

FRANCHISE DISCLOSURE DOCUMENT



Kilwins Chocolates Franchise, Inc.

a Michigan corporation

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Petoskey, Michigan 49770

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A Kilwins franchisee will operate a business (either a “Kilwins” Full Line Chocolates, Confectionery & Ice Cream Store (a “**Store**”) or a “Kilwins” Ice Cream & Chocolate Shop (a “**Shop**”)) that specializes in the sale of Kilwins approved hand crafted chocolates, Kilwins brand original recipe ice cream, fudge, and other confections.

The total investment necessary to begin operation of a Kilwins Store franchise is \$451,229 to \$857,996. This includes \$64,089 to \$90,845 that must be paid to the franchisor or affiliate. The total investment necessary to begin operation of a Kilwins Shop franchise is \$239,281 to \$410,117. This includes \$41,200 to \$43,840 that must be paid to the franchisor or affiliate.

This disclosure document summarizes certain provisions of your franchise agreement and other information in plain English. Read this disclosure document and all accompanying agreements carefully. You must receive this disclosure document at least 14 calendar days before you sign a binding agreement with, or make any payment to, the franchisor or an affiliate in connection with the proposed franchise sale. **Note, however, that no governmental agency has verified the information contained in this document.**

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact Ron Galbreath at 1050 Bay View Road, Petoskey, Michigan 49770, telephone (231) 758-3945.

The terms of your contract will govern your franchise relationship. Don't rely on the disclosure document alone to understand your contract. Read all of your contract carefully. Show your contract and this disclosure document to an advisor, like a lawyer or an accountant.

Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as “A Consumer's Guide to Buying a Franchise,” which can help you understand how to use this disclosure document, is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. You can also visit the FTC's home page at www.ftc.gov for additional information. Call your state agency or visit your public library for other sources of information on franchising.

There may also be laws on franchising in your state. Ask your state agencies about them.

The issuance date of this Franchise Disclosure Document is April 29, 2024.

How to Use This Franchise Disclosure Document

Here are some questions you may be asking about buying a franchise and tips on how to find more information:

QUESTION	WHERE TO FIND INFORMATION
How much can I earn?	Item 19 may give you information about outlet sales, costs, profits or losses. You should also try to obtain this information from others, like current and former franchisees. You can find their names and contact information in Item 20 or Exhibit E.
How much will I need to invest?	Items 5 and 6 list fees you will be paying to the franchisor or at the franchisor's direction. Item 7 lists the initial investment to open. Item 8 describes the suppliers you must use.
Does the franchisor have the financial ability to provide support to my business?	Item 21 or Exhibit G includes financial statements. Review these statements carefully.
Is the franchise system stable, growing, or shrinking?	Item 20 summarizes the recent history of the number of company-owned and franchised outlets.
Will my business be the only "Kilwins" business in my area?	Item 12 and the "territory" provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.
Does the franchisor have a troubled legal history?	Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.
What's it like to be a "Kilwins" franchisee?	Item 20 or Exhibit E lists current and former franchisees. You can contact them to ask about their experiences.
What else should I know?	These questions are only a few things you should look for. Review all 23 Items and all Exhibits in this disclosure document to better understand this franchise opportunity. See the table of contents.

WHAT YOU NEED TO KNOW ABOUT FRANCHISING *GENERALLY*

Continuing responsibility to pay fees. You may have to pay royalties and other fees even if you are losing money.

Business model can change. The franchise agreement may allow the franchisor to change its manuals and business model without your consent. These changes may require you to make additional investments in your franchise business or may harm your franchise business.

Supplier restrictions. You may have to buy or lease items from the franchisor or a limited group of suppliers the franchisor designates. These items may be more expensive than similar items you could buy on your own.

Operating restrictions. The franchise agreement may prohibit you from operating a similar business during the term of the franchise. There are usually other restrictions. Some examples may include controlling your location, your access to customers, what you sell, how you market, and your hours of operation.

Competition from franchisor. Even if the franchise agreement grants you a territory, the franchisor may have the right to compete with you in your territory.

Renewal. Your franchise agreement may not permit you to renew. Even if it does, you may have to sign a new agreement with different terms and conditions in order to continue to operate your franchise business.

When your franchise ends. The franchise agreement may prohibit you from operating a similar business after your franchise ends even if you still have obligations to your landlord or other creditors.

SOME STATES REQUIRE REGISTRATION

Your state may have a franchise law, or other law, that requires franchisors to register before offering or selling franchises in the state. Registration does not mean that the state recommends the franchise or has verified the information in this document. To find out if your state has a registration requirement, or to contact your state, use the agency information in Exhibit C.

Your state also may have laws that require special disclosures or amendments be made to your franchise agreement. If so, you should check the State Specific Addenda. See the Table of Contents for the location of the State Specific Addenda.

SPECIAL RISKS TO CONSIDER ABOUT *THIS* FRANCHISE

Certain states require that the following risk(s) be highlighted:

Out-of-State Dispute Resolution. The franchise agreement requires you to resolve disputes with us by mediation and litigation in Michigan. Out of state mediation and litigation may force you to accept a less favorable settlement for disputes. It may also cost more to mediate and litigate in Michigan than in your own state.

Spousal Liability. Your current spouse, and any future spouse, must sign a document that makes your spouse liable for all financial obligations under the franchise agreement even though your spouse has no ownership interest in the franchise. This guarantee will place both your and your spouse's marital and personal assets, perhaps including your house, at risk if your franchise fails.

Supplier Control. You must purchase all or nearly all of the inventory or supplies that are necessary to operate your business from the franchisor, its affiliates, or suppliers that the franchisor designates, at prices the franchisor or they set. These prices may be higher than prices you could obtain elsewhere for the same or similar goods. This may reduce the anticipated profit of your franchise business.

Certain states may require other risks to be highlighted. Check the "State Specific Addenda" (if any) to see whether your state requires other risks to be highlighted.

**KILWINS CHOCOLATES FRANCHISE, INC.
FRANCHISE DISCLOSURE DOCUMENT**

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ITEM 1**THE FRANCHISOR, AND ANY PARENT, PREDECESSORS, AND AFFILIATES****The Franchisor**

Kilwins Chocolates Franchise, Inc. ("**us**," "**our**," or "**we**") is a Michigan corporation that was incorporated on March 5, 1981. We do not conduct business under any other name. We maintain our principal place of business at 1050 Bay View Road, Petoskey, Michigan 49770. We conduct our business under the name and mark "Kilwins."

Our agents for service of process are disclosed in Exhibit D to this disclosure document.

We franchise the right to operate a "Kilwins Full Line Chocolates, Confectionery & Ice Cream Store" (a "**Store**") or a "Kilwins Ice Cream & Chocolates Shop" (a "**Shop**"). We do not have any other business activity. We have operated Stores of the type that are offered in this disclosure document since 1993. Since our incorporation in March 1981, we have been franchising Stores. We do not offer and have never offered franchises in any other lines of business.

Our Parent, Predecessor, and Affiliates

We do not have any predecessors.

Kilwins Quality Confections, LLC ("**Quality Confections**"), our affiliate, is a Delaware limited liability company, with a principal business address also at 1050 Bay View Road, Petoskey, Michigan. Quality Confections operated one Store from its inception in February 1995 (when it acquired the candy manufacturing business of Kilwins Candy Kitchens, Inc.) through May 2011. During that time, Quality Confections maintained its offices at 355 N. Division Rd, Petoskey, Michigan 49770. From 1999 until 2001, Quality Confections operated a Store in Harbor Springs, Michigan. Quality Confections is the designated source of supply for manufactured candy and ice cream products sold to all Kilwins Stores and Shops. Quality Confections does not offer any type of franchise, nor has it offered franchises in the past.

On February 17, 2023 (the "**Closing**"), we closed on a Stock Purchase Agreement with an entity controlled by Levine Leichtman Capital Partners, LLC ("**LLCP**"). LLCP is a Beverly Hills, California-based independent investment firm with its principal place of business at 345 N. Maple Drive, Suite 300, Beverly Hills, California 90210. After the Closing, the stock in our company as well as Quality Confections is owned by Kilwins MidCo LLC, which in turn is owned by Kilwins TopCo LLC. Both are Delaware entities and have the same address as does LLCP.

Through common ownership with investment funds controlled by LLCP, we are affiliated with the franchise programs listed below. None of these affiliates have offered franchises in any line of business other than as listed below and none of them have conducted a business similar to the "Kilwins" franchised business that you will operate.

1. LD Parent, Inc. is the direct or indirect parent company to the following franchisors, all of which have a principal business address of 142 State Route 34, Holmdel, New Jersey 07733:
 - a. Lawn Doctor, Inc. ("**LDI**") franchises the right to operate businesses that establish, care for, and maintain, lawns and other vegetation and provide pest control services under the principal trademark and service mark "Lawn Doctor"

- (**"Lawn Doctor Businesses"**). LDI has offered Lawn Doctor Business franchises since 1967. As of December 31, 2023, there were 627 Lawn Doctor Businesses in the United States.
- b. Mosquito Hunters LLC (**"MH"**) franchises the right to operate businesses that provide mosquito and pest control services through regular spraying applications and follow-up maintenance and do so under the trademark "Mosquito Hunters." MH has offered franchises since 2013. As of December 31, 2023, there were 128 franchised units operating in the United States.
 - c. Ecomaid LLC (**"EM"**) franchises the right to operate businesses that provide environmentally-friendly home cleaning services under the principal trademark "Ecomaid." EM has offered franchises since 2019. As of December 31, 2023, there were 57 franchised units operating in the United States.
 - d. Elite Franchising Corp. (**"Elite"**) franchises the right to operate businesses that provide window cleaning, gutter cleaning and power washing services to residential and commercial customers under the principal trademark "Elite Window Cleaning." Elite began franchising in 2018. As of December 31, 2023, there were 8 franchised units operating in Canada.
2. Tropical Smoothie Cafe, LLC (**"TSC"**) franchises the right to develop and operate Tropical Smoothie Cafe restaurants (**"Tropical Smoothie Cafe Restaurants"**), which are customer-driven businesses that sell a variety of premium, handcrafted smoothies made with select fruit and vegetables blended fresh in the restaurant using proprietary recipes, as well as specialty sandwiches, flatbreads, wraps, and salads. TSC or its predecessors have offered franchises since 1998. As of December 31, 2023, there were 1,371 franchised Tropical Smoothie Cafe Restaurants in operation in the United States. TSC's principal place of business is located at 1117 Perimeter Center West, Suite W200, Atlanta, Georgia 30338.

The Franchise Rights Offered

Stores and Shops are operated in buildings that bear our trade dress (interior, exterior, or both). Stores sell high-quality candy, chocolate candy products, nuts, beverages, ice cream, and other edible food products, made-in-store items crafted by each Store according to approved recipes using approved ingredients, as well as approved gifts in some stores (collectively, the **"Approved Products"**). Shops sell a modified product assortment including ice cream products and limited pre-packaged chocolate products. In some locations, such as tourist areas, sales – and operations – may be seasonal and the types of products sold may also vary depending upon the season or the geographic area. The typical market for "Kilwins" products is persons over the age of two.

We offer to enter into franchise agreements (**"Franchise Agreements"**) with qualified corporations and persons (**"you"**) that wish to establish and operate Stores or Shops. (In this disclosure document, "you" means the person or legal entity with whom we enter into an agreement. The term "you" also refers to the direct and indirect owners of a corporation, partnership, limited liability company, or limited liability partnership that signs a Franchise Agreement as the "franchisee.") We award franchises in our discretion, and in order to be qualified to become our franchisee, we will consider many factors that include, among other things, a

prospective franchisee's financial resources, educational and work background, personality fit, and ability to work with our team.

Under a Franchise Agreement, we will grant you the right (and you will accept the obligation) to operate a Store at an agreed-upon specified location (the "**Approved Location**"). If you wish to establish and operate a Shop and we approve you to do so, then in addition to a Franchise Agreement, you will enter into a Kilwins Ice Cream & Chocolate Shop Addendum to the Franchise Agreement (an "**Ice Cream & Chocolate Shop Addendum**" or "**Shop Addendum**").

Unless otherwise referred to in this disclosure document, all references to Stores will include Shops, and all references to the Franchise Agreement will include the Ice Cream Shop Addendum.

Stores are characterized by our system (the "**System**"). Some of the features of our System are our distinctive branding, design, and plans for Stores, as well as our recipes, operating procedures, customer service, quality standards, management procedures, inventory control procedures, training assistance, advertising, marketing, and promotional programs, collateral and material.

We may periodically change parts of the System.

You must operate your Store in accordance with our standards and procedures, as set out in our Confidential Brand Standards Manual (the "**Manual**"). We will lend you, or make available electronically, a copy of the Manual for the duration of the Franchise Agreement. In addition, we will grant you the right to use our marks, including the mark "Kilwins" and any other trade names and marks that we designate in writing for use with the System (the "**Proprietary Marks**").

Stores will be operated from an indoor structure that need not be free-standing, in a target range of approximately 800 square feet to 1,500 square feet in size and decorated to meet our specifications (including the use of our trade dress, trademark, and design).

Shops will be operated from an indoor structure that need not be free-standing, in a target range of approximately 500 square feet to 600 square feet in size and decorated to meet our specifications (including the use of our trade dress, trademark, and design).

We also have the option to offer franchisees the option of obtaining a Kilwins – Build Store ("**Kilwins – Build Store**"). A Kilwins – Build Store will be a Store that we will prepare, construct, and equip for you at the Approved Location, according to the terms and conditions of an "**Architectural & Engineering Agreement**," the form of which is attached to this disclosure document as Exhibit B-3, and a "**Store Construction Agreement**," the form of which is attached to this disclosure document as Exhibit B-1. Kilwins – Build Stores are not available for Shops.

Franchisees may also ask that we purchase, deliver, and manage the delivery of the equipment necessary for the operation of the Store. If you make such a request and we agree to provide that service, we will purchase and deliver the equipment for the Store according to the terms and conditions of an "**Equipment Management Agreement**," the form of which is attached to this disclosure document as Exhibit B-2.

The terms of our arrangement for a Kilwins - Build Store are also discussed below. You are not required to engage us to construct a Kilwins - Build Store, and you will be free instead to engage your own contractors.

We currently (but may not in the future) have designated delivery programs. You may be required to participate and meet our standards and procedures for those programs. In order to do so, you may have to buy or lease certain items from third party vendors (for example, companies such as “Uber Eats,” “DoorDash,” etc.), such as a dedicated iPad, certain software, special packaging needed for delivery orders, and other items, and those vendors will likely charge for their goods and services (as well as for the delivery service itself). These programs are likely to change dynamically throughout the term of your Franchise Agreement and we cannot predict which vendors will be in business in any given year, the opportunities that may become available, the competition, or the costs that may be associated with these programs.

Industry-Specific Regulations

You must comply with all local, state, and federal laws that apply to your Store operations, including for example health, sanitation, no-smoking, EEOC, OSHA, discrimination, employment, and sexual harassment laws. The Americans with Disability Act of 1990 requires readily accessible accommodation for disabled persons and therefore may affect your building construction, site elements, entrance ramps, doors, seating, restrooms, drinking facilities, etc. For example, you must obtain real estate permits (e.g., zoning), real estate licenses, and operational licenses. There are also regulations that pertain to handling consumer data, sanitation, healthcare, labeling, caloric information, nutrition disclosures, allergen disclosures, food preparation, food handling, and food service. You will be required to comply with all applicable federal, state, and local laws and regulations in connection with the operation of your Store. You should consult with your attorney concerning those and other local laws and ordinances that may affect your Store’s operation.

Competition

You can expect to compete in your market with locally-owned businesses, as well as with national and regional chains, that offer confections, ice cream, frozen yogurt, and other items that may compete with the products offered at a Store. The market for these items is well-established and very highly competitive. Confectioneries and ice cream stores compete on the basis of factors such as price, service, store location, and product quality. These businesses are often affected by other factors as well, such as changes in consumer taste, economic conditions, seasonal population fluctuation, and travel patterns. To the extent that customers may be able to buy Kilwins brand products from other sources (for example, other Stores, our website), you may appear to, or actually, compete with other sellers of Kilwins brand products.

ITEM 2 **BUSINESS EXPERIENCE**

The following is a list of directors, principal officers, and other executives who have management responsibility for the operation of our business concerning the franchises described in this disclosure document. The principal occupation and business experience of each during the last five years, including the names and location of prior employers, are indicated in the table below. Unless otherwise indicated, the location of the employer is Petoskey, Michigan.

Member, Board of Directors**Donald McCarty**

Mr. McCarty has been associated with the Kilwins system since 1979. He joined us in 1988, and served as our President from March 1995 to February 2023 and as our CEO from February 2010 to February 2023. Mr. McCarty has also been a Member of our Board of Directors since April 1989.

President and Chief Executive Officer**Brian Britton**

Mr. Britton has been our President and Chief Executive Officer since July 2023. Before that, he was President and CEO of National Heritage Academies in Grand Rapids, Michigan from September 2016 to June 2023.

Member, Board of Directors**John King**

Mr. King has been a member of our Board of Directors since July 2023. He has been an Associate Director with LLC since December 2022. From July 2017 to December 2022, Mr. King was an Investment Professional with Towerbrook Capital Partners in New York, New York.

Member, Board of Directors**Kyle Smith**

Mr. Smith has been a member of our Board of Directors since September 2023. From August 2012 to June 2022 he was CEO of Nothing Bundt Cakes in Addison, Texas.

Vice President of Finance, Secretary and Treasurer**Robin Burgan**

Ms. Burgan joined us as Director of Finance in May 2017. From March 2009 to May 2017, she was a Controller for Lexamar in Boyne City, Michigan. In February 2023, her role was expanded to include responsibility of Vice President of Finance, Secretary and Treasurer.

Advisor**Stephen R. Hooley**

Mr. Hooley served as a Member of our Board of Directors and Vice President from May 2001, as Secretary from June 2001, and as our Chief Operating Officer from June 2006 all until the Closing in February 2023. Mr. Hooley remains an advisor to our company.

Advisor**David Selvius**

Mr. Selvius since January 2009 has been the founder and owner of Selvius Consulting, LLC in Hudsonville, Michigan. In his capacity with Selvius Consulting and with C3 Network, he also acted as our Chief Financial Officer from June 2006 until the Closing in February 2023. Mr. Selvius remains an advisor to our company and also serves as a financial advisor and as a Chief Financial Officer to other companies.

Chief of Design & Branding**Ronald A. Brunette**

Mr. Brunette has been our Chief of Design & Branding since September 2010. From January 2007 to May 2010, he was Vice President Creative Design for Sears Holdings in Hoffman Estates, Illinois. Mr. Brunette was Vice President Store Environment for Circuit City, Inc. in Richmond, Virginia from March 2006 to January 2007. He was Vice President of Visual Merchandising and Store Design for Modell's Sporting Goods in New York, New York from March 2003 to March 2006.

Director of Franchise Development**Ronald S. Galbreath**

Mr. Galbreath has been our Director of Franchise Development Since November 2021. From April 2012 to December 2020, he was Customer Vice President for Mondelez International in Minneapolis, Minnesota.

Director of Franchise Relations**Jeffrey Deming**

Mr. Deming has been our Director of Franchise Relations since March 2016. From February 2015 to February 2016, he was the General Manager for the Kilwins retail store we maintain at our headquarters in Petoskey, Michigan. Mr. Deming was Purchasing Manager for Quality Confections from June 2008 to January 2015.

Director of Technology**George Fabis**

Mr. Fabis has been our Director of Technology since May 2023. He was Director of IT at Byrne Electrical Specialists in Rockford, Michigan from April 2017 to December 2022.

Development Manager**Brian Crawford**

Mr. Crawford joined us as Development Manager in April 2012. From January 2011 to February 2012, he was Vice President of Franchising for GoWaiter in Tallahassee, Florida. Mr. Crawford was Vice President of Franchising for Homes & Land in Tallahassee, Florida from August 2004 to February 2012. From July 1997 to August 2004, he was Director of Franchising for Millicare in Fort Worth, Texas.

Development Manager**Joseph Benney**

Mr. Benney joined us as Development Manager in May 2012. From January 2010 to April 2012, he was Director of New Business Development for Consultant Associates in Bedford, New York. Mr. Benney was Director of New Business Development for Checkers Drive-In Restaurants in Tampa, Florida from April 2005 to January 2010. From May 2004 to April 2005, he was Director of New Business Development Southeast for Coldwell Banker in Parsippany, New Jersey, and from June 1995 to April 2004, he was Manager of New Business Development for Dunkin' Donuts in Randolph, Massachusetts.

Development Manager**Tyler McCarty**

Mr. McCarty joined us as Development Manager in January 2018. He was a Real Estate Analyst for us from January 2015 to December 2017, and a Manager for us from March 2013 to December 2015.

Development Manager**Brian Ognian**

Mr. Ognian joined us as Development Manager in April 2023. He was a Real Estate Analyst for Dhanani Group in Sugarland, Texas from October 2022 to March 2023. From July 2021 to August 2022, Mr. Ognian was Vice President Development for Toppers Pizza in Whitewater, Wisconsin. From September 2020 to July 2021, he was self employed in Houston, Texas. Mr. Ognian was a Developer for Texas Bulls Eye Brands in Atlanta, Georgia from October 2017 to August 2020.

Franchise Development Process Manager**Heather Vance**

Ms. Vance joined us as Franchise Development Process Manager in February 2022. From May 2019 to February 2022, she was self-employed in Petoskey, Michigan. From November 2009 to May 2019, Ms. Vance was Senior Real Estate Manager for HD Supply Construction Supply LTD in Louisville, KY.

Member, Board of Directors**Andrew Alexander**

Mr. Alexander joined us as a member of our Board of Directors upon the Closing in February 2023. Since July 2016, he has been a private equity investor, and is now a Managing Director, with Levine Leichtman Capital Partners, LLC in Beverly Hills, California.

Member, Board of Directors**Andrew Schwartz**

Mr. Schwartz joined us as a member of our Board of Directors upon the Closing in February 2023. Since May 2011, he has been a private equity investor, and is now a Partner, with Levine Leichtman Capital Partners, LLC in Beverly Hills, California.

ITEM 3
LITIGATION

Kilwins Chocolates Franchise, Inc. v. Erik Berakovich, Trisha L. Berakovich, Karl Berakovich, Georgia Marina Corp., and A.J. Velvet, Inc. (Circuit Court for Emmet County, Michigan, Case No. 11-3196-CZ). We filed a lawsuit on August 31, 2011 against parties who are now former franchisees, as well as a related party. This case stems from the operation of a competing business by Trisha Berakovich ("T. Berakovich") and A.J. Velvet, Inc. ("AJ Velvet") at the same location on Mackinac Island as that from which Erik Berakovich had previously operated a legitimate "Kilwins" franchised store in earlier years, and efforts that the defendants made to assist in the operation of the AJ Velvet / T. Berakovich fudge store on Mackinac Island. Among other things, we alleged in our complaint that the former franchisees violated the terms of their covenants against competition, conspired to deprive us of our contractual rights, tortiously interfered with our rights, and engaged in fraud and negligent misrepresentation. Our complaint sought monetary damages, injunctive relief, and a declaratory judgment that we properly terminated the defendants' franchise agreements. The defendants answered, denied and admitted certain facts that we alleged, and also counterclaimed against us. In their counterclaim, the defendants alleged, among other things, that we violated antitrust law because we filed a complaint claiming that the defendants violated their covenant against competition. We filed a motion for summary judgment on the defendants' counterclaims, which the court granted in part (including dismissing the antitrust law claim against us, ordering the enforcement of the covenants against competition, and declaring that the franchise agreements were properly terminated). The defendants appealed that judgment, and their appeal was denied. The defendants agreed to settle the matter by paying us \$180,000; agreeing that their franchise agreements were properly terminated; agreeing to abide by the covenants against competition (for a limited period of time); agreeing not to use our intellectual property (including our recipes); and agreeing to relinquish the furniture, fixtures, and equipment, as well as the leases/subleases, for their two formerly franchised shops in Mackinaw City, Michigan. The parties also exchanged releases. The settlement was signed as of April 24, 2013, and the court entered the parties' stipulation of dismissal on August 22, 2013.

Other than this action, no litigation is required to be disclosed in this Item.

ITEM 4
BANKRUPTCY

No bankruptcy information is required to be disclosed in this Item.

ITEM 5

INITIAL FEES

Initial Franchise Fee

When you sign the Franchise Agreement, you must pay us an initial franchise fee of \$40,000 for a Store, and \$20,000 for a Shop. The initial franchise fee will be fully earned when paid, must be paid in one lump-sum amount, excluding any required deposits as described below. For franchisees entering into a Franchise Agreement for an additional Store with us, we have reduced the initial franchise fee to 75% of the initial franchise fee payable for the first Store (\$30,000). The initial franchisee fee is uniform for new franchisees.

We are a member of the International Franchise Association (“**IFA**”) and participate in the IFA’s VetFran Program (the “**Vet Fran Program**”), which provides a discount on initial franchise fees to veterans of U.S. Armed Forces who otherwise meet the requirements of the program. If you are a qualified veteran participating in the Vet Fran Program, we will reduce the amount of the initial franchise fee for the first Franchise Agreement you sign with us for a Store by \$10,000, and for a Shop by \$5,000. To qualify, you must provide us with adequate documentation of your honorable discharge from the U.S. Armed Forces, and the franchisee entity operating the Store must be at least 75% owned by the veteran who is participating in the Vet Fran program. If you participate in the Vet Fran Program and, before you open your Store, propose to transfer the franchise to a buyer who is not a qualified veteran participating in the Vet Fran Program, then you must pay us the reduced portion of the initial franchise fee (\$10,000 for a Store or \$5,000 for a Shop) as a condition to the transfer (in addition to other requirements applicable to transfers).

Inventory

Before opening your Store, you will need to buy an opening inventory. We estimate that the inventory needed for a typical Store in the preferred range of 800 to 1,500 square feet will range from \$26,089 to \$51,762 assuming all available discounts are taken. You must purchase this inventory from our affiliate, Kilwins Quality Confections.

Before opening your Shop, you will need to buy an opening inventory. We estimate that the inventory needed for a typical Shop in the preferred range of 500 to 600 square feet will range from \$13,200 to \$15,840 assuming all available discounts are taken. You must purchase this inventory from our affiliate, Kilwins Quality Confections.

POS Software Fee

The Kilwins Computer System (defined below) requires, among other things, the installation of the Kilwins POS System, related software, and equipment. In connection with that installation, you are required to pay us the amount of \$3,000 at the time you sign the Franchise Agreement.

Kilwins - Build Stores: Architectural & Engineering Agreement, Store Construction Agreement and Equipment Management Agreement.

We may qualify you to do so and offer you the option to engage us to construct a Kilwins - Build Store, or you may wish to hire contractors, purchase and install equipment, and do these and other things on your own (“**Franchisee – Build Store**”). If you elect to build a Franchisee – Build Store, you agree to provide us with a weekly progress status report (in the format we

request) upon the earliest to occur of: (a) commencement of architectural design and engineering, (b) demolition, or (c) construction activities. If you choose to engage us to construct a Kilwins - Build Store, then you will sign an Architectural & Engineering Agreement and a Store Construction Agreement. Whether you choose a Kilwins – Build Store or a Franchisee – Build Store, you will still be responsible for meeting all of our specifications and standards in connection with the construction of the Store.

Under the Architectural & Engineering Agreement, you will have to make a single lump sum payment to us for the cost associated with the Store design and architectural and engineering activities. By signing the Architectural & Engineering Agreement, we can proceed with design and architectural and engineering activities for the Store and generate the drawings necessary to apply for a building permit and solicit cost estimates for construction, equipment and the exterior sign and/or awning package. You and we will discuss and agree upon an estimated amount for the work to be performed under the Architectural & Engineering Agreement cost, which includes an architectural and engineering management fee of 10%, which will be stated in the Architectural & Engineering Agreement before we sign that contract.

Under a Store Construction Agreement, you will have to make periodic payments to us for the costs of constructing the Kilwins - Build Store (the “**Cost of Work**”). Although the Cost of Work will obviously vary based on factors such as the site, the local construction market and availability of contractors (and the Store features that you select based on the Kilwins Manual), we will agree with you to an estimated amount for the Cost of Work, which includes a construction management fee of 10%, which will be stated in the Store Construction Agreement before we sign that contract. Under the Store Construction Agreement, you must also pay us for the cost of certain equipment, exterior signs and awnings for the Store (the “**Cost of Equipment**”), and the Cost of Equipment will be equal to our cost to procure and manage the installation of the equipment and POS, plus a 7.5% management fee. (See Item 7 for the range of cost of equipment (Note 4) and signs and awnings (Note 7) for the Store.) In addition, if we advance any deposits on your behalf, you must reimburse us for those deposits (the “**Deposit Amounts**”). You must pay us for Deposit Amounts within ten days after we send you an invoice for those amounts. In the last three years, the total Cost of Work and Cost of Equipment for Kilwins Build Stores ranged from \$415,189 to \$695,319, which includes management fees and applicable sales tax. Sales tax rates have ranged from 6.0% to 8.5%, but you should review your specific situation with your tax advisor.

Even if we do not construct a Kilwins - Build Store for you under a Store Construction Agreement, you may elect to have us procure and manage certain equipment at your Store under an Equipment Management Agreement. As under the Store Construction Agreement, the Cost of Equipment under the Equipment Management Agreement will be equal to our cost to procure and manage, plus a 7.5% management fee.

You must pay us the Cost of the Work and the Cost of Equipment in the form of progress payments. The schedule for these progress payments will be specified in Exhibit A to the Store Construction Agreement or Equipment Management Agreement and will be mutually agreed-upon before we sign the Store Construction Agreement or Equipment Management Agreement.

You must pay us a single lump sum payment, as outlined in Exhibit A to the Architectural & Engineering Agreement, due at the time you sign the Architectural & Engineering Agreement.

Construction Deposit

When you sign the Franchise Agreement, you must pay us a deposit of \$5,000 (the “**Construction Deposit**”). If we offer you the option to engage us to build your Store, you must enter into a Store Construction Agreement and the Construction Deposit will then be applied to that agreement. If you elect to build the Store, then the Construction Deposit will be used to reimburse us for our costs and expenses we and our representatives incur in connection with our periodic review and oversight of the construction of your Store.

All of these amounts are fully-earned when paid, and are non-refundable.

ITEM 6
OTHER FEES

(Please review this table in conjunction with all of the notes that follow.)

