

EXHIBIT A

**THE EXECUTIVE NONQUALIFIED EXCESS PLAN
OF
RATNER COMPANIES**

Effective as Restated July 1, 2009

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EXECUTIVE NONQUALIFIED EXCESS PLAN

Effective as Restated July 1, 2009

Purpose

The purpose of this Executive Nonqualified Plan, a plan of deferred compensation established effective as of October 1, 2005 and hereby restated July 1, 2009, is to provide specified benefits to a select group of management and highly compensated Employees who contribute materially to the continued growth, development, and future business success of Ratner Companies. The Plan shall be unfunded for tax purposes and for purposes of Title I of ERISA.

ARTICLE 1

Definitions

For purposes of the Plan, unless otherwise clearly apparent from the context, the following phrases or terms shall have the following meanings:

- 1.1 “**Account Balance**” shall mean, with respect to a Participant, a credit on the records of the Company equal to the sum of (i) the Deferral Account balance, (ii) the Employer Discretionary Account balance, and (iii) the Employer Profit Sharing Account balance. The Account Balance shall be a bookkeeping entry only and shall be utilized solely as a device for the measurement and determination of the amounts to be paid to a Participant, or his Beneficiary, pursuant to the Plan.
- 1.2 “**Affiliated Group**” means (i) the Company and (ii) all entities with which the Company would be considered a single employer under Code Sections 414(b) and 414(c), provided that in applying Code Sections 1563(a)(1), (2) and (3) for purposes of determining whether a controlled group of corporations exists under Code Section 414(b), the language “at least 50 percent” shall be used instead of “at least 80 percent” each place it appears in Code Sections 1563(a)(1), (2) and (3), and in applying Treasury Regulation Section 1.414(c)-2 for purposes of determining whether trades or businesses (whether or not incorporated) are under common control for purposes of Code Section 414(c), the language “at least 50 percent” shall be used instead of “at least 80 percent” each place it appears in Treasury Regulation Section 1.414(c)-2. The term “Affiliated Group” shall be interpreted in a manner consistent with the definition of “service recipient” contained in Code Section 409A.
- 1.3 “**Annual Installment Method**” shall be an annual installment payment over the number of years selected by the Participant in accordance with the Plan, calculated as follows: (i) for the first annual installment, the vested Account Balance of the Participant shall be calculated as of the close of business on or around (a) the last business day of the Plan Year in which the Participant Retires or is deemed to have Retired in accordance with Section 5.4, or (b) the date on which the Participant experiences a Termination of Employment or is deemed to have

experienced a Termination of Employment in accordance with Section 5.4, and (ii) for remaining annual installments, the vested Account Balance of the Participant shall be calculated on every applicable anniversary of (a) the last business day of the Plan Year in which the Participant Retires, is deemed to have Retired in accordance with Section 5.4, or (b) the date on which the Participant experiences a Termination of Employment or is deemed to have experienced a Termination of Employment in accordance with Section 5.4. Each annual installment shall be calculated by multiplying this balance by a fraction, the numerator of which is one and the denominator of which is the remaining number of annual payments due the Participant. By way of example, if the Participant elects a ten (10) year Annual Installment Method, the first payment shall be 1/10 of the vested Account Balance, calculated as described in this definition. The following year, the payment shall be 1/9 of the vested Account Balance, calculated as described in this definition.

For purposes of Section 409A an annual installment payment shall be considered a “single payment” as defined in IRS regulation 1.409A-2(b)(2)(iii).

- 1.4 “**Compensation**” shall mean the annual base rate of cash compensation payable by the Affiliated Group during a calendar year, plus any amount of Bonus, any performance-based compensation, and any commissions. Compensation shall exclude overtime, fringe benefits, stock options, relocation expenses, incentive payments, non-monetary awards, fees, automobile and other allowances, and prior to reduction for compensation voluntarily deferred or contributed by the Participant pursuant to all qualified or non-qualified plans of the Affiliated Group under Code Section 125, 402(e)(3), 402(h), or 403(b). Compensation payable after the last day of a calendar year solely for services performed during the final payroll period described in Code Section 3401(b) containing December 31 of such year shall be treated as earned during the subsequent calendar year.
- 1.5 “**Beneficiary**” shall mean the person or persons, designated in accordance with Article 6, that are entitled to receive benefits under the Plan upon the death of a Participant.
- 1.6 “**Beneficiary Designation Form**” shall mean the form established from time to time by the Board that a Participant completes, signs, and returns to the Board to designate one or more Beneficiaries.
- 1.7 “**Board**” shall mean the board of directors of the Company or a committee appointed by the Board to administer the Plan.
- 1.8 “**Bonus**” shall mean any compensation relating to services performed during any calendar year(s), whether or not paid in a calendar year or included on the Form W-2 for the calendar year, payable to a Participant as an Employee under the Company’s written bonus or cash compensation incentive plans, excluding stock

options and restricted stock . and which qualifies as “performance-based compensation” under IRS regulation 1.409A-1(e)(1).

