9.3. *RIGHT TO PAYMENT*. The grant of a Performance Share to a Participant will entitle the Participant to receive at a specified later time a specified number of Shares, or the equivalent cash value, if the performance goals established by the Committee are achieved and the other terms and conditions thereof are satisfied. The grant of a Performance Unit to a Participant will entitle the Participant to receive at a specified later time a specified dollar value in cash or other property, including Shares, variable under conditions specified in the Award, if the performance goals in the Award are achieved and the other terms and conditions thereof are satisfied. The Committee shall set performance goals and other terms or conditions to payment of the Performance Awards in its discretion which, depending on the extent to which they are met, will determine the number and value of the Performance Awards that will be paid to the Participant.

9.4. *OTHER TERMS*. Performance Awards may be payable in cash, Stock, or other property, and have such other terms and conditions as determined by the Committee and reflected in the Award Certificate. For purposes of determining the number of Shares to be used in payment of a Performance Award denominated in cash but payable in whole or in part in Shares or Restricted Stock, the number of Shares to be so paid will be determined by dividing the cash value of the Award to be so paid by the Fair Market Value of a Share on the date of determination by the Committee of the amount of the payment under the Award, or, if the Committee so directs, the date immediately preceding the date the Award is paid.



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**ARTICLE 10**

**RESTRICTED STOCK AND RESTRICTED STOCK UNIT AWARDS**

10.1. *GRANT OF RESTRICTED STOCK AND RESTRICTED STOCK UNITS.* The Committee is authorized to make Awards of Restricted Stock or Restricted Stock Units to Participants in such amounts and subject to such terms and conditions as may be selected by the Committee. An Award of Restricted Stock or Restricted Stock Units shall be evidenced by an Award Certificate setting forth the terms, conditions, and restrictions applicable to the Award.

10.2. *ISSUANCE AND RESTRICTIONS.* Restricted Stock or Restricted Stock Units shall be subject to such restrictions on transferability and other restrictions as the Committee may impose (including, without limitation, limitations on the right to vote Restricted Stock or the right to receive dividends on the Restricted Stock). These restrictions may lapse separately or in combination at such times, under such circumstances, in such installments, upon the satisfaction of performance goals or otherwise, as the Committee determines at the time of the grant of the Award or thereafter. Except as otherwise provided in an Award Certificate, the Participant shall have all of the rights of a stockholder with respect to the Restricted Stock, and the Participant shall have none of the rights of a stockholder with respect to Restricted Stock Units until such time as Shares of Stock are paid in settlement of the Restricted Stock Units.

10.3. *FORFEITURE.* Except as otherwise determined by the Committee at the time of the grant of the Award or thereafter, upon termination of Continuous Status as a Participant during the applicable restriction period or upon failure to satisfy a performance goal during the applicable restriction period, Restricted Stock or Restricted Stock Units that are at that time subject to restrictions shall be forfeited; provided, however, that the Committee may provide in any Award Certificate that restrictions or forfeiture conditions relating to Restricted Stock or Restricted Stock Units will be waived in whole or in part in the event of terminations resulting from specified causes, and the Committee may in other cases waive in whole or in part restrictions or forfeiture conditions relating to Restricted Stock or Restricted Stock Units.

10.4. *DELIVERY OF RESTRICTED STOCK.* Shares of Restricted Stock shall be delivered to the Participant at the time of grant either by book-entry registration or by delivering to the Participant, or a custodian or escrow agent (including, without limitation, the Company or one or more of its employees) designated by the Committee, a stock certificate or certificates registered in the name of the Participant. If physical certificates representing shares of Restricted Stock are registered in the name of the Participant, such certificates must bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock.

**ARTICLE 11**

**DEFERRED STOCK UNITS**

11.1. *GRANT OF DEFERRED STOCK UNITS.* The Committee is authorized to grant Deferred Stock Units to Participants subject to such terms and conditions as may be selected by the Committee. Deferred Stock Units shall entitle the Participant to receive Shares of Stock (or the equivalent value in cash or other property if so determined by the Committee) at a future time as determined by the Committee, or as determined by the Participant within guidelines established by the Committee in the case of voluntary deferral elections. An Award of Deferred Stock Units shall be evidenced by an Award Certificate setting forth the terms and conditions applicable to the Award.