Type of Fee (Note 1)	Amount	Due Date	Remarks
Royalty	5% of Gross Sales	Monthly, on or before the tenth calendar day of each month; calculated on the Gross Sales for the prior month.	Gross Sales means all revenue related to the Store (excluding sales of gift cards, refunds, shipping charges, gratuities, and sales taxes collected and remitted to the proper authorities). We reserve the right to require Stores to pay royalty fees and marketing contributions weekly instead of monthly.
Marketing Contribution	Currently 3% of Gross Sales (which we have the right to increase up to 5% of Gross Sales) (Note 2)	Same as Royalty.	We currently allocate the Marketing Contribution in the manner set out in Note 2 below. We have the right to change the allocation and increase the Marketing Contribution to a total of 5% of Gross Sales.
Transfer Fee	\$30,000 or 75% of our then-current initial franchise fee, whichever is more	At time of transfer	Payable if you sell your franchise or your company. (Note 3)
Interest on Overdue Payments	18% per year on the underpayment (Note 4)	Upon demand	Payable only on overdue amounts, from the date when originally due.

Type of Fee (Note 1)	Amount	Due Date	Remarks
Costs and Attorneys' Fees	Will vary under circumstances	Upon demand	If you are in violation under the Franchise Agreement, or if we must enforce the Franchise Agreement you must reimburse us for our expenses (including but not limited to a per diem expense for our employee costs, travel expenses and reasonable attorneys' fees, plus a 10% surcharge) in enforcing or terminating the Franchise Agreement.
Audit Costs	All costs and expenses associated with the audit, per diem expenses, reasonable accounting and legal costs; and interest on the underpayment (see Note 4)	Upon demand	Payable only if we audit because you did not submit financial information as required in section 12.2 in a timely manner, or if sales are underreported by 2% or more.
Indemnification	Will vary under circumstances	As incurred	Note 5
Securities Offering Fee	\$5,000 or our actual expenses, whichever is greater	Upon demand	If you engage in a securities offering, you must reimburse us for our reasonable costs and expenses (including legal and accounting fees) to evaluate your proposed offering and you also must indemnify us (see above).
Renewal Fee	\$10,000 or 25% of our then-current initial franchise fee, whichever is more	At time of notice to us of intent to renew	Only payable if you decide to renew your franchise. The renewal fee is instead of a new initial franchise fee. There are no renewals of a Shop Addendum.
Replacement training	\$5,000 for each replacement training session, per diem expenses, plus travel expenses	Before training begins	Note 6

Type of Fee (Note 1)	Amount	Due Date	Remarks
Additional Individuals for Initial Training	\$5,000 for each individual over the first four individuals	Before training begins	Note 7
Web-based employee training	Our then current fee (which is currently \$20) per month	On or before the 5 th day of each month	Currently, the Web-based employee training Fee is \$20 per month, per Store, but we can increase this fee by up to 5% each year commensurate with increased technology costs that we periodically incur.
Recurrent inspection	Time (currently \$500/day) plus expenses	Upon demand	Charged only when additional trips are necessary to your Store to correct a violation which was not corrected upon returning for the second inspection, or where additional training is required.
Sale of Store Sales Fee	Up to 7% of the sales price of the Store	Upon sale of Store	Charged only if you request our assistance in finding a buyer for your Store and facilitating the sale of the Store. It is your option to ask us to provide this service.
Technology Fee	Our then-current costs for development and support of System technology. Note 8.	On or before the 5 th day of each month	Currently, the Technology Fee is \$200 per month per Store, but we can increase this fee up to 5% each year commensurate with increased technology costs that we periodically incur, as well as for changes to the Index. Note 8.
Relocation Expenses	Our costs (travel, lodging and meals) to visit the proposed new location, as well as our legal fees and related expenses to review, approve and document the new site.	As incurred	If you wish to relocate the Franchised Business, then you must reimburse us these amounts, in advance. We will reconcile with you the actual relocation expenses incurred within 30 days after you have reopened your Franchised Business at the new location.

Type of Fee (Note 1)	Amount	Due Date	Remarks
Insurance	The amount of the premiums obtained, plus a 10% surcharge of the premium.	Within 30 days of our written request	If you do not obtain or maintain the insurance coverage required under the Franchise Agreement, we will have the right (but not the obligation) to pay any premium or obtain the required coverage on your behalf and charge you back for those premiums, plus a 10% surcharge.
Lost Future Royalties	The average of the monthly royalty fees due for the previous 12 months (or actual time open if less than 12 months), multiplied by the lesser of 36 or the number of months remaining in the then-current term of the Franchise Agreement	Upon request	You must pay this if we terminate the Franchise Agreement as a result of your default or if you abandon the Store.
POS Software Fee	Our then-current fee (presently, estimated at \$210 per month per Store). Note 9.	As incurred	This is a monthly fee payable to us or an approved vendor we designate. Note 9
Accounting and Backoffice Software Fee	Our then-current fee (we presently do not charge or collect a fee, however, it is subject to change at any time with 30 day notice) Note 9	Not currently applicable	This is a monthly or annual fee payable to us or an approved vendor we designate. Note 9

Type of Fee (Note 1)	Amount	Due Date	Remarks
Network, Internet, Telephone Service and Support Fee	Our then-current fee (presently \$250 per month per Store). Note 9	As incurred	This is a monthly or annual fee payable to us or an approved vendor we designate. Note 9

Notes:

1. General:

- All fees are payable to us or our designated or approved vendor, and uniformly applied to new system franchisees, and non-refundable (however, in some instances that we consider appropriate, we may waive some or all of these fees).
- We have the right to adjust, for inflation, all fixed dollar amounts under the Franchise Agreement, once a year, according to the Index. The term "**Index**" means the Consumer Price Index (1982-84=100; all items; CPI-U; all urban consumers) as published by the U.S. Bureau of Labor Statistics ("**BLS**"). If the BLS no longer publishes the Index, then we will have the right to designate a reasonable alternative measure of inflation.
- All amounts due, owed, or payable to us (including payments for past due amounts) must be made by electronic funds transfer using the Automated Clearing House (ACH) Network.

3. The Marketing Contribution can be allocated among the Marketing Fund, a "**Regional Fund**," which is intended to focus on promotional activities within a smaller geographic area where the Franchised Business is located, or to be spent by you on local advertising. See Item 11, "Advertising", for details. Regional Funds determine the amount of the contributions required from the Stores in their area.

- Currently, the allocation of the Marketing Contribution is to contribute 3% of Gross Sales to the Marketing Fund, but we have the right to periodically make changes to the allocation of the Marketing Contribution by giving you written notice of the change, and those changes will take effect at the end of that month.
- We may require that you deposit your local marketing funds into a special bank account that we will establish and administer, from which you may apply to withdraw those funds for the purpose of conducting local marketing efforts.

3. There is no transfer fee for a Shop, but the transferee must enter into a new Franchise Agreement and pay the initial franchise fee under that agreement.

Also, if you participate in the Vet Fran Program and, before you open your Store, propose to transfer the franchise to a buyer who is not a qualified veteran participating in the Vet Fran Program, then you must pay us the reduced portion of the initial franchise fee (\$10,000) as a condition to the transfer (in addition to other requirements applicable to transfers).

4. Interest starts to accrue when your payment was initially due. Interest rates will not exceed any applicable maximum rate permitted by law.
5. You must indemnify us and reimburse us for our costs (including our attorneys' fees), if we are sued or held liable in any case: (a) having anything to do with any securities offering you make; (b) your use of the marks (other than as we approve); or (c) that has anything to do with a claim arising out of the operation of your Store.
6. One Highly Trained Personnel individual per store who has been through our training program must always be in active management of the franchised business. If any of the Highly Trained Personnel (defined below) cease active management or employment at the Franchised Business, or if we disapprove of any of the Highly Trained Personnel, then you must enroll a qualified replacement in our initial training program within thirty 30 days. We will provide you with one replacement training session during the term of the Franchise Agreement, for up to a total of four individuals during such session. If you ask to send more than four individuals to the replacement training session, or if you request more than one replacement training session, then you agree to pay us a training fee in the amount of \$5,000 for each replacement session, with payment to be made in full before the replacement training starts, plus all other expenses we incur in connection with such training (including the costs of transportation, lodging, and meals).
7. You may send up to four individuals (including the Highly Trained Personnel) to the initial training program. If you ask to send more than four individuals to the initial training program, then you must pay us a training fee in the amount of \$5,000 for each additional individual that will attend the initial training program, with payment to be made in full before initial training starts.
8. You are required to pay us an ongoing monthly Technology Fee to pay for ongoing development and support of the technology used for the System and other technology initiatives. The Technology Fee is in the amount of our then-current costs for these initiatives, which is currently \$200 per month per Store. We can increase the Technology Fee up to 5% each year commensurate with increased technology costs that we periodically incur, as well as for changes to the Index. We may rely on suppliers of the hardware and software to provide support for the hardware and software and reserve the right to have you enter into a service contract directly with the hardware and software suppliers and pay the suppliers directly for this support, if specific to your Store.
9. The Computer System Support Fees (consisting of, but not limited to: POS, Accounting and Backoffice, Network, Internet, Telephone Service and Support) are related to the required Computer System, and are payable to us or our designated vendor. The POS Software Fee currently charged is \$210 per month. We presently do not charge or collect the Accounting and Backoffice Software Fee, however, that is subject to change at any time with 30 days' notice to you. The Computer System Support Fees are subject to adjustment due to, and that are commensurate with, increased system costs as well as for changes to the Index.

ITEM 7
ESTIMATED INITIAL INVESTMENT

YOUR ESTIMATED INITIAL INVESTMENT

	Store	Shop			
Type of Expenditure	Amount (Low to High Est.)	Amount (Low to High Est.)	Method of Payment	When Due	To Whom Payment is Made
Initial franchise fee (Note 1)	\$30,000 to \$40,000	\$20,000	Lump Sum	When you sign the Franchise Agmt	KCF
Lease/rent (Note 2)	\$2,083 to \$13,412	\$932 to \$6,500	As Arranged	Monthly rental amount due upon signing	Landlord
Plans and Construction (includes architectural and building permits) (Note 3)	\$257,783 to \$400,975	\$80,500 to \$132,250	As Arranged	As Arranged	Contractors
Store Construction Oversight & Review Fee	\$5,000	\$5,000	Lump sum	Upon signing the Franchise Agmt	KCF
Equipment (Note 4)	\$93,338 to \$185,699	\$74,553 to \$85,690	Lump sum	Before Opening	Vendors, Approved Suppliers, or KCF
POS (Note 5)	\$12,286 to \$14,134	\$7,100	As Arranged	As Arranged	Vendor and KCF
Inventory (Note 6)	\$26,089 to \$42,845	\$13,200 to \$15,840	Lump sum	Before Opening	KCF, Vendors, Approved Suppliers
Signs and Awnings (Note 7)	\$2,131 to \$27,179	\$5,000 to \$13,000	Lump sum	Before Opening	Vendors or KCF
Advertising (Note 8)	\$10,000	\$10,000	As Incurred	As Arranged	Service Providers
Insurance (Note 9)	\$519 to \$21,528	\$1,669 to \$20,265	As Arranged	As Arranged	Insurance Providers
Training Expenses (Note 10)	\$3,000 to \$7,559	\$250 to \$4,000	As Incurred	As Incurred	Airlines, hotels, restaurants

	Store	Shop			
Type of Expenditure	Amount (Low to High Est.)	Amount (Low to High Est.)	Method of Payment	When Due	To Whom Payment is Made
Business Licenses (Note 11)	\$250 to \$1,200	\$111 to \$750	As Incurred	As Incurred	Government Agencies, providers
Professional Fees (Note 12)	\$750 to \$5,990	\$756 to \$7,290	As Incurred	As Arranged	Service Providers
Additional Funds (3 Months) (Note 13)	\$8,000 to \$90,000	\$20,000 to \$77,915	As Incurred	As Incurred	Employees, vendors, utilities
Security Deposits (Note 14)	\$0 to \$4,560	\$210 to \$4,517	As Arranged	As Arranged	Lender, Approved Suppliers
Total- Actual store total range (Note 15)	\$451,229 to \$857,996	\$239,281 to \$410,117			

Notes:

We do not offer direct or indirect financing for any part of the initial investment. We do not guarantee your note, lease or obligations. Unless otherwise indicated below, none of the fees payable to us or our affiliates is refundable. We cannot estimate whether and to what extent fees payable to third parties may be refunded.

1 **INITIAL FRANCHISE FEE.** These amounts are discussed in detail in Item 5. You may pay a deposit, which will be credited against the initial franchise fee if you sign a Franchise Agreement. The deposit will only be refundable in the circumstances described in Item 5.

2 **LEASE/RENT** If you do not own a location for your Store, you must purchase or lease a space. The estimate in the table is for one month of rent. You will probably need to lease a space at least four months in advance and be prepared to pay first and last month rent; however, you may attempt to negotiate an abatement from the landlord. Store locations include resort and tourist areas, downtown store fronts, entertainment centers, and shopping centers. For Stores opened from 2021 to 2023, lease rates per square foot ranged from \$18 to \$130, with annual rates between \$24,996 and \$160,940 and are representative of the first-year rent for 29 stores. The highest annual rate may not necessarily be for the largest store or the highest per square foot rate. Monthly rents for the Stores opened in our target size range in the past three years ranged from \$2,083 to \$13,412. Because no Shops were open during this time period, we used the same figures for lease rates as with our full line Stores and our target square footage requirements for a Shop, to arrive at an estimated lease cost range of \$932 to \$6,500 per month.

Rent varies considerably from market to market, and from location to location within each market. Rents may vary beyond the range that we have provided, based on factors such as

market conditions in the relevant area, the type and nature of improvements needed to the premises, the size of the Store, the terms of the lease, and the desirability of the location. If you decide to purchase the property for the location of your Store, you will incur additional costs that we cannot estimate.

3. PLANS AND CONSTRUCTION. We will provide you, at no charge, our Manual and construction requirements based on an AutoCAD formatted layout to include an equipment schedule and specifications for the Store. You must adapt, at your expense, the layout we provide, subject to our approval. We provide no other drawings unless we offer you the option to engage us to construct a Kilwins - Build Store and sign an Architectural & Engineering Agreement and a Store Construction Agreement with us.

You will need to construct improvements, or “build out” the premises at which you will operate the Store. Occasionally, you will take the premises in “vanilla box” condition (e.g., primed drywall ready to be painted, but without improvements). Among other things, you will need to arrange for proper wiring and plumbing, floor covering, wall covering, partitions, heat, air conditioning, lighting, storefront modifications, painting, cabinetry, bathroom facilities, and the like. You will need to hire a licensed architect and a licensed builder. Costs are likely to vary, and may be much higher, if you wish to establish your Store in an area where special requirements of any kind (e.g., historical, architectural, or preservation requirements) will apply. If you elect to have us construct a Kilwins - Build Store, we estimate that these costs are likely to be the same.

If we offer you the option to engage us to construct a Kilwins - Build Store, we will hire an architect and contractor, obtain permits and a certificate of occupancy, and you will pay the Cost of Work (which will be equal to the plans and construction costs, plus a construction management fee of 10%). The Cost of Work in the table reflects a management fee of 10%. These costs do not include sales or use tax applicable to your location. Construction costs including markup, but without architectural fees for a Kilwins – Build Store, range from \$170.41 to \$445.76 per square foot.

Costs in the table reflect Stores we have built in our target size range in the past three years and include construction, architect and engineering fees, permits and the 10% management fee. Architect fees included in this range varied from \$9,929 to \$24,156 depending upon the local permitting process and condition of the existing space. Costs in the table also include our Store Construction Oversight and Review Fee of \$5,000, as explained in Item 5 above. Gross costs do not include tenant improvement allowances or payments that you may be able to negotiate from the landlord. For a Shop, the estimate includes a \$5,000 to \$12,000 architect expense instead of the estimate for Stores noted above.

4. EQUIPMENT. We require franchisees to purchase equipment needed to operate the Store, such as ice cream dipping cases, walk-in freezers, refrigerators, marble tables, stoves (gas or electric), sinks, cabinetry, fixtures, graphics, and many other miscellaneous items. You will need to obtain the exact equipment we specify and in some cases from the vendor we specify. The amount spent for equipment will vary for each Store depending upon the Store's size, style, volume of Approved Products to be offered in the Store, and local zoning requirements.

The cost range for a Store is typical of Store owners who entered into our Equipment Management Agreement for Stores in our target size range in 2021 through 2023. The high range for the equipment costs in the chart already reflects the cost of equipment and installation charges and applicable sales tax. The sales tax rates included in the costs range from 6.0% to 8.5%. Costs

without sales tax range from \$88,055 to \$173,551 with the 7.5% management fee. The cost of equipment per square foot ranges from \$53.89 to \$166.93. Variances in cost per square foot may be due to customization levels, finishes chosen for the cabinetry package, and/or the size of the Store.

The cost range for a Shop is based upon our estimates for the required equipment for that format and includes a 7.5% management fee but no sales tax. You will need to add the sales tax that applies for your specific jurisdiction to these estimates.

If you enter into the Equipment Management Agreement, we will procure the equipment used in the Store, and you will pay the cost of equipment (which will be equal to our cost to procure and manage the installation of select items from the equipment list, plus a 7.5% management fee).

5. POS. We require our franchisees to purchase our then-standard Point of Sale (POS) system, currently consisting of a PC-based hardware platform, standardized network equipment, plus portable device for “line-busting” or remote sales activity (including PC processor and peripheral hardware devices such as touch screens, printers, bar code readers, credit card readers, cash drawers, scales, music system, battery back-up, etc.) combined with our standard POS software from our approved supplier. The standard POS system is described below in this disclosure document. The cost for the POS system will vary based on the size of your Store and the number of POS stations required for the Store. These costs do not include sale or use tax applicable to your location, but do include the \$3,000 POS software fee. The costs reflect a 7.5% equipment management fee.

6. INVENTORY. Items of inventory which you are required to obtain from us or from our affiliate are paid at standard prices and terms. All items of inventory which you obtain from sources of your own choosing are paid for directly to the supplier of those inventory items at prices agreed upon by you and the supplier. Start-up inventory of products and supplies includes all products that will be offered for sale as part of the opening merchandising of the Store, as well as any ingredients for the made-in-Store products, packaging materials, serving supplies, gift cards, uniforms and visual merchandising. These items will vary based on the expected volume of business and size of storage areas in the building. This estimate is for the initial inventory only. If you elect to have us construct a Kilwins Build Store, we will install an opening merchandise inventory in a quantity and variety that we will estimate is appropriate for the size, location and market of your Store. We estimate that those costs will fall within the range already provided in the chart. These costs reflect all available discounts offered by affiliated suppliers and orders for stores that were opened in 2021 through 2023. Costs may be higher for Stores with greater square footage for merchandising or for Stores opening at peak holiday times.

7. SIGNS AND AWNINGS. The cost of signs and awnings will vary from location to location depending on lease requirements, ordinances and restrictions, traffic patterns, competition, and related factors. The cost will also depend on whether you have signage with no awnings, awnings with no signs, and other combinations of signage and awning configurations. In addition, other considerations – such as zoning requirements, as well as historical and architectural design standards – may affect your costs (both in terms of materials as well as professional fees that you will incur to get approval of your proposed signs and awnings). We will provide assistance to you in designing your signs and awnings; you must submit the final design to us for our review and approval. You will pay your sign and awning fabricator directly. If you elect to have us construct a

Kilwins - Build Store, we will obtain and install the signs and awnings used in the Store, and we will charge you a management fee for our services equal to 7.5% of the signage cost.

8. ADVERTISING. We will assist you in tailoring a marketing plan appropriate to your market and Store. The estimate is for the initial marketing efforts you will need to make, which includes the Opening Marketing Program. Additional details regarding marketing can be found in Item 11, under the subheading "Marketing."

9. INSURANCE. The estimate is for the annual premium for the policies required under the Franchise Agreement. Insurance costs will vary depending upon factors such as the size and location of the Store, business income level to be insured, payroll totals for workers compensation, flood zoning, and lease requirements. You must obtain general liability insurance and product liability insurance with minimum limits of \$1,000,000 per occurrence, \$2,000,000 in the aggregate, which you will have to obtain through third parties, such as your own insurance agent. Your obligations with respect to insurance are more fully described below in this disclosure document. The range does not include Florida coastal locations, which may significantly exceed the amounts shown.

10. TRAINING EXPENSES. The estimates assume travel, meals, auto, and lodging, for two individuals. The cost you incur will vary depending upon factors such as the distance traveled, mode of transportation, *per diem* expenses actually incurred, and the number of persons who will attend training. If you send more than two persons to attend training, we estimate that the additional cost, on a per person basis, will range from \$2,000 to \$4,000 for a Store and \$850 to \$1,700 for a Shop. Lodging, airfares and rental car cost for northern Michigan vary with the seasons, with summer being the peak season.

11. BUSINESS LICENSES. Local, municipal, county, and state regulations vary on what licenses and permits are required by you to operate. These fees are paid to governmental authorities before starting business.

12. PROFESSIONAL FEES. The estimate is for legal, accounting, administrative, traffic studies, demographic studies, and miscellaneous other professional fees that you may incur before you open for business, including (among other things) to assist you in reviewing the Franchise Agreement. Your actual costs may vary, for example, depending on the degree to which you rely upon your advisors, type of financing, lease negotiations, and the permitting process in your city. The hourly rates for advisors, accountants, and legal professionals will also vary.

13. ADDITIONAL FUNDS. You will need capital to support on-going expenses, such as payroll and utilities, to the extent that these costs are not covered by sales revenue. New businesses often generate a negative cash flow. We estimate that the amount given will be sufficient to cover on-going expenses for the start-up phase of the business, which we calculate to be three months. This is only an estimate, however, and there is no assurance that additional working capital will not be necessary during this start-up phase or after. Our estimate is based on information provided to us by franchisees.

14. SECURITY DEPOSITS. The figure is the estimated cost of telephone and utility deposits.

15. TOTAL. While the "low amount" total represents the sum of the lowest estimated initial investment expenditures for each category in the table, and the "high amount" total represents the sum of the highest estimated initial investment expenditures for each category in the table,

we expect that your overall expenditures will fall somewhere between the low amount and high amount range, as it is not common for each of a franchisee's initial investment expenditures to match the lowest expected for each category, nor the highest for each category (for example, while rent costs may be close to the estimated low amount, construction costs may be close to the estimated high amount). These are only estimates, however, and there are numerous ways in which your costs may be higher or lower depending on the choices you make in connection with the development of your Store. You should review these estimates on your own, preferably with a business advisor of your own choosing.

Total actual costs for Stores opened in the past three years range from \$544,883 to \$740,857 for 8 stores that responded with costs for all categories, and were reflective of a typical investment. We do not have historical ranges for Shops, which carry a modified product assortment.

ITEM 8

RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES

In order to maintain the high standards of quality and uniformity associated with the candy products, chocolate candy products, confectionery products and ice cream products featured at all Stores in the System, you may not make or offer or sell any other candy products, chocolate candy products, chocolate molded products, confectionery products, ice cream products, or lines of product that we have not approved at or from the Store. We strictly regulate the sale of edible and non-edible products which may be sold in your Store.

You must buy all of your packaging (napkins, bags, ice cream cones, boxes, cups, dishes, etc.), from us or our affiliates (or from approved suppliers we designate).

You must buy certain Store items including uniforms, product display fixtures, risers, trays, easels, cases, holders, tablecloths, and beverage ice coolers from us or our affiliates.

You must buy all of your chocolate candy products from us or our affiliates.

You must buy all of your ice cream products from us or from our affiliates.

For the small number of products that are not provided exclusively by us or our affiliates or which are made by you in your Store (such as items that are nationally-recognized brands of confectionery items), or that you must purchase only from approved suppliers, we may, instead of designating approved suppliers, approve specific items rather than the supplier of those items. In this case you may buy the approved item from any source you choose as long as the item meets (and continues to meet) our specifications for that item. We have the right to change the specifications, at any time, for any approved item and to disapprove any item or supplier if it does not meet our standards (which may periodically change). We may share credit information with our affiliates, and each of our affiliates have the right to use this information in order to determine how much credit to provide you.

You may not use, purchase, make, offer, give away or sell any products (whether edible or non-edible) that we have not approved in writing.

The purchase of chocolate, food items, ingredients, supplies, materials, and other products from approved suppliers or in accordance with our specifications will represent approximately 29% to 30% of your total purchases in establishing a Shop or a Store, and

approximately 78% to 95% of your total purchases in the continuing operation of a Shop or a Store. We do not provide you with material benefits based upon your purchase of particular products and/or services, or the use of particular suppliers. We (or Quality Confections) will derive revenue from your purchases of chocolate, chocolate candy, ingredients, packaging, and ice cream.

In limited circumstances, we may offer to sell used equipment to our franchisees. During the fiscal year ending December 31, 2023, we received revenues in the amount of \$40,837 from the sale of used equipment to our franchisees, which represented less than one percent of our total revenue of \$16,401,356.

You will be required to procure and maintain certain standardized software in connection with the Kilwins POS system and store operations for your Store. —As noted in Item 5, we will charge you \$3,000 for the Kilwins' standard POS software. During the fiscal year ending December 31, 2023, our revenue from the sale of Kilwins POS software to franchisees was \$64,000, which represented less than one percent of our total revenue of \$16,401,356.

To ensure that the highest degree of quality and service is maintained, you must operate the Store in strict conformity with the methods, standards, and specifications we may periodically designate in the Manual or otherwise in writing.

You must maintain in sufficient supply, and may offer for sale only the items, products, and services that we have approved in writing for sale at Stores. You must offer all types of items and products that we designate, and you may not change the items at your Store unless we have given our prior written approval. You must use only the ingredients, preparation methods, and techniques that we specify. You may not deviate from our standards (for example, standards relating to Approved Products, food preparation, ingredients and recipes) without our prior written consent. If we disapprove of any items, products, or services, in our discretion, you must stop selling and offering those items and services for sale and remove them from your store.

You must buy only approved food items, ingredients, equipment, supplies, beverages, materials (such as packaging), and other (edible and non-edible) products used or offered for sale at the Store. In some cases these products may be purchased only from suppliers (including manufacturers, distributors, and other sources) who we have approved in writing as meeting our then current standards. Our approval of suppliers is conditioned on factors such as their adequate quality controls and capacity to supply your needs promptly and reliably, and whose approval will enable the System, in our sole opinion, to take advantage of marketplace efficiencies. Our criteria for supplier approval are set out in our internal specifications and are not communicated to our franchisees. We will have the right to revoke our approval at any time. We also have the right to appoint only one supplier for any particular item (which may be us or one of our affiliates).

In some cases where specific Approved Products are available from more than one source, we will not designate an approved supplier of that Approved Product. We will instead designate the Approved Product with specifications, and you must buy only the Approved Product, with no substitutions, but you may buy that Approved Product from any supplier of your choosing as long as the specifications are met.

Except as may be noted above, if you want to buy products or equipment from an unapproved supplier, you must submit to us a written request for our approval. You may not buy from any supplier unless we have given our prior written approval of that supplier. Before we approve a supplier, we will have the right to inspect the supplier's facilities and ask that samples

from the supplier be delivered to us or to an independent laboratory that we designated for testing. Either you or the supplier may have to reimburse us for the reasonable cost of the inspection and the actual cost of the test. We may also require that the supplier comply with other requirements that we may deem appropriate, such as payment of licensing fees as well as reasonable continuing inspection fees and administrative costs. We reserve the right, at our option, to periodically re-inspect the facilities, products or equipment of any approved supplier and to revoke our approval if the supplier fails to continue to meet any of our criteria. Nothing in the Franchise Agreement may be construed to require us to approve any particular supplier, nor to require us to make available to prospective suppliers, standards and specifications for formulas that we, in our sole discretion, deem confidential. We formulate criteria in order to maintain the highest level of quality and may revise our criteria periodically. Depending upon the type of product or equipment for which approval is sought, or for which a new approved supplier is proposed, we anticipate providing our response to the request within one to six months after receipt of the request and the accompanying information.

If you want to have an unapproved edible product, unapproved non-edible product, or unapproved packaging, approved for sale in your Store, you must first submit to us a written request asking for our approval using our defined processes. You may not buy or make any additional products unless we have given you our prior written approval to make or sell that product. Our process and criteria for product approval are set out in the Manual.

We require certain trade fixtures and equipment to be purchased according to our specifications. These specifications are set to maintain the Kilwins brand and achieve uniformity in store appearance and product quality. We will recommend certain suppliers of these trade fixtures and equipment. However, as long as you purchase equipment that meets our specifications, you can purchase from suppliers of your own choosing. Nothing in the Franchise Agreement may be construed to require us to approve any particular supplier, nor to require us to make available to prospective suppliers, standards and specifications for trade fixtures and equipment that we deem confidential. We design our trade fixtures and equipment to meet our brand quality and operating requirements and may revise our criteria periodically. Depending upon the type of trade fixtures and equipment for which you seek approval, or for which you propose a new approved supplier, we anticipate providing our response to the request within one to six months after receipt of the request and the accompanying information we require.

We require you to purchase certain uniform apparel and music systems according to our specifications and from approved suppliers in order to maintain uniformity of the Kilwins brand and Store appearance.

Neither we nor our affiliates currently receive revenue from suppliers based on franchisee purchases from those suppliers, including commissions, rebates, or reduced prices for merchandise that we (or our affiliates) buy from the supplier, although we may do so in the future. There are no specific payment arrangements in place with suppliers by which we or any of our affiliates derive revenue.

You must buy (or lease) and maintain a computer system. More detailed information concerning the computer system can be found below in this disclosure document under the heading "Electronic Point-Of-Sale and Computer Systems." In general terms, you must obtain a computer system that includes certain hardware and software items and peripheral devices (such as printers). Among other things, you must meet our requirements concerning: (a) back office and point of sale systems, data, audio, video (including managed video security surveillance), telephone, voice messaging, retrieval, and transmission systems for use at Stores, between or

among Stores, and between and among the Franchised Business, and you, and us; (b) POS Systems; (c) physical, electronic, networking and other security systems and measures to include hardware; (d) printers and other peripheral devices; (e) archival back-up systems; (f) internet access mode (e.g., form of telecommunications connection) and bit speed we require, along with internet redundancy solutions; (g) front-of-the-house WiFi and other internet connectivity for customers digital; (h) cloud-based back-end management systems and storage sites; (i) in shop music systems; and (j) consumer-marketing oriented technology (including customer apps, affinity and rewards hardware and software, facial and other customer-recognition technology, and approved social media/networking sites) (collectively, all of the above are referred to as the **“Computer System”**).