- 1.9 “**Change in Control**” shall mean the occurrence of a "change in the ownership," a "change in the effective control," or a "change in the ownership of a substantial portion of the assets" of the Company within the meaning of Code Section 409A.
- 1.10 “**Code**” shall mean the Internal Revenue Code of 1986, as it may be amended from time to time.
- 1.11 “**Company**” shall mean Ratner Companies and any successor to all or substantially all of the Company’s assets or business.
- 1.12 “**Deferral Account**” shall mean (i) the sum of all of a Participant’s Deferral Amounts, plus (ii) amounts credited in accordance with all the applicable crediting provisions of the Plan that relate to the Participant’s Deferral Account, less (iii) all distributions made to the Participant or his Beneficiary pursuant to the Plan that relate to his Deferral Account.
- 1.13 “**Deferral Amount**” shall mean that portion of a Participant’s Compensation that a Participant elects to have, and is deferred, in accordance with Article 3, for any one Plan Year. In the event of a Participant’s Retirement, Disability, death or a Termination of Employment prior to the end of a Plan Year, such year’s Deferral Amount shall be the actual amount withheld prior to such event.
- 1.14 “**Deferral Election**” shall mean a Participant's election on an Election Form to defer a portion of his Compensation, or both, in accordance with the provisions of Article 3.
- 1.15 “**Disability**” shall mean the occurrence of circumstances under which a Participant meets one of the following requirements (a) the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, or (b) the Participant is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than 3 months under an accident and health plan covering employees of the Participant’s employer.
- 1.16 “**Disability Benefit**” shall mean the benefit set forth in Section 5.4.
- 1.17 “**Election Form**” shall mean the form established from time to time by the Board that a Participant completes, signs, and returns to the Board to make a Deferral Election under the Plan.

- 1.18 “**Employee**” shall mean a person who is designated as an employee by the Company.
- 1.19 “**Employer Discretionary Account**” shall mean (i) the sum of the Participant’s Employer Discretionary Amounts, plus (ii) amounts credited in accordance with all the applicable crediting provisions of the Plan that relate to the Participant’s Employer Discretionary Account, less (iii) all distributions made to the Participant or his Beneficiary pursuant to the Plan that relate to the Participant’s Employer Discretionary Account.
- 1.20 “**Employer Discretionary Amount**” shall mean, for any one Plan Year, the amount determined in accordance with Section 3.3.
- 1.21 “**Employer Profit Sharing Account**” shall mean (i) the sum of the Participant’s Employer Profit Sharing Amounts, plus (ii) amounts credited in accordance with all the applicable crediting provisions of the Plan that relate to the Participant’s Employer Profit Sharing Account, less (iii) all distributions made to the Participant or his Beneficiary pursuant to the Plan that relate to the Participant’s Employer Profit Sharing Account
- 1.22 “**Employer Profit Sharing Amount**” shall mean, for any one Plan Year, the amount determined in accordance with Section 3.4.
- 1.23 “**ERISA**” shall mean the Employee Retirement Income Security Act of 1974, as it may be amended from time to time.
- 1.24 “**Participant**” shall mean any Employee (i) who is selected to participate in the Plan, (ii) who elects to participate in the Plan, (iii) who signs an Election Form and a Beneficiary Designation Form, (iv) whose signed Election Form and Beneficiary Designation Form are accepted by the Board, (v) who commences participation in the Plan, and (vi) whose participation in the Plan has not terminated. A spouse or former spouse of a Participant shall not be treated as a Participant in the Plan or have an account balance under the Plan, even if he has an interest in the Participant’s benefits under the Plan as a result of applicable law or property settlements resulting from legal separation or divorce.
- 1.25 “**Plan**” shall mean the Executive Nonqualified Excess Plan of Ratner Companies, as amended from time to time.
- 1.26 “**Plan Year**” shall mean a period beginning on January 1 of each calendar year and continuing through December 31 of such calendar year.
- 1.27 “**Pre-Retirement Survivor Benefit**” shall mean the benefit set forth in Section 5.2.

- 1.28 “**Retirement,**” “**Retire(s),**” or “**Retired**” shall mean, with respect to an Employee, severance from employment from the Company for any reason other than a leave of absence, death or Disability on or after the attainment of age sixty-five (65).
- 1.29 “**Retirement Benefit**” shall mean the benefit set forth in Section 5.1.
- 1.30 “**Termination Benefit**” shall mean the benefit set forth in Section 5.3.
- 1.31 “**Termination of Employment**” shall mean a termination of employment with the Affiliated Group in such a manner as to constitute a "separation from service" as defined under Code Section 409A, voluntarily or involuntarily, for any reason other than Retirement, Disability, or death. For this purpose, the employment relationship is treated as continuing while a Participant is on military leave, sick leave, or other bona fide leave of absence if the period of such leave does not exceed six months or, if longer, so long as the individual retains a right to reemployment with the Affiliated Group under an applicable statute or by contract. A leave of absence constitutes a bona fide leave of absence only if there is a reasonable expectation that the Participant will return to perform services for the Affiliated Group. If the period of leave exceeds six months and the Participant does not retain a right to reemployment under an applicable statute or by contract, the employment relationship is deemed to terminate on the first day immediately following such six-month period. A Termination of Employment will occur if there is a reasonable expectation that the level of services by the Participant for the Affiliated Group will permanently decrease to 20% or less of the average level of services during the previous 36 months (or, if shorter, the actual period of services).
- 1.32 “**Trust**” shall mean one or more rabbi trusts established by the Company in accordance with Article 12 of the Plan as amended from time to time.
- 1.33 “**Unforeseeable Emergency**” shall mean a severe financial hardship to the Participant resulting from (i) an illness or accident of the Participant or Beneficiary or his spouse or dependent (as defined in Code Section 152(a) without regard to Code Sections 152(b)(1), 152(b)(2), and 152(d)(1)(B)), (ii) loss of the Participant's property due to casualty (including the need to rebuild a home following damage to the home not otherwise covered by insurance), or (iii) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. The term "Unforeseeable Emergency" shall be interpreted in a manner consistent with the definition of "unforeseeable emergency" contained in Code Section 409A.