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**ARTICLE 12**

**DIVIDEND EQUIVALENTS**

12.1. *GRANT OF DIVIDEND EQUIVALENTS*. The Committee is authorized to grant Dividend Equivalents to Participants subject to such terms and conditions as may be selected by the Committee. Dividend Equivalents shall entitle the Participant to receive payments equal to dividends with respect to all or a portion of the number of Shares subject to an Award, as determined by the Committee. The Committee may provide that Dividend Equivalents be paid or distributed when accrued or be deemed to have been reinvested in additional Shares, or otherwise reinvested.

**ARTICLE 13**

**STOCK OR OTHER STOCK-BASED AWARDS**

13.1. *GRANT OF STOCK OR OTHER STOCK-BASED AWARDS*. The Committee is authorized, subject to limitations under applicable law, to grant to Participants such other Awards that are payable in, valued in whole or in part by reference to, or otherwise based on or related to Shares, as deemed by the Committee to be consistent with the purposes of the Plan, including without limitation Shares awarded purely as a bonus and not subject to any restrictions or conditions, convertible or exchangeable debt securities, other rights convertible or exchangeable into Shares, and Awards valued by reference to book value of Shares or the value of securities of or the performance of specified Parents or Subsidiaries. The Committee shall determine the terms and conditions of such Awards.

**ARTICLE 14**

**PROVISIONS APPLICABLE TO AWARDS**

14.1. *STAND-ALONE AND TANDEM AWARDS*. Awards granted under the Plan may, in the discretion of the Committee, be granted either alone or in addition to, in tandem with, any other Award granted under the Plan. Subject to Section 16.2, awards granted in addition to or in tandem with other Awards may be granted either at the same time as or at a different time from the grant of such other Awards.

14.2. *TERM OF AWARD*. The term of each Award shall be for the period as determined by the Committee, provided that in no event shall the term of any Incentive Stock Option or a Stock Appreciation Right granted in tandem with the Incentive Stock Option exceed a period of ten years from its Grant Date (or, if Section 7.2(c) applies, five years from its Grant Date).

14.3. *FORM OF PAYMENT FOR AWARDS*. Subject to the terms of the Plan and any applicable law or Award Certificate, payments or transfers to be made by the Company or an Affiliate on the grant or exercise of an Award may be made in such form as the Committee determines at or after the Grant Date, including without limitation, cash, Stock, other Awards, or other property, or any combination, and may be made in a single payment or transfer, in installments, or on a deferred basis, in each case determined in accordance with rules adopted by, and at the discretion of, the Committee.



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14.4. *LIMITS ON TRANSFER*. No right or interest of a Participant in any unexercised or restricted Award may be pledged, encumbered, or hypothecated to or in favor of any party other than the Company or an Affiliate, or shall be subject to any lien, obligation, or liability of such Participant to any other party other than the Company or an Affiliate. No unexercised or restricted Award shall be assignable or transferable by a Participant other than by will or the laws of descent and distribution or, except in the case of an Incentive Stock Option, pursuant to a domestic relations order that would satisfy Section 414(p)(1)(A) of the Code if such Section applied to an Award under the Plan; provided, however, that the Committee may (but need not) permit other transfers where the Committee concludes that such transferability (i) does not result in accelerated taxation, (ii) does not

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cause any Option intended to be an Incentive Stock Option to fail to be described in Code Section 422(b), and (iii) is otherwise appropriate and desirable, taking into account any factors deemed relevant, including without limitation, state or federal tax or securities laws applicable to transferable Awards.

14.5. *BENEFICIARIES*. Notwithstanding Section 14.14.4, a Participant may, in the manner determined by the Committee, designate a beneficiary to exercise the rights of the Participant and to receive any distribution with respect to any Award upon the Participant's death. A beneficiary, legal guardian, legal representative, or other person claiming any rights under the Plan is subject to all terms and conditions of the Plan and any Award Certificate applicable to the Participant, except to the extent the Plan and Award Certificate otherwise provide, and to any additional restrictions deemed necessary or appropriate by the Committee. If no beneficiary has been designated or survives the Participant, payment shall be made to the Participant's estate. Subject to the foregoing, a beneficiary designation may be changed or revoked by a Participant at any time provided the change or revocation is filed with the Committee.