We require that you purchase certain products and items from Quality Confections and from no other source. These items include chocolate products, candy products, and ice cream products, which represent the core retail sales items of a Store. You must also purchase certain other items for the Store from Quality Confections including uniforms, product display fixtures, risers, trays, easels, cases, holders, tablecloths, and beverage ice coolers. The requirement that these products and items be purchased from Quality Confections, our affiliate, is to maintain the quality and uniformity among all Stores. We believe that our goodwill originates from the quality of the products sold and items appearing in Stores. Accordingly, it is only by controlling the source of those products and items that the quality of the confectioneries, ice cream and Store decor can be maintained. Quality Confections is the only designated source for certain varieties of manufactured candy products and ice cream products. Quality Confections is also an approved source for supplies and other candy products. A taster that we employ is designated to approve suppliers and other candy products. Quality Confections may periodically use third parties to manufacture some or all of its ice cream products or other products. Quality Confections does not purchase any of those products from us or our affiliates.

You may be required to manufacture certain candy products that are approved for manufacture in your Store.

We do not, but Quality Confections does, negotiate purchase arrangements with suppliers, including price terms, for the benefit of the Stores operated under the System, including our franchisees.

Quality Confections sells inventory items to you at a price that includes a profit for Quality Confections. Quality Confections does not pay any fee to us based on the amount of its sales to franchisees. Quality Confections reserves the right to establish the credit terms and manner/method(s) or payment of its choosing with respect to the sale of inventory items to franchisees. Quality Confections only sells products to Stores at our direction. If you are in default of the Franchise Agreement, we reserve the right to direct Quality Confections not to sell products to you, or to withhold certain discounts which might otherwise be available to you. The amount of revenue that Quality Confections derived from, or on account of, franchisee purchases of ingredients and products for resale during Quality Confections' last fiscal year was \$41,534,501, which represented 95% of Quality Confections' total revenues. There are no other suppliers in which an officer of the franchisor owns an interest, with the exception of the indirect, beneficial ownership interest in Quality Confections held through Levine Leichtman Capital Partners' investment.

Except as otherwise described above, we and our affiliates are not a supplier of any inventory item. We do not receive rebates, commissions, or other cash payments from other

suppliers that may sell to you. We may on some occasions pay vendors directly on your behalf for items you purchase because the vendor prefers payment in that manner; if so, we will advance the funds and charge you on a pass-through basis.

You are required to obtain and maintain during the term of the Franchise Agreement the insurance policies that we periodically require. You must provide us with certificates of insurance with respect to these insurance policies at least 30 days before the time we require you to carry that insurance, 30 days before the expiration of any policy, and at least 30 days before you renew the Franchise Agreement. The insurance must meet the following requirements:

- The insurance policies must name us (and any of our affiliates that we may require, currently Quality Confections) as an additional insured.
- The insurance must be placed with an approved vendor and a carrier with an A.M. Best's Rating of not less than A-VII and licensed to do business in the state in which the Franchised Business is located.
- The insurance may not be subject to cancellation or any material change except after 30 days' written notice.
- The insurance policies must provide that even if you do not comply with the contract, or engage in other conduct, the insurance coverage will not be voided or otherwise affect the coverage afforded to us and our affiliates.
- The insurance policies must contain a waiver of subrogation in favor of us for casualty losses.
- Minimum coverage requirements include:

Type of Coverage	Limits/Specifications
Commercial General Liability	\$1,000,000 Bodily Injury/Property Damage Per Occurrence / \$2,000,000 Aggregate, with no exclusions for Food Borne Illness, Accidental, & Malicious Contamination or separate endorsement; plus \$100,000 for damage to premises rented to you and \$5,000 for medical expense coverage
Building Improvements and Betterments	At least \$250,000 for a Store (\$80,000 for a Shop) – Special Form Coverage – Full Replacement Cost – No Coinsurance
Business Personal Property	At least \$205,000 for a Store (\$90,000 for a Shop) – Special Form Coverage – Full Replacement Cost – No Coinsurance
Food Borne Illness, Accidental & Malicious Contamination coverage	At least \$1,000,000 (however, if this coverage is already included under your general liability coverage, you do not need to purchase separate additional coverage).
Spoilage	\$10,000
Business Interruption	Either on an actual loss sustained basis for up to 12 months, or in an amount sufficient to cover 12 months

Type of Coverage	Limits/Specifications
	of net profit plus continuing business expenses (including royalty fees).
Business Auto	\$1,000,000 per occurrence
Stop Gap or Employer Liability	\$1,000,000 by disease \$1,000,000 each accident \$1,000,000 policy limit The above coverages are per employee
Workers' Compensation, Employer's Liability and Stop-Gap Liability	Workers' compensation according to state law, but if the state is the sole provider of workers' compensation benefits, you must purchase additional stop gap coverage in the amount of \$1,000,000.
Umbrella Policy	\$1,000,000
Property Insurance	At least 90% of full replacement value for Store due to loss or damage, and including flood, earthquake and volcanic eruption
Flood Coverage	If Store is in a federally designated flood plain, flood insurance in the amounts set out above for property insurance, business personal property insurance, and business interruption insurance.
Wind and Hail Coverage	If the perils of wind or hail are excluded from coverage for property insurance, business personal property insurance, or business interruption insurance, then you must purchase stand-alone coverage for wind and hail damage in the amounts set out for property insurance, business personal property insurance, and business interruption insurance.

If you do not obtain or maintain the requisite coverage, we will have the right (but not the obligation) to pay any premium or obtain the required coverage on your behalf and charge you back for those premiums, plus a 10% surcharge.

Except as specified here, you are not required to purchase any other goods or services in accordance with our specifications or from approved suppliers.

ITEM 9
FRANCHISEE'S OBLIGATIONS

This table lists your principal obligations under the franchise and other agreements. It will help you find more detailed information about your obligations in these agreements and in other items of this disclosure document.

Obligation	Section in Franchise Agreement	Section in Store Construction Agreement	Section in Equipment Management Agreement	Disclosure Document Item
a. Site selection and acquisition/lease	1.2, 5	16	Not Applicable	8 and 11
b. Pre-opening purchases/ leases	3.10, 5	1, 2, 3, 4, 5, and 6	1, 2 and 5	5, 7, and 8
c. Site development and other pre-opening requirements	3.2, 5.1, 5.4	3	Not Applicable	8 and 11
d. Initial and ongoing training	6 and 8.3.3	Not applicable	Not applicable	11
e. Opening	3.7, 5.1, 5.4 and 8.2	3	Not Applicable	11
f. Fees	4, 12.5 (and 2 of Shop Addendum)	4	3	5 and 6
g. Compliance with standards and policies / Operating Manual	1.4, 3.3, 5, 7, 8.4, and 10	6	5	1, 8, 11, and 14
h. Trademarks and proprietary information	1.1 and 9	Not applicable	Not applicable	13 and 14
i. Restrictions on products/ services offered	1.4 and 7	7	6	5, 8, and 16
j. Warranty and customer service requirements	8.3.1	Not applicable	4	Not applicable
k. Territorial development	1.3	Not applicable	Not applicable	12
l. Ongoing product/ service purchases	7	7	6	8
m. Maintenance, appearance and remodeling requirements	5 and 8.6	Not applicable	Not applicable	8

Obligation	Section in Franchise Agreement	Section in Store Construction Agreement	Section in Equipment Management Agreement	Disclosure Document Item
n. Insurance	14	Not applicable	Not applicable	7 and 8
o. Marketing	3.4 and 13	Not applicable	Not applicable	6 and 11
p. Indemnification	21 and Ex. C	Not applicable	Not applicable	Not applicable
q. Owner's participation/ management/ staffing	8.3	Not applicable	Not applicable	15
r. Records/reports	12 and 15.7	5	4	6
s. Inspection/ audits	3.8 and 12	Not applicable	Not applicable	6 and 11
t. Transfer	12.1.1, 16 and 19.5	Not applicable	Not applicable	17
u. Renewal	2.2 (and 4 of Shop Addendum)	Not applicable	Not applicable	17
v. Post-termination obligations	12.1.1, 18 and 19.3	Not applicable	Not applicable	17
w. Non-competition covenants	19	Not applicable	Not applicable	17
x. Dispute resolution	26	11, 12, 13, 14 and 15	9, 10, 11, 12, and 13	17
y. Taxes/permits	5.4 and 20	2(a)	Not Applicable	1
z. Other: Personal Guarantee	Ex. C	Not applicable	Not applicable	15

ITEM 10 **FINANCING**

We do not offer direct or indirect financing. We do not guarantee your note, lease or obligation.

ITEM 11
FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS, AND TRAINING

Except as listed below, we need not provide any assistance to you.

Pre-opening Obligations

We are required by the Franchise Agreement to provide certain assistance and service to you.

Before you open your Store:

- (1) Before the Store opens, we will provide to you, and to your Highly Trained Personnel (defined below), the training programs that we designate. Our training programs will be conducted in the English language. If you do not fluently speak or read the English language you must bring a translator, at your cost, to translate the English language during training. We will be responsible for the cost of instruction and materials. (Franchise Agreement, Sections 6.1-6.2)
- (2) We will provide you, at no charge, our Manual and construction requirements based on an AutoCAD formatted layout to include an equipment schedule and specifications for the Store. (Franchise Agreement, Section 5.7)
- (3) We will inspect and approve the Store for opening before the initial opening. You may not start operation of your Store until receiving our approval to do so. (Franchise Agreement, Section 3.7)
- (4) If you have one or more Stores operating under the System at the time you sign the Franchise Agreement, we may, but are not required to, provide a representative to be present at the opening of the Store. We will provide such additional onsite preopening and opening supervision and assistance as we deem advisable. (Franchise Agreement, Sections 3.2 and 8.2.2)
- (5) We will provide you, on loan, with one copy of the confidential operations manual (the "**Manual**"), which we will have the right to provide in any format we choose (including, but not limited to, paper, CD, electronic media file, or online). (Franchise Agreement, Section 3.3)
- (6) We will assist you in developing the Opening Marketing Program (which is more fully described in Items 6 and below in this Item 11 of this disclosure document); you will be responsible for the cost of instituting this program in your market. (Franchise Agreement, Section 3.6)
- (7) We will provide you with a written list of equipment, utensils and suppliers of such materials that are needed to open your Store. We will also provide you with a list of suggested opening inventory. (Franchise Agreement, Section 3.10)

We are not required by the Franchise Agreement to provide any other service or assistance to you before the opening of your Franchised Business.

Continuing Obligations

We are required by the Franchise Agreement to provide certain assistance and service to you. During the operation of your Franchised Business:

- (1) We may conduct, as we deem advisable, periodic inspections of the Store, and may evaluate the products sold, services rendered and sanitation by your Store. (Franchise Agreement, Section 3.8)
- (2) We will provide ongoing training that we periodically deem appropriate, at such places and times that we deem proper. (Franchise Agreement, Section 6.1)
- (3) Upon your request, we will provide the personal assistance and counsel of our qualified representative, who will be experienced in the operation of Kilwins Stores at the retail level, subject to availability of our staff. If you request this additional assistance (and if we are able to provide it), then you will be charged a daily fee and reasonable expenses for this personal assistance and counsel. (Franchise Agreement, Section 3.11)
- (4) We will administer the Marketing Fund as stated in the Franchise Agreement and as described below in this Item 11. (Franchise Agreement, Section 3.5)

Neither the Franchise Agreement, nor any other agreement, requires us to provide any other assistance or services to you during the operation of the Store.

Site Selection

When you enter into the Franchise Agreement, if you do not have an approved location for your Franchised Business (an “**Approved Site**”), you must sign the “**Search Area Addendum**” attached to the Franchise Agreement as Exhibit K. You may have obtained an Approved Site and a lease for the Approved Site before entering into the Franchise Agreement; if not, then you must enter into the Search Area Addendum. Under the terms of the Search Area Addendum, you must lease, sublease or acquire a site for the Franchised Business, subject to our approval according to our site selection guidelines.

Under the Search Area Addendum, we will grant you an area within which you may search for an Approved Site (the “**Search Area**”). The Search Area is granted only for the purpose of selecting an Approved Site for the Franchised Business during a period of time that you and we will agree upon (the “**Search Period**”). If, during the Search Period but before the Approved Site has been selected, we wish to operate or license another party to operate a Store to be located within the Search Area, we will provide you with notice of the proposed Store location, and you will have a right of first refusal to accept that site for your Franchised Business, as set out in the Search Area Addendum. If you do not select the site within the Search Area that we propose according to this right of first refusal, then we will have the right to establish or license another party to establish a Store at that location.

We will furnish site selection guidelines to you, including our minimum construction standards for a location for the Franchised Business, and such site selection counseling and assistance as we may deem advisable. You must submit to us, in the form we specify, a copy of the site plan and such other materials or information that we may require, together with an option contract, letter of intent, or other evidence satisfactory to us which confirms your favorable

prospects for obtaining the site. We will have 21 days following receipt of this information and materials from you to approve or disapprove the proposed site for the Approved Site of the Franchised Business. If we do not approve a proposed site by written notice to you within this 21-day period, the site will be deemed disapproved. If you are unable to locate an Approved Site for the Franchised Business within 120 days, this will be a default under, and we will have the right to terminate, the Franchise Agreement. Once authorized, the site for the Franchised Business will be the "Approved Site."

The factors we will evaluate in considering whether to approve a site include: general location and neighborhood; pedestrian traffic volume and patterns; type of pedestrian traffic; competition; demographic and traffic patterns, storefront width and visibility, size and ease of access to the proposed site; the proposed lease or sublease; utilities; and zoning issues. We will make our site-selection criteria available to you upon request. We do not typically own the premises for franchised Store locations and lease those out to franchisees.

We estimate that the time period between the signing of the Franchise Agreement and the start of operations will be approximately six months. Factors that may affect this time period include your ability to acquire financing or permits, build out your location, have signs and equipment installed in your location, and complete the required training. You must establish the Franchised Business and have it open and in operation within 365 days after entering into the Franchise Agreement (but not later than 210 days after the purchase, lease or sublease of a suitable site for the Store). If you enter into an Architectural & Engineering Agreement and a Store Construction Agreement for a Kilwins Build Store, we will design, construct, and equip the Store generally within three months after all necessary approvals (for example, building permits) are obtained for the construction of the Store at the Approved Location.

Prices

We may provide you with periodic guidance and assistance in establishing prices. Although we will not set the prices for the products and services offered at the Store, we reserve the right to set reasonable restrictions on the maximum and minimum prices you may charge for the products and services offered and sold at the Store.

Training

Before opening the Franchised Business, you (or if you are an entity, your controlling principal, who is also designated to serve as your general manager and whom we have previously approved to serve in that role (the Operating Partner)) and one full-time general manager (the **"Franchised Business Manager"**), must attend and successfully complete, to our satisfaction, the initial training program we offer. (Franchise Agreement, Section 6.2)

You may send up to four individuals (including the Highly Trained Personnel (defined below)) to the initial training program. If you ask to send more than four individuals to the initial training program, then you must pay us a training fee (as described in Item 6 above) for each additional individual that will attend the initial training program, with payment to be made in full before initial training starts.

The term “**Highly Trained Personnel**” means: (a) you; (b) the Operating Partner; and (c) the Franchised Business Manager. The Franchised Business Manager may serve as the Operating Partner regardless of the equity interest the Franchised Business Manager holds in Franchisee.

One of the Highly Trained Personnel who has successfully completed our training program must always be actively managing the Franchised Business. At least one of the “Highly Trained Personnel,” who has successfully completed our training program, must be in the store at all times with our opening team while we are onsite to assist with the store opening. If any of the Highly Trained Personnel cease active management or employment at the Franchised Business, or if we disapprove of any of the Highly Trained Personnel, then you must enroll a qualified replacement who is acceptable to us in our initial training program within 30 days. The replacement and the franchisee must attend and successfully complete the management training program, to our reasonable satisfaction, as soon as it is practical to do so. We will provide you with one replacement training session during the term of the Franchise Agreement, for up to a total of four individuals. If you ask to send more than four individuals to a replacement training session, or if you request more than one replacement training session, then you must pay us a training fee (as specified in Item 6 above) for each replacement session, plus all other expenses we incur in connection with the training (including the costs of transportation, lodging, and meals).

Your Highly Trained Personnel may also be required to attend refresher courses, seminars, and other training programs that we may periodically specify.

You may be required to enroll each of your employees in our web-based training program, for which there may be an annual charge per employee, as described above in Item 6.

We will bear the cost of all training (instruction and required materials) (except for additional and replacement training, and web-based training, as noted above and in Item 6). You will bear all other expenses incurred in attending training, such as the costs of transportation, lodging, meals, wages, and worker’s compensation insurance (see Items 6 and 7 of this disclosure document).

The subjects covered in the initial training program are described below.

TRAINING PROGRAM

	Store		Shop		
Subject	Hours Of Class-Room Training	Hours Of On-The-Job Training	Hours Of Class-Room Training	Hours Of On-The-Job Training	Location
Background & History, Kilwins Philosophy	2.0	0	2.0	0	Petoskey, Michigan
Operations Manual and Preparing You to Train Your Team Members	1.5	8.0	1.5	2.0	Petoskey, Michigan
Pre-Opening Activities	1.5	0	1.5	0	Petoskey, Michigan

	Store		Shop		
Subject	Hours Of Class-Room Training	Hours Of On-The-Job Training	Hours Of Class-Room Training	Hours Of On-The-Job Training	Location
General Operations	1.0	5.0	1.0	5.0	Petoskey, Michigan
Franchise Site	6.0	0	3.0	0	Petoskey, Michigan
Employee Orientation to Zone Training	2.0	6.0	1.0	2.0	Petoskey, Michigan
Management Training	4.0	0	2.0	0	Petoskey, Michigan
Production training	1.0	1.0	1.0	1.0	Petoskey, Michigan
Production: Made in Store Products	2.5	60.0	1.0	8.0	Petoskey, Michigan
Ordering & Delivery	3.0	2.0	3.0	1.0	Petoskey, Michigan
Marketing	3.0	2.0	1.5	1.5	Petoskey, Michigan
Building Your Team	2.0	1.0	2.0	1.0	Petoskey, Michigan
Budgeting	3.0	0	1.5	0	Petoskey, Michigan
Merchandising	3.0	3.0	1.0	.5	Petoskey, Michigan
Selection & Pricing	0	6.0	0	3.0	Petoskey, Michigan
POS System Training	3.0	3.0	2.0	3.0	Your Store
Daily Store Operations - Support	0	36.0	0	12.0	Your Store
Store Set-up/ Merchandising/ Staffing	2.5	24.0	1.0	8.0	Your Store
Support as You Train Your Team	2	16.0	1.0	8.0	Your Store
Total	43	173	27	56	

Training for a Store will be conducted over a two-week period at a location of our choosing (typically, our headquarters in Petoskey, Michigan) for a minimum of fourteen days (Session 1), plus a minimum of six days in your Store (Session 2). Training for a Shop will be conducted over a one-week period at a location of our choosing (typically, our headquarters in Petoskey,

Michigan) for a minimum of six days (Session 1), plus a minimum of four days in your Shop (Session 2). Each day of training consists of a minimum of eight hours per day. Training is conducted as frequently as we determine it necessary in order to hold a training class. The initial training program must be completed at least 30 days before you open the Store.

Jeff Deming, our Director of Franchise Relations, is responsible for supervising the initial training program. Mr. Deming is identified in Item 2 above and has nine years of experience with both us and with the subjects taught during training.

The instructional materials for our training programs include the Manual, lecture, discussions, and practice.

Marketing

As described in Item 6 above, for each month during the term of the Franchise Agreement, you must contribute an amount up to 5% of your Franchised Business' Gross Sales during the preceding month (the "**Marketing Contribution**"). We will have the right to allocate your Marketing Contribution in the proportion that we designate among the following: (a) the Marketing Fund; or (b) local marketing, consisting of expenditure on local marketing and promotion (and/or contributions to a Regional Fund, if one is established for your area). (Franchise Agreement, Section 13.2). The current allocation of the Marketing Contribution is to contribute 3% of Gross Sales to the Marketing Fund, but we have the right to make changes to that allocation by giving you written notice of the change, and those changes will take effect at the end of that month.

You must also conduct an Opening Marketing Program when your Store opens, as described below.

We have not yet established any Regional Funds. We do not have an advertising council composed of franchisees.

None of the amounts that we collect or hold in connection with the Marketing Fund or a Regional Fund will be used for marketing that is principally a solicitation for the sale of franchises. We do not receive payment for providing goods or services to the Marketing Fund. An accounting of the Marketing Fund's operations, as shown on our books, will be prepared annually, and that accounting will be made available to you upon request. As described below, we are not required to spend any particular amount on marketing in the area where your Store is located. As also described below, if amounts are unspent in the Marketing Fund at fiscal year-end, those amounts are carried over by the Marketing Fund for expenditure in future years.

The Marketing Fund

We will have sole discretion over how the Marketing Fund creates, places, and pays for national marketing. We (or our designee, which might be a corporate subsidiary or a marketing agency) will maintain and administer the Marketing Fund, as follows:

- (a) We or our designee will direct all marketing programs, with sole discretion over the concepts, materials, and media used in these programs and the placement and allocation of the programs. The Marketing Fund is intended to maximize general public recognition (building the Kilwins brand), acceptance, and use of the System. We will have the sole right to decide how the Marketing Fund creates, places, and pays for marketing. Neither we nor our designee are obligated to make

expenditures for you that are equivalent or proportionate to your contribution, or to ensure that any franchisee benefits directly or pro rata from expenditures by the Marketing Fund.

- (b) The Marketing Fund, all contributions, and any earnings, will be used exclusively to meet the costs of marketing and any other activities that we believe will enhance the System's image and, in our sole discretion, promote general public awareness of and favorable support for the System.
- (c) You must make your contributions to the Marketing Fund and to any Regional Fund by electronic funds transfer using the Automated Clearing House (ACH) Network by the tenth calendar day of each month based on your Gross Sales in the previous month. All sums you pay to the Marketing Fund will be recognized as revenue. The intent is to use those funds for services related to the direction and implementation of the Marketing Fund and marketing programs for you and the System (for example, costs of personnel for creating and implementing, advertising, merchandising, promotional and marketing programs). Those items will be recorded as expenses incurred. The funds received will not be used to solicit the sale of franchises. We or our designee will maintain separate bookkeeping accounts for the Marketing Fund.
- (d) The Marketing Fund is not and will not be our asset, and the Marketing Fund is not audited.
- (e) Although the Marketing Fund is intended to be of perpetual duration, we maintain the right to terminate the Marketing Fund. The Marketing Fund will not be terminated, however, until all monies in the Marketing Fund have been expended for marketing purposes.

During our fiscal year ended December 31, 2023, the expenditures of the Marketing Fund were as follows:

4% on Website marketing and online graphics library
 66% on creation and production of merchandising
 30% on consulting and other services

Regional Funds

We currently do not have any Regional Funds, however, we have the right, as we see fit, to establish a Regional Fund for your region. The purpose of a Regional Fund is to conduct marketing campaigns for the Stores located in that region.

If a Regional Fund for your area was established before you began to operate your Store, then when you open your Store, you must immediately join that Regional Fund. If a Regional Fund for your area is established after you begin to operate your Store, then you will have thirty days to join the new Regional Fund. You will not be required to be a member of more than one Regional Fund. The following provisions will apply to each Regional Fund (if and when established):

- (a) Regional Funds will be established, organized, and governed in the form and manner that we have approved in advance.

- (b) Regional Funds will be organized for the exclusive purpose of administering regional marketing programs and developing (subject to our approval) standardized marketing materials for use by the members in regional marketing.
- (c) Regional Funds may not use marketing, advertising, promotional plans, or materials without our prior written approval, as described below.
- (d) You must submit contributions to the Regional Fund by electronic funds transfer using the Automated Clearing House (ACH) Network by the tenth calendar day of each month based on your Gross Sales in the previous month. At the same time, you will have to submit the reports that we or the Regional Fund require. We may require that your Regional Contribution and reports to the Regional Fund be made to us for distribution to the Regional Fund.
- (e) A majority of the Store owners in any Regional Fund may vote to increase the amount of each Store owners' Regional Contribution by up to an additional 2% of each Store's Gross Sales. In the event of such a vote to increase the amount of each Store owners' Regional Contribution, the increase shall apply to only those Store Owners who contribute 1% or more of each Store's Gross Sales to the Regional Fund being increased. Voting will be based on one vote per Store, and the Stores we operate in the region, if any, will have the same voting rights as those owned by franchisees.
- (f) Although, if established, a Regional Fund is intended to be of perpetual duration, we maintain the right to terminate any Regional Fund. A Regional Fund will not be terminated, however, until all monies in that Regional Fund have been expended for marketing purposes.

Local Marketing

Certain criteria will apply to the local marketing that you conduct. All your local marketing must be dignified, must conform to our standards and requirements, and must be conducted in the media, type, and format that we have approved. You may not use any marketing, advertising, or promotional plans that we have not approved in writing. You must submit to us samples of all proposed plans and materials (unless, within the previous six months, we prepared or already approved the plans or materials). You are not required to obtain our approval of the prices you intend to charge. If you email us with your request for approval, along with all needed information, we will ordinarily provide you with our response (whether approval or disapproval) to the proposed plans or materials within three business days; but if we do not give our approval within fifteen days, we will have been deemed to disapprove the plans or materials.

All copyrights in and to marketing, advertising and promotional materials you develop (or that are developed for you) will become our sole property. You must sign the documents (and, if necessary, require your independent contractors to sign the documents) that we deem reasonably necessary to implement this provision. (The requirements in this paragraph, as well as in the previous paragraph, also apply to any Regional Funds.)

In addition to (and not in place of) your ongoing local marketing expenditures, you must spend not less than \$10,000 on local marketing conducted for the Store's opening (the "**Opening Marketing Program**") in accordance with the Opening Marketing Program you and we agree upon and also according to our specifications. You must complete the Opening Marketing

Program no later than three months after the Store first opens for business. All materials used in the Opening Marketing Program will be subject to our prior written approval, as described above. The Opening Marketing Program is considered “local marketing” and is therefore subject to the restrictions described below. We will work with you to tailor your Opening Marketing Program to your market.

We will periodically make available to you, for purchase, certain marketing materials for your use in local advertising and promotion.

As used in the Franchise Agreement, the term “**local marketing**” refers to only the direct costs of purchasing and producing marketing materials (such as camera-ready advertising and point of sale materials), media (space or time), promotion, and your direct out-of-pocket expenses related to costs of marketing in your local market or area. Local marketing and promotion also include associated advertising agency fees and expenses, postage, shipping, telephone, and photocopying costs. Local marketing does not, however, include any of the following:

- (a) Salaries, incentives or discounts offered to your employees, and your employees’ expenses;
- (b) Charitable, political, or other contributions or donations;
- (c) The value of discounts given to consumers;
- (d) The cost of food items; and
- (e) Specialty items (e.g., cups, banners and t-shirts), unless they are a part of a market wide advertising and sales promotion program (if so, only to the extent you do not recover the cost of the items by the promotion), and we have first provided written permission for these items.

Websites (as defined below) are considered “marketing” under the Franchise Agreement and are subject (among other things) to our review and prior written approval before they may be used.

Electronic Point-Of-Sale and Computer Systems

We require our franchisees to purchase a Computer System. You must meet our requirements concerning the then-standard Computer System. Our standard Point of Sale (POS) system consists of a PC-based hardware platform (including PC processor and peripheral hardware devices such as touch screens, printers, bar code readers, card readers, cash drawers, scales, battery back-up, etc.). The hardware is non-proprietary, and you must buy it from our authorized supplier. The software licensing fee will be paid monthly to us or our designated vendor. You must purchase the exact hardware that we specify and our standard POS software. (Please refer to Item 5 for information regarding the initial POS and other Fees and Item 6 regarding the monthly Technology Fee and other monthly software and services related to, but not limited to, POS, Accounting, Backoffice, Network, and other Support Fees.) You must be able to maintain a continuous cabled (not wireless) connection to the internet to send and receive POS data to/from us. Wireless connections to the internet are not authorized or supported for the POS system. You must establish merchant accounts and internet-based credit card and gift card authorization accounts that we designate for use with online card authorizations.

We have the right to develop or have developed for us, or to designate: (a) computer software programs and accounting system software that you must use in connection with the Computer System ("**Required Software**"), which you must install; (b) updates, supplements, modifications, or enhancements to the Required Software, which you must install; (c) the tangible media upon which you must record data; and (d) the database file structure of your Computer System.

We rely on suppliers to provide support for the hardware and software and we may require that you enter into service contracts directly with the hardware and software suppliers and pay the suppliers directly for this support.

We estimate that the cost of purchasing required POS computer hardware and software will typically be \$12,286, but may cost as much as \$14,134, plus sales tax applicable to location of the Store.

The estimated annual cost of POS maintenance, support, and upgrades is \$2,220, and the estimated annual cost for network, internet, telephone service and support is \$3,000. Neither we nor any of our affiliates have an obligation to provide ongoing maintenance, repairs, upgrades, or updates to your computer hardware or software.

You must be able to access information that is available on the Internet and be able to send and receive email. We may periodically require you to upgrade and update the hardware and software used in connection with the Computer System. There are no contractual limitations on the frequency and cost of these upgrades and updates. We reserve the right to approve your email address or require you to use only an e-mail address that we provide for your Store's business e-mails.

We may permit or require you to use a "Kilwins" e-mail address (that is, one that will contain the Top-Level Domain Name "kilwins.com" or "kilwinsfranchise.com" as we require) (the "Kilwins e-mail address") in connection with the operation of the Store. You will be required to sign our current form of Users' Access Privilege and E-Mail Agreement, appended to the Extranet Agreement (Exhibit H to the Franchise Agreement) as Exhibit H-2, for this purpose.

You must afford us unimpeded access to your Computer System in the manner, form, and at the times we may request. We will have the right at any time to retrieve and use this data and information from your Computer System in any manner we deem necessary or desirable, and there are no contractual limits on such access or use.

We have the right to require you to use one or more designated telephone vendors. If we so require, you must use our designated telephone vendors for the phone service to your Store. We may designate, and own, the telephone numbers for your Franchised Business.

You must also participate in our gift card. Loyalty and incentive programs. The gift card program, which is mandatory for our franchisees, was implemented to provide franchisees with an efficient system to sell and redeem gift cards and to build the brand while increasing individual Store awareness and sales by driving customers to Stores. Cards may be purchased online at our website (www.kilwins.com) or at any Store and may be redeemed for purchases online or at any Store. You will incur approximately \$50 in initial costs with the gift card vendor. You also will incur ongoing fees (the vendor's current fees are \$5 per month and 18¢ per card swipe).

You must offer for sale, and honor for purchases by customers, all gift cards and other incentive or convenience programs that we may periodically institute (including loyalty programs that we or a third-party vendor operate, as well as mobile payment applications); and you agree to do all of those things in compliance with our standards and procedures for such programs. For this purpose, you must purchase the software, hardware, and other items needed to sell and process the above programs.