ARTICLE 2
Selection, Enrollment, Eligibility

- 2.1 **Selection by Board.** Participation in the Plan shall be limited to those Employees who (i) are officers or key employees and (ii) are selected and approved for participation in the Plan by the Board, in its sole discretion.
- 2.2 **Enrollment Requirements.** As a condition to participation, each selected Employee shall complete, execute and return to the Board an Election Form and a Beneficiary Designation Form, all within 30 days (or such shorter time as the Board may determine) after he is selected to participate in the Plan. In addition, the Board shall establish from time to time such other enrollment requirements as it determines in its sole discretion are necessary.
- 2.3 **Eligibility; Commencement of Participation.** Provided an Employee selected to participate in the Plan has met all enrollment requirements set forth in the Plan and required by the Board, including returning all required documents to the Board within thirty (30) days (or such shorter time as the Board may determine) after he is selected to participate in the Plan, that Employee shall commence participation in the Plan as of the date determined by the Board.
- 2.4 **Termination of Deferrals.** If the Board determines in good faith that a Participant no longer qualifies as a member of a select group of management or highly compensated employees, as membership in such group is determined in accordance with Sections 201(2), 301(a)(3) and 401(a)(1) of ERISA, the Participant's entitlement to defer Compensation shall cease with respect to calendar years following the calendar year in which such determination is made, although the Participant shall remain subject to all terms and conditions of the Plan for as long as he remains a Participant.

ARTICLE 3
Deferral Elections

- 3.1 **Elections to Defer Compensation.**
- (a) **Deferral Election.**
- (i) **New Participant.** In connection with a Participant's commencement of participation in the Plan, a Participant may elect to defer Compensation by filing with the Board an Election Form that conforms with the requirements of Article 2 within the time period specified in Section 2.3, and the Deferral Election shall become irrevocable at the end of such time period, unless the conditions specified in Section 3.1(a)(ii) apply. The Deferral Election shall apply only to Compensation earned during the first Plan Year beginning with the first payroll period that begins immediately after the date the Deferral Election becomes irrevocable. If a Participant does not make a

deferral election with respect to the first Plan Year for which the Participant is eligible to participate in the Plan, the Participant may elect to defer Compensation for any subsequent Plan year by filing with the Board an Election Form that conforms with the requirements of Article 2 before the start of that Plan Year.

(ii) **Annual Deferral Election.** Unless Section 3.1(a)(i) applies, each Participant may elect to defer Compensation for a Plan Year by filing a Deferral Election with the Board within the timeframes specified by the Board for the Plan Year for which such Compensation is earned. However, the Deferral Election becomes irrevocable as of such December 31 preceding the Plan Year for which such Compensation is earned, provided, however that such election may be cancelled if any of the following events shall occur:

- a. The participant receives a payment due to an unforeseeable emergency,
- b. The cancellation is needed for the Participant to obtain a hardship withdrawal from a qualified plan, or
- c. The Participant suffers a Disability.

(b) **Amount of Deferral.** A Participant shall designate on the Deferral Election form the amount of Compensation that is to be deferred in accordance with this Article 3. The amount may be a flat dollar amount or percentage, as selected by the Participant, which, unless otherwise determined by the Board, shall not exceed 100 percent of the Participant's Compensation; provided that the total amount deferred by a Participant shall be limited in any calendar year, if necessary, to satisfy FICA, income tax, and employee benefit plan withholding requirements as determined in the sole and absolute discretion of the Board.

(c) **Duration of Deferral Election.** A Participant's Deferral Election shall remain in effect for subsequent Plan Years until the Deferral Election is changed or revoked. A Participant may change or revoke a Deferral Election for any subsequent Plan Year by filing a new Election Form with the Board prior to the beginning of such Plan Year, at such time as the Board may require, which Deferral Election shall be effective on the first day of the next following Plan Year.

3.2 **Withholding of Deferral Amounts.** For each Plan Year, the Deferral Amount shall be withheld from each regularly scheduled payroll in equal amounts, as adjusted from time to time for increases and decreases in Compensation.

3.3 **Employer Discretionary Amount.** For each Plan Year, the Board, in its sole discretion, may, but is not required to, credit an amount to any Participant's Employer Discretionary Account under the Plan, which amount shall equal the Employer Discretionary Amount for that Participant for that Plan Year. The

amount so credited to a Participant may be smaller or larger than the amount credited to any other Participant, and the amount credited to any Participant for a Plan Year may be zero, even though one or more other Participants receive an Employer Discretionary Amount for that Plan Year.