14.6. *STOCK CERTIFICATES*. All Stock issuable under the Plan is subject to any stop-transfer orders and other restrictions as the Committee deems necessary or advisable to comply with federal or state securities laws, rules and regulations and the rules of any national securities exchange or automated quotation system on which the Stock is listed, quoted, or traded. The Committee may place legends on any Stock certificate or issue instructions to the transfer agent to reference restrictions applicable to the Stock.

14.7. *ACCELERATION UPON DEATH OR DISABILITY OR RETIREMENT*. Except as otherwise provided in the Award Certificate, upon the Participant's death or Disability during his or her Continuous Status as a Participant, or (with respect to Awards that are not intended to be Qualified Performance-Based Awards under Section 14.12(b)) upon the Participant's Retirement, all of such Participant's outstanding Options, SARs, and other Awards in the nature of rights that may be exercised shall become fully exercisable, all time-based vesting restrictions on the Participant's outstanding Awards shall lapse, and any performance-based criteria shall be deemed to be satisfied at the greater of target or actual performance as of the date of such termination. Any Awards shall thereafter continue or lapse in accordance with the other provisions of the Plan and the Award Certificate. To the extent that this provision causes Incentive Stock Options to exceed the dollar limitation set forth in Section 7.2(b), the excess Options shall be deemed to be Nonstatutory Stock Options.

14.8. *ACCELERATION UPON A CHANGE IN CONTROL*. Except as otherwise provided in the Award Certificate, if a Participant's employment is terminated without Cause or the Participant resigns for Good Reason within two years after the effective date of a Change in Control, then (i) all of that Participant's outstanding Options, SARs and other Awards in the nature of rights that may be exercised shall become fully exercisable and shall remain exercisable for a period of 60 months from such date or until the earlier expiration of the award, and (ii) all time-based vesting restrictions on his or her outstanding Awards shall lapse. Except as otherwise provided in the Award Certificate, upon the occurrence of a Change in Control, the target payout opportunities attainable under all outstanding performance-based Awards shall be deemed to have been fully earned as of the effective date of the Change in Control and there shall be pro rata payout to Participants within thirty (30) days following the effective date of the Change in Control based upon an assumed achievement of all relevant targeted performance goals and upon the length of time within the performance period that has elapsed prior to the Change in Control.

14.9. *ACCELERATION FOR ANY OTHER REASON*. Regardless of whether an event has occurred as described in Section 14.7 or 14.8 above, and subject to Section 14.11 as to Qualified Performance-Based Awards, the Committee may in its sole discretion at any time determine that all or a portion of a Participant's Options, SARs, and other Awards in the nature of rights that may be exercised shall become fully or partially exercisable, that all or a part of the restrictions on all or a portion of the outstanding Awards shall lapse, and/or that any performance-based criteria with respect to any Awards shall be deemed to be wholly or partially satisfied, in each case, as of such date as the Committee may, in its sole discretion, declare. The Committee may discriminate among Participants and among Awards granted to a Participant in exercising its discretion pursuant to this Section 14.9.



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14.10. *EFFECT OF ACCELERATION*. If an Award is accelerated under Section 14.7, 14.8 or Section 14.9, the Committee may, in its sole discretion, provide (i) that the Award will expire after a designated period of time after such acceleration to the extent not then exercised, (ii) that the Award will be settled in cash rather than Stock, (iii) that the Award will be assumed by another party to a transaction giving rise to the acceleration or otherwise be equitably converted or substituted in connection with such transaction, (iv) that the Award may be settled by payment in cash or cash equivalents equal to the excess of the Fair Market Value of the underlying Stock, as of a specified date associated with the transaction, over the exercise price of the Award, or (v) any combination of the foregoing. The Committee's determination need not be uniform and may be different for different Participants whether or not such Participants are similarly situated. To the extent that such acceleration causes Incentive Stock Options to exceed the dollar limitation set forth in Section 7.2(b), the excess Options shall be deemed to be Nonstatutory Stock Options.