Online Sites

Unless we have otherwise approved in writing, you agree to neither establish nor permit any other party to establish an Online Site relating in any manner whatsoever to your Store or referring to the Proprietary Marks. We will have the right, but not the obligation, to provide one or more references or webpage(s), as we may periodically designate, within our Online Site. The term “**Online Site**” means one or more related documents, designs, pages, or other communications that can be accessed through electronic means, including, but not limited to, the Internet, World Wide Web, webpages, microsites, social media sites, social networking sites (including Facebook, Twitter, LinkedIn, YouTube, TikTok, Pinterest, Instagram, etc.), blogs, vlogs, podcasts, applications to be installed on mobile devices (for example, iPhone, iPad or Android apps), and other applications, etc. However, if we approve a separate Online Site for you (which we are not obligated to provide and as to which we may rescind any approval we may have given), then each of the following provisions will apply: (1) you may neither establish nor use any Online Site without our prior written approval; (2) before establishing any Online Site, you must submit to us, for our prior written approval, a sample of the proposed Online Site, including its domain name, format, visible content (including, without limitation, proposed screen shots), and non-visible content (including meta tags), in the form and manner we may require; (3) you must not use or modify an Online Site without our prior written approval; (4) you must comply with the standards and specifications for Online Sites that we may periodically prescribe in the Manuals or otherwise in writing; (5) if we require, you must establish hyperlinks to our Online Site and other Online Sites; and (6) we may require you to make us the sole administrator (or co-administrator) of any social networking pages that you maintain or that are maintained on your behalf.

Manuals

The table of contents of the Manual is attached as Exhibit H. The total number of pages in the Manual is currently 7,868 pages.

ITEM 12 **TERRITORY**

Franchise Agreement

During the term of the Franchise Agreement, and except as provided otherwise in that agreement, we will not establish or license anyone else to establish, another Kilwins Store at any location within the “Protected Territory” that is designated in your Franchise Agreement. The Protected Territory will typically be a circle, the center of which will be the front door of the Store, and that circle will have a radius that is specified in your Franchise Agreement, but your actual Protected Territory may be defined differently, depending on your desired location’s characteristics. There is no minimum Protected Territory that will be granted to you. We (and our affiliates) retain all rights not specifically granted to you. We will have the right (among other things), on any terms and conditions that we deem advisable, and without granting you any rights,

to do any or all of the following:

- To use and license others to use the System and Proprietary Marks for the operation of Stores at any location outside the Protected Territory in your Franchise Agreement, despite the proximity to your Protected Territory;
- To acquire (or be acquired) and, upon acquisition, operate any business or stores of any kind, whether located inside or outside the Protected Territory in your Franchise Agreement, despite the proximity of such businesses to your Store (except that we will not do so from a Kilwins Store located in your Protected Territory);
- To use and license others to use the Proprietary Marks, and other marks, for the operation of stores at any location, even if those stores and marks are the same as, or similar to, the Store and Proprietary Marks, and despite those stores' proximity to the Approved Location under your Franchise Agreement (except that we will not do so from a Kilwins Store located in your Protected Territory); and
- To sell and distribute, or license others to sell and distribute, directly or indirectly, any products or services from any location or to any purchaser (including, among other things, the sale of products or services at wholesale and to purchasers in the Protected Territory through supermarkets, gourmet shops, specialty shops, convenience stores, mail order, and on the Internet, under our Proprietary Marks or as private-labeled items), so long as these sales are not made from a "Kilwins" Store operated inside the Protected Territory (excluding National Accounts (defined below)).

You will not receive an exclusive territory. You may face competition from outlets from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control. We, our affiliates, and our designees now sell and will continue to sell and distribute Kilwins brand products from any location and to any purchaser, even if that purchaser is located in the Protected Territory in your Franchise Agreement. We will have the right to sell and distribute these Kilwins brand products by any method or channel of distribution other than through Kilwins Stores located in your Protected Territory (including for example the Internet, mail order, and certain kinds of kiosk-type formats, as well as at major events such as carnivals, fairs, sporting events and concerts ("**Major Events**"). We will not compensate you for sales we may make at Major Events, to purchasers (or recipients) located in your Protected Territory, or in the alternative distribution channels that are described above. The Protected Territory does not include a protected territory for any other franchised Stores for which you (or your affiliate) have entered into a Franchise Agreement with us.

If we determine that certain kinds of temporary kiosk-type formats or Major Events located within your Protected Territory afford sufficient opportunity for sales, then you will have the first right to operate that temporary kiosk or other representation at a Major Event. If you do not exercise that right once it is offered to you, on the terms it might be offered to you, then we, or our affiliates, or our designees may operate that business within your Protected Territory.

We retain the right to prohibit your Store (and other Stores) from delivering products outside of the Protected Territory, but we may or may not prohibit other Stores (whether operated or franchised by us) from providing delivery service to customers at any location. This means that

other Stores (whether operated or franchised by us) may or may not provide delivery services into your Protected Territory.

Our business model is for retail sales made in-person to retail customers from within a single Store location. You may only offer and sell products face to face to retail customers for consumption on the Store's premises, for personal carryout consumption, and for pick up or delivery service in a manner that complies with our standards. You may only sell products to end-users and other entities that do not resell the products, and you may not sell products to people or entities that will re-sell the products. You may not sell products to gift shops and similar type stores. We will have the right to review and approve (or not approve) any proposed sale of the products to a hotel or a restaurant, or any other customer (which may be required to comply with our standards in order to feature or give away Kilwins brand products). All sales will be counted in "Gross Sales."

You may not sell products to any hotel, restaurant or to any other customer that sells, resells or intends to resell those products. If you wish to sell products to a hotel or a restaurant, or to any similar customer who intends to give away the product(s) as a part of a normal course of business or to use in any way, you must first submit to us a written request seeking our approval of the sale, and any additional information we may reasonably request, and we will have the right to approve or reject that proposed sale. If we approve, we will have the right to impose such conditions as we deem necessary and we may, in turn, require the hotel, restaurant or other customer to comply with our standards with respect to the proposed products for sale. We will also have the right to require you to stop selling these products to any restaurant, hotel, or other customer.

The Approved Location for the Store will be specified in the Franchise Agreement. You may not relocate the Store without our prior written approval. If you ask to relocate the Store, we will evaluate your request on the basis of the same standards that we apply to reviewing the proposed location of a Store for a new franchisee.

A "**National Account**" is any regional or national business with multiple locations (including licensed and franchised locations) that we designate as a "National Account." We will give you the first opportunity to provide Approved Products and services to National Accounts headquartered in your Protected Territory (if feasible) according to our standards and the terms of the Franchise Agreement. We will negotiate and agree to terms with each National Account regarding the Approved Products and services to be provided at each of their locations. If you provide Approved Products or services to a National Account, you must do so on the prices and terms that we have negotiated with the National Account and subject to your obligations and covenants under the Franchise Agreement. We will have the right to require you to stop selling Approved Products to any National Account. You agree to not sell Approved Products to any National Account without our prior written approval, and you also agree to stop selling Approved Products to any National Account if we direct you, in writing, to do so.

You may solicit customers and use advertising materials for the Franchised Business (approved under the Franchise Agreement) within your Protected Territory. For any customer solicitation or advertising of the Franchised Business you wish to conduct outside your Protected Territory, you must first obtain our prior written consent.

If we implement a delivery program, you may be required to participate in that program and adhere to our standards and procedures. You must purchase the software, hardware, signs, graphics, packaging, and other items, and pay the fees imposed by third party vendors (such as

delivery fees) that may be needed to implement the delivery program from your Store. You must abide by our standards for the delivery program as specified in the Manuals and elsewhere, which may include specifications as to the methods, vendors, place, and implementation of delivery and catering services, required packaging materials, as well as any additional insurance requirements.



There are no circumstances under the Franchise Agreement that permit us to modify your Protected Territory so long as you stay in compliance with the terms of your Franchise Agreement.



Under the Franchise Agreement you will not have any options, rights of first refusal, or similar rights to acquire additional franchises or other rights, whether inside the Protected Territory or elsewhere.

Our affiliates, including those described in Item 1 above (and other companies that currently or in the future may be owned by investment funds managed by LLCP), may operate or franchise businesses that sell similar goods or services to those that our franchisees sell. These other brands currently maintain offices and training facilities that are physically separate from ours. Most of our affiliates are not direct competitors of the “Kilwins” franchise network, given the products or services they sell, although some may be, as described in Item 1. The businesses that our affiliates and their franchisees operate may solicit and accept orders from guests near your “Kilwins” business. Because they are separate companies operating under separate brands, we do not expect any conflicts between our franchisees and our affiliates’ franchisees regarding territory, guests, and support, and we have no obligation to resolve any perceived conflicts that might arise.

ITEM 13
TRADEMARKS, SERVICE MARKS, TRADE NAMES,
LOGOTYPES, AND COMMERCIAL SYMBOLS

You will be licensed by the Franchise Agreement to use our Proprietary Marks, including the principal marks described below:

Mark	Registration No.	Registration Date
KILWIN'S	1276447	May 1, 1984
KILWIN'S	3870466	November 2, 2010
	4126689	April 10, 2012
KILWINS	4084068	January 10, 2012
	4088099	January 17, 2012

Mark	Registration No.	Registration Date
	4095558	February 7, 2012
	4264060	December 25, 2012

The above-listed registrations appear on the Principal Register of the U.S. Patent and Trademark Office. We filed, and intend to file when due, an affidavit of use and an affidavit of incontestability, as well as a renewal application, for the registrations listed above.

There are no currently effective determinations of the U.S. Patent and Trademark Office, the trademark administrator of this state, or of any court, nor any pending interference, opposition, or cancellation proceedings, nor any pending material litigation involving the trademarks, service marks, trade names, logotypes, or other commercial symbols which is relevant to their use in this state or any other state in which the Franchised Business is to be located. There are no agreements currently in effect which significantly limit our rights to use or license the use of the Proprietary Marks (including trademarks, service marks, trade names, logotypes, or other commercial symbols) that are in any manner material to the franchise. There are no infringing uses actually known to us which could materially affect your use of the Proprietary Marks in this state or elsewhere.

You must promptly notify us of any suspected infringement of the Proprietary Marks, any challenge to the validity of the Proprietary Marks, or any challenge to our ownership of, or your right to use, the Proprietary Marks licensed under the Franchise Agreement. Under the Franchise Agreement, we will have the sole right to initiate, direct, and control any administrative proceeding or litigation involving the Proprietary Marks, including any settlement of the action. We also have the sole right, but not the obligation, to take action against uses by others that may constitute infringement of the Proprietary Marks. If you used the Proprietary Marks in accordance with the Franchise Agreement, we will defend you at our expense against any third party claim, suit, or demand involving the Proprietary Marks arising out of your use. If you did not use the Proprietary Marks in accordance with the Franchise Agreement, we will defend you, at your expense, against those third party claims, suits, or demands.

If we undertake the defense or prosecution of any litigation concerning the Proprietary Marks, you must sign any documents and agree to do the things as may, in our counsel's opinion, be necessary to carry out such defense or prosecution, such as becoming a nominal party to any legal action. Except to the extent that the litigation is the result of your use of the Proprietary Marks in a manner inconsistent with the terms of the Franchise Agreement, we agree to reimburse you for your out of pocket costs in doing these things, except that you will bear the salary costs of your employees, and we will bear the costs of any judgment or settlement. To the extent that the

litigation is the result of your use of the Proprietary Marks in a manner inconsistent with the terms of the Franchise Agreement, you must reimburse us for the cost of the litigation, including attorneys' fees, as well as the cost of any judgment or settlement.

If it becomes advisable at any time in our sole judgment for you to modify or discontinue using any Proprietary Mark or for you and the Store to use one or more additional or substitute trade or service marks, you will have to immediately comply with our directions. Neither we nor our affiliates will have any obligation to reimburse you for any expenditures you make because of any discontinuance or modification.

ITEM 14 **PATENTS, COPYRIGHTS, AND PROPRIETARY INFORMATION**

Patents and Copyrights

We do not own any patents that are material to the franchise being offered. We own common law copyrights in the Manuals, our recipe books, certain drawings, and advertising materials, and we will make these available to you. These materials are our proprietary property and must be returned to us upon expiration or termination of the Franchise Agreement.

We will furnish you, under the terms of the Franchise Agreement, with standard floor plans and specifications for construction of a Store. You may be required to employ a licensed architect or engineer, who will be subject to our reasonable approval, to prepare plans and specifications for construction of your Store, based upon our standard plans. These revised plans will be subject to our approval. You will be entitled to use the plans only for the construction of a single Store at the site approved in the Franchise Agreement, and for no other purpose. We will require your architect and contractor to agree to maintain the confidentiality of our plans and to assign to us any copyright in the derivative plans they create.

There are no currently effective determinations of the Patent and Trademark Office, Copyright Office, or any court concerning any copyright. There are no currently effective agreements pursuant to which we derive our rights in the copyrights which could limit your use thereof. The Franchise Agreement does not obligate us to protect any of the rights that you have to use any copyright, nor does the Franchise Agreement impose any other obligation upon us concerning copyrights. We are not aware of any infringements that could materially affect your use of any copyright in any state.

Confidential Manuals

In order to protect our reputation and goodwill and to maintain high standards of operation under our Proprietary Marks, you must conduct your business in accordance with the Manual. We will lend you one set of our Manual, which we have the right to provide in any format we choose (including paper, CD, or online), for the term of the Franchise Agreement.

You must at all times accord confidential treatment to the Manual, any other manuals we create (or that we approve) for use with the Franchised Business, and the information contained in the Manual. You must use all reasonable efforts to maintain this information as secret and confidential. You may never copy, duplicate, record, or otherwise reproduce the Manual and the related materials, in whole or in part (except for the parts of the Manual that are meant for you to copy, which we will clearly mark as such), nor may you otherwise let any unauthorized person

have access to these materials. The Manual will always be our sole property. You must always maintain the security of the Manual.

We may periodically revise the contents of the Manual, and you must consult the most current version and comply with each new or changed standard. If there is ever a dispute as to the contents of the Manual, the version of the Manual (that we maintain) will be controlling.

Confidential Information

Except for the purpose of operating the Store under the Franchise Agreement, you may never (during Franchise Agreement's term or later) communicate, disclose, or use for any person's benefit any of the confidential information, knowledge, or know-how concerning the operation of the Franchised Business that may be communicated to you or that you may learn by virtue of your operation of a Store. You may divulge confidential information only to those of your employees who must have access to it in order to operate the Franchised Business. Any and all information, knowledge, know-how, and techniques that we designate as confidential will be deemed confidential for purposes of the Franchise Agreement. However, this will not include information that you can show came to your attention before we disclosed it to you; or that at any time became a part of the public domain, through publication or communication by others having the right to do so.

In addition, you must require each of your Principals, your Principal's current and future spouses, and your Store Managers to sign confidentiality covenants. Every one of these covenants must provide that the person signing will maintain the confidentiality of information that they receive in their employment or affiliation with you or the Store. These agreements must be in a form that we find satisfactory, and must include, among other things, specific identification of our company as a third party beneficiary with the independent right to enforce the covenants. Our current form for this agreement is attached as Exhibit J to the Franchise Agreement. Once signed, you must provide us with a copy of each executed confidentiality agreement.

ITEM 15 **OBLIGATION TO PARTICIPATE IN THE** **ACTUAL OPERATION OF THE FRANCHISE BUSINESS**

The Franchise Agreement requires that you (or one of your designated management employees who will assume primary responsibility for the franchise operations and who we have previously approved in writing) must devote full time, energy, and best efforts to the management and operation of the Store. We do not require the on-premises supervisor of the Store to have an equity interest in you, if you are an entity.

The Franchise Agreement does not require you to participate personally in the direct operation of the Store, although we encourage and recommend active participation by you. If you are a corporation, partnership, or other entity, we require all of your owners and their current and future spouses, at the time the Franchise Agreement is signed and during the term of this agreement, to sign a guarantee (in the form attached to the Franchise Agreement as Exhibit C) of the performance of your obligations under the Franchise Agreement.

During the term of the Franchise Agreement, it is your obligation to inform us of any change in the marital status of your Principals and deliver to us any new spouse's guarantee of the performance of your obligations under the Franchise Agreement.

You and your staff must, at all times, cooperate with us and with our representatives.

ITEM 16
RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL

You may sell and provide only products and services that conform to our standards and specifications. You also will have certain obligations to offer for sale particular items. We have the right, without limit, to change the types of authorized products and services.

In some cases, you may sell non-edible products to retail customers, but all products in your Store, whether edible or non-edible, must be approved in writing in order to be sold in your Store. Any products, whether edible or non-edible, which are not approved in writing by us, may not be sold in your Store.

You may only offer and sell products to retail customers for consumption on the Store’s premises, for personal carry-out consumption, and for delivery service in a manner that complies with our standards. You may also sell products to end-users and other entities that do not resell the products. You may not sell products to gift shops and similar type stores. We will have the right to review and approve (or not approve) any proposed sale of the products to a hotel or a restaurant (which may be required to comply with our standards in order to feature or give away Kilwins brand products). All sales will be counted in “Gross Sales.”

The Approved Location for the Store will be specified in the Franchise Agreement. You may not relocate the Store without our prior written approval. If you ask to relocate the Store, we will evaluate your request on the basis of the same standards that we apply to reviewing the proposed location of a Store for a new franchisee.

ITEM 17
RENEWAL, TERMINATION, TRANSFER, AND DISPUTE RESOLUTION

THE FRANCHISE RELATIONSHIP

This table lists important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this disclosure document.

Provision*	Section in Agreement	Summary*
a. Length of the franchise term	§ 2.1 of Franchise Agreement	10 years
b. Renewal or extension of the term	§ 2.2 of Franchise Agreement (and § 4 of Shop Addendum).	For a Store, there would be one additional 10-year term from the Effective Date, subject to certain contractual requirements described in “c” below. There is no renewal right for a Shop.

Provision*	Section in Agreement	Summary*
c. Requirements for you to renew or extend	§§ 2.2.1 - 2.2.10 of Franchise Agreement	Written notice, renovate/modernize Store premise, upgrades to computer hardware and software to conform with then-current standards, satisfaction of monetary obligations, not be in default of the Agreement, sign release, comply with then current qualification and training requirements, compliance with Franchise Agreement, sign our then-current form of Franchise Agreement (which may contain materially different terms and conditions than the original contract).
d. Termination by you	Not applicable	
e. Termination by us without cause	Not applicable	
f. Termination by us with cause	§ 17 of Franchise Agreement; § 4(c) of the Store Construction Agreement; § 3(b) of the Equipment Management Agreement	<p>Default under Franchise Agreement, bankruptcy, abandonment, and other grounds; see § 17 of the Franchise Agreement. If you fail to pay us, we can terminate the Store Construction Agreement, Architectural & Engineering Agreement and Equipment Management Agreement</p> <p>Under the U.S. Bankruptcy Code, we may be unable to terminate the Franchise Agreement merely because you make a bankruptcy filing.</p>
g. "Cause" defined – curable defaults	§ 17.3 of Franchise Agreement	All other defaults not specified in §§ 17.1 and 17.2 of the Franchise Agreement

Provision*	Section in Agreement	Summary*
h. "Cause" defined - non-curable defaults	§§ 17.1 and 17.2 of Franchise Agreement; § 4(c) of the Store Construction Agreement; § 3(b) of the Equipment Management Agreement	Bankruptcy, abandonment, conviction of felony, and others; see § 17.2 of the Franchise Agreement. Failure to pay the amounts due under the Store Construction Agreement and Equipment Management Agreement will also lead to termination of those contracts. Under the U.S. Bankruptcy Code, we may be unable to terminate the Franchise Agreement merely because you make a bankruptcy filing.
i. Your obligations on termination/nonrenewal	§ 18 of Franchise Agreement	Cease operating Store, payment of amounts due, pay lost future royalties, and others; see §§ 18.1 - 18.12.
j. Assignment of contract by us	§ 16.1 of Franchise Agreement	There are no limits on our right to assign the Franchise Agreement.
k. "Transfer" by you - definition	§§ 16.4.1 - 16.4.6 of Franchise Agreement	Includes transfer of any interest.
l. Our approval of transfer by you	§ 16.4 of Franchise Agreement	We must approve transfers.
m. Conditions for our approval of transfer	§ 16.5 of Franchise Agreement	Release, signature of new Franchise Agreement, payment of transfer fee, and others; see §§ 16.5.1 - 16.5.11.
n. Our right of first refusal to acquire your business	§ 16.6 of Franchise Agreement	We can match any offer.
o. Our option to purchase your business	§§ 18.4 and 18.5 of Franchise Agreement	Upon termination or expiration of the Franchise Agreement, we can acquire any interest which you have in any lease or sublease for the premises and purchase your furnishings, equipment, material, or inventory at cost or fair market value.
p. Your death or disability	§ 16.7 of Franchise Agreement	Your estate must transfer your interest in the Franchised Business to a third party we have approved.

Provision*	Section in Agreement	Summary*
q. Non-competition covenants during the term of the franchise	§§ 19.2, 19.3, 19.4, 19.5 and 19.6 of Franchise Agreement	Includes prohibition on engaging in a “Competitive Business,” which is any business that offers for sale chocolate, fudge, candy, popcorn-based products, ice cream, and other frozen dessert products; see §§ 19.2 - 19.6.
r. Non-competition covenants after the franchise is terminated or expires	§§ 19.2, 19.3, 19.4, 19.5 and 19.6 of Franchise Agreement	Includes a two-year prohibition similar to “q” (above), within 10 miles of the Approved Location, and also within 10 miles of any other Store then-operating under the System.
s. Modification of the agreement	§ 24 of Franchise Agreement; § 10 of Store Construction Agreement; § 8 of Equipment Management Agreement	Must be in writing signed by both parties.
t. Integration/merger clause	§ 24 of Franchise Agreement; § 10 of Store Construction Agreement; § 8 of Equipment Management Agreement	Only the final written terms of the Franchise Agreement are binding, subject to state law. Any representation or promises outside of the disclosure document and Franchise Agreement may not be enforceable. Notwithstanding the foregoing, nothing in this or any related agreement is intended to disclaim the express representations made in the Franchise Disclosure Document, its exhibits and amendments.
u. Dispute resolution by arbitration or mediation	§ 26.3 of Franchise Agreement	Before bringing an action in court, the parties must first submit the dispute to non-binding mediation (except for injunctive relief). The Franchise Agreement contains provisions that may affect your legal rights, including a waiver of jury trial, waiver of punitive or exemplary damages, and limitations on when claims may be raised. See Section 26 of the Franchise Agreement.
v. Choice of forum	§ 26.2 of Franchise Agreement; § 11 of Store Construction Agreement; § 9 of Equipment Management Agreement	Subject to applicable law, if we ever litigate, we must do so in the state and judicial district where we have our principal place of business (currently, Petoskey, Michigan). *

Provision*	Section in Agreement	Summary*
w. Choice of law	§ 26.1 of Franchise Agreement; § 11 of Store Construction Agreement; § 9 of Equipment Management Agreement	Subject to applicable law, Michigan law applies to the Franchise Agreement, Store Construction Agreement, Architectural & Engineering Agreement, and Equipment Management Agreement. *

ITEM 18 **PUBLIC FIGURES**

We do not use any public figures to promote our franchise.

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ITEM 19 **FINANCIAL PERFORMANCE REPRESENTATIONS**

The FTC's Franchise Rule permits a franchisor to disclose information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a reasonable basis for the information, and the information is included in the disclosure document. Financial performance information that differs from that included in Item 19 may be given only if: (1) a franchisor provides the actual records of an existing outlet you are considering buying; or (2) a franchisor supplements the information provided in this Item 19, for example, by providing information about performance at a particular location or under particular circumstances.

Presented below are historical financial operating results for certain franchised Kilwins Stores. Please read carefully all of the information in this Item 19 (including the table below as well as the notes that follow this table) for explanation of how these results are determined.

Please note that the data reported below in this Item 19 does not apply to Shops (and because no Shops are already in operation, we provide no operating results, data, or other information relating to Shops).

(Notes 1, 6-11)	Average Per Store	Median Per Store	Number of Stores Above Average	Percent of Stores Above Average
Gross Sales (2023) (Note 2)				
All States (131 Stores)	\$946,105	\$829,713	49	37%
Florida (35 Stores)	\$1,188,608	\$1,089,178	17	49%
Georgia (7 Stores)	\$829,307	\$818,601	3	43%
Illinois (10 Stores)	\$735,549	\$655,335	4	40%
Michigan (11 Stores)	\$679,249	\$601,440	3	27%
New York (5 Stores)	\$653,338	\$504,328	2	40%
North Carolina (14 Stores)	\$913,945	\$604,885	4	29%
Pennsylvania (4 Stores)	\$713,801	\$711,073	2	50%
South Carolina (7 Stores)	\$861,253	\$803,343	3	43%
Tennessee (3 Stores)	\$1,691,202	\$1,699,583	2	67%
Texas (7 Stores)	\$796,584	\$829,713	4	57%
Virginia (4 Stores)	\$887,718	\$937,139	2	50%
Wisconsin (3 Stores)	\$1,052,718	\$707,612	1	33%
Cost of Sales (2022) (Note 3)				
All States (118 Stores)	30%	27%	64	54%
Non-Owner Payroll (2022) (Note 4)				
All States (118 Stores)	22%	22%	52	44%
Transaction Value (2023) (Note 5)				
All States (142 Stores)	\$16.48	\$16.48	71	50%

Notes:

Please note the following:

1. The averages in the table noted above were prepared from our internal operating records, which, in turn, were prepared from information obtained from our franchisees. To the best of our knowledge, this information has been prepared according to generally accepted accounting principles. The information presented in this Item 19 has not been audited.

2. Gross Sales. Gross Sales figures include revenues reported for calendar year 2023 from the sale of goods to retail customers, including the full range of required products. The

term “Gross Sales” is explained in greater detail in Item 6 of this disclosure document. The following comments should also be considered when reviewing the Gross Sales numbers above:

- a. The table represents results from 131 franchised Kilwins Stores, and no Company-owned Stores. These Stores represent Stores that were in operation during the entire period of January 1, 2023 through December 31, 2023 and that reported Gross Sales to us. We excluded from the results 11 Stores that are seasonally operated and were not open for the entire 12-month period, and 2 Stores without full cooking capacity. We excluded from the results 16 franchised Kilwins Stores which were not open, even seasonally, for the entire 12-month period.
 - b. We separately listed only those states in which we have three or more franchisees who are operating Stores so that we do not provide information (even in summary form) that could be directly linked to any one of our franchisees, or that others could use to determine the performance of any particular Store. However, data for all of the Stores (except those excluded Stores as explained above) were included in the “total” figures that are in the row marked “All States.”
 - c. The Gross Sales information provided in this Item 19 reflects the aggregate results of 131 individual Kilwins Stores. Gross Sales vary considerably from one location to the next based upon a number of factors. Some examples of these factors are matters large and small, such as whether the Store is situated in a year-round or a seasonal location, local economic conditions, competition, the attraction of the locality as a tourist destination, climate, the specific location for the Store, traffic patterns (that may change due to construction or other activities), local taste preferences, the volume of pedestrian traffic, and pedestrian traffic patterns.
 - d. Out of the 131 individual Kilwins Stores included in Item 19, the Store with the highest Gross Sales was \$2,580,705 and the Store with the lowest Gross Sales was \$244,487.
3. Cost of Sales. Cost of Sales includes the cost of purchased and manufactured product that is sold in the Store, computed as a percentage of Gross Sales. The following notes should be taken into consideration when reviewing these results:
- a. These figures are for Stores open during 2022, the most recent period for which figures have been reported.
 - b. The information included in these figures was accumulated from internally generated Store financial statements and tax returns provided to us by 118 franchised Stores from whom we were able to obtain applicable information. These financial statements and tax returns have not been audited and we rely on the representations of the Store owners for their accuracy.
 - c. We believe that the results above are a reasonable representation of the entire population of Stores.
 - d. Cost of Sales figures will vary from Store to Store and you need to prepare your own estimates of the cost of sales you expect to achieve in your Store. Some of the items impacting cost of sales, many of which will have a material impact on actual cost of sales percentages include: actual product sales mix; the cost of

commodities including chocolate, sugar, milk and other materials over which you will have little control; the availability of local supply for products not supplied by Kilwins; the amount of product manufactured in the Store and the efficiency with which it is made; control over serving sizes by your employees; and, customer pricing sensitivity in your market.

4. *Non-Owner Payroll*. Non-Owner Payroll includes direct wages paid to employees, excluding any compensation paid to Store owners, computed as a percentage of Gross Sales. Payroll expenses used in this computation do not include any taxes or benefits incurred by the Store. The following notes should be taken into consideration when reviewing these results:

- a. These figures are for Stores open during 2022, the most recent period for which figures have been reported.
- b. The information included in these figures was accumulated from internally generated Store financial statements and tax returns provided to us by 118 franchised stores from whom we were able to obtain applicable information. These financial statements and tax returns have not been audited.
- c. We believe that the results above are a reasonable representation of the entire population of Stores.
- d. Payroll figures vary from Store to Store and you need to prepare your own estimates of payroll for your Store. Some of the items impacting actual payroll, many of which will have a material impact on actual payroll costs will include the amount of time an owner works in the Store, the compensation of manager (s) employed, any applicable minimum wage requirements, the level of benefits other than wages provided to employees, local labor market competition, the mix of full-time and part-time employees, and the Store's sales volume.

5. *Transaction Value*. Transaction value amounts are for single customer transactions in Stores reported for calendar year 2023 from the sale of goods to retail customers, including the full range of required products. The table represents results from 142 franchised Kilwins Stores, and no Company-owned Stores. These Stores represent all franchised Stores that were in operation during the year January 1, 2023 to December 31, 2023 that reported complete transaction values to us, including Stores that intentionally operated seasonally for part of the year (as compared to Stores that may have been operating for part of the year because they opened or closed during 2023). We excluded from the results two franchised Stores that did not report complete information to us and one Store that closed.

6. Gross Sales, Cost of Sales, Payroll, and Transaction Value figures provide only a part of the information that you will need to evaluate the franchise opportunity. We urge you to carefully consider not just these figures but also the information that you independently verify and develop about the costs that you are likely to incur. Franchisees will incur business expenses that are likely to be significant. All of the Stores included in the operating results are franchised units. As a franchisee you will be required to pay royalty fees and make local advertising expenditures, as well as to make contributions to the Marketing Fund and Regional Fund contributions (if a Regional Fund is formed for your market). Among the additional categories of expense that you may incur are rent and occupancy costs; franchisee compensation over and above that earned from the operations of the Store business (such as a salary that you may draw); employee benefits, such as health, vacation and pension plan contributions (none of which are included in

the payroll numbers in the chart); debt service; insurance; Store facilities and property maintenance (and reserves for future maintenance); business and regulatory fees and licenses; ongoing and supplemental training expenses; recruitment expenses; legal and accounting fees; and bookkeeping and other professional services.