- 3.4 **Employer Profit Sharing Amount.** For each Plan Year, the Board, in its sole discretion, may, but is not required to, credit an amount to any Participant's Employer Profit Sharing Account under the Plan, which amount shall equal the Employer Profit Sharing Amount for that Participant for that Plan Year. The amount so credited to a Participant may be smaller or larger than the amount credited to any other Participant, and the amount credited to any Participant for a Plan Year may be zero, even though one or more other Participants receive an Employer Profit Sharing Amount for that Plan Year.
- 3.5 **Vesting.**
- (a) A Participant shall at all times be 100% vested in his Deferral Account. A Participant shall become 100% vested in his Employer Profit Sharing Account after he has been employed by the Company for a period of five years. A Participant shall become 100% vested in each Employer Discretionary Amount as of the fifth anniversary of the date such amount was credited to him. The above schedules notwithstanding, the Company shall have the right, at any time and with respect to any contribution, to establish, at its discretion, alternative vesting provisions for that contribution, provided that such alternative provisions will be more liberal than those provided above, and that the affected Participants will be notified of the change.
- (b) Notwithstanding anything to the contrary contained in this Section 3.5, a Participant shall immediately become 100% vested (if not already vested in accordance with the above vesting schedule) in his Employer Discretionary Account and Employer Profit Sharing Account as of the earliest of the following: 1) his attainment of age 65, 2) his suffering a Disability, 3) his death, or 4) a Change in Control.
- (c) Notwithstanding subsection (a), the vesting schedules for a Participant's Employer Discretionary and Profit Sharing Accounts shall not be accelerated to the extent that the Board determines that such acceleration would cause the deduction limitations of Code Section 280G to become effective. In the event that all of a Participant's Employer Discretionary and Profit Sharing Accounts are not vested pursuant to such a determination, the Participant may request independent verification of the Board's calculations with respect to the application of Code Section 280G. In such case, the Board must provide to the Participant within 15 business days of such a request an opinion from a nationally recognized accounting firm selected by the Participant (the "Accounting Firm"). If the Accounting Firm's opinion is in agreement with the Board's determination, the opinion shall state that

any limitation in the vested percentage hereunder is necessary to avoid the limits of Code Section 280G and contain supporting calculations. The cost of such opinion shall be paid for by the Company.

- 3.6 **Employee Accounts.** The Company shall establish a Deferral Account, an Employer Discretionary Account, and an Employer Profit Sharing Account for each Participant under the Plan. Each Participant's accounts shall be further divided into separate subaccounts ("investment fund subaccounts"), each of which corresponds to an investment fund elected by the Participant. A Participant's accounts shall be credited as follows:
- (a) After amounts are withheld from a Participant's Compensation, the Company shall credit the investment fund subaccounts of the Participant's Deferral Account with an amount equal to the amount of Compensation deferred by the Participant as of the date that the Compensation would have been paid to the Participant, and each portion of the Participant's deferred Compensation that the Participant has deemed to be invested in a certain type of investment fund shall be credited to the investment fund subaccount corresponding to that investment fund.
 - (b) The Company shall credit the investment fund subaccounts of the Participant's Employer Discretionary and Profit Sharing Accounts with amounts equal to the Employer Discretionary and Profit Sharing Amounts, if any, for that Participant, on the date or dates to be determined by the Board in its sole discretion, and the portions of the Participant's Employer Discretionary and Profit Sharing Amounts that the Participant has deemed to be invested in a certain type of investment fund shall be credited to the investment fund subaccount corresponding to that investment fund.
 - (c) Each business day, each of the Participant's investment fund subaccounts shall be credited with earnings or losses in an amount equal to that determined by multiplying the balance credited to such investment fund subaccount as of the prior day plus contributions allocated to the investment fund subaccount that day by the rate of net gain or loss for the corresponding investment fund for that day.
 - (d) Each of the Participant's investment fund subaccounts shall be reduced pro rata by the amount of any distributions made to the Participant, as of the date of the distribution.

3.7 **Investment Elections.**

- (a) The Board shall select from time to time, in its sole and absolute discretion, commercially available investment funds to be used to determine the amount of earnings or losses to be credited to the Participant's Accounts under Section 3.6(c).
- (b) At the time of making a Deferral Election, a Participant shall designate, on the Election Form, the investment fund or funds in which the Participant's Account

Balance will be deemed to be invested for purposes of determining the amount of earnings or losses to be allocated to the Participant's Account. The Participant may specify the deemed investment, in whole percentage increments, in one or more of the investment Funds as communicated from time to time by the Board. Effective as of any business day, a Participant may change this investment designation by filing a change of election and making a new designation as permitted by the Board.

- (c) Notwithstanding any other provision of the Plan that may be interpreted to the contrary, the investment funds selected by the Board or designation of investment funds by a Participant shall not be considered or construed in any manner as an actual investment of the Participant's Account Balance in any such investment fund. In the event that the Company or the Trustee, in its sole and absolute discretion, shall invest funds in any or all of the selected investment funds, no Participant shall have any rights in or to such investments. Without limiting the foregoing, a Participant's Account Balance shall at all times be a bookkeeping entry only and shall not represent any investment made on his behalf by the Company or the Trust; the Participant shall remain at all times an unsecured creditor of the Company.