14.11. *QUALIFIED PERFORMANCE-BASED AWARDS*.

(a) The provisions of the Plan are intended to ensure that all Options and Stock Appreciation Rights granted hereunder to any Covered Employee shall qualify for the Section 162(m) Exemption; provided that the exercise or base price of such Award is not less than the Fair Market Value of the Shares on the Grant Date.

(b) When granting any other Award (including a below-market priced Option or SAR), the Committee may designate such Award as a Qualified Performance-Based Award, based upon a determination that the recipient is or may be a Covered Employee with respect to such Award, and the Committee wishes such Award to qualify for the Section 162(m) Exemption. If an Award is so designated, the Committee shall establish performance goals for such Award within the time period prescribed by Section 162(m) of the Code based on one or more of the following Qualified Business Criteria, which may be expressed in terms of Company-wide objectives or in terms of objectives that relate to the performance of an Affiliate or a division, region, department or function within the Company or an Affiliate:

Net earnings;

Earnings per share;

Net sales growth;

Net income (before or after taxes);

Net operating profit;

Return measures (including, but not limited to, return on assets, capital, equity, or sales, and cash flow return on assets, capital, equity, or sales);

Cash flow (including, but not limited to, operating cash flow and free cash flow);

Earnings before or after taxes, interest, depreciation and/or amortization;

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Internal rate of return or increase in net present value;

Dividend payments to parent;

Gross margins;

Gross margins minus expenses;

Operating margin;

Share price (including, but not limited to, growth measures and total shareholder return);

Expense targets;

Working capital targets relating to inventory and/or accounts receivable;

Planning accuracy (as measured by comparing planned results to actual results);

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Comparisons to various stock market indices;

Comparisons to the performance of other companies;

Same-store sales;

Customer counts;

Customer satisfaction;

EVA®.

Total revenue; and

Diversity-based targets

For purposes of this Plan, EVA means the positive or negative value determined by net operating profits after taxes over a charge for capital, or any other financial measure, as determined by the Committee in its sole discretion. (EVA is a registered trademark of Stern Stewart & Co.). In the event that applicable tax and/or securities laws change to permit Board or Committee discretion to alter the governing Qualified Business Criteria without obtaining stockholder approval of such changes, the Board or Committee shall have sole discretion to make such changes without obtaining stockholder approval.

(c) Each Qualified Performance-Based Award (other than a market-priced Option or SAR) shall be earned, vested and payable (as applicable) only upon the achievement of performance goals established by the Committee based upon one or more of the Qualified Business Criteria, together with the satisfaction of any other conditions, such as continued employment, as the Committee may determine to be appropriate; provided, however, that the Committee may provide, either in connection with the grant thereof or by amendment thereafter, that achievement of such performance goals will be waived upon the death or Disability of the Participant, or upon termination of the Participant's employment without Cause or for Good Reason within two years after the effective date of a Change in Control. Performance periods established by the Committee for any such Qualified Performance-Based Award may be as short as three months and may be any longer period.

(d) The Committee may provide in any Qualified Performance-Based Award that any evaluation of performance may include or exclude any of the following events that occurs during a performance period: (a) asset write-downs; (b) litigation or claim judgments or settlements; (c) the effect of changes in tax laws, accounting principles or other laws or provisions affecting reported results; (d) accruals for reorganization and restructuring programs; (e) extraordinary nonrecurring items as described in Accounting Principles Board Opinion No. 30 and/or in management's discussion and analysis of financial condition and results of operations appearing in the Company's annual report to stockholders for the applicable year; (f) acquisitions or divestitures; and (g) foreign exchange gains and losses. To the extent such inclusions or exclusions affect Awards to Covered Employees, they shall be prescribed in a form that meets the requirements of Code Section 162(m) for deductibility.