7. We strongly advise you to conduct an independent investigation of this information and the opportunity to buy a franchise so that you can decide whether or not you think the franchise will meet your financial needs. Among other things, we recommend that you contact the current and former franchisees listed in this Disclosure Document and that you also consult with a qualified attorney, accountant, and other professional advisors before entering into a Franchise Agreement. We suggest that you develop and review with your own professional advisors a pro forma cash flow statement, balance sheet and statement of operations, and that you make your own financial projections regarding sales, costs, customer base, and business development for your own Kilwins Store.

8. Written substantiation of the data used in preparing the information in this Item 19 will be made available to you upon reasonable request.

Some Stores have earned this amount. Your individual results may differ. There is no assurance you will earn as much.

Other than the preceding financial performance representation, Kilwins Chocolates Franchise, Inc. does not make any financial performance representations. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to our management by contacting Ms. Robin Burgan at 1050 Bay View Road, Petoskey, Michigan 49770, telephone 231.347.3800, the Federal Trade Commission, and the appropriate state regulatory agencies.

ITEM 20 **OUTLETS AND FRANCHISEE INFORMATION**

Table 1:
System wide Outlet Summary
For years – 2021 to 2023 (Note 1)

Outlet Type	Year	Outlets at the Start of the Year	Outlets at the End of the Year	Net Change
Franchised	2021	137	146	+9
	2022	146	145	-1
	2023	145	159	14
Company-Owned	2021	3	4	+1
	2022	4	4	0
	2023	4	5	+1

Outlet Type	Year	Outlets at the Start of the Year	Outlets at the End of the Year	Net Change
Total Outlets	2021	140	150	+10
	2022	150	149	-1
	2023	149	164	+15

Notes

(1) All numbers are as of the fiscal year end. Our fiscal year end is December 31st.

Table 2:
Transfers of Outlets from Franchisees to New Owners (other than the Franchisor)
For years 2021 to 2023 (Note 1)

State (Note 2)	Year	Number of Transfers
Florida	2021	2
	2022	5
	2023	1
Georgia	2021	0
	2022	0
	2023	1
Illinois	2021	0
	2022	1
	2023	1
Indiana	2021	0
	2022	0
	2023	1
Maryland	2021	1
	2022	0
	2023	0
Michigan	2021	0
	2022	1
	2023	2
North Carolina	2021	0
	2022	1
	2023	1
Pennsylvania	2021	0
	2022	0
	2022	1
South Carolina	2021	0
	2022	1
	2023	0
Tennessee	2021	1
	2022	0
	2023	1
Texas	2021	0
	2022	1

State (Note 2)	Year	Number of Transfers
	2023	0
Virginia	2021	0
	2022	0
	2023	1
Wisconsin	2021	1
	2022	0
	2023	0
Total	2021	5
	2022	10
	2023	10

Notes

- (1) All numbers are as of the fiscal year end. Our fiscal year end is December 31st.
(2) States not listed had no activity during the relevant time frame.

Table 3:
Status of Franchised Outlets
For years 2021 to 2023 (Note 1)

State (Note 2)	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Re-acquired by Franchisor	Ceased Operations Other Reasons	Outlets at End of the Year
Alabama	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	1	0	0	0	0	2
Arkansas	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
Colorado	2021	4	0	0	0	0	0	4
	2022	4	0	0	1	0	1	2
	2023	2	1	0	0	0	0	3
Delaware	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Florida	2021	32	4	0	0	0	0	36
	2022	36	1	1	0	0	1	35
	2023	35	2	0	0	0	0	37
Georgia	2021	5	1	0	0	0	0	6
	2022	6	1	0	0	0	0	7
	2023	7	1	0	0	0	0	8
Illinois	2021	10	1	0	0	0	0	11
	2022	11	0	0	0	0	0	11
	2023	11	1	1	0	0	0	11

State (Note 2)	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non- Renewals	Re-acquired by Franchisor	Ceased Operations Other Reasons	Outlets at End of the Year
Indiana	2021	1	1	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
Louisiana	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Maryland	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
Massachu- setts	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
Michigan	2021	23	0	1	1	0	0	21
	2022	21	0	0	1	0	0	20
	2023	20	0	0	0	0	0	20
Mississippi	2021	0	0	0	0	0	0	0
	2022	0	0	0	0	0	0	0
	2023	0	1	0	0	0	0	1
Missouri	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
New Hampshire	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
New Jersey	2021	4	0	0	0	0	0	4
	2022	4	0	2	0	0	0	2
	2023	2	0	0	0	0	0	2
New York	2021	5	0	0	0	0	0	5
	2022	5	0	0	0	0	0	5
	2023	5	0	0	0	0	0	5
North Carolina	2021	12	1	0	0	0	0	13
	2022	13	1	0	0	0	0	14
	2023	14	2	0	0	0	0	16
Ohio	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Oklahoma	2021	0	0	0	0	0	0	0
	2022	0	1	0	0	0	0	1
	2023	1	0	0	0	0	0	1

State (Note 2)	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non- Renewals	Re-acquired by Franchisor	Ceased Operations Other Reasons	Outlets at End of the Year
Pennsyl- vania	2021	2	1	0	0	0	0	3
	2022	3	1	0	0	0	0	4
	2023	4	2	0	0	0	0	6
Rhode Island	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
South Carolina	2021	6	1	0	0	0	0	7
	2022	7	0	0	0	0	0	7
	2023	7	0	0	0	0	0	7
Tennessee	2021	3	0	0	0	0	0	3
	2022	3	0	0	0	0	0	3
	2023	3	0	0	0	0	0	3
Texas	2021	6	1	1	0	0	0	6
	2022	6	1	0	0	0	0	7
	2023	7	2	0	0	0	0	9
Virginia	2021	5	0	0	0	0	0	5
	2022	5	0	0	0	0	0	5
	2023	5	0	0	0	0	0	5
Washington DC	2021	0	1	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	1	0	0	0	0	2
Wisconsin	2021	4	0	0	0	0	0	4
	2022	4	0	0	0	0	0	4
	2023	4	0	0	0	0	0	4
Totals	2021	137	12	2	1	0	0	146
	2022	146	6	3	2	0	2	145
	2023	145	15	1	0	0	0	159

Notes

- (1) All numbers are as of the fiscal year end. Our fiscal year ends December 31st.
- (2) States not listed had no activity during the relevant time frame.

Table 4:
Status of Company-Owned Outlets (Note 1)
for years 2021 to 2023 (Note 2)

State (Note 3)	Year	Outlets at Start of the Year	Outlets Opened	Outlets Reacquired From Franchisee	Outlets Closed	Outlets Sold to Franchisee	Outlets at End of the Year
Michigan	2021	2	0	0	0	0	2
	2022	2	0	0	0	0	2
	2023	2	0	1	0	0	3
New Jersey	2021	1	0	0	0	0	1
	2022	1	0	0	0	0	1
	2023	1	0	0	0	0	1
Ohio	2021	0	0	0	0	0	0
	2022	0	0	1	0	0	1
	2023	1	0	0	0	0	1
Pennsyl- vania	2021	0	0	0	0	0	1
	2022	1	0	0	0	1	0
	2023	0	0	0	0	0	0
Totals	2021	3	1	0	0	0	4
	2022	4	0	1	0	1	4
	2023	4	0	1	0	0	5

Notes

- (1) Our Company-Owned Stores are identified in Exhibit F.
- (2) All numbers are as of the fiscal year end. Our fiscal year end is December 31ST.
- (3) States not listed had no activity during the relevant time frame.

Table 5:
Projected Openings as of December 31, 2023 for 2024

State (Note 1)	Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlets In The Next Fiscal Year	Projected New Company-Owned Outlets In The Next Year
Alabama	1	1	0
Arkansas	1	0	0
Colorado	1	1	0
Connecticut	1	0	0

State (Note 1)	Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlets In The Next Fiscal Year	Projected New Company-Owned Outlets In The Next Year
Florida	4	1	0
Georgia	7	5	0
Illinois	2	1	0
Indiana	1	0	0
Louisiana	1	0	0
New York	0	0	0
North Carolina	1	1	0
Pennsylvania	1	1	0
Tennessee	1	1	0
Texas	3	0	0
Virginia	1	1	0
Washington, DC	2	0	0
Total	28	13	0

Notes

(1) States not listed had no activity during the relevant time frame.

The names, addresses, and telephone numbers of our franchisees as of our fiscal year ending December 31, 2023 are listed in Exhibit E.

The name and last known home address and telephone number of every one of our franchisees who has had a Franchise Agreement terminated, canceled, not renewed, or who otherwise voluntarily or involuntarily ceased to do business under a Franchise Agreement during one-year period ending December 31, 2023, or who has not communicated with us within ten weeks of the date of this disclosure document, are also listed in Exhibit E. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

No franchisees have signed a confidentiality clause in a Franchise Agreement, settlement or other contract within the last three years that would restrict their ability to speak openly about their experience with Kilwins.

As of the date of this franchise disclosure document, there are no Kilwins franchisee associations in existence regardless of whether they use our trademark or not.

ITEM 21
FINANCIAL STATEMENTS

Our fiscal years end on December 31st. Attached as Exhibit G-1 are our audited financial statements for our fiscal years ended December 31, 2021, December 31, 2022 and December 31, 2023.

ITEM 22
CONTRACTS

Exhibit A-1	The Franchise Agreement with its 10 exhibits: A. Site Addendum B. Fee Schedule C. Guarantee, Indemnification, and Acknowledgment D. List of Principals E. ACH Authorization Agreement F. Kilwins Lease Addendum G. E-Mail Authorization Letter H. Extranet Agreement (and exhibits) I. Conditional Assignment and Power of Attorney - Telephone Numbers and Listings J. Training Participation and Non-Disclosure Agreement
Exhibit A-2	Ice Cream Shop Addendum
Exhibits B-1, B-2, & B-3	Sample Form of Store Construction Agreement, Equipment Management Agreement, and Architectural & Engineering Agreement, with schedules and exhibits (including Franchise Agreement amendment)
Exhibit K	General Release

ITEM 23
RECEIPTS

The last two pages of this disclosure document (Exhibit M) are identical pages acknowledging receipt of this entire document (including the exhibits). Please sign and return to us one copy; please keep the other copy along with this disclosure document.

EXHIBIT A-1

Franchise Agreement with Exhibits

Kilwins Chocolates Franchise, Inc.
Franchise Agreement

**KILWINS CHOCOLATES FRANCHISE, INC.
FRANCHISE AGREEMENT**

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Exhibits:

- A. Site Addendum
- B. Fee Schedule
- C. Guarantee, Indemnification, and Acknowledgment
- D. List of Principals
- E. ACH Authorization Agreement
- F. Lease Addendum
- G. E-Mail Authorization Letter
- H. Extranet Agreement (and exhibits)
- I. Conditional Assignment and Power of Attorney - Telephone Numbers and Listings
- J. Training Participation and Non-Disclosure Agreement
- K. Search Area Addendum

KILWINS CHOCOLATES FRANCHISE, INC. FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (the “**Agreement**”) was made and entered into on _____ (the “**Effective Date**”), by and between:

- Kilwins Chocolates Franchise, Inc., a Michigan corporation with offices at 1050 Bay View Road, Petoskey, Michigan 49770 (“**we**,” “**us**,” “**our**” and “**Franchisor**”)); and
- _____, which is a _____
[resident of] [corporation organized in] [limited liability company organized in]
the State of _____ and having offices
at _____
 (“**you**” or “**Franchisee**”).

Introduction

We own a format and system relating to the establishment and operation of “Kilwins Stores,” which are retail businesses operating under our Proprietary Marks in buildings that bear our interior and/or exterior trade dress for end-consumers to visit in order to purchase Approved Products (each one of which is referred to as a “**Store**”). A Store specializes in the sale of premium chocolate, candy, chocolate candy products, nuts, ice cream, beverages, other edible food products, and other products (together, the “**Approved Products**”).

Among the distinguishing characteristics of a Store are that it operates under our “Kilwins” “System.” Our System includes (among other things): Approved Products, equipment layouts; signage; distinctive interior and exterior design and accessories; operational procedures; brand standards; quality and uniformity of products and services offered; recipes, procedures for management and inventory control; training and assistance; and marketing programs; all of which we may periodically change, improve, and further develop (together, the “**System**”).

We identify the System by means of our Proprietary Marks. Our proprietary marks include the certain trade names (for example, the “KILWINS” mark and logo), service marks, trademarks, logos, emblems, and indicia of origin, as well as other trade names, service marks, and trademarks that we may periodically designate in writing for use in connection with the System (all of these are referred to as our “**Proprietary Marks**”). We continue to develop, use, and control the use of our Proprietary Marks in order to identify for the public the source of services and products marketed under those marks and under the System, and to represent the System’s high standards of quality, appearance, and service.

You have asked to enter into the business of operating a Store under our System and wish to obtain a franchise from us for that purpose, as well as to receive the training and other assistance we provide as described in this Agreement. You also understand and acknowledge the importance of our high standards of quality, cleanliness, appearance, and service and the necessity of operating the business franchised under this Agreement in conformity with our standards and specifications.

In recognition of all of the details noted above, the parties have decided to enter into this Agreement, taking into account (and in consideration of) all of the promises and commitments that they are each making to one another in this contract, and they agree as follows:

1. GRANT.

1.1 Rights and Obligations. We grant you the right, and you accept the obligation, to do all of the following (all according to the terms and conditions of this Agreement):

- 1.1.1 operate a Store under the System (the “**Franchised Business**” or “**Store**”);
- 1.1.2 use the Proprietary Marks and the System, but only in connection with the Franchised Business (recognizing that we may periodically change or improve the Proprietary Marks and the System); and
- 1.1.3 do all of these things at the Approved Site (which is defined in Section 1.2 below) and only at the Approved Site.

1.2 Approved Site. If the street address of the location for the Franchised Business has been selected and approved as of the Effective Date, it will be specified in Exhibit A to this Agreement and is referred to as the “**Approved Site**.” When this Agreement is signed, if you have not yet obtained (and we have not yet approved in writing) an Approved Site for the Franchised Business, then you agree to enter into the search area addendum attached to this Agreement as Exhibit K (the “**Search Area Addendum**”) at the same time as you sign this Agreement. Under the Search Area Addendum:

- 1.2.1 You will then proceed to find a site within the Search Area (defined in the Search Area Addendum) which will become the Approved Site after we have given you our written approval for that site and you have obtained the right to occupy the premises, by lease, sublease, or acquisition of the property, all subject to our prior written approval and in accordance with the Search Area Addendum.
- 1.2.2 We have the right to grant, condition, and/or to withhold our approval of the proposed site before it will become the official Approved Site Location under this Agreement. We will review your proposed Approved Site Location in accordance with the terms of the Search Area Addendum and Section 5 below.

1.3 Protected Territory and Exclusions. During the term of this Agreement, and except as otherwise provided in this Agreement, we agree not to establish, nor license any other person to establish, another Kilwins Store at any location within the “Protected Territory.” The “**Protected Territory**” is specified in Exhibit A. The Protected Territory excludes any other franchised Stores for which you (or your affiliate) have entered into a franchise agreement with us. In addition:

- 1.3.1 We retain the exclusive right, among others, on any terms and conditions we deem advisable, and without granting you any rights:
 - 1.3.1.1 to use and to license others to use, the System and the Proprietary Marks for the operation of the “Stores” at any location outside the Protected Territory;
 - 1.3.1.2 to acquire and operate (or be acquired by) any business or stores of any kind, whether located within or outside the Protected Territory (but we will not change those other businesses into “Kilwins” Stores operated in the Protected Territory);

- 1.3.1.3 to use and license the use of the Proprietary Marks and other marks in connection with the operation of stores at any location, which stores and marks may be the same as, similar to, or different from the Store and Proprietary Marks (but these will not be “Kilwins” Stores located in the Protected Territory);
 - 1.3.1.4 to sell and distribute, and/or license others to sell and distribute, directly or indirectly, any products or services, including among other things Approved Products, from any location or to any purchaser (including but not limited to, the sale of items at wholesale and to purchasers in the Protected Territory through supermarkets, gourmet shops, specialty shops, convenience stores, mail order, and on the Internet, under our Proprietary Marks or as private-labeled items), so long as these sales are not made from a “Kilwins” Store operated inside the Protected Territory (excluding National Accounts (defined in Section 1.7 below)). As used in this Section 1.3.1, the term “we” includes us and our affiliates.
- 1.3.2 We retain the right to sell Approved Products through certain kinds of temporary kiosk-type formats and at major events such as carnivals, fairs, sporting events, and concerts (“**Major Events**”), whether located within or outside of the Protected Territory. If we determine that certain kinds of temporary kiosk-type formats or Major Events located within the Protected Territory provide sufficient opportunity for sales, then we will give you the first right to operate such temporary kiosk-type format or other business format as we may approve for use at a Major Event. If you do not exercise your right to operate such kiosk-type format or other business formats, on the terms such offer is extended to you (including signing such documents and doing such things as we may deem necessary in connection with operating a kiosk-type format or Major Event), then we, our affiliates, and/or our designee may operate such business(es) within the Protected Territory.
- 1.3.3 We retain the right to prohibit your Store from delivering products outside of the Protected Territory, but we are not required to prohibit other Stores (whether operated or franchised by us) from providing delivery service to customers at any location. This means that other Stores (whether operated or franchised by us) may provide delivery service into your Protected Territory.
- 1.3.4 The Protected Territory does not include a protected territory for any other franchised Stores for which you (or your affiliate) have entered into a franchise agreement with us.
- 1.4 Limits on Where You May Sell. You agree that:
- 1.4.1 You will only offer and sell products face-to-face to retail customers for consumption on the Store’s premises, for personal, carryout consumption, and pick up or delivery service in a manner that complies with the standards set out in the Manual (as defined in Section 3.3 below) and as otherwise provided in this Agreement (including Section 8.10 below);
 - 1.4.2 You will not sell any products by any other means including electronic media (such as the Internet, social media and networking sites, and mobile applications), phone sales, telephone sales, catalogs, direct mail, and/or at wholesale; and

- 1.4.3 You will sell products only to retail end-users that do not sell or resell the products. You will not give, sell, or otherwise provide products to end-users or any other entities that sell, resell, or use (or that plan to sell, resell or use) the products (for example, gift shops and/or similar type stores, hotels, or restaurants), except as provided in Section 1.6 below.
- 1.4.4 You may solicit customers and use advertising materials for the Franchised Business (approved in accordance with Section 13.7 below) within your Protected Territory. For any customer solicitation or advertising of the Franchised Business you wish to conduct outside your Protected Territory, you must first obtain our prior written consent.
- 1.5 Best Efforts. You agree that you will at all times faithfully, honestly and diligently perform your obligations under this Agreement, that you will continuously exert your best efforts to promote and enhance the Franchised Business, and that you will not engage in any other business or activity that may conflict with your obligations under this Agreement.
- 1.6 Hotel and Restaurant Sales. You agree not to sell products (including Approved Products) to any hotel, restaurant or to any other customer that sells, resells or intends to resell those products. If you wish to sell products (including Approved Products) to a hotel and/or a restaurant, or to any similar customer that intends to give away the products as a part of a normal course of business or to use in any way, you must first submit to us a written request seeking our approval of the sale, and any additional information we may reasonably request, and we will have the right to approve or reject that proposed sale. If we approve, we will have the right to impose such conditions as we deem necessary and we may, in turn, require the hotel, restaurant or other customer to comply with our standards with respect to Approved Products. We will also have the right to require you to stop selling Approved Products to any restaurant, hotel, or other customer. You agree not to sell products (including Approved Products) to any restaurant or hotel without our prior written approval, and you must also agree to stop selling Approved Products to any restaurant, hotel, or other account if we direct you, in writing, to do so.
- 1.7 National Accounts. We may establish a National Accounts program. A “**National Account**” is any regional or national business with multiple locations (including licensed and franchised locations) that we designate as a “National Account.” If we establish a National Accounts program, we will give you the first opportunity to provide Approved Products and services to National Accounts in your Protected Territory (if feasible) in accordance with our standards and the terms of this Agreement. We will negotiate and agree to terms with each National Account regarding the Approved Products and services to be provided at each of their locations. If you provide Approved Products or services to a National Account, you must do so on the prices and terms that we have negotiated with the National Account and subject to your obligations and covenants under this Agreement. We will have the right to require you to stop selling Approved Products to any National Account. You agree to not sell any products, including Approved Products, to any National Account without our prior written approval, and you also agree to stop selling Approved Products to any National Account if we direct you, in writing, to do so.

2. TERM AND RENEWAL.

2.1 Term. The term of this Agreement will expire ten (10) years from the Effective Date (the “**Initial Term**”) unless this Agreement is terminated earlier in accordance with its provisions.

2.2 Renewal. You will have the option to renew this Agreement for one (1) additional term of ten (10) years, subject to the following conditions, all of which must be met before renewal:

2.2.1 At the time of renewal, you must be in material compliance with the provisions of this Agreement (including any amendment to this Agreement), any successor to this Agreement, and/or any other agreement between you (and your affiliates) and us (and our affiliates); and in our reasonable judgment, you must have been in material compliance during the term of this Agreement, even if we did not issue a notice of default or exercise our right to terminate this Agreement if you did not meet your obligations;

2.2.2 You must have satisfied all of your monetary obligations to us and our subsidiaries and affiliates and must have timely met those obligations throughout the term of this Agreement;

2.2.3 You must give us written notice that you wish to renew not less than six (6) months nor more than twelve (12) months before the end of the Initial Term;

2.2.4 You must pay us a renewal fee in the amount of Ten Thousand Dollars (\$10,000) (or twenty-five percent (25%) of our then-current initial franchise fee, whichever is greater) at the time you deliver us written notice of your intent to renew under Section 2.2.3 above;

2.2.5 You agree to do the following:

2.2.5.1 You agree to undertake and complete the renovation and modernization of the Franchised Business that we may reasonably require, to our reasonable satisfaction. The renovation and modernization will include renovation of the exterior facade, signs, awnings, interior furnishings, fixtures, equipment, and decor, to reflect the System's then current standards and image, as reflected in our Manual.

2.2.5.2 You also agree to undertake and complete the upgrades that we may require to bring your Computer System (including the Kilwins POS System) and Required Software (as those terms are defined in this Agreement), and any related peripheral equipment, into conformity with our then-current standards for new Stores.

2.2.6 You must execute and deliver our then current form of franchise agreement, which agreement will supersede this Agreement in all respects (except with respect to the renewal provisions thereof, which shall not supersede this Section 2), and the terms of which may differ from the terms of this Agreement, including a smaller Protected Territory (commensurate with the size of protected territory we are then-offering to new franchisees under the System) and a higher percentage royalty fee and marketing contribution;

2.2.7 You (and your direct and indirect owners) must execute and deliver to us a general release, in a form we prescribe, of any and all claims against us and our

subsidiaries and affiliates, and their respective officers, directors, members, managers, shareholders, agents, and employees;

- 2.2.8 You and your personnel must comply with our then current qualification and training requirements including our then-current training, software systems, methods, and requirements;
 - 2.2.9 You and your personnel must comply with our then-current operational standards as set out in the Manual; and
 - 2.2.10 You must demonstrate to our satisfaction your continuing right to retain possession of the premises of the Approved Site for the entire renewal term, including entering into a new lease (and a Lease Addendum (defined below)), or amending the lease (or Lease Addendum), as may be necessary.
- 2.3 Renewal and Expiration. If you elect to not renew this Agreement, fail to provide us with notice of renewal in the time period required in Section 2.2.3 above, or upon expiration of this Agreement in due course, you acknowledge and agree as follows:
- 2.3.1 We shall have the right to immediately begin discussions with your landlord regarding the lease for your Store, and to enter into a new lease or plan to transition your existing lease to us or to our designee at the end of the term of this Agreement;
 - 2.3.2 We shall have the right to find and secure a new location, and enter into a franchise agreement with a franchisee, for a Store within your Protected Territory, provided that such Store will not open before the expiration or termination of this Agreement; and
 - 2.3.3 Regardless of any action we may or may not take in connection with Sections 2.3.1 and 2.3.2 above, and with respect to our right to purchase your assets pursuant to Section 18.5 below, you agree not to dispose of any of your assets prior to the expiration or termination of this Agreement other than in the due course of operating your Store.
3. OUR DUTIES.
- 3.1 Your Location. We will provide you with the assistance specified in Section 5 below with respect to your location.
 - 3.2 Opening Assistance. If you have one (1) or more Stores operating under the System as of the Effective Date, we may, but are not required to, provide a representative to be present at the opening of the Franchised Business. We will provide such additional onsite preopening and opening supervision and assistance as we deem advisable.
 - 3.3 Manual. We will provide you, on loan, with one copy of our brand standards manual (the "**Manual**"), which we will have the right to provide in any format we choose (including but not limited to, paper, CD, or online), as more fully described in Section 10 below.
 - 3.4 Marketing Materials. We will review and will have the right to approve or disapprove all marketing materials which you propose to use, pursuant to Section 13 below.

- 3.5 Marketing Fund. We will administer the “Kilwins” Marketing Fund (the “**Marketing Fund**”) as specified in Section 13 below.
- 3.6 Opening Marketing Program. We will assist you in developing and conducting the Opening Marketing Program (as described in Section 13.8 below), which program will be conducted at your expense.
- 3.7 Inspection Before Opening. We will inspect and approve the Franchised Business for opening before it opens. You may not commence operation of the Franchised Business until receiving our approval.
- 3.8 Periodic Inspections. We seek to maintain high standards of quality, appearance, service, and sanitation of the System, and, to that end, we may conduct, as we deem advisable, periodic inspections of the Franchised Business and we may provide evaluations of the products sold and services rendered by the Franchised Business.
- 3.9 Periodic Assistance. We will provide periodic and continuing advisory assistance to you as to the operation and promotion of the Franchised Business as we deem advisable.
- 3.10 Opening Equipment and Inventory. We will provide you with a written list of equipment, utensils and suppliers of such materials that are required to open the Franchised Business. We will also provide you with a list of suggested opening inventory.
- 3.11 Additional Assistance. Upon your request, we will provide the personal assistance and counsel of our qualified representative, who shall be experienced in the operation of Kilwins Stores at the retail level, subject to availability of our staff. If you request this additional assistance (and if we are able to provide it), then you will be charged a daily fee and reasonable expenses for this personal assistance and counsel as set out in the Fee Schedule attached to this Agreement as Exhibit B.
- 3.12 Services Performed. You agree that any of our designees, employees, agents, or independent contractors may perform any duty or obligation imposed on us by this Agreement, as we may direct (if so, we will, however, remain responsible to you for the performance of these obligations).
- 3.13 Our Decision-making. In fulfilling our obligations under this Agreement, and in conducting any activities or exercising our rights under this Agreement, we (and our affiliates) will always have the right: **(a)** to take into account, as we see fit, the effect on, and the interests of, other franchised businesses and systems in which we have an interest and on our activities (and those of our affiliates’); **(b)** to share market and product research, and other proprietary and nonproprietary business information, with other franchised businesses and systems in which we (or our affiliates) have an interest, and/or with our affiliates; **(c)** to test market various items in some or all parts of the System; **(d)** to introduce new proprietary items and nonproprietary items or operational equipment; and/or **(e)** to allocate resources and new developments between and among systems, and/or our affiliates, as we see fit. You understand and agree that all of our obligations under this Agreement are subject to this Section 3.13, and that nothing in this Section 3.13 shall in any way affect your obligations under this Agreement.
4. FEES.
- 4.1 Initial Franchise Fee. When you sign this Agreement, you must pay us an initial franchise fee in the amount of Forty Thousand Dollars (\$40,000) (the “**Initial Franchise Fee**”). The Initial Franchise Fee has been fully earned and is non-refundable in consideration of administrative

and other expenses we incur in granting this franchise and for our lost or deferred opportunity to franchise others.

- 4.2 **Royalty Fee.** For each month during the term of this Agreement, you must pay us a continuing royalty fee in an amount equal to five percent (5%) of the Gross Sales (as defined below) of the Franchised Business.

4.2.1 As used in this Agreement, “**Gross Sales**” means all revenue from the sale of all services and products and all other income of every kind and nature related to, derived from, or originating from the Franchised Business, including barter and the proceeds of any business interruption insurance policies, whether for cash or credit, and regardless of theft, or of collection in the case of credit. Gross Sales excludes: (a) any legitimate and reasonable discounts (e.g., coupon sales) or refunds that you provide to customers; (b) shipping revenue (except for any markup on shipping charges); (c) sales of gift cards that we have approved at face value; (d) gratuities paid by customers to employees of the Franchised Business; and (e) sales taxes or other taxes (such as bag or straw taxes) that you collect from your customers and pay to the appropriate taxing authorities (and you acknowledge that any such taxes collected that are not paid to appropriate taxing authorities shall be included in Gross Sales).

- 4.3 **Due Date.** You agree to make all payments required by Section 4.2 above and Section 13 below so that those amounts are received by us, in our offices, by the tenth (10th) calendar day of each month based on the Gross Sales for the preceding month. You acknowledge and agree that we reserve the right to require you to make all payments required by Section 4.2 above and Section 13 below on a weekly basis, by the close of business on Monday of each week (Sunday to Saturday), or on such other days and times, and in the manner, we may periodically specify. In addition, you agree to all of the following:

4.3.1 You agree to deliver to us all of the reports, statements, and/or other information that is required under Section 4.2 above and 13.3 below, at the time and in the format that we reasonably request.

4.3.2 You agree to establish an arrangement for electronic funds transfer to us, or electronic deposit to us of any amounts due, owed or payable to us (including for amounts past due) under this Agreement. Among other things, to implement this point, you agree to sign and return to us our current form of “ACH - Authorization Agreement for Prearranged Payments (Direct Debits),” a copy of which is attached to this Agreement as Exhibit E (and any replacements for that form that we deem to be periodically needed to implement this Section 4.3.2), and you agree to comply with the payment and reporting procedures that we may specify in the Manual or otherwise in writing.

4.3.3 You acknowledge and agree that your obligation to make full and timely payment of royalty fees and marketing contributions (and all other sums due to us) are absolute, unconditional, fully earned, and due when you have generated and received Gross Sales.

4.3.4 You agree that you will not, for any reason, delay or withhold the payment of any amount due to us under this Agreement; put into escrow any payment due to us; set off payments due to us against any claims or alleged claims that you may allege against us, the Marketing Fund, a Regional Fund, or others.