3.8 **FICA and Other Taxes.**

- (a) **Deferral Amounts.** For each Plan Year in which a Deferral Amount is being withheld from a Participant, the Company shall withhold from that portion of the Participant's Compensation that is not being deferred, in a manner determined by the Company, the Participant's share of FICA and other employment taxes on such Deferral Amount. If necessary, the Board may reduce the Deferral Amount in order to comply with this Section 3.8(a).
- (b) **Employer Discretionary and Profit Sharing Amounts.** When a Participant becomes vested in a portion of his Employer Discretionary and Profit Sharing Accounts, the Company shall withhold from the Participant's Compensation that is not deferred, in a manner determined by the Company, the Participant's share of FICA and other employment taxes. If necessary, the Board may reduce the vested portion of the Participant's Employer Discretionary and Profit Sharing Accounts in order to comply with this Section 3.8(b).
- (c) **Distributions.** The Company, or the trustee of the Trust, shall withhold from any payments made to a Participant under the Plan all federal, state and local income, employment and other taxes required to be withheld by the Company, or the trustee of the Trust, in connection with such payments, in amounts and in a manner to be determined in the sole discretion of the Company and the trustee of the Trust.

ARTICLE 4

Change in Control and Unforeseeable Emergencies

- 4.1 **Payout as a Result of a Change in Control.** If the Company undergoes a Change in Control, the Account Balance of each Participant who opted at the time of their Deferral Election to receive a distribution upon a Change in Control, shall be distributed in the form of a lump sum payment or pursuant to an Annual Installment Method not to exceed 10 years.
- 4.2 **Payout/Suspensions for Unforeseeable Emergencies.** If the Participant experiences an Unforeseeable Emergency, the Participant may petition the Board to receive a partial or full payout from the Plan. The payout shall not exceed the lesser of the Participant's Account Balance, calculated as if such Participant were receiving a Termination Benefit, or the amount reasonably needed to satisfy the Unforeseeable Emergency plus amounts necessary to pay taxes reasonably anticipated as a result of the payout, after taking into account the extent to which such Unforeseeable Emergency is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the Participant's assets (to the extent such liquidation would not itself cause severe financial hardship). If, subject to the sole discretion of the Board, the petition for a suspension and/or payout is approved, suspension shall take effect upon the date of approval and any payout shall be made within 60 days of the date of approval.

ARTICLE 5

Benefits

- 5.1 **Retirement Benefit.** A Participant who Retires shall receive, as a Retirement Benefit, his Account Balance.
- (a) **Payment of Retirement Benefit.** A Participant, in connection with his commencement of participation in the Plan, shall elect on an Election Form to receive the Retirement Benefit in a lump sum or pursuant to an Annual Installment Method not to exceed 10 years. Notwithstanding the preceding sentence, if the Participant's Account Balance at the time of his Retirement is less than \$10,000, payment of his Retirement Benefit shall be made in a lump sum on or before the later of (a) December 31 of the calendar year in which occurs the Participant's separation from service or (b) the date 2-1/2 months after the Participant's separation from service. If a Participant does not make any election with respect to the payment of the Retirement Benefit, then such benefit shall be payable in a lump sum. The lump sum payment shall be made, or installment payments shall commence, no later than 60 days after the last day of the Plan Year in which the Participant Retires.

- (b) **Death Prior to Completion of Retirement Benefit.** If a Participant dies after Retirement but before the Retirement Account is paid in full, the Participant's unpaid Retirement Benefit payments shall be paid to the Participant's Beneficiary in a lump sum.
- 5.2 **Pre-Retirement Survivor Benefit.** The Participant's Beneficiary shall receive a Pre-Retirement Survivor Benefit equal to the Participant's Account Balance if the Participant dies before he Retires, experiences a Termination of Employment or suffers a Disability. A Participant's Beneficiary shall receive the Pre-Retirement Survivor Benefit in a lump sum. The lump sum payment shall be made no later than 60 days after the last day of the Plan Year in which the Board is provided with proof that is satisfactory to the Board of the Participant's death.
- 5.3 **Termination Benefit.** The Participant shall receive a Termination Benefit, which shall be equal to the Participant's Account Balance, if a Participant experiences a Termination of Employment prior to his Retirement, death or Disability. If the Participant's Account Balance at the time of his Termination of Employment is less than \$10,000, payment of his Termination Benefit shall be paid in a lump sum on or before the later of (a) December 31 of the calendar year in which occurs the Participant's separation from service or (b) 2-1/2 months after the Participant's separation from service. If his Account Balance at such time is equal to or greater than \$10,000, the Termination Benefit shall be paid in a lump sum or pursuant to an Annual Installment Method not to exceed 10 years, as elected by the Participant for the payment of the Retirement Benefit with respect to such amount. The lump sum payment shall be made, or installment payments shall commence, no later than 60 days after the Participant experiences the Termination of Employment.
- 5.4 **Disability Benefit.** A Participant suffering a Disability shall, for benefit purposes under the Plan, be deemed to have experienced a Termination of Employment. A disabled Participant who is eligible to Retire will be deemed to have Retired, as soon as practicable after such Participant is determined to be suffering a Disability, in which case the Participant shall receive a Disability Benefit equal to his Account Balance provided, however, that should the Participant otherwise have been eligible to Retire, he shall be paid in accordance with Section 5.1. The Disability Benefit shall be paid in a lump sum or pursuant to an Annual Installment Method not to exceed 10 years. The lump sum payment shall be made, or installment payments shall commence within sixty (60) days of the Participant's deemed Termination of Employment.
- 5.5 **Change in Time or Form of Payment.** Notwithstanding the method of payment for the Retirement Benefit or Termination Benefit elected by a Participant on an Election Form with respect to the Compensation, or both, deferred pursuant to such Election Form, the Participant may elect to change the time or form of such payment under a subsequent election that meets the following requirements:

- (a) The subsequent election may not take effect until at least 12 months after the date on which the subsequent election is made.
 - (b) The first payment with respect to which the subsequent election is made must be deferred for a period of not less than five years from the date such payment would otherwise have been made.
 - (c) The subsequent election may not accelerate the time of any payment.
- The form of payment elected in a subsequent election must be a lump sum or an Annual Installment Method not to exceed 10 years.