(e) Any payment of a Qualified Performance-Based Award granted with performance goals pursuant to subsection (c) above shall be conditioned on the written certification of the Committee in each case that the performance goals and any other material conditions were satisfied. Except as specifically provided in subsection (c), no Qualified Performance-Based Award may be amended, nor may the Committee

exercise any discretionary authority it may otherwise have under the Plan with respect to a Qualified Performance-Based Award under the Plan, in any manner to waive the achievement of the applicable performance goal based on Qualified Business Criteria or to increase the amount payable pursuant thereto or the value thereof, or otherwise in a manner that would cause the Qualified Performance-Based Award to cease to qualify for the Section 162(m) Exemption.

(f) Section 5.4 sets forth the maximum number of Shares or dollar value that may be granted in any one-year period to a Participant in designated forms of Qualified Performance-Based Awards.

14.12. *ANNUAL INCENTIVE AWARDS.*

(a) The Committee may designate Company executive officers who are eligible to receive a monetary payment in any calendar year based on a percentage of an incentive pool equal to five percent (5%) of the

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company's consolidated operating earnings for the calendar year. If so, the Committee shall allocate an incentive pool percentage to each designated Participant for each calendar year. In no event may the incentive pool percentage for any one Participant exceed thirty percent (30%) of the total pool. Consolidated operating earnings shall mean the consolidated earnings after income taxes of the Company, computed in accordance with generally accepted accounting principles, but shall exclude the effects of Extraordinary Items. For purposes of this Section 14.12, Extraordinary Items shall mean (i) extraordinary, unusual and/or nonrecurring items of gain or loss, (ii) gains or losses on the disposition of a business, (iii) changes in tax or accounting regulations or laws, or (iv) the effect of a merger or acquisition, all of which must be identified in the audited financial statements, including footnotes, or Management Discussion and Analysis section of the Company's annual report.

(b) As soon as possible after the determination of the incentive pool for a Plan year, the Board shall calculate the Participant's allocated portion of the incentive pool based upon the percentage established at the beginning of the calendar year. The Participant's incentive award then shall be determined by the Board based on the Participant's allocated portion of the incentive pool subject to adjustment in the sole discretion of the Board. In no event may the portion of the incentive pool allocated to a participant who is a Covered Employee be increased in any way, including as a result of the reduction of any other Participant's allocated portion.

(c) Unless otherwise provided by the Committee at the time of grant, upon the occurrence of a Change in Control, annual incentive awards granted under this Section 14.12 shall be paid out based on the consolidated operating earnings of the immediately preceding year or such other method of payment as may be determined by the Committee at the time of the Award or thereafter but prior to the Change in Control.

14.13. *TERMINATION OF EMPLOYMENT.* Whether military, government or other service or other leave of absence shall constitute a termination of employment shall be determined in each case by the Committee at its discretion, and any determination by the Committee shall be final and conclusive. A Participant's Continuous Status as a Participant shall not be deemed to terminate (i) in a circumstance in which a Participant transfers from the Company to an Affiliate, transfers from an Affiliate to the Company, or transfers from one Affiliate to another Affiliate, or (ii) in the discretion of the Committee as specified at or prior to such occurrence, in the case of a spin-off, sale or disposition of the Participant's employer from the Company or any Affiliate. To the extent that this provision causes Incentive Stock Options to extend beyond three months from the date a Participant is deemed to be an employee of the Company, a Parent or Subsidiary for purposes of Sections 424(e) and 424(f) of the Code, the Options held by such Participant shall be deemed to be Nonstatutory Stock Options.

14.14. *DEFERRAL.* The Committee may permit or require a Participant to defer such Participant's receipt of the payment of cash or the delivery of Shares that would otherwise be due to such Participant by virtue of the exercise of an Option or SAR, the lapse or waiver of restrictions with respect to Restricted Stock or Restricted Stock Units, or the satisfaction of any requirements or goals with respect to Performance Awards, and Other Stock-Based Awards. If any such deferral election is required or permitted, the Board shall, in its sole discretion, establish rules and procedures for such payment deferrals.