- 4.3.5 You agree that if you do not provide us, as requested, with access to your computer system to obtain sales information or, if we permit, printed and signed sales reports, then we will have the right to impute your sales for any period using (among other things) your sales figures from any Month(s) that we choose, including those with your highest grossing sales; and that you must pay the royalties on that amount (whether by check or by our deduction of that amount from your direct debit account).
- 4.3.6 You agree that you will not, whether on grounds of alleged non-performance by us or others, withhold payment of any fee, including royalty fees or marketing contributions, nor withhold or delay submission of any reports due under this Agreement.
- 4.4 Late Payment. Any payment that we (or the appropriate marketing fund) do not receive on or before the due date shall be deemed overdue. Any report that we do not receive on or before the due date will also be deemed overdue. If any payment is overdue, then you agree to pay us, in addition to the overdue amount, interest on the overdue amount from the date it was due until paid, at the rate of eighteen percent (18%) per annum (but not more than the maximum rate permitted by law that applies to you, if any). Our entitlement to such interest shall be in addition to any other remedies we may have.
- 4.5 Other Funds Due. You agree to pay us, within ten (10) days of our written request (which is accompanied by reasonable substantiating material), any amounts that we have paid, or that we have become obligated to pay, on your behalf, by consent or otherwise under this Agreement, plus a ten percent (10%) surcharge.
- 4.6 Index. We have the right to adjust, for inflation, all fixed dollar amounts under this Agreement (except for the Initial Franchise Fee) once a year to reflect changes in the Index. For the purpose of this Section 4.6, the term "Index" means the Consumer Price Index (1982-84=100; all items; CPI-U; all urban consumers) as published by the U.S. Bureau of Labor Statistics ("BLS"). If the BLS no longer publishes the Index, then we will have the right to designate a reasonable alternative measure of inflation.
- 5. FRANCHISED BUSINESS LOCATION, CONSTRUCTION AND RENOVATION.**
- 5.1 Preparing for the Opening of your Franchised Business.
- 5.1.1 Within fifteen (15) days after signing a lease for the Approved Site or taking possession of the Approved Site, you agree to submit to us a detailed written project plan and schedule with respect to your plans for the design and build out of the Store.
- 5.1.2 You are responsible for purchasing, leasing, or subleasing a suitable site for the Franchised Business. Except as may be provided in the Search Area Addendum (if applicable), you must establish the Franchised Business and have it open and in operation within three hundred sixty five (365) days following the Effective Date of this Agreement (but not more than two hundred ten (210) days following the purchase, lease or sublease of an approved site for the Franchised Business). Time is of the essence.
- 5.1.3 You are solely responsible for all due diligence and related costs to determine the suitability of a proposed site for the Franchised Business, including the costs related to issues that arise after the commencement of construction (such as after

walls and floors are opened), even if we were involved in reviewing the site prior to your commitment to construct the Franchised Business at that site.

- 5.2 Lease Conditions. You agree that, before committing to a site, you will submit the proposed lease or sublease for the premises of your Store to us for our review and approval. We require you and the landlord for the Approved Site to sign our “**Lease Addendum**” (a copy of which attached to this Agreement as Exhibit F) as a condition to giving our approval to your lease or sublease. Once signed, you agree not to modify the lease without our prior written approval.
- 5.3 Review. Any reviews that we conduct under this Section 5 are only for our benefit. You also acknowledge and agree to the following:
- 5.3.1 You acknowledge and agree that our review and approval of a site, lease, sublease, design plans or renovation plans for the Store do not constitute a recommendation, endorsement, or guarantee of the suitability of that location or the terms of the lease, or sublease, or purchase agreement. You agree that you will take all steps necessary to determine for yourself whether a particular location and the terms of any lease, sublease, or purchase agreement for the site are beneficial and acceptable to you.
- 5.3.2 You also acknowledge and agree that no matter to what extent (if any) that we participate in lease negotiations, discussions with the landlord, and/or otherwise in connection with reviewing the lease, you must make the final decision as to whether or not the lease is sensible for your business, and the final decision as to whether or not to sign the lease is yours, and you agree not to hold us responsible with respect to the terms and conditions of your lease.
- 5.3.3 Additionally, with respect to any review of your design plans and construction or renovation plans, or other federal, state, or local health regulations, we will not review whether you are in compliance with federal, state, or local laws and regulations, including the ADA (defined below), and you acknowledge and agree that: **(a)** you are solely responsible for compliance with all such laws and regulations; and **(b)** our approval is not, and will not be deemed to be, an assessment as to whether or not you have complied with those laws and regulations.
- 5.4 Preparing the Site. Promptly after obtaining possession of the premises for the Franchised Business, you agree to do the following things:
- 5.4.1 cause to be prepared and submit for our approval, to conform to the building design, brand requirements and our Manual, trade dress, color schemes, and presentation of the Proprietary Marks in a manner consistent with the Manual then in effect for new Stores under the system, including: signs, awnings, graphics, remodeling, redecoration, and modifications to existing improvements, computer and networking equipment; provided that you may modify our Manual only to the extent required to comply with all applicable ordinances, building codes and permit requirements (with prior notification to and written approval from us);
- 5.4.2 obtain all required zoning permits, all required building, utility, health, sign permits and licenses, and any other required permits and licenses;
- 5.4.3 purchase or lease equipment (you will need to obtain the exact equipment we specify, and we may specify specific suppliers from which you may be required to

purchase the equipment (Store operations and computer technology)), fixtures, furniture and signs as required under this Agreement (including the specifications we have provided in writing, whether in the Manual or otherwise);

- 5.4.4 complete the construction (and/or remodeling of the existing structure), and install all the equipment (Store operations and computer technology), fixture, furniture, signs and awnings, and the decoration of the Franchised Business, in full and strict compliance with plans and specifications for the Franchised Business that we have approved in writing, as well as all applicable ordinances, building codes and permit requirements;
 - 5.4.5 obtain all customary contractors' sworn statements and partial and final waivers of lien for construction, remodeling, and other construction-related services; and
 - 5.4.6 otherwise complete development of and have the Franchised Business ready to open and commence the conduct of its business in accordance with Section 5.1 above.
- 5.5 Use of the Premises. You may use the Approved Site only for the purpose of operating the Franchised Business and for no other purpose. You agree not to permit any other business to operate at the Approved Site (whether as a co-branded operation or otherwise), and not to use or permit the use of the premises for any purpose other than operating a Store, without our prior written approval. As used in this Section, the term "premises" includes the grounds and immediate adjacent space surrounding the Store. We have the ongoing right to approve or deny any offsite storage facility location for the Franchised Business, and to approve or deny the conditions that apply to your use of that location, including the insurance that you must carry for such facility.
- 5.6 Relocation. You agree not to relocate the Franchised Business without our prior written consent. We will have the right to grant or to withhold our approval of any proposed location or relocation and, if our approval is granted, you understand that our approval will not be deemed to be our guarantee, representation, or assurance that your Franchised Business shall be profitable or successful at that location or elsewhere. If you request to relocate your existing Franchised Business the requirements of Section 5.8 apply, including paying us the Construction Deposit if the relocation requires us to provide you with a CAD formatted layout, and/or new equipment schedule and specifications for the Store. If you wish to relocate, then you must reimburse us (in advance) for the costs and expenses that we reasonably expect to incur (including if we deem necessary to visit the proposed new location, the costs of travel, lodging and meals for our representatives to visit the proposed location), and our legal fees and related expenses incurred in connection with reviewing, approving, and documenting your relocation of the Franchised Business to a new site (the "**Relocation Expenses**"). The parties will reconcile the Relocation Expenses within thirty (30) days after you have reopened your Franchised Business at the new location, based on a statement of our actual Relocation Expenses, at which time: **(a)** we will refund to you the unused balance of the funds that you have advanced as compared to our actual Relocation Expenses; or **(b)** you will pay us the additional amount necessary to fully reimburse us for our actual Relocation Expenses.
- 5.7 Our Obligations to you. We will provide you, at no charge, our Manual and construction requirements based on an AutoCAD formatted layout to include an equipment schedule and specifications for the Store. You must adapt, at your expense, the layout we provide, subject to our approval, as provided in Section 5.8.4 below; except that, we will not unreasonably withhold approval of special plans and specifications, prepared at your expense, when Approved Site will not accommodate our plans, provided that such plans and specifications

conform to our general design criteria. We will provide you with our written consent or disapproval of location within twenty (20) days after receiving all of the requested information pertaining to the proposed location. It is your responsibility to secure a location and we will not refund the Initial Franchise Fee (defined above) if you are unable to secure a satisfactory location.

5.8 Construction of the Store. Before starting any construction of the Store, you agree to comply with the following requirements, at your expense:

5.8.1 If we request or if required by applicable law you must employ a qualified, architect and engineer, both of whom are licensed within the state that construction will occur, who are acceptable to us to prepare, for our approval, preliminary plans and specifications for site improvement and construction of the Store based upon our Manual, layout, equipment schedule and specifications. Your architect and engineer must use computer-aided design ("**C.A.D.**") drawings for all drawings generated for the Store. In addition:

5.8.1.1 You will be responsible for obtaining all zoning classifications and clearances which may be required by state or local laws, ordinances, or regulations or which may be necessary or advisable owing to any restrictive covenants relating to your location. After having obtained such approvals and clearances, you must submit to us, for our approval, final plans for construction based upon the layout generated by us along with the equipment schedule and specifications. Once we approve, such final plans shall not thereafter be changed or modified without our prior written consent.

5.8.1.2 You shall obtain all permits and certifications required for the lawful construction, opening, and operation of the Franchised Business.

5.8.2 You must employ a qualified licensed general contractor who is reasonably acceptable to us to construct the Store and to complete all improvements.

5.8.3 You agree to employ a qualified, licensed architect and engineer who is reasonably acceptable to us to prepare, for our review and approval, preliminary plans and specifications for site improvement and construction of the Franchised Business based upon our layout, equipment schedule and specifications and Manual.

5.8.4 You agree not to start construction without obtaining our prior written approval. Our approval shall be limited to determining whether your plans conform to our layout, equipment schedule and specifications and Manual, and shall not relate to your obligations with respect to any federal, state and local laws, codes and regulations including the applicable provisions of the Americans with Disabilities Act (the "**ADA**") regarding the construction, design and operation of the Franchised Business, which subjects shall be your sole responsibility.

5.8.5 You agree to comply with all federal, state, and local laws, codes and regulations, including the applicable provisions of the ADA regarding the construction, design and operation of the Franchised Business. If you receive any complaint, claim, or other notice alleging a failure to comply with the ADA, you agree to provide us with a copy of that notice within five (5) days after you have received the notice.

- 5.8.6 In connection with the Manual and any layout and equipment plans that we provide to you, you acknowledge and agree that those specifications do not meet and are not meant to address the requirements of any federal, state or local law, code or regulation (including those concerning the ADA and/or similar rules governing public accommodations or commercial facilities for persons with disabilities), nor shall such plans contain the requirements of, or be used for, construction drawings or other documentation necessary to obtain permits or authorization to build a specific Franchised Business, compliance with all of which shall be your responsibility and at your expense. You agree to adapt, at your expense, the standard specifications to the Franchised Business location, subject to our approval, as provided above in this Section, which we will not unreasonably withhold, provided that such plans and specifications conform to our general criteria. You understand and acknowledge that we have the right to modify the architectural plans and specifications as we deem appropriate from time to time (however, we will not modify the architectural plans and specifications for the Franchised Business developed pursuant to this Agreement once those architectural plans and specifications have been given to you).
- 5.8.7 Once we have approved your final plans, you cannot later change or modify the plans without our prior written consent. Any such change made without our prior written permission shall constitute a material default under this Agreement and we may withhold our authorization to open the Franchised Business (or if the Franchised Business is already open and operational, we may require you to close the Franchised Business) for business until the unauthorized change is rectified (or reversed) to our reasonable satisfaction.
- 5.8.8 When you sign this Agreement, you must pay us a deposit of Five Thousand Dollars (\$5,000) (the “**Construction Deposit**”). If we offer you the option to engage us to build your Store, and if you elect to have us build your Store, you must enter into a store construction agreement with us and the Construction Deposit will then be applied to that agreement. If you elect to build the Store, then the Construction Deposit will be used to reimburse us for our costs and expenses we and our representatives incur in connection with our periodic review and oversight of the construction of your Store.
- 5.8.9 You agree to obtain and maintain in force before taking possession of the space, and during the entire period of construction, all the insurance required under Section 14 below; and you must deliver to us such proof of such insurance as we may require.
- 5.8.10 If you elect to build the Store, you agree to provide us with a weekly progress status report (in the format we request) upon the earliest to occur of: (a) commencement of architectural design and engineering, (b) demolition, and/or (c) construction activities.
- 5.9 **Pre-Opening.** Before opening for business, you agree to meet all the preopening requirements specified in this Agreement (including those with respect to the Opening Marketing Program), the Manual, and/or that we may otherwise specify in writing. You (or if you are an entity, your Operating Partner (defined below)) must be physically present at the Store during the opening process for the Franchised Business.
- 5.10 **After Opening.** Within ninety (90) days after the Franchised Business first opens for business, you must give us a full written breakdown of all costs associated with the development and

construction of the Franchised Business, in the form that we may reasonably find acceptable or that we may otherwise require.

- 5.11 Renovation. At our request, which will not be more often than once every five (5) years, you must renovate and refurbish the Franchised Business, at your expense, to conform to the building design, brand requirements and our Manual, trade dress, color schemes, and presentation of the Proprietary Marks in a manner consistent with the Manual, including equipment (Store operations and computer technology) and fixtures, signs, awnings, graphics, remodeling, redecoration, and modifications to existing improvements. If you request to significantly renovate your existing Franchised Business the requirements of Section 5.8 apply, including paying us the Construction Deposit if the renovation is to the extent that it requires us to provide you with a CAD formatted layout, and/or new equipment schedule and specifications for the Store.

6. TRAINING AND PERSONNEL.

- 6.1 We Will Provide Training. Before the opening of your Franchised Business, we will provide to you, and to your Highly Trained Personnel (defined below), the training programs that we designate. We will also provide the ongoing training that we periodically deem appropriate, at such places and times that we deem proper. Our training programs will be conducted in the English language. We will be responsible for the cost of instruction and materials as provided in Section 6.2.8 below (except as otherwise provided below in Section 6.2.4).

- 6.2 Your Training and Personnel Obligations. Before opening the Franchised Business, you (or if you are an entity, your controlling principal, who is also designated to serve as your general manager and whom we have previously approved to serve in that role (the “**Operating Partner**”), and one full-time general manager (the “**Franchised Business Manager**”), must attend and successfully complete, to our satisfaction, the initial training program we offer.

- 6.2.1 The term “**Highly Trained Personnel**” is agreed to mean: (a) you; (b) the Operating Partner; and (c) the Franchised Business Manager. The Franchised Business Manager may serve as the Operating Partner regardless of the equity interest the Franchised Business Manager holds in the Franchise.

- 6.2.2 You may send up to four (4) individuals (including the Highly Trained Personnel) to the initial training program. If you ask to send more than four (4) individuals to the initial training program, then you agree to pay us a discounted training fee in the amount of Five Thousand Dollars (\$5,000) for each additional individual that will attend the initial training program, with payment to be made in full before initial training starts.

- 6.2.3 The Franchised Business must be under the active full-time management of either you or the Operating Partner who has successfully completed (to our satisfaction) our initial training program.

- 6.2.4 One (1) of the Highly Trained Personnel who has successfully completed our training program must at all times be actively managing the Franchised Business. At least one of the Highly Trained Personnel who has successfully completed our training program, must be in the store at all times with our opening team while we are onsite to assist with the store opening. If any of the Highly Trained Personnel cease active management or employment at the Franchised Business, or if we disapprove of any of the Highly Trained Personnel, then you agree to enroll a qualified replacement (who must be reasonably acceptable to us) in our initial

training program within thirty (30) days after the Highly Trained Person ended his/her fulltime employment and/or management responsibilities. The replacement and the franchisee must attend and successfully complete the management training program, to our reasonable satisfaction, as soon as it is practical to do so. We will provide you with one (1) replacement training session during the term of this Agreement, for up to a total of four (4) individuals during such session. If you ask to send more than four (4) individuals to a replacement training session, or if you request more than one (1) replacement training session, then you agree to pay us a discounted training fee in the amount of Five Thousand Dollars (\$5,000) for each such replacement session, with payment to be made in full before the replacement training starts, plus all other expenses we incur in connection with such training (including the costs of transportation, lodging, and meals).

- 6.2.5 Your Highly Trained Personnel may also be required to attend such refresher courses, seminars, and other training programs as we may reasonably specify from time to time.
- 6.2.6 We will have the right to require that your trainees execute and deliver to us a personal covenant of confidentiality in substantially the form appended to this Agreement as Exhibit J.
- 6.2.7 You must cover all of your employees at all times (including the pre-opening period, and including those attending training) under the insurance policies required in Section 14 below.
- 6.2.8 We will bear the cost of instruction and required materials (except as otherwise provided above in Section 6.2.4), and you will bear all other expenses incurred in connection with any training (including the costs of transportation, lodging, meals, wages, benefits, and worker's compensation insurance).
- 6.2.9 We may require you to enroll each of your employees in our web-based training program, for which there may be an annual charge for your Store or per employee. If web-based training is required, you agree to pay the fees for such training on a monthly basis, as incurred by your employees, at the times and in the manner set forth in Section 4.3 above.
- 6.3 You may ask us to provide on-site training in addition to that which we will provide to you in connection with the initial training program and/or the opening of the Franchised Business, and if we are able to do so, then you agree to pay us our then-current per diem training charges as well as our out-of-pocket expenses.
- 6.4 You agree to attend the conventions and meetings that we may periodically require, with at least one individual in attendance. We anticipate that such meetings will not take place more frequently than once every two years, but may be as often as once per year. You will be responsible for all costs of attendance, including travel, room and board, and your employees' wages, benefits and other expenses.

7. PURCHASING AND SUPPLY OF APPROVED PRODUCTS.

*The requirements of this Section 7 apply to Approved Products (which include Designated Products, as described below) and "**Input Items**" (which include ingredients, supplies, beverages, materials (such as packaging) that you must purchase or otherwise source from approved suppliers (Section 7.1), Designated Products (Section 7.2), and Spec Items that you*

must otherwise purchase or source in accordance with our standards and specifications (Section 7.3).

7.1 Approved Products and Suppliers.

- 7.1.1 You agree to offer and sell only Approved Products (whether edible or non-edible) at the Franchised Business. You shall not sell anything at the Franchised Business that is not an Approved Product.
- 7.1.2 Notwithstanding anything to the contrary in this Agreement, you agree to buy all of your Input Items for Designated Products only from us or from our designees, as provided in Section 7.2 below (possibly through one or more suppliers that we designate in writing). We have the right, but not the obligation, to periodically change the list of Designated Products by adding or deleting some items.
- 7.1.3 Except as provided in Section 7.3 below, you agree to buy all Approved Products and Input Items, and other products used or offered for sale at the Franchised Business) only from suppliers that we have approved in writing (and whom we have not subsequently disapproved).
- 7.1.4 If you want to buy any Approved Products or any Input Items (except as provided in Sections 7.2 and/or 7.3 below) from an unapproved supplier, you must first submit a written request to us asking for our prior written approval. You agree not to buy from any such supplier unless and until we have given you our prior written consent to do so. We have the right to require that our representatives be permitted to inspect the supplier's facilities, and that samples from the supplier be delivered, either to us or to an independent laboratory that we have designated for testing. You (or the supplier) may be required to pay a charge, not to exceed the reasonable cost of the inspection, as well as the actual cost of the test. We have the right to also require that the supplier comply with such other requirements that we have the right to designate, including payment of reasonable continuing inspection fees and administrative costs and/or other payment to us by the supplier on account of their dealings with you or other franchisees, for use of our trademarks, and for services that we may render to such suppliers. We also reserve the right, at our option, to periodically re-inspect the facilities and products of any such approved supplier and to revoke our approval if the supplier does not continue to meet any of our then current criteria. We are not required to approve any particular supplier, nor to make available our standards, specifications, or formulas to prospective suppliers, which we have the right to deem confidential.
- 7.1.5 In determining whether we will approve any particular supplier, we will consider various factors, including: (a) whether the supplier can demonstrate, to our continuing reasonable satisfaction, the ability to meet our then current standards and specifications for such items; (b) whether the supplier has adequate quality controls and capacity to supply your needs promptly and reliably; (c) whether approval of the supplier would enable the System, in our sole opinion, to take advantage of marketplace efficiencies; and (d) whether the supplier will sign a confidentiality agreement and a license agreement in the form that we may require (which may include a royalty fee for the right to use our Proprietary Marks and any other proprietary rights, recipes, and/or formulae). For the purpose of this Agreement, the term "supplier" includes, but is not limited to, manufacturers, distributors, resellers, and other vendors. You also recognize and agree that we

have the right to appoint only one supplier for any particular Approved Product or item, which may be us or one of our affiliates.

- 7.1.6 You acknowledge and agree we have the right to establish one or more strategic alliances or preferred vendor programs with one or more nationally or regionally-known suppliers that are willing to supply all or some Stores with some or all of the products and/or services that we require for use and/or sale in the development and/or operation of Stores, notwithstanding anything to the contrary contained in this Agreement. In this event, we may limit the number of approved suppliers with whom you may deal, designate sources that you must use for some or all Approved Products, Input Items, and other products and services, and/or refuse any of your requests if we believe that this action is in the best interests of the System or the network of Stores. We have the right to approve or disapprove of the suppliers who may be permitted to sell Approved Products or Input Items to you. Any of our affiliates that sell products to you will do so at our direction. If you are in default of this Agreement, we reserve the right to direct our affiliates not to sell products to you, or to withhold certain discounts which might otherwise be available to you.
- 7.1.7 You acknowledge and agree that we have the right to collect and retain all manufacturing allowances, marketing allowances, rebates, credits, monies, payments or benefits (collectively, “**Allowances**”) offered by suppliers to you or to us (or our affiliates) based upon your purchases of Approved Products and other goods and services. These Allowances include those based on purchases of Approved Products, Input Items and Designated Products (defined below). You assign to us or our designee all of your right, title and interest in and to any and all such Allowances and authorize us (or our designee) to collect and retain any or all such Allowances without restriction.
- 7.1.8 If we require you to offer items that bear our Proprietary Marks (for example, stamped chocolate bars, bottled water, and ice cream cones), or to use items that bear our Proprietary Marks (for example, serving dishes and paperware), then you must buy, use, and sell only the items that we require, and you must buy those items only from our approved suppliers (or as otherwise required under Section 7.2 below).
- 7.2 Designated Products. You acknowledge and agree that the chocolate, candy, and ice cream products (including ice cream cakes) offered and sold at the Franchised Business (collectively, “**Designated Products**”) are manufactured in accordance with our secret recipes, standards, and specifications and/or those of our affiliates, and that such Designated Products are our proprietary products. In order to maintain the high standards of quality, taste, and uniformity associated with Designated Products and other Approved Products and packaging bearing the Proprietary Marks, you agree to purchase Designated Products and Approved Products and packaging bearing the Proprietary Marks (and any other products we may now or in the future designate) only from us, our affiliates, and/or our approved suppliers, and not to offer or sell any other such products at or from the Franchised Business. We have the right to determine whether any particular item will be a “Designated Product.” The requirements of this Section 7.2 are in addition to those in Section 7.6 below.
- 7.3 Spec Items. We have the right to determine whether any particular item will be an “Approved Product” covered by Section 7.1 above, a Designated Product covered by Section 7.2 above, or an Input Item that must meet the specifications that we prescribe for those items in the Manual (“**Spec Items**”). If we designate any particular Input Item as a Spec Item, then you may buy that Spec Item from a supplier of your choosing so long as the Spec Item at all times

meets all of our requirements and specifications for that item. We also have the right, at any time: **(a)** to designate that an item is no longer a Spec Item and, instead, is an Approved Product or a Designated Product; **(b)** to change the requirements and specifications for any Spec Items; and/or **(c)** to disapprove any Spec Item or supplier of a Spec Item if that Spec Item or supplier does not meet our standards (which we have the right to change periodically).

- 7.4 Quality. You agree that you will be solely responsible for the quality of products that you sell.
- 7.5 Use of the Marks. All marketing materials, signs, decorations, paper goods (including disposable food and beverage containers, bags, napkins, menus, and all forms and stationery used in the Franchised Business), and other items which we may designate must bear the Proprietary Marks in the form, color, location, and manner we prescribe (and subject to our prior written approval, for example as provided in Section 13.7 below).
- 7.6 Manufacturing. You must manufacture in the Franchised Business only those products that we have authorized and approved for production. You agree not to manufacture ice cream, ice cream cakes, and/or molded products. You agree not to manufacture any chocolate and/or candy item that we identify in writing (whether in the Manual or otherwise) as available only from us, from our affiliates, and/or from designated suppliers. We may require you to manufacture certain products in your Store and to do so in accordance with our written standards and instructions.
- 7.7 Innovations. All products, services, ingredients, concepts, methods, technologies, techniques, and/or new information relevant to your operation of the Franchised Business (together, "**Innovations**"), whether or not constituting protectable intellectual property, that you or your employees create, or that are created on your behalf, must be promptly disclosed to us. All such Innovations will be deemed to be our sole and exclusive property and works made-for-hire for us. You and each of your Principals and owners agree to: **(a)** sign the assignment and/or other documents we request in order to implement this clause in order to evidence our ownership; **(b)** cause your employees and contractors to sign such assignment documents as we may request for this purpose; and **(c)** assist us in securing intellectual property rights in such Innovations.
- 7.8 Employee Attire and Personal Appearance. Your employees must comply with such dress code or standards as we may require, which may include use of branded (or other "**uniform**") apparel, and otherwise identify themselves with the Proprietary Marks at all times in the manner we specify (whether in the Manual or otherwise in writing) while on a job for the Franchised Business. We may also require that you and your employees comply with personal appearance standards (including dress code, shoes, hair color, body art, piercing, sanitation and personal hygiene, foundation garments, personal displays at work stations, etc.).
- 7.9 Wholesaling. You agree not to sell products to any party that you know or have reason to believe is purchasing those items for resale.
8. YOUR DUTIES.
- 8.1 Every Detail Important. You understand and acknowledge that every detail of the Franchised Business is important to you, us and other franchisees in order to develop and maintain high operating standards, to increase the demand for the services and products sold by all franchisees, and to protect our reputation and goodwill.
- 8.2 Opening. In connection with the opening of the Franchised Business:

- 8.2.1 You must conduct, at your expense, such opening marketing activities as we may require, as set forth in Section 13 below.
- 8.2.2 You must give us at least thirty (30) days' prior notice of the date on which you propose to first open the Franchised Business. We will send a representative to attend the opening unless you (or your affiliates) already have one (1) or more Stores operating under the System as of the Effective Date, and you agree not to open the Franchised Business without our representative present. If we cannot provide our representative on the date that you propose to first open the Franchised Business for business, then you must reschedule such opening to a date on which our representative can be in attendance; provided, that we will not unreasonably delay opening of the Franchised Business due to these considerations.
- 8.3 Staffing.
- 8.3.1 You agree to maintain a competent, conscientious, trained staff in numbers sufficient to promptly service customers, including at least one of the (1) Highly Trained Personnel on duty at all times and to take such steps as are necessary to ensure that your employees preserve good customer relations and comply with such dress code and cleanliness and sanitation standards as we may prescribe, or as may be required under applicable law.
- 8.3.2 You and your staff must, at all times, cooperate with us and with our representatives.
- 8.3.3 If you (including your affiliates) have five (5) or more Stores operating under the System, and for each additional multiple of five, you must employ at least one full-time supervisor (the Franchised Business Manager may serve in this capacity), who shall be reasonably acceptable to us and shall meet such standards as we may reasonably impose in the Manual or otherwise in writing (including the requirement that the Franchised Business Manager attend and successfully complete the training course specified in Section 6.2 above), to supervise and coordinate the operation of the Stores and the activities of Store Managers.
- 8.3.4 Although we will neither require the methods you use, nor will we monitor how you do so, you agree to develop, cultivate, and at all times maintain a cooperative, cordial, respectful, and professional work environment for your customers to experience, as well as for your staff and among all of the owners of the Franchised Business and us.
- 8.4 Operation According to Our Standards. To ensure that the highest degree of quality and service is maintained, you must operate the Franchised Business in strict conformity with such methods, standards, and specifications as we may periodically prescribe in the Manual or otherwise in writing. You agree that you will do all of the following:
- 8.4.1 You agree to maintain in sufficient supply, and to use and/or sell at all times only such approved items, ingredients, products, materials, supplies, packaging, and paper goods as conform to our written standards and specifications, and to refrain from deviating therefrom by the use or offer of any non-conforming items without our specific prior written consent.

- 8.4.2 You agree to sell or offer for sale only such items, products, and services as we have approved for sale in writing; to sell or offer for sale all the items and products, utilizing the ingredients and employing the preparation standards and techniques we specify (and subject to the other requirements specified in Section 7 above); to refrain from making any changes to the items offered at the Franchised Business without our prior written approval; to refrain from any deviation from our standards and specifications, including manner of preparation of food products, without our prior written consent; and to discontinue selling and offering for sale any items, products, or services which we may, in our discretion, disapprove in writing at any time. If you deviate or propose to deviate from our standards and specifications, whether or not we have approved such deviation, such deviation will become our property and can be removed immediately by us.
- 8.4.3 You agree to permit us or our agents, at any reasonable time, to remove samples of food or nonfood items from your inventory, or from the Franchised Business, without payment, in amounts reasonably necessary for testing by us or an independent laboratory to determine whether said samples meet our then current standards and specifications. In addition to any other remedies we may have under this Agreement, we may require you to bear the cost of such testing if we have not previously approved the supplier of the item or if the sample fails to conform to our specifications.
- 8.4.4 You agree to purchase and install, at your expense, all fixtures, furnishings, equipment (Store operations and computer technology), decor, signs, and awnings as we may specify; and to refrain from installing or permitting to be installed on or about the Store premises, without our prior written consent, any fixtures, furnishings, equipment, decor, signs, or other items not previously approved as meeting our standards and specifications.
- 8.4.5 You agree not to install, or permit anyone else to install any vending machine, ATM machine, game or coin (or debit/credit/stored value card) operated device without our prior written consent.
- 8.4.6 You agree to keep the Franchised Business open and in normal operation for such hours and days as we may periodically specify in the Manual or as we may otherwise approve in writing.
- 8.4.7 You agree to install and maintain at the Store only the televisions, video monitors, displays, audio devices, and other media devices that we may require or that we have approved, in writing, in the location(s) we prescribe or approve, and to display, play, and/or show on such devices only the content and programming that we may periodically permit in the Manuals or otherwise in writing.
- 8.4.8 You agree to refrain from selling, offering to sell, or permitting any other party to sell or offer to sell beer, wine, or any form of liquor, without our prior written consent.
- 8.4.9 You agree to immediately suspend operation of (and temporarily close) the Franchised Business if: **(a)** any Approved Products sold at the Franchised Business appear to have been adulterated or otherwise deviate from our standards for Approved Products; **(b)** any Approved Products sold at the Franchised Business fail to comply with applicable laws or regulations; **(c)** you fail to maintain the Approved Products, Franchised Business premises, equipment, personnel, or

operation of the Franchised Business in accordance with any applicable health and safety law or regulations; **(d)** you fail to meet the “Kilwins” brand standards in operating your Franchised Business; **(e)** you do not continuously maintain all of the insurance coverages required under this Agreement; and/or **(f)** you fail to use, or keep current, required and/or approved computer systems. If you do not voluntarily suspend operation as required in this Section 8.4.9, then we will have the right to require that you do so, and you agree to comply with such a request. In the event of such temporary suspension or closure, you agree to immediately notify us, in writing, and also destroy all contaminated or adulterated products, eliminate the source of those products, meet brand standards, and remedy any unsanitary, unsafe, or other condition or other violation of the applicable law or regulation. You agree not to reopen the Franchised Business until after we have inspected the Franchised Business premises, and we have given you our written approval to do so.