5.6 **Limitation on Key Employees.** Notwithstanding any other provision of the Plan to the contrary, the payment of a Retirement Benefit, Disability Benefit, or Termination Benefit with respect to a “key employee” of the Company, within the meaning of Code Section 416(i)(1), if at that time any stock of the Company is publicly traded on an established securities market or otherwise, shall not be made within six months following his separation from service with the Company, except in the event of death.

ARTICLE 6

Beneficiary Designation

- 6.1 **Beneficiary.** Each Participant shall have the right, at any time, to designate his Beneficiary(ies) (both primary as well as contingent) to receive any benefits payable under the Plan to a beneficiary upon the death of a Participant. The Beneficiary designated under the Plan may be the same as or different from the Beneficiary designation under any other plan of the Company in which the Participant participates.
- 6.2 **Beneficiary Designation; Change.** A Participant shall designate his Beneficiary by completing and signing the Beneficiary Designation Form, and returning it to the Board. A Participant shall have the right to change a Beneficiary by completing, signing and otherwise complying with the terms of the Beneficiary Designation Form and the Board’s rules and procedures, as in effect from time to time. Upon the acceptance by the Board of a new Beneficiary Designation Form, all Beneficiary designations previously filed shall be canceled. The Board shall be entitled to rely on the last Beneficiary Designation Form filed by the Participant and accepted by the Board prior to his death.
- 6.3 **Acknowledgment.** No designation or change in designation of a Beneficiary shall be effective until received and acknowledged in writing by the Board.
- 6.4 **No Beneficiary Designation.** If a Participant fails to designate a Beneficiary as provided in Sections 6.1, 6.2 and 6.3 above or, if all Beneficiaries predecease the

Participant or die prior to complete distribution of the Participant's benefits, then the Participant's Beneficiary shall be deemed to be his surviving spouse. If the Participant has no surviving spouse, the benefits remaining under the Plan to be paid to a Beneficiary shall be payable to the Participant's estate.

- 6.5 **Doubt as to Beneficiary.** If the Board has any doubt as to the proper Beneficiary to receive payments pursuant to the Plan, the Board shall have the right, exercisable in its discretion, to cause the Company to withhold such payments until this matter is resolved to the Board's satisfaction.
- 6.6 **Discharge of Obligations.** The payment of benefits under the Plan to a Beneficiary shall fully and completely discharge the Company and the Board from all further obligations under the Plan with respect to the Participant, and that Participant's participation in the Plan shall terminate upon such full payment of benefits.

ARTICLE 7

Leave of Absence

- 7.1 **Paid Leave of Absence.** If a Participant is authorized by the Company for any reason to take a paid leave of absence from the employment of the Company, the Participant shall continue to be considered employed by the Company and the Deferral Amount shall continue to be withheld during such paid leave of absence in accordance with Section 3.1.
- 7.2 **Unpaid Leave of Absence.** If a Participant is authorized by the Company for any reason to take an unpaid leave of absence from the employment of the Company, the Participant shall continue to be considered employed by the Company and the Participant shall be excused from making deferrals until the Participant returns to a paid employment status. Upon such return, deferrals shall resume for the remaining portion of the Plan Year in which the return occurs, based on the deferral election, if any, made for that Plan Year. If no election was made for that Plan Year, no deferral shall be withheld.

ARTICLE 8

Termination, Amendment or Modification

- 8.1 **Termination.** Although the Company anticipates that it will continue the Plan for an indefinite period of time, there is no guarantee that the Company will continue the Plan or will not terminate the Plan at any time in the future. Accordingly, the Company reserves the right to terminate the Plan at any time with respect to any or all of its participating Employees, by action of the Board. Upon the termination of the Plan, further deferrals under the Plan shall terminate but, unless the conditions

specified below are satisfied, all Account Balances shall remain subject to the terms of the Plan and the elections made in the applicable Election Forms. Account balances may be distributed to Participants upon a Plan termination if any of the following conditions apply:

- (a) The Plan termination is within 30 days preceding, or 12 months following, a Change in Control,
- (b) The termination is within 12 months of a corporate dissolution or has the approval of a bankruptcy court,
- (c) The voluntary termination of the Plan is for reasons other than the financial health of the Company. All nonqualified plans of the Affiliated Group must also be terminated and no new nonqualified plans established by the Affiliated Group for at least 3 years. No payments other than those due under the Plan may be made within 12 months of the termination date, and all other Plan assets will be distributed within 24 months of the termination date.