14.15. *FORFEITURE EVENTS.* The Committee may specify in an Award Certificate that the Participant's rights, payments and benefits with respect to an Award shall be subject to reduction, cancellation, forfeiture or recoupment upon the occurrence of certain specified events, in addition to any otherwise applicable vesting or performance conditions of an Award. Such events shall include, but shall not be limited to, termination of employment for cause, violation of material Company or Affiliate policies, breach of noncompetition, confidentiality or other restrictive covenants that may apply to the Participant, or other conduct by the Participant that is detrimental to the business or reputation of the Company or any Affiliate.



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**ARTICLE 15**

**CHANGES IN CAPITAL STRUCTURE**

15.1. *GENERAL.* In the event of a corporate event or transaction involving the Company (including, without limitation, any stock dividend, stock split, extraordinary cash dividend, recapitalization, reorganization, merger, consolidation, split-up, spin-off, combination or exchange of shares), the authorization limits under Section 5.1 and 5.4 shall be adjusted proportionately, and the Committee may adjust the Plan and Awards to preserve the benefits or potential benefits of the Awards. Action by the Committee may include: (i) adjustment of the number and kind of shares which may be delivered under the Plan; (ii) adjustment of the number and kind of shares subject to outstanding Awards; (iii) adjustment of the exercise price of outstanding Awards or the measure to be used to determine the amount of the benefit payable on an Award; and (iv) any other adjustments that the Committee determines to be equitable. In addition, the Committee may, in its sole discretion, provide (i) that Awards will be settled in cash rather than Stock, (ii) that Awards will become immediately vested and exercisable and will expire after a designated period of time to the extent not then exercised, (iii) that Awards will be assumed by another party to a transaction or otherwise be equitably converted or substituted in connection with such transaction, (iv) that outstanding Awards may be settled by payment in cash or cash equivalents equal to the excess of the Fair Market Value of the underlying Stock, as of a specified date associated with the transaction, over the exercise price of the Award, (v) that performance targets and performance periods for Performance Awards will be modified, consistent with Code Section 162(m) where applicable, or (vi) any combination of the foregoing. The Committee's determination need not be uniform and may be different for different Participants whether or not such Participants are similarly situated. Without limiting the foregoing, in the event of a subdivision of the outstanding Stock (stock-split), a declaration of a dividend payable in Shares, or a combination or consolidation of the outstanding Stock into a lesser number of Shares, the authorization limits under Section 5.1 and 5.4 shall automatically be adjusted proportionately, and the Shares then subject to each Award shall automatically be adjusted proportionately without any change in the aggregate purchase price therefor.

**ARTICLE 16**

**AMENDMENT, MODIFICATION AND TERMINATION**

16.1. *AMENDMENT, MODIFICATION AND TERMINATION.* The Board or the Committee may, at any time and from time to time, amend, modify or terminate the Plan without stockholder approval; provided, however, that if an amendment to the Plan would, in the reasonable opinion of the Board or the Committee, either (i) materially increase the benefits accruing to Participants, (ii) materially increase the number of Shares available under the Plan, (iii) expand the types of awards under the Plan, (iv) materially expand the class of participants eligible to participate in the Plan, (v) materially extend the term of the Plan, or (vi) otherwise constitute a material change requiring stockholder approval under applicable laws, policies or regulations or the applicable listing or other requirements of an Exchange, then such amendment shall be subject to stockholder approval; and provided, further, that the Board or Committee may condition any other amendment or modification on the approval of stockholders of the Company for any reason, including by reason of such approval being necessary or deemed advisable to (i) permit Awards made hereunder to be exempt from liability under Section 16(b) of the 1934 Act, (ii) to comply with the listing or other requirements of an Exchange, or (iii) to satisfy any other tax, securities or other applicable laws, policies or regulations.