- 8.4.10 You agree not to store Approved Products, Designated Products, Spec Items, or any other products, ingredients, materials, supplies, packaging, or paper goods, sold from or used in connection with the Store, at any location other than the Store operated at the Approved Site, without our prior written consent.
- 8.5 Health and Food Safety Standards. You agree to meet and maintain the highest health and food safety standards and ratings applicable to the operation of the Franchised Business. You agree to send to us, within fifteen (15) days after your receipt, a copy of all inspection reports, warnings, citations, certificates, and/or ratings resulting from inspections conducted by any federal, state or municipal agency with jurisdiction over the Franchised Business.
- 8.6 Franchised Business Condition and Maintenance. You agree that, at all times, you will maintain the Franchised Business in a high degree of sanitation, repair, and condition. In that regard, you agree to make such additions, alterations, repairs, and replacements to the furniture, fixtures, and equipment (Store operations and computer technology) of the Franchised Business (but no others without our prior written consent) as may be required for that purpose, including such periodic repainting or replacement of obsolete signs, furniture, furnishings, equipment, flooring, and decor as we may reasonably direct.
- 8.7 For a Franchisee that is an Entity:
- 8.7.1 Corporate Franchisee. If you are a corporation, then you must be a new entity and agree to: **(a)** confine your activities, and your governing documents shall at all times provide that your activities are confined, exclusively to operating the Franchised Business; **(b)** not issue any voting securities or securities convertible into voting securities; **(c)** maintain a current list of all owners of record and all beneficial owners of any class of voting stock of your company and furnish the list to us upon request; and **(d)** maintain stop transfer instructions on your records against the transfer of any equity securities and shall only issue securities upon the face of which a legend, in a form satisfactory to us, appears which references the transfer restrictions imposed by this Agreement, as follows:

The transfer of this stock is subject to the terms and conditions of a Franchise Agreement with Kilwins Chocolates Franchise, Inc., dated [____]. Reference is made to the provisions of the said Franchise Agreement and to the Articles and Bylaws of this [Corporation] [LLC].

- 8.7.2 Partnership/LLP Franchisee. If you are a partnership or a limited liability partnership (LLP), then you must be a new entity and agree to: **(a)** confine your activities, and your governing documents shall at all times provide that your activities are confined, exclusively to operating the Franchised Business; **(b)** furnish us with a copy of your partnership agreement as well as such other documents as we may reasonably request, and any amendments thereto; **(c)** prepare and furnish to us, upon request, a current list of all your general and limited partners; and **(d)** consistent with the transfer restrictions set out in this Agreement, maintain instructions against the transfer of any partnership interests without our prior written approval.
- 8.7.3 LLC Franchisee. If you are a limited liability company (LLC), then you must be a new entity and agree to: **(a)** confine your activities, and your governing documents shall at all times provide that your activities are confined, exclusively to operating the Franchised Business; **(b)** furnish us with a copy of your articles of organization and operating agreement, as well as such other documents as we may reasonably request, and any amendments thereto; **(c)** prepare and furnish to us, upon request, a current list of all members and managers in your LLC; and **(d)** maintain stop transfer instructions on your records against the transfer of equity securities and shall only issue securities upon the face of which bear a legend, in a form satisfactory to us (as specified in Section 8.7.1 above), which references the transfer restrictions imposed by this Agreement.
- 8.7.4 Guarantees. At the time this Agreement is signed, and during the term of this Agreement, each present and future: **(a)** shareholder of a corporate Franchisee; **(b)** member of a limited liability company Franchisee; **(c)** partner of a partnership Franchisee; and/or **(d)** partner of a limited liability partnership Franchisee; must, along with each such individual's current or future spouse(s), jointly and severally guarantee your performance of each and every provision of this Agreement by executing the Guarantee, Indemnification, and Acknowledgment in the form attached to this Agreement as Exhibit C. During the term of this Agreement, you also agree to notify us in writing of any change in marital status of your Principals, and deliver to us any new spouse's guarantee of performance of your obligations under this Agreement.
- 8.8 Prices. You agree that we may set reasonable restrictions on the maximum and minimum prices you may charge for any items, products and services offered and sold under this Agreement. With respect to the sale of all such items, products, or services, you will have sole discretion as to the prices to be charged to customers; provided, however, that we will have the right to set maximum or minimum prices on such items, products, and services (subject to applicable law). If we impose a maximum price on a particular item, product, or service, then you may charge any price for that item, product, or service, up to and including the maximum price we have set. If we impose a minimum price on a particular item, product, or service, then you may charge any price for that item, product, or service, down to and including the minimum price that we have set.
- 8.9 Environmental Matters. We are committed to working to attain optimal performance of Stores with respect to environmental, sustainability, and energy performance. We each recognize and agree that there are changing standards in this area in terms of applicable law, competitors' actions, consumer expectations, obtaining a market advantage, available and affordable solutions, and other relevant considerations. In view of those and other considerations, as well as the long-term nature of this Agreement, you agree that we have the right to periodically set

reasonable standards with respect to environmental, sustainability, and energy for the System through the Manual, and you agree to abide by those standards.

8.10 Delivery Programs.

8.10.1 You agree to participate in the delivery and/or catering program(s) that we specify and to adhere to our standards and procedures for such program. You must purchase the software, hardware, signs, graphics, packaging, and other items, and pay the fees imposed by vendors (such as third-party delivery fees), that may be needed to implement the delivery program from your Store. You also agree to abide by our standards for the delivery program as specified in the Manuals and elsewhere, which may include, among other things, specifications as to the methods, vendors, place, and implementation of delivery and catering services, as well as any additional insurance requirements.

8.10.2 You agree not to engage in delivery and/or catering activities without our prior written approval.

8.11 Franchisee shall comply with all other requirements set forth in this Agreement.

9. PROPRIETARY MARKS.

9.1 Our Representations. We represent with respect to the Proprietary Marks that:

9.1.1 We are the owner of all right, title, and interest in and to the Proprietary Marks.

9.1.2 We have taken and will take all steps reasonably necessary to preserve and protect the ownership and validity in, and of, the Proprietary Marks.

9.2 Your Agreement. With respect to your use of the Proprietary Marks, you agree that:

9.2.1 You must use only the Proprietary Marks we designate, and shall use them only in the manner we authorize and permit.

9.2.2 You must use the Proprietary Marks only for the operation of the business franchised hereunder and only at the location authorized hereunder, or in franchisor approved marketing for the business conducted at or from that location.

9.2.3 Unless otherwise authorized or required by us, you must operate and advertise the Franchised Business only under the name "Kilwins," without prefix or suffix.

9.2.4 During the term of this Agreement and any renewal of this Agreement, you must identify yourself (in a manner reasonably acceptable to us) as the owner of the Franchised Business in conjunction with any use of the Proprietary Marks, including but not limited to, uses on invoices, order forms, receipts, and contracts, as well as the display of a notice in such content and form and at such conspicuous locations on the premises of the Franchised Business as we may designate in writing. You also agree not to make any reference to us and/or the Proprietary Marks on employment and human resources documents, including applications, pay stubs, payment notices, employment agreements, correspondence with your employees, etc.

- 9.2.5 Your right to use the Proprietary Marks is limited to such uses as are authorized under this Agreement, and any unauthorized use thereof shall constitute an infringement of our rights.
- 9.2.6 You must not use the Proprietary Marks to incur any obligation or indebtedness on our behalf.
- 9.2.7 You must not use the Proprietary Marks: (a) as part of your corporate or other legal name; (b) as part of your identification in any email address, domain name, or other electronic medium; and/or (c) in connection with any employment or H.R. documents (including employment applications, paychecks, pay stubs, and employment agreements).
- 9.2.8 You must execute and deliver to us any documents we or our counsel deem necessary to obtain protection for the Proprietary Marks or to maintain their continued validity and enforceability.
- 9.2.9 You agree not to directly or indirectly engage in any activities that would be detrimental to or interfere with the operation, reputation, or goodwill of the Franchised Business, us or the System. You acknowledge and agree that such activities include making, posting, and/or transmitting disparaging comments about the Proprietary Marks, the Franchised Business, us, our affiliates, other Kilwins franchisees, and/or the System, in an advertisement, letter, e-mail, Internet chat room, teleconference, website, blog, social or professional networking site, or any other such medium. However, nothing in this Section will preclude you from honestly answering questions posed by prospective franchisees seeking information about the Franchised Business, us, or the System.
- 9.2.10 With respect to litigation involving the Proprietary Marks, the parties agree that:
- 9.2.10.1 You must promptly notify us of any suspected infringement of the Proprietary Marks, any known challenge to the validity of the Proprietary Marks, or any known challenge to our ownership of, or your right to use, the Proprietary Marks licensed hereunder. You acknowledge that we will have the sole right to direct and control any administrative proceeding or litigation involving the Proprietary Marks, including any settlement thereof. We will also have the sole right, but not the obligation, to take action against uses by others that may constitute infringement of the Proprietary Marks.
- 9.2.10.2 If you have used the Proprietary Marks in accordance with this Agreement, we will indemnify and defend you, at our expense, against any third party claim, suit, or demand involving the Proprietary Marks arising out of your use thereof. If you have not used the Proprietary Marks in accordance with this Agreement, then we will still defend you, but at your expense, against such third party claims, suits, or demands.
- 9.2.10.3 If we undertake the defense or prosecution of any litigation relating to the Proprietary Marks, you must execute and deliver to us any and all documents and do such acts and things as may, in the opinion of our counsel, be necessary to carry out such defense or prosecution, including but not limited to, becoming a nominal party to any legal action. Except to the extent that such litigation is the result of your use of the Proprietary

Marks in a manner inconsistent with the terms of this Agreement, we agree to reimburse you for your out-of-pocket costs in doing such acts and things, except that you must bear the salary costs of your employees, and we will bear the costs of any judgment or settlement. To the extent that such litigation is the result of your use of the Proprietary Marks in a manner inconsistent with the terms of this Agreement, then you agree to reimburse us for the cost of such litigation, including attorney's fees, as well as the cost of any judgment or settlement.

9.3 Your Acknowledgements. You understand and acknowledge that:

- 9.3.1 We are the owner of all right, title, and interest in and to the Proprietary Marks and the goodwill associated with and symbolized by them.
- 9.3.2 The Proprietary Marks are valid and serve to identify the System and those who are authorized to operate under the System.
- 9.3.3 Neither you nor any of your principals may directly or indirectly contest the validity or our ownership of the Proprietary Marks, nor shall you, directly or indirectly, seek to register the Proprietary Marks with any government agency, except with our express prior written consent.
- 9.3.4 Your use of the Proprietary Marks does not give you any ownership interest or other interest in or to the Proprietary Marks, except the license granted by this Agreement.
- 9.3.5 Any and all goodwill arising from your use of the Proprietary Marks shall inure solely and exclusively to our benefit, and upon expiration or termination of this Agreement and the license granted under this Agreement, no monetary amount shall be assigned as attributable to any goodwill associated with your use of the System or the Proprietary Marks.
- 9.3.6 The right and license of the Proprietary Marks granted hereunder to you is non-exclusive, and we thus have and retain the right, among others:
 - 9.3.6.1 To use the Proprietary Marks in connection with selling products and services;
 - 9.3.6.2 To grant other licenses for the Proprietary Marks, in addition to those licenses already granted to existing franchisees; and
 - 9.3.6.3 To develop and establish other systems using the same or similar Proprietary Marks, or any other proprietary marks, and to grant licenses or franchises thereto without providing any rights therein to you.
- 9.3.7 We reserve the right to substitute different Proprietary Marks for use in identifying the System and the businesses operating thereunder if our currently owned Proprietary Marks no longer can be used, or if we, in our sole discretion, determine that substitution of different Proprietary Marks will be beneficial to the System.

10. CONFIDENTIAL BRAND STANDARDS MANUAL.

- 10.1 You Agree to Abide by the Manual. In order to protect our reputation and goodwill and to maintain high standards of operation under our Proprietary Marks, you must conduct your business in accordance with the Manual, one copy of which you acknowledge having received on loan from us, in a format we have chosen (including but not limited to, paper, CD, e-mail, or online), for the term of this Agreement.
- 10.2 You Agree to Treat Manual as Confidential. You must at all times treat the Manual, any other manuals created for or approved for use in the operation of the Franchised Business, and the information contained therein, as confidential, and shall use all reasonable efforts to maintain such information as secret and confidential. Except for those portions of the Manual that we designate, in writing, as appropriate for copying and use at the Franchised Business, you must not at any time copy, duplicate, record, or otherwise reproduce the foregoing materials, in whole or in part, nor otherwise make the same available to any unauthorized person.
- 10.3 We Own the Manual. The Manual shall at all times remain our sole property and you shall at all times maintain the security of the Manual.
- 10.4 Format of the Manual. We will have the right to provide the Manual in any format we determine is appropriate (including paper format and/or by making some or all of the Manual available to you in electronic form, such as through an internet website or an extranet). If at any time we choose to provide the Manual electronically, you agree to immediately return to us any and all physical copies of the Manual that we have previously provided to you.
- 10.5 Revisions to the Manual. We may periodically revise the contents of the Manual, and you agree to comply with the most current version of the Manual that you have access to and to comply with each new or changed standard.
- 10.6 Which Copy of the Manual Controls. The version of the Manual that we maintain is the most current and up to date version; and, in the event of any dispute as to the contents of the Manual, the terms of the version of the Manual we maintain at our home office shall be controlling.
- 10.7 Modifications to the System. You recognize and agree that we may periodically change or modify the System and you agree to accept and use for the purpose of this Agreement any such change in the System (which may include, among other things, new or modified trade names, service marks, trademarks or copyrighted materials, new products, new equipment (Store operations and computer technology), new software, or new techniques, as if they were part of this Agreement when we signed this Agreement; provided the financial burden placed upon you is not substantial). You agree to make such expenditures and such changes or modifications as we may reasonably require pursuant to this Section 10.7 and to make payments directly to us or our designated vendor(s).

11. CONFIDENTIAL INFORMATION.

- 11.1 Confidentiality. You must not, during the term of this Agreement or thereafter, communicate, divulge, or use for the benefit of any other person, persons, partnership, association, or corporation any confidential information, knowledge, or know-how concerning the methods of operation of the business franchised hereunder which may be communicated to you before or during the term of this Agreement or of which you may be apprised by virtue of your operation under the terms of this Agreement. You must divulge such confidential information only to such of your employees as must have access to it in order to operate the Franchised Business. Any

and all information, knowledge, know-how, and techniques which we designate as confidential shall be deemed confidential for purposes of this Agreement, except information which you can demonstrate came to your attention before our disclosure thereof; or which, at or after the time of our disclosure to you, had become or later becomes a part of the public domain, through publication or communication by others.

- 11.2 Consequences of Breach. You acknowledge that any failure to comply with the requirements of this Section 11 will cause us irreparable injury, and you agree to pay all expenses, damages, and costs (including reasonable attorney's fees) that we incur in obtaining specific performance of, or an injunction against violation of, the requirements of this Section 11.

12. ACCOUNTING, RECORDS, AND INSPECTIONS.

12.1 Accounting Records.

12.1.1 With respect to the Franchised Business, you agree to maintain for at least seven (7) years during (as well as after) the term of this Agreement (and also after any termination and/or transfer), full, complete, and accurate books, records, and accounts prepared in accordance with generally accepted accounting principles and in the form and manner we have prescribed from time to time in the Manual or otherwise in writing, including: **(a)** daily cash reports; **(b)** cash receipts journal and general ledger; **(c)** cash disbursements and weekly payroll journal and schedule; **(d)** monthly bank statements, daily deposit slips and cancelled checks; **(e)** all tax returns; **(f)** supplier's invoices (paid and unpaid); **(g)** dated daily and weekly cash register journals and POS reports in accordance with our standards; **(h)** monthly fiscal period balance sheets and fiscal period profit and loss statements; **(i)** operational schedules and monthly inventory records; **(j)** records of promotion and coupon redemption; and **(k)** such other records as we may from time to time request.

12.1.2 We have the right to specify the accounting and/or back-office software, and if we do so, you agree to use that software and you must enter into and maintain such agreements (including making such payments) as we or the third-party suppliers and/or servicers require in connection with the installation, maintenance, and/or support of this system, which is part of the Computer System. You are required to use a common chart of accounts, and you agree to use any required software and chart of accounts (and require your bookkeeper and accountant to do so) in preparing and submitting your financial statements to us. We have the right to require you to use only an approved bookkeeping service and an approved independent certified public accountant.

12.2 Financial Information.

12.2.1 Each year, you must, at your expense, provide to us, in a format we specify, a complete income statement and balance sheet (prepared according to generally accepted accounting principles) (your "**Annual Financial Statement**") within ninety (90) days after the end of each fiscal year of the Franchised Business during the term of this Agreement, showing the results of operations of the Franchised Business during the completed fiscal year. You must certify to us, in writing, that your Annual Financial Statement is accurate. You also agree to provide us with copies of your federal, state, and local income tax returns within ten (10) days of when you file those returns. If you do not meet your obligation to provide us with access to your books and records, as well as copies of required accounting records

and financial statements, as specified in this Section 12, or if you fail to provide us with required reports (such as sales reports), then we will have the right to require you to have your Annual Financial Statement prepared on a review basis by an independent certified public accountant, at your expense, that is reasonably satisfactory to us (however, if you have failed on more than one occasion to meet the foregoing standards, then we will have the right to require that your Annual Financial Statement be prepared on an audited basis by an independent certified public accountant, at your expense, that is reasonably satisfactory to us).

- 12.2.2 Upon our request, and no later than the twentieth (20th) day after each fiscal quarter (or, if we elect, each fiscal month or other periodic time period) during the term of this Agreement after the opening of the Franchised Business, you will submit to us, in a format acceptable to us (or, at our election, in a form that we have specified): **(a)** a fiscal period and fiscal year-to-date profit and loss statement and a quarterly balance sheet (which may be unaudited) for the Franchised Business; and **(b)** reports of those income and expense items of the Franchised Business that we periodically specify for use in any revenue, earnings, and/or cost summary we choose to furnish to prospective franchisees (provided that we will not identify to prospective franchisees the specific financial results of the Franchised Business).
- 12.2.3 Upon our request and no later than the tenth (10th) day after the close of each state and local reporting period, you agree to provide us with copies of all state and local sales tax returns, filings, or other such submissions made for the Franchised Business.
- 12.2.4 On the last day of each month, you agree to take a physical inventory of the stock at your Store and, upon our request, will provide us with a written report on the results of that inventory by the seventh (7th) day of the next month.
- 12.2.5 You must certify as correct and true all reports and information that you submit to us pursuant to this Section 12.2.
- 12.3 Additional Information. You also agree to submit to us, for review or auditing, such other forms, reports, records, information about outstanding loans, other information, and data as and when we may reasonably designate, in the form and format, and at the times and places as we may reasonably require, upon request and as specified from time to time in the Manual or otherwise in writing, including: **(a)** information in electronic format; **(b)** restated in accordance with our financial reporting periods; **(c)** consistent with our then-current financial reporting periods and accounting practices and standards; and/or **(d)** as necessary so that we can comply with reporting obligations imposed upon us by tax authorities with jurisdiction over the Franchised Business and/or our company. The reporting requirements of this Section 12.3 shall be in addition to, and not in lieu of, the provisions of Section 12.6 below.
- 12.4 PCI Compliance and Credit Cards. With respect to your acceptance and processing of customer payments by credit and debit cards, you agree to do all of the following:
 - 12.4.1 You agree to maintain, at all times, credit-card relationships with the credit- and debit-card issuers or sponsors, check or credit verification services, financial-center services, merchant service providers, and electronic-fund-transfer systems (together, "**Payment Vendors**") that we may periodically designate as mandatory. The term "Payment Vendors" includes, among other things, companies that

provide services for electronic payment, such as near field communication vendors (for example, "Apple Pay" and "Google Wallet").

- 12.4.2 You agree not to use any Payment Vendor for which we have not given you our prior written approval or as to which we have revoked our earlier approval.
 - 12.4.3 We have the right to modify our requirements and designate additional approved or required methods of payment and vendors for processing such payments, and to revoke our approval of any service provider.
 - 12.4.4 You agree to comply with all of our policies regarding acceptance of payment by credit and/or debit cards, including for example minimum purchase requirements for a customer's use of a credit card (we may set these requirements in the Manual).
 - 12.4.5 You agree to comply with our requirements concerning data collection and protection, as specified in Section 15.3 below.
 - 12.4.6 You agree to comply with the then-current Payment Card Industry Data Security Standards as those standards may be revised and modified by the PCI Security Standards Council, LLC (see www.pcisecuritystandards.org), or any successor organization or standards that we may reasonably specify. Among other things, you agree to implement the enhancements, security requirements, and other standards that the PCI Security Standards Council (or its successor) requires of a merchant that accepts payment by credit and/or debit cards.
- 12.5 Gift Cards, Loyalty, and Incentive Programs. You must participate in our gift card program. You agree to offer for sale, and to honor for purchases by customers, all gift cards and other incentive or convenience programs that we may periodically institute (including loyalty programs that we or a third-party vendor operate, as well as mobile payment applications); and you agree to do all of those things in compliance with our standards and procedures for such programs. For this purpose, you must purchase the software, hardware, and other items needed to sell and process the above programs such as gift cards, loyalty and to contract with the supplier of gift cards and gift card processing services, as we may specify in writing in the Manuals or otherwise and you must enter into and maintain such agreements (including making such payments) as we or the third-party suppliers and/or servicers require in connection with the installation, maintenance, and/or support of this system which is part of the Computer System. You must also pay such monthly and per-swipe transaction fees as may be required by the vendors of the gift card or credit card processors and their system. You agree not to sell, issue, or redeem coupons, gift certificates and gift cards other than gift cards that we have approved in writing.
- 12.6 Our Right to Inspect Your Books and Records. We shall have the right at all reasonable times to examine, copy, and/or personally review or audit (at our expense) all of your sales receipts, books, records, and sales and income tax returns in person or through electronic access (at our option). We will also have the right, at any time, to have an independent audit made of your books and records. If an inspection should reveal that you have understated any payments in any report to us, then this shall constitute a default under this Agreement, and you must immediately pay us the amount understated upon demand, in addition to interest from the date such amount was due until paid, at the rate of one and one half percent (1.5%) per month (but not more than the maximum rate permitted by law that applies to you, if any). If we conduct an inspection because you did not timely provide information to us, or if an inspection discloses that you understated your sales, in any report to us, by two percent

(2%) or more, then you agree (in addition to paying us the overdue amount and interest) to reimburse us for any and all costs and expenses we incur in connection with the inspection (including travel, lodging and wages expenses, and reasonable accounting and legal costs). These remedies shall be in addition to any other remedies we may have. If an inspection discloses that you understated your sales, in any report to us, by four percent (4%) or more, then we will have the right to immediately terminate this Agreement. We may exercise our rights under this section directly or by engaging outside professional advisors (for example, a CPA) to represent us and conduct these reviews on our behalf.

- 12.7 Operational Inspections. In addition to the provisions of Section 12.6 above, you also grant to us and our agents the right to enter upon the Franchised Business premises at any reasonable time for the purpose of conducting inspections, for among other purposes, preserving the validity of the Proprietary Marks, and verifying your compliance with this Agreement and the policies and procedures outlined in the Manual. You agree to cooperate with our representatives in such inspections by rendering such assistance as they may reasonably request; and, upon notice from us or from our agents (and without limiting our other rights under this Agreement), you agree to take such steps as may be necessary to correct immediately any deficiencies detected during any such inspection. You further agree that you must reimburse us for our representative's time and travel expenses, as well as any legal and/or attorneys' fees (and expenses) that we incur, if additional visits or inspections of the Franchised Business are required when a violation has occurred and you have not corrected the violation.

13. MARKETING.

- 13.1 Marketing Funds. We have established a Marketing Fund and will have the right to establish, at any time, a regional marketing fund ("**Regional Fund**") as described in this Section 13. You must contribute to the Marketing Fund and/or spend certain amounts on local marketing (which we have the right to allocate to a Regional Fund), as described in this Section 13. In addition, you must also conduct the Opening Marketing Program as described in Section 13.8, below.

- 13.2 Marketing Contribution. For each month during the term of this Agreement, you must contribute an amount up to five percent (5%) of your Franchised Business' Gross Sales during the preceding month (the "**Marketing Contribution**"). You agree to pay the Marketing Contribution in the manner and at the times required under Section 4.3 above (and as otherwise provided in this Section 13).

13.2.1 We will have the right to allocate your Marketing Contribution in the proportion that we designate among the following: (a) the Marketing Fund; or (b) local marketing, consisting of expenditure on local marketing and promotion (as provided in Section 13.10 below) and/or contributions to a Regional Fund (if one is established for your area, as provided in Section 13.4 below).

13.2.2 The current allocation of the Marketing Contribution is to contribute three percent (3%) of Gross Sales to the Marketing Fund, but we have the right to periodically make changes to the allocation of the Marketing Contribution by giving you written notice of the change, and those changes will take effect at the end of that month.

13.2.3 No part of the Marketing Contribution shall be subject to refund or repayment under any circumstances.

- 13.3 Marketing Fund. We or our designee will maintain and administer the Marketing Fund, as follows:

- 13.3.1 We, or our designee, will direct all marketing programs, with sole discretion over the concepts, materials, and media used in such programs and the placement and allocation thereof. You agree and acknowledge that the Marketing Fund is intended to maximize general public recognition, acceptance, and use of the System; and that we and our designee are not obligated, in administering the Marketing Fund, to make expenditures for you which are equivalent or proportionate to your contribution, or to ensure that any particular franchisee benefits directly or pro rata from expenditures by the Marketing Fund.
- 13.3.2 The Marketing Fund, all contributions thereto, and any earnings thereon, shall be used exclusively to meet any and all costs of maintaining, administering, staffing, directing, conducting, and preparing advertising, marketing, public relations and/or promotional programs and materials, and any other activities which we believe will enhance the image of the System, including among other things, the costs of preparing and conducting media advertising campaigns; direct mail advertising; developing and implementing website, social networking/media, search optimization, and other electronic marketing strategies; marketing surveys and other public relations activities; employing advertising and/or public relations agencies to assist therein; purchasing promotional items, conducting and administering visual merchandising, and other merchandising programs; the cost of establishing and maintaining franchisee advisory committees; and providing promotional and other marketing materials and services to the Stores operated under the System. The Marketing Fund may also be used to provide rebates or reimbursements to franchisees for local expenditures on products, services, or improvements, approved in advance by us, which products, services, or improvements we deem, in our sole discretion, will promote general public awareness and favorable support for the System. All sums you pay to the Marketing Fund will be maintained in an account separate from our other monies and will not be used to defray any of our expenses, except for such reasonable costs and overhead, if any, as we may incur in activities reasonably related to the direction and implementation of the Marketing Fund and marketing programs for franchisees and the System. The Marketing Fund and its earnings will not otherwise inure to our benefit. We or our designee will maintain separate bookkeeping accounts for the Marketing Fund.
- 13.3.3 You must contribute to the Marketing Fund by electronic transfer according to the Authorization Agreement for Automated Clearing House (ACH) Network Payments (a copy of which is attached to this Agreement as Exhibit E) made payable to the Marketing Fund, at such times as are required under Section 4.3 above.
- 13.3.4 The Marketing Fund is not and shall not be our asset. We will prepare and make available to you upon reasonable request an annual statement of the operations of the Marketing Fund as shown on our books.
- 13.3.5 Although the Marketing Fund is intended to be of perpetual duration, we maintain the right to terminate the Marketing Fund. The Marketing Fund will not be terminated, however, until all monies in the Marketing Fund have been expended for marketing purposes.
- 13.4 Regional Fund. We have the right to designate any geographical area for purposes of establishing a Regional Fund. If a Regional Fund for the geographic area in which the Franchised Business is located has been established at the time you commence operations hereunder, you must immediately become a member of such Regional Fund. If a Regional

Fund for the geographic area in which the Franchised Business is located is established during the term of this Agreement, you must become a member of such Regional Fund within thirty (30) days after the date on which the Regional Fund commences operation. In no event will you be required to be a member of more than one Regional Fund. The following provisions shall apply to each such Regional Fund:

- 13.4.1 Each Regional Fund shall be organized and governed in a form and manner, and shall commence operations on a date, all of which we must have approved in advance, in writing.
 - 13.4.2 Each Regional Fund shall be organized for the exclusive purpose of administering regional marketing programs and developing, subject to our approval, standardized promotional materials for use by the members in regional marketing.
 - 13.4.3 No marketing, advertising or promotional plans or materials may be used by a Regional Fund or furnished to its members without our prior approval, pursuant to the procedures and terms as set forth in Section 13.7 below.
 - 13.4.4 You must submit the contribution to the Regional Fund in the manner required under Section 13.2 above, and at the time required under Section 4.3 above, together with such statements or reports as we, or the Regional Fund with our prior written approval, may require. If we request, you must submit your contributions and reports to the Regional Fund directly to us for distribution to the Regional Fund.
 - 13.4.5 A majority of the Store owners in the Regional Fund who pay one percent (1%) or more of each Store's Gross Sales to the Regional Fund may vote to increase the amount of each Store owner's contribution to the Regional Fund by up to an additional two percent (2%) of each Store's Gross Sales. In the event of such a vote to increase the amount of each Store owner's contribution to the Regional Fund, the increase shall apply to only those Store owners who pay one percent (1%) or more of each Store's Gross Sales to the Regional Fund. Voting will be on the basis of one vote per Store, and any Stores we operate in the region, if any, will have the same voting rights as those owned by our franchisees. You must contribute to the Regional Fund in accordance with any such vote by the Regional Fund to increase each Store's contribution by up to two percent (2%) of the Gross Sales of your Franchised Business.
 - 13.4.6 Although once established, each Regional Fund is intended to be of perpetual duration, we maintain the right to terminate any Regional Fund. A Regional Fund shall not be terminated, however, until all monies in that Regional Fund have been expended for marketing purposes.
- 13.5 Standards. All local marketing by you must be in such media, and of such type and format as we may approve; shall be conducted in a dignified manner; and, shall conform to such standards and requirements as we may specify. You must not use any marketing, advertising or promotional plans or materials, including any materials you wish to use in connection with marketing or promoting the Franchised Business for a proposed sale of the Franchised Business, unless and until you have received our written approval, pursuant to the procedures and terms set forth in Section 13.7 below. If we conduct a national or regional advertising campaign, or a promotional initiative for an area that includes your Franchised Business, then you must participate in, and provide Approved Products according to the terms (including pricing for Approved Products consistent with Section 8.8 above) of, such campaign or initiative.