8.2 **Amendment.** The Company may, at any time, amend or modify the Plan in whole or in part by the action of the Board; provided, however, that no amendment or modification shall be effective to decrease or restrict the value of a Participant's Account Balance in existence at the time the amendment or modification is made, calculated as if the Participant had experienced a Termination of Employment as of the effective date of the amendment or modification or, if the amendment or modification occurs after the date upon which the Participant was eligible to Retire, the Participant had Retired as of the effective date of the amendment or modification. The amendment or modification of the Plan shall not affect any Participant or Beneficiary who has become entitled to the payment of benefits under the Plan as of the date of the amendment or modification. The Company specifically reserves the right to amend the Plan to conform the provisions of the Plan to the guidance issued by the Secretary of the Treasury with respect to Code Section 409A, in accordance with such guidance.

8.3 **Effect of Payment.** The full payment of the applicable benefit under Articles 4 or 5 of the Plan shall completely discharge all obligations to a Participant and his Beneficiaries under the Plan and the Participant's participation in the Plan shall terminate.

ARTICLE 9 **Administration**

9.1 **Administrative Duties.** To the extent that ERISA applies to the Plan, the Company shall be the "named fiduciary" of the Plan and the "plan administrator" of the Plan. The Board shall be responsible for the general administration of the Plan. The Board will, subject to the terms of the Plan, have the authority to: (i)

approve for participation employees who are recommended for participation by the president and Chief Executive Officer of the Company, (ii) adopt, alter, and repeal administrative rules and practices governing the Plan, (iii) interpret the terms and provisions of the Plan, and (iv) otherwise supervise the administration of the Plan. All decisions by the Board will be made with the approval of not less than a majority of its members. The Board may delegate any of its authority to any other person or persons that it deems appropriate.

- 9.2 **Agents.** In the administration of the Plan, the Board may, from time to time, employ agents and delegate to them such administrative duties as it sees fit (including acting through a duly appointed representative) and may from time to time consult with counsel who may be counsel to the Company.
- 9.3 **Binding Effect of Decisions.** All decisions by the Board, and by any other person or persons to whom the Board has delegated authority, shall be final and conclusive and binding upon all persons having any interest in the Plan.
- 9.4 **Indemnity of Board.** The Company shall indemnify and hold harmless the members of the Board and any Employee to whom the duties of the Board may be delegated against any and all claims, losses, damages, expenses or liabilities arising from any action or failure to act with respect to the Plan, except in the case of willful misconduct by the Board, any of its members, or any such Employee.
- 9.5 **Information.** To enable the Board to perform its functions, the Company shall supply full and timely information to the Board on all matters relating to the compensation of its Participants, the date and circumstances of the Retirement, Disability, death or Termination of Employment of its Participants, and such other pertinent information as the Board may reasonably require.

ARTICLE 10

Other Benefits and Agreements

- 10.1 **Coordination with Other Benefits.** The benefits provided for a Participant and Participant's Beneficiary under the Plan are in addition to any other benefits available to such Participant under any other plan or program for employees of the Company. The Plan shall supplement and shall not supersede, modify or amend any other such plan or program except as may otherwise be expressly provided.

ARTICLE 11

Claims Procedures

- 11.1 **Procedures for Handling Claims.** In accordance with the provisions of Section 503 of ERISA, the Company shall provide a procedure for handling claims for benefits under the Plan. The procedure shall be in accordance with the regulations issued by the Secretary of Labor and provide adequate written notice within a reasonable period of time with respect to a claim denial. The procedure shall also

provide for a reasonable opportunity for a full and fair review by the Company of any claim denial.

ARTICLE 12

Trust

- 12.1 **Establishment of the Trust.** The Company may establish one or more Trusts to which the Company may transfer such assets as the Company determines in its sole discretion to assist in meeting its obligations under the Plan.
- 12.2 **Interrelationship of the Plan and the Trust.** The provisions of the Plan and the Participant's Election Forms shall govern the rights of a Participant to receive distributions pursuant to the Plan. The provisions of the Trust shall govern the rights of the Company, Participants and the creditors of the Company to the assets transferred to the Trust.
- 12.3 **Distributions From the Trust.** The Company's obligations under the Plan may be satisfied with Trust assets distributed pursuant to the terms of the Trust, and any such distribution shall reduce the Company's obligations under the Plan.

ARTICLE 13

Miscellaneous

- 13.1 **Status of Plan.** The Plan is intended to be a plan that is not qualified within the meaning of Code Section 401(a) and that "is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employee" within the meaning of Sections 201(2), 301(a)(3) and 401(a)(1) of ERISA. The Plan shall be administered and interpreted to the extent possible in a manner consistent with that intent.
- 13.2 **Unsecured General Creditor.** Participants and their Beneficiaries, heirs, successors and assigns shall have no legal or equitable rights, interests or claims in any property or assets of the Company. For purposes of the payment of benefits under the Plan, any and all of the Company's assets shall be, and remain, the general, unpledged unrestricted assets of the Company. The Company's obligation under the Plan shall be merely that of an unfunded and unsecured promise to pay money in the future.
- 13.3 **Company's Liability.** The Company's liability for the payment of benefits shall be defined only by the Plan and the Participant's Election Forms. The Company shall have no obligation to a Participant under the Plan except as expressly provided in the Plan and his Election Forms.
- 13.4 **Nonassignability.** Neither a Participant nor any other person shall have any right to commute, sell, assign, transfer, pledge, anticipate, mortgage or otherwise

encumber, transfer, hypothecate, alienate or convey in advance of actual receipt, the amounts, if any, payable hereunder, or any part thereof, which are, and all rights to which are expressly declared to be, unassignable and non-transferable. No part of the amounts payable shall, prior to actual payment, be subject to seizure, attachment, garnishment or sequestration for the payment of any debts, judgments, alimony or separate maintenance owed by a Participant or any other person, be transferable by operation of law in the event of a Participant's or any other person's bankruptcy or insolvency or be transferable to a spouse as a result of a property settlement or otherwise.