16.2. *AWARDS PREVIOUSLY GRANTED.* At any time and from time to time, the Committee may amend, modify or terminate any outstanding Award without approval of the Participant; provided, however:

(a) Subject to the terms of the applicable Award Certificate, such amendment, modification or termination shall not, without the Participant's consent, reduce or diminish the value of such Award determined as if the Award had been exercised, vested, cashed in or otherwise settled on the date of such amendment or termination (with the per-share value of an Option or Stock Appreciation Right for this purpose being calculated as the excess, if any, of the Fair Market Value as of the date of such amendment or termination over the exercise or base price of such Award);



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(b) The original term of an Option may not be extended without the prior approval of the stockholders of the Company;

(c) Except as otherwise provided in Article 15, the exercise price of an Option may not be reduced, directly or indirectly, without the prior approval of the stockholders of the Company; and

(d) No termination, amendment, or modification of the Plan shall adversely affect any Award previously granted under the Plan, without the written consent of the Participant affected thereby. An outstanding Award shall not be deemed to be adversely affected by a Plan amendment if such amendment would not reduce or diminish the value of such Award determined as if the Award had been exercised, vested, cashed in or otherwise settled on the date of such amendment (with the per-share value of an Option or Stock Appreciation Right for this purpose being calculated as the excess, if any, of the Fair Market Value as of the date of such amendment over the exercise or base price of such Award).

**ARTICLE 17**

**GENERAL PROVISIONS**

17.1. *NO RIGHTS TO AWARDS; NON-UNIFORM DETERMINATIONS.* No Participant or any Eligible Participant shall have any claim to be granted any Award under the Plan. Neither the Company, its Affiliates nor the Committee is obligated to treat Participants or Eligible Participants uniformly, and determinations made under the Plan may be made by the Committee selectively among Eligible Participants who receive, or are eligible to receive, Awards (whether or not such Eligible Participants are similarly situated).

17.2. *NO STOCKHOLDER RIGHTS.* No Award gives a Participant any of the rights of a stockholder of the Company unless and until Shares are in fact issued to such person in connection with such Award.

17.3. *WITHHOLDING.* The Company or any Affiliate shall have the authority and the right to deduct or withhold, or require a Participant to remit to the Company, an amount sufficient to satisfy federal, state, and local taxes (including the Participant's FICA obligation) required by law to be withheld with respect to any exercise, lapse of restriction or other taxable event arising as a result of the Plan. If Shares are surrendered to the Company to satisfy withholding obligations in excess of the minimum withholding obligation, such Shares must have been held by the Participant as fully vested shares for such period of time, if any, as necessary to avoid variable accounting for the Option. With respect to withholding required upon any taxable event under the Plan, the Committee may, at the time the Award is granted or thereafter, require or permit that any such withholding requirement be satisfied, in whole or in part, by withholding from the Award Shares having a Fair Market Value on the date of withholding equal to the minimum amount (and not any greater amount) required to be withheld for tax purposes, all in accordance with such procedures as the Committee establishes.

17.4. *NO RIGHT TO CONTINUED SERVICE.* Nothing in the Plan, any Award Certificate or any other document or statement made with respect to the Plan, shall interfere with or limit in any way the right of the Company or any Affiliate to terminate any Participant's employment or status as an officer, director or consultant at any time, nor confer upon any Participant any right to continue as an employee, officer, director or consultant of the Company or any Affiliate, whether for the duration of a Participant's Award or otherwise.

17.5. *UNFUNDED STATUS OF AWARDS.* The Plan is intended to be an unfunded plan for incentive and deferred compensation. With respect to any payments not yet made to a Participant pursuant to an Award, nothing contained in the Plan or any Award Certificate shall give the Participant any rights that are greater than those of a general creditor of the Company or any Affiliate. This Plan is not intended to be subject to ERISA.

17.6. *RELATIONSHIP TO OTHER BENEFITS.* No payment under the Plan shall be taken into account in determining any benefits under any pension, retirement, savings, profit sharing, group insurance, welfare or benefit plan of the Company or any Affiliate unless provided otherwise in such other plan.

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17.7. *EXPENSES*. The expenses of administering the Plan shall be borne by the Company and its Affiliates.

17.8. *TITLES AND HEADINGS*. The titles and headings of the Sections in the Plan are for convenience of reference only, and in the event of any conflict, the text of the Plan, rather than such titles or headings, shall control.

17.9. *GENDER AND NUMBER*. Except where otherwise indicated by the context, any masculine term used herein also shall include the feminine; the plural shall include the singular and the singular shall include the plural.