- 13.6 Materials Available for Purchase. We may periodically make available to you, for you to purchase, marketing materials, including newspaper mats, coupons, merchandising materials, sales aids, point of purchase materials, special promotions, direct mail materials, community relations programs, and similar marketing materials for use in local marketing.
- 13.7 Our Review and Right to Approve All Proposed Marketing. For all proposed marketing plans, you or the Regional Fund, as applicable, shall submit samples of the proposed plans and materials to us (by means described in Section 23 below), for our prior written approval. If you or the Regional Fund do not receive written approval from us within fifteen (15) days of when we receive such samples or materials, we will be deemed to have disapproved them. You acknowledge and agree that any and all copyright in and to marketing materials developed by or on your behalf will be our sole property, and you agree to execute and deliver to us such documents (and, if necessary, require your independent contractors to execute and deliver to us such documents) as we may deem reasonably necessary to give effect to this provision.
- 13.8 Opening Marketing Program. In addition to and not in lieu of your Marketing Contribution, you must expend not less than such amount as described in Exhibit B to this Agreement on local marketing conducted in conjunction with the Store's initial opening (the "**Opening Marketing Program**"), in accordance with an Opening Marketing Program that you and we must agree upon in writing, and according to our specifications. You must complete the Opening Marketing Program no later than three months after the date on which the Franchised Business first opens for business. All materials used in the Opening Marketing Program shall be subject to our approval under Section 13.7, above. For the purpose of this Agreement, the Opening Marketing Program shall be considered local marketing, as provided under Section 13.10 below.
- 13.9 Additional Marketing Expenditures Encouraged. You understand and acknowledges that the required contributions and expenditures are minimum requirements only, and that you may, and are encouraged by us to, expend additional funds for local marketing of a local nature which will focus on disseminating advertising directly related to your Franchised Business. Any additional local marketing of any nature is subject to the same standards and approval practices as outlined in Section 13.7 above.
- 13.10 Local Marketing and Promotion. As used in this Agreement, the term "local marketing" shall consist only of the direct costs of purchasing and producing marketing materials (including but not limited to, camera-ready advertising and point of sale materials), media (space or time), and those direct out-of-pocket expenses related to costs of "marketing" you spend in your local market or area, advertising agency fees and expenses, postage, shipping, telephone, and photocopying.
- 13.10.1 "Local marketing" does not include costs or expenses incurred by or on your behalf in connection with any of the following:
- 13.10.1.1 Salaries and expenses of any of your employees, independent contractors, and/or agents, including salaries or expenses for attendance at advertising meetings or activities, or incentives provided or offered to such employees, including discount coupons;
 - 13.10.1.2 Charitable, political, or other contributions or donations;
 - 13.10.1.3 The value of discounts provided to consumers;
 - 13.10.1.4 The cost of food items; and

13.10.1.5 Specialty items (e.g., cups, banners, t-shirts, and premiums), unless such items are a part of a marketwide advertising and sales promotion program but only to the extent that the cost of such items is not recovered by the promotion and we have first provided written permission for these items.

13.10.2 Upon our request, you must pay your local marketing expenditure obligation as required under Section 13.2 above to a special bank account that we establish and maintain and from which you may apply to withdraw funds for the purpose of paying (or reimbursing yourself) for mutually-agreeable local marketing as specified in this Section 13.10.

14. INSURANCE.

14.1 Coverage and Insurance Company. Before starting any activities or operations under this Agreement, you must procure and maintain in full force and effect during the term of this Agreement (and for such period thereafter as is necessary to provide the coverages required hereunder for events having occurred during the Term of this Agreement), at your expense, the following insurance policy or policies in connection with the Franchised Business or other facilities on premises, or by reason of the construction, operation, or occupancy of the Franchised Business or other facilities on premises. Such policy or policies shall be written by an insurance company or companies reasonably satisfactory to us, having a current A.M. Best's rating of at least A-VII (unless otherwise approved by us) and licensed to do business in the state in which the Franchised Business is located, and shall include, at a minimum (except such additional coverages and higher policy limits as we may reasonably specify for all franchisees from time to time in the Manual or otherwise in writing), the following:

14.1.1 **Commercial General Liability Insurance.** You must purchase commercial general liability coverage utilizing ISO Form CG0001 (04 13) or its substantial equivalent. The policy must provide coverage limits (at a minimum) of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate. Additionally, there must be no exclusions or deviations from standard wording related to: contractual liability, products liability, accidental & malicious contamination, or food borne illness. The general liability coverage must also include a minimum of One Hundred Thousand Dollars (\$100,000) for damage to premises rented to you and Five Thousand Dollars (\$5,000) for medical expense coverage. The policy shall name us as an additional insured utilizing ISO Form CG2029 (04 13) or its substantial equivalent. The policy shall also name us and our affiliates that we designate (currently, Kilwins Quality Confections, Inc. ("KQC")) as an additional insured utilizing ISO Form CG2026 (04 13) or its substantial equivalent. Coverage afforded to us and our affiliates shall be on a primary basis and shall not seek contribution from our or our affiliates' insurers by utilizing ISO Form CG2001 (04 13) or its substantial equivalent. You shall also cause your insurer to agree to waive its right of subrogation against us and our affiliates using CG2404 (05 09) or its substantial equivalent.

14.1.2 **Property Insurance.** You must purchase property insurance coverage of at least One Hundred and Eighty-Five Thousand Dollars (\$185,000) for building improvements and betterments. This policy must be written utilizing ISO forms CP0010 (10 12) and CP1030 (10 12) or their substantial equivalent on a replacement cost basis with agreed value (no coinsurance condition).

- 14.1.3 **Business Personal Property Insurance.** You must purchase business personal property coverage with at least Two Hundred and Five Thousand Dollars (\$205,000) in special form coverage at full replacement cost, with no coinsurance.
- 14.1.4 **Food Borne Illness, Accidental & Malicious Contamination Insurance.** You must purchase food borne illness, accidental & malicious contamination coverage, with minimum coverage of at least One Million Dollars (\$1,000,000) (however, if this coverage is already included under your general liability coverage, you do not need to purchase separate additional coverage).
- 14.1.5 **Spoilage.** You must purchase coverage of at least Ten Thousand Dollars (\$10,000) for food spoilage utilizing ISO Form CP0440 (06 07) or its substantial equivalent for the perils of breakdown/contamination and power outage.
- 14.1.6 **Business Interruption.** You must purchase coverage for business interruption, either on an actual loss sustained basis for up to 12 months or in an amount sufficient to cover 12 months of net profit plus continuing business expenses (expenses are to include, but not be limited to, royalty fees consistent with the royalty fees due to us for the trailing 12 months prior to the loss). Coverage must be written utilizing ISO Forms CP0030 (10 12) and CP1030 (10 12) or their substantial equivalent.
- 14.1.7 **Business Auto Liability.** You must purchase business auto liability coverage utilizing ISO form CA0001 (10 13) or its substantial equivalent covering the use of all owned, non-owned, leased and hired vehicles with limits of not less than One Million Dollars (\$1,000,000) per occurrence. If you own or lease no vehicles, coverage may be provided for non-owned and hired vehicles utilizing an endorsement to the commercial general liability coverage. You shall cause your insurer to agree to waive its right of subrogation against us and our affiliates (currently, KQC) using ISO Form CA0444 (10 13) or its substantial equivalent.
- 14.1.8 **Stop Gap or Employer Liability.** You must purchase stop gap or employer liability insurance with at least One Million Dollars (\$1,000,000) in coverage for disease, One Million Dollars (\$1,000,000) in coverage for each accident, and One Million Dollars (\$1,000,000) in the policy limit.
- 14.1.9 **Workers' Compensation and Stop-Gap Liability.** You must purchase workers' compensation in accordance with your state's laws. If your state is the sole provider of workers' compensation benefits, you must additionally purchase stop gap liability coverage in the amount of One Million Dollars (\$1,000,000). Workers compensation coverage required in this Section shall waive its insurer's right to subrogate any payment of claims against us and our affiliates (currently, KQC) utilizing NCCI Form WC000313 or its substantial equivalent.
- 14.1.10 **Umbrella Policy.** You must purchase an umbrella or excess liability policy in the amount of One Million Dollars (\$1,000,000). Such insurance shall provide substantially the same coverage as the underlying commercial general liability policy (including us and our affiliates (currently, KQC) as additional insureds), business auto liability, workers compensation and employer's liability insurance, and shall expressly provide that the umbrella or excess liability policy will drop down over a reduced or exhausted aggregate limit of the underlying insurance. The umbrella or excess liability policy shall be primary insurance to us and our affiliates (currently, KQC), and your umbrella or excess liability insurer agrees not

to seek contribution from both our and KQC's insurer. You shall cause your insurer to waive its right to subrogation by utilizing ISO form CU2403 (09 00) or its substantial equivalent.

- 14.1.11 **Property Insurance.** You must purchase property insurance providing coverage for direct physical loss or damage to real and personal property for all risk perils, including the perils of flood, earthquake, and volcanic eruption. Appropriate coverage shall also be provided for boiler and machinery exposures and business interruption/extra expense exposures. The policy or policies shall value property (real and personal) on a new replacement cost basis without deduction for depreciation and the amount of insurance shall not be less than ninety percent (90%) of the full replacement value of the Franchised Business, its furniture, fixtures, equipment, and stock (real and personal property). Any deductibles contained in such policy shall be subject to our review and approval.
- 14.1.12 **Flood Coverage.** If the Franchised Business is located within a federally-designated floodplain, you must purchase flood insurance covering building improvements and betterments, business personal property, and loss of business income with extra expense coverage in the amounts of no less than those set out in Sections 14.1.2, 14.1.3, and 14.1.6 above.
- 14.1.13 **Wind and Hail Coverage.** If the perils of wind/hail are excluded from coverage provided in Sections 14.1.2, 14.1.3, and 14.1.6 above, then you must purchase stand-alone coverage that provides for damage caused by wind and hail in amounts no less than those required under in Sections 14.1.2, 14.1.3, and 14.1.6 above.
- 14.2 **Endorsements.** All policies listed in Section 14.1 above (unless otherwise noted below) shall contain the endorsements that we may periodically require (whether those requirements are described in the Manual or otherwise in writing).
- 14.3 **Notices to Us.** In the event of cancellation, material change, or non-renewal of any policy, you must provide us with thirty (30) days' advance written notice (10 days for non-payment of premium) in the manner provided in Section 23 below.
- 14.4 **Construction Coverages.** In connection with all significant construction, reconstruction, or remodeling of the Franchised Business during the term hereof, you will cause the general contractor, its subcontractors, and any other contractor, to effect and maintain at general contractor's and all other contractor's own expense, such insurance policies and bonds with such endorsements as are set forth in the Manual, all written by insurance or bonding companies satisfactory to us, having a current A.M. Best's rating of at least A-VII.
- 14.5 **Other Insurance Does Not Impact Your Obligation.** Your obligation to obtain and maintain the foregoing policy or policies in the amounts specified shall not be limited in any way by reason of any insurance which we may maintain, nor shall your performance of that obligation relieve you of liability under the indemnity provisions set forth in Section 21.4 of this Agreement.
- 14.6 **Additional Named Insured.** All public liability and property damage policies shall list us as an additional named insured, and shall also contain a provision that we, although named as an insured, shall nevertheless be entitled to recover under said policies on any loss occasioned to us or our servants, agents, or employees by reason of your negligence or that of your servants, agents, or employees.

- 14.7 Certificates of Insurance. You must deliver to us current certificates of property insurance (ACORD 24) and liability insurance (ACORD 25). You must provide us with proof of coverage before beginning any business activity or operations. Your policies must include a 30-day written notice of cancellation in the event of cancellation for any reason (ten 10 days for cancellation due to non-payment of premium, and in the case of non-renewal, a 30-day advance written notice must be provided to us).
- 14.8 Proof of Coverage. If you do not obtain or maintain the coverage required under this Section 14, then we will have the right (but not the obligation) to pay any premium or obtain the required coverage on your behalf and charge you back for those premiums. You must reimburse us for such expenditures, plus a ten percent (10%) surcharge of the premium, within thirty (30) days of our written request.
- 14.9 Coverages are Minimums. You acknowledge and agree that the specifications and coverage requirements in this Section 14 are minimums, and that we recommend that you review these with your own insurance advisors to determine whether additional coverage is warranted in the operation of your Franchised Business.
- 14.10 Changes. We have the right to periodically make such changes in minimum policy limits and endorsements as we may determine; provided, however, all changes shall apply to all of our franchisees who are similarly situated.

15. TECHNOLOGY.

15.1 Computer Systems and Required Software.

- 15.1.1 We have the right to specify or require that certain brands, types, makes, and/or models of communications, computer systems, operating systems, and hardware to be used by, between, or among Stores, and in accordance with our standards, as well as we may designate one or more approved vendors to provide installation, maintenance, and/or support including: **(a)** back office and point of sale systems, data, audio, video (including managed video security surveillance), telephone, voice messaging, retrieval, and transmission systems for use at Stores, between or among Stores, and between and among the Franchised Business, and you, and us; **(b)** Kilwins POS Systems (defined in Section 15.7 below); **(c)** physical, electronic, networking that and other security systems and measures to include hardware such as, but not limited to firewall, software, or process to protect data, brand, and system performance as stated by, but not limited to, NIST, CIS Critical Security Controls, ISO 27001; **(d)** printers and other peripheral devices (e.g., digital and virtual menu and display boards and related technology, hardware, software, and firmware); **(e)** archival back-up systems; **(f)** internet access mode (e.g., form of telecommunications connection) and bit speed we require, along with internet redundancy solution approved by us; **(g)** front-of-the-house WiFi and other internet connectivity for customers digital; **(h)** cloud-based back-end management systems and storage sites; **(i)** in shop music systems; and **(j)** consumer-marketing oriented technology (including customer apps, affinity and rewards hardware and software, facial and other customer-recognition technology, and approved social media/networking sites) (collectively, all of the above are referred to as the "**Computer System**").
- 15.1.2 We will have the right, but not the obligation, to develop or have developed for us, or to designate: **(a)** computer software programs and accounting system software that you must use in connection with the Computer System ("**Required**

Software”), which you must install; **(b)** updates, supplements, modifications, or enhancements to the Required Software, which you must install; **(c)** the tangible media upon which you must record data; and **(d)** the database file structure of your Computer System. If we require you to use any or all of the above items, then you agree that you will do so. The term “Required Software” also includes the gift card and other incentive or convenience program items that are required under Section 12.5 above.

- 15.1.3 You must pay an ongoing monthly “**Technology Fee**” that we require, at such times and in such amounts as we may designate. The current Technology Fee amount is set forth in Exhibit B of this Agreement, but we reserve the right to increase this fee up to five percent (5%) on January 1 each year, in addition to any adjustments, up or down, depending on changes in the Index.
 - 15.1.4 You must also pay us an initial “**POS Software Fee**” in the amount of Three Thousand Dollars (\$3,000) when you sign this Agreement, and, subsequently a monthly fee paid to us or our approved vendor as set out in the Manual.
 - 15.1.5 You must install and use the Computer Systems and Required Software.
 - 15.1.6 You must enter into appropriate agreements with approved or designated vendors of the Computer System, Networking, and Required Software, and pay those vendors (or us) according to the terms of those arrangements and a contract term that we have approved in writing, as set out in the Manual.
 - 15.1.7 You must implement and periodically make upgrades and other changes to the Computer System and Required Software as we may reasonably request in writing (collectively, “**Computer Upgrades**”) or as may be necessary in the interim to ensure the proper maintenance and functioning of your Computer System and Required Software.
 - 15.1.8 You must comply with all specifications we issue with respect to the Computer System and the Required Software, and with respect to Computer Upgrades (including our Manuals). You must also afford us unimpeded access to your Computer System and Required Software as we may request, in the manner, form, and at the times we request.
- 15.2 Data.
- 15.2.1 You agree that all data relating to the Franchised Business that you collect, create, provide, or otherwise develop on your Computer System (whether or not uploaded to our system from your system and/or downloaded from your system to our system) is and will be owned exclusively by us, and that we will have the right to access, download, and use that data in any manner that we deem appropriate without compensation to you.
 - 15.2.2 All other data that you create or collect in connection with the System, and in connection with your operation of the Franchised Business (including customer and transaction data), is and will be owned exclusively by us during the term of, and following termination or expiration of, this Agreement.
 - 15.2.3 You agree to transfer to us all data that we do not automatically collect upon our request.

- 15.2.4 We hereby license use of such data back to you, at no additional cost, solely for: **(a)** the term of this Agreement; and **(b)** your use in connection with operating the Franchised Business under this Agreement. You acknowledge and agree that except for the right to use the data under this clause, you will not develop or have any ownership rights in or to the data.
- 15.2.5 Upon termination, expiration, and/or transfer of this Agreement and/or the Franchised Business, you agree to provide us with all data (in the digital machine-readable format that we specify, and/or printed copies, and/or originals), promptly, including tax or legal transactions captured in all software, upon our request.
- 15.2.6 For the limited purpose of this Section 15.2, references to “data” exclude consumers’ credit card, debit card, and/or other payment information.
- 15.3 Data Requirements and Usage. We may periodically specify in the Manual or otherwise in writing the information that you must collect and maintain on the Computer System installed at the Franchised Business, and you must provide us with such reports as we may reasonably request from the data so collected and maintained. All data pertaining to or derived from the Franchised Business (including data pertaining to or otherwise about Franchised Business customers) is and shall be our exclusive property, and we hereby grant a royalty-free non-exclusive license to you to use such data during the term of this Agreement.
- 15.3.1 You must abide by all applicable laws pertaining to the privacy of consumer, employee, and transactional information (“**Privacy Laws**”).
- 15.3.2 You must comply with our standards and policies pertaining to the privacy of consumer, employee, and transactional information. If there is a conflict between our standards and policies and Privacy Laws, you must: **(a)** comply with the requirements of Privacy Laws; **(b)** immediately give us written notice of such conflict; and **(c)** promptly and fully cooperate with us and our counsel in determining the most effective way, if any, to meet our standards and policies pertaining to privacy within the bounds of Privacy Laws.
- 15.3.3 You must not publish, disseminate, implement, revise, or rescind a data privacy policy without our prior written consent as to such policy.
- 15.4 Extranet. You must comply with our requirements (as set forth in the Manual or otherwise in writing) with respect to establishing and maintaining telecommunications connections between your Computer System and our Extranet and/or such other computer systems as we may reasonably require. The term “**Extranet**” means a private network, storage system, and/or other digital portal that is based upon Internet protocols that will allow users inside and outside of our headquarters to access certain parts of our computer network via the Internet.
- 15.5 Participation in the Extranet. We may establish an Extranet (but are not required to do so or to maintain an Extranet). If we establish an Extranet, then you must comply with our requirements (as set forth in the Manual or otherwise in writing) with respect to connecting to the Extranet, and utilizing the Extranet in connection with the operation of your Franchised Business. The Extranet may include the Manuals, training other assistance materials, and management reporting solutions (both upstream and downstream, as we may direct). You must purchase and maintain such computer software and hardware (including telecommunications capacity) as may be required to connect to and utilize the Extranet. You agree to execute and deliver to us such documents as we may deem reasonably necessary to permit you to access the Extranet including your managers and other personnel. Our current form of Extranet

Agreement is appended to this Agreement as Exhibit H, which we have the right to require be signed digitally and/or in paper-and-ink format.

- 15.6 **No Separate Online Sites.** Unless we have otherwise approved in writing, you agree to neither establish nor permit any other party to establish an Online Site relating in any manner whatsoever to the Franchised Business or referring to the Proprietary Marks. We will have the right, but not the obligation, to provide one or more references or webpage(s), as we may periodically designate, within our Online Site. The term “**Online Site**” means one or more related documents, designs, pages, or other communications that can be accessed through electronic means, including but not limited to, the Internet, World Wide Web, webpages, microsites, social media sites, social networking sites (including Facebook, Twitter, LinkedIn, YouTube, TikTok, Pinterest, Instagram, etc.), blogs, vlogs, podcasts, applications to be installed on mobile devices (e.g., iPhone, iPad or Android apps), and other applications, etc. However, if we give you our prior written consent to have a separate Online Site (which we are neither obligated to provide nor are we obligated not to rescind, even if given), then each of the following provisions shall apply to an Online Site:
- 15.6.1 You must not establish or use any Online Site without our prior written approval.
 - 15.6.2 Any Online Site owned or maintained by or for your benefit will be deemed “marketing” under this Agreement, and will be subject to (among other things) our approval under Section 13.7 above.
 - 15.6.3 Before establishing any Online Site, you must submit to us, for our prior written approval, a sample of the proposed Online Site domain name, format, visible content (including proposed screen shots, links, and other content), and non-visible content (including meta tags, cookies, and other electronic tags) in the form and manner we may reasonably require. We reserve the right not to approve your use of certain types of Online Sites (for example, mobile apps) or certain channels (for example, Snapchat).
 - 15.6.4 You may not use or modify such Online Site without our prior written approval as to such proposed use or modification.
 - 15.6.5 In addition to any other applicable requirements, you must comply with the standards and specifications for Online Sites that we may periodically prescribe in the Manuals or otherwise in writing (including but not limited to, requirements pertaining to designating us as the sole administrator or co-administrator of the Online Site).
 - 15.6.6 If we require, you must establish such hyperlinks to our Online Site and others as we may request in writing.
 - 15.6.7 We may require you to make us the sole administrator (or co-administrator) of any social networking pages that you maintain or that are maintained on your behalf, and we will have the right (but not the obligation) to exercise all of the rights and privileges that an administrator may exercise.
- 15.7 **Kilwins POS Systems.** You must record all sales on computer-based point of sale systems we approve or on such other types of cash registers as we may designate in the Manual or otherwise in writing (“**Kilwins POS Systems**”), which shall be deemed part of your Computer System. You must utilize Kilwins POS Systems that are fully compatible with any program, software program, and/or system which we, in our discretion, may employ (including mobile or

remote device, application and payment systems), and you must record all Gross Sales at all times and all revenue information on such equipment. We may designate one or more third party suppliers or servicers to provide installation, maintenance, and/or support for the Kilwins POS System, and upon our direction you must enter into and maintain such agreements (including making such payments) as we or the third-party suppliers and/or servicers require in connection with the installation, maintenance, and/or support for the Kilwins POS System. The Kilwins POS System is part of the Computer System. You must at all times maintain a continuous high-speed cabled (not wireless other than as redundancy for intermittent network outages) connection to the Internet at the bit speed we require to send and receive POS data to us. Wireless connections to the Internet are not currently authorized or supported for the Kilwins POS System.

- 15.8 Electronic Identifiers; E-Mail. You agree not to use the Proprietary Marks or any abbreviation or other name associated with us and/or the System as part of any e-mail address, domain name, social network or social media name or address, and/or any other identification of you and/or your business in any electronic medium. You agree not to transmit or cause any other party to transmit advertisements or solicitations by e-mail, text message, and/or other electronic media without first obtaining our written consent as to: **(a)** the content of such electronic advertisements or solicitations; and **(b)** your plan for transmitting such advertisements. In addition to any other provision of this Agreement, you will be solely responsible for compliance with any laws pertaining to sending electronic communication including but not limited to, the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (known as the “CAN-SPAM Act of 2003”) and the Federal Telephone Consumer Protection Act. (As used in this Agreement, the term “**electronic communication**” is agreed to include all methods for sending communication electronically, whether or not currently invented or used, including e-mails, text messages, and faxes.)
- 15.9 Telephone Service. We have the right to require you to use one or more designated telephone vendors. If we so require, you agree to use our designated telephone vendor(s) for the phone service to your Store, and that we may designate, and own, the telephone numbers for your Franchised Business. You also agree to sign the power of attorney with respect to your telephone service and telephone numbers that are attached as Exhibit I.
- 15.10 Outsourcing. You agree not to hire third party or outside vendors to perform any services or obligations in connection with the Computer System, Required Software, and/or any other of your obligations, without our prior written approval. Our consideration of any proposed outsourcing vendor(s) may be conditioned upon, among other things, such third party or outside vendor’s entry into a confidentiality agreement with us and you in a form that we may reasonably provide and the third party or outside vendor’s agreement to pay for all initial and ongoing costs related to interfaces with our computer systems. The provisions of this section are in addition to and not instead of any other provision of this Agreement. You agree not to install (and/or remove) any software or firmware from the Computer System without our prior written consent.
- 15.11 Changes. You acknowledge and agree that changes to technology are dynamic and not predictable within the term of this Agreement. In order to provide for inevitable but unpredictable changes to technological needs and opportunities, you agree that we will have the right to establish, in writing, reasonable new standards for the implementation of technology in the System; and you agree to abide by those reasonable new standards we establish as if this Section 15 were periodically revised by us for that purpose.
- 15.12 Electronic Communication – Including E-Mail, Fax, and Texts. You acknowledge and agree that exchanging information with us by electronic media is an important way to enable quick,

effective, and efficient communication, and that we are entitled to rely upon your use of e-mail and faxes for communicating as part of the economic bargain underlying this Agreement. To facilitate the use of electronic communication to exchange information, you authorize the transmission of those electronic communications by us and our employees, vendors, and affiliates (on matters pertaining to the business contemplated hereunder) (together, “**Official Senders**”) to you during the term of this Agreement.

- 15.12.1 In order to implement the terms of this Section 15.12, you agree that: **(a)** Official Senders are authorized to send electronic communications to those of your employees as you may occasionally designate for the purpose of communicating with us and others; **(b)** you will cause your officers, directors, members, managers, and employees (as a condition of their employment or position with you) to give their consent (in an electronic communication or in a pen-and-paper writing, as we may reasonably require) to Official Senders’ transmission of electronic communication to those persons, and that such persons shall not opt-out, or otherwise ask to no longer receive electronic communication, from Official Senders during the time that such person works for or is affiliated with you; **(c)** you will not opt-out, or otherwise ask to no longer receive electronic communications, from Official Senders during the term of this Agreement; and **(d)** you must protect the privacy and integrity of the password(s) associated with this e-mail account and you acknowledge that you are fully liable in the case such password(s) are compromised during the term of this Agreement.
- 15.12.2 The consent given in this Section 15.12 shall not apply to the provision of notices by either party under this Agreement using e-mail unless the parties otherwise agree in a pen-and-paper writing signed by both parties.
- 15.12.3 We may permit or require you to use a “Kilwins” e-mail address (that is, one that will contain a Top Level Domain Name that we designate, such as jane.smith@kilwins.com or “john.jones@kilwinsfranchise.com”) (the “**Kilwins email address**”) in connection with the operation of the Franchised Business. You will be required to sign our current form of E-Mail Authorization Letter and Extranet Agreement, appended to this Agreement as Exhibits G and H, for this purpose. If we assign you a Kilwins e-mail address, then you agree that you (and your employees) will use only that email account for all official business associated with your Franchised Business.

16. TRANSFER OF INTEREST.

- 16.1 **By Us.** We will have the right to transfer or assign this Agreement and all or any part of our rights or obligations under this Agreement to any person or legal entity, and any assignee of ours will be solely responsible for all of our obligations under this Agreement from the date of assignment.
- 16.2 **Your Principals.** If you are an entity (whether a corporation, LLC, partnership, or otherwise) each of your principals (“**Principal**”), and the interest of each Principal in you, is correctly identified in Exhibit D to this Agreement. We may in our sole discretion designate any person or entity which owns a direct or indirect interest in Franchisee as a Principal, and Exhibit D shall be so amended automatically upon notice thereof to you. We have the right to rely on any one or more of your Principals to speak on your behalf and to bind your entity in any and all dealings with us.

- 16.3 Principals. We will have a continuing right to designate as a Principal any person or entity which owns a direct or indirect interest in Franchisee.
- 16.4 By You. You understand and acknowledge that the rights and duties set forth in this Agreement are personal to you, and that we have granted this franchise in reliance on your or your Principals' business skill, financial capacity, and personal character. Accordingly:
- 16.4.1 You must not, without our prior written consent, transfer, pledge, encumber, or in any manner whatsoever assign (and/or permit any other party to do so): **(a)** your rights and/or obligations under this Agreement; **(b)** any material asset of you and/or the Franchised Business; and/or **(c)** any direct or indirect (and/or beneficial) ownership interest in you.
 - 16.4.2 If you are a corporation, LLC, or other form of entity (other than a partnership), you must not, without our prior written consent, issue any voting securities, securities convertible into voting securities, membership interest, and/or other equity interest, and the recipient of any such securities and/or interest shall become a Principal under this Agreement, if we so designate.
 - 16.4.3 If you are a partnership, the partners of the partnership shall provide us with at least thirty (30) days' prior written notice of any intent to, and you shall not, without our prior written consent, admit additional partners, remove a partner, or otherwise materially alter the powers of any partner. Each partner shall automatically be deemed a Franchisee Principal.
 - 16.4.4 A Principal shall not, without our prior written consent, transfer, pledge or otherwise encumber any interest of the Principal in Franchisee as shown in Exhibit D.
 - 16.4.5 You acknowledge and agree that any transfer, pledge or other encumbrance by you which does not have our prior written approval will be deemed null and void.
 - 16.4.6 You also acknowledge and agree that in order to streamline our review and approval of proposed buyers, and to avoid circumstances in which a potential transaction proceeds too far ahead before we are given an opportunity to review and consider the qualifications of a potential buyer, that you will: **(a)** provide us with information about a prospective buyer at the earliest possible date that you consider an individual or an entity to be a prospective transferee; **(b)** cooperate with us in obtaining the information that we need in order to review and consider the qualifications of a prospective transferee; and **(c)** provide us