- 13.5 **Not a Contract of Employment.** The terms and conditions of the Plan shall not be deemed to constitute a contract of employment between the Company and the Participant, either expressed or implied. Such employment is hereby acknowledged to be an "at will" employment relationship that can be terminated at any time for any reason, or no reason, with or without cause, and with or without notice, unless expressly provided in a written employment agreement. Nothing in the Plan shall be deemed to give a Participant the right to be retained in the service of the Company, or to interfere with the right of the Company to discipline or discharge the Participant at any time.
- 13.6 **Furnishing Information.** A Participant or his Beneficiary will cooperate with the Board by furnishing any and all information requested by the Board and take such other actions as may be requested in order to facilitate the administration of the Plan and the payments of benefits hereunder, including but not limited to taking such physical examinations as the Board may deem necessary.
- 13.7 **Terms.** Whenever any words are used herein in the masculine, they shall be construed as though they were in the feminine in all cases where they would so apply; and whenever any words are used herein in the singular or in the plural, they shall be construed as though they were used in the plural or the singular, as the case may be, in all cases where they would so apply.
- 13.8 **Captions.** The captions of the articles, sections and paragraphs of the Plan are for convenience only and shall not control or affect the meaning or construction of any of its provisions.
- 13.9 **Governing Law.** Subject to ERISA, the provisions of the Plan shall be construed and interpreted according to the internal laws of the State of Virginia without regard to its conflicts of laws principles.
- 13.10 **Notice.** Any notice or filing required or permitted to be given to the Board under the Plan shall be sufficient if in writing and hand-delivered, or sent by registered or certified mail, to the address below:

Ratner Companies
1577 Spring Hill Road, Suite 500
Vienna, VA 22182

Such notice shall be deemed given as of the date of delivery or, if delivery is made by mail, as of the date shown on the postmark on the receipt for registration or certification.

Any notice or filing required or permitted to be given to a Participant under the Plan shall be sufficient if in writing and hand-delivered, or sent by mail, to the last known address of the Participant.

- 13.11 **Successors**. The provisions of the Plan shall bind and inure to the benefit of the Company and its successors and assigns and the Participant and the Participant's Beneficiaries.
- 13.12 **Spouse's Interest**. The interest in the benefits hereunder of a spouse of a Participant who has predeceased the Participant shall automatically pass to the Participant and shall not be transferable by such spouse in any manner, including but not limited to such spouse's will, nor shall such interest pass under the laws of intestate succession.
- 13.13 **Validity**. In case any provision of the Plan shall be illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts hereof, but the Plan shall be construed and enforced as if such illegal or invalid provision had never been inserted herein.
- 13.14 **Incompetent**. If the Board determines in its discretion that a benefit under the Plan is to be paid to a minor, a person declared incompetent or to a person incapable of handling the disposition of that person's property, the Board may direct payment of such benefit to the guardian, legal representative or person having the care and custody of such minor, incompetent or incapable person. The Board may require proof of minority, incompetence, incapacity or guardianship, as it may deem appropriate prior to distribution of the benefit. Any payment of a benefit shall be a payment for the account of the Participant and the Participant's Beneficiary, as the case may be, and shall be a complete discharge of any liability under the Plan for such payment amount.
- 13.15 **Court Order**. The Board is authorized to make any payments directed by court order in any action in which the Plan or the Board has been named as a party. In addition, if a court determines that a spouse or former spouse of a Participant has an interest in the Participant's benefits under the Plan in connection with a property settlement or otherwise, the Board, in its sole discretion, shall have the right, notwithstanding any election made by a Participant, to immediately

distribute the spouse's or former spouse's interest in the Participant's benefits under the Plan to that spouse or former spouse.

- 13.16 **Insurance**. The Company, on its own behalf or on behalf of the trustee of the Trust, and, in its sole discretion, may apply for and procure insurance on the life of the Participant, in such amounts and in such forms as the Trust may choose. The Company or the trustee of the Trust, as the case may be, shall be the sole owner and beneficiary of any such insurance. The Participant shall have no interest whatsoever in any such policy or policies, and at the request of the Company shall submit to medical examinations and supply such information and execute such documents as may be required by the insurance company or companies to whom the Company has applied for insurance.
- 13.17 **No Acceleration of Benefits**. The acceleration of the time or schedule of any payment under the Plan is not permitted, except as provided in regulations by the Secretary of the Treasury.
- 13.18 **Compliance with Code Section 409A**. The Plan is intended to provide for the deferral of compensation in accordance with Code Section 409A for compensation earned, vested, or deferred after December 31, 2004. Notwithstanding any provisions of the Plan or any Election Form to the contrary, no otherwise permissible election under the Plan shall be given effect that would result in the taxation of any amount under Code Section 409A.

IN WITNESS WHEREOF, the Company has signed this Plan document on _____, 2009.

**RATNER COMPANIES LC
(Creative Hairdressers, Inc.)**

By: _____

Title: _____