17.10. *FRACTIONAL SHARES*. No fractional Shares shall be issued and the Committee shall determine, in its discretion, whether cash shall be given in lieu of fractional Shares or whether such fractional Shares shall be eliminated by rounding up or down.

17.11. *GOVERNMENT AND OTHER REGULATIONS*.

(a) Notwithstanding any other provision of the Plan, no Participant who acquires Shares pursuant to the Plan may, during any period of time that such Participant is an affiliate of the Company (within the meaning of the rules and regulations of the Securities and Exchange Commission under the 1933 Act), sell such Shares, unless such offer and sale is made (i) pursuant to an effective registration statement under the 1933 Act, which is current and includes the Shares to be sold, or (ii) pursuant to an appropriate exemption from the registration requirement of the 1933 Act, such as that set forth in Rule 144 promulgated under the 1933 Act.

(b) Notwithstanding any other provision of the Plan, if at any time the Committee shall determine that the registration, listing or qualification of the Shares covered by an Award upon any Exchange or under any foreign, federal, state or local law or practice, or the consent or approval of any governmental regulatory body, is necessary or desirable as a condition of, or in connection with, the granting of such Award or the purchase or receipt of Shares thereunder, no Shares may be purchased, delivered or received pursuant to such Award unless and until such registration, listing, qualification, consent or approval shall have been effected or obtained free of any condition not acceptable to the Committee. Any Participant receiving or purchasing Shares pursuant to an Award shall make such representations and agreements and furnish such information as the Committee may request to assure compliance with the foregoing or any other applicable legal requirements. The Company shall not be required to issue or deliver any certificate or certificates for Shares under the Plan prior to the Committee's determination that all related requirements have been fulfilled. The Company shall in no event be obligated to register any securities pursuant to the 1933 Act or applicable state or foreign law or to take any other action in order to cause the issuance and delivery of such certificates to comply with any such law, regulation or requirement.

17.12. *GOVERNING LAW*. To the extent not governed by federal law, the Plan and all Award Certificates shall be construed in accordance with and governed by the laws of the State of Delaware.

17.13. *ADDITIONAL PROVISIONS*. Each Award Certificate may contain such other terms and conditions as the Committee may determine; provided that such other terms and conditions are not inconsistent with the provisions of the Plan.

17.14. *NO LIMITATIONS ON RIGHTS OF COMPANY.* The grant of any Award shall not in any way affect the right or power of the Company to make adjustments, reclassification or changes in its capital or business structure or to merge, consolidate, dissolve, liquidate, sell or transfer all or any part of its business or assets. The Plan shall not restrict the authority of the Company, for proper corporate purposes, to grant or assume awards, other than under the Plan, to or with respect to any person. If the Committee so directs, the Company may issue or transfer Shares to an Affiliate, for such lawful consideration as the Committee may specify, upon the condition or understanding that the Affiliate will transfer such Shares to a Participant in accordance with the terms of an Award granted to such Participant and specified by the Committee pursuant to the provisions of the Plan.

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17.15. *INDEMNIFICATION*. Each person who is or shall have been a member of the Committee, or of the Board, or an officer of the Company to whom authority was delegated in accordance with Article 4 shall be indemnified and held harmless by the Company against and from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by him or her in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action taken or failure to act under the Plan and against and from any and all amounts paid by him or her in settlement thereof, with the Company's approval, or paid by him or her in satisfaction of any judgment in any such action, suit, or proceeding against him or her, provided he or she shall give the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf, unless such loss, cost, liability, or expense is a result of his or her own willful misconduct or except as expressly provided by statute. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled under the Company's Articles of Incorporation or Bylaws, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

The foregoing is hereby acknowledged as being the Denny's Corporation 2004 Omnibus Incentive Plan as adopted by the Company's stockholders on August 25, 2004 and as amended on April 13, 2005 by the Board and its Compensation Committee to be submitted to the stockholders for approval.

DENNY'S CORPORATION

By: \_\_\_\_\_

Its: \_\_\_\_\_

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Notice of Annual Meeting and Proxy Statement

*Annual Meeting of Stockholders to be held May 25, 2005*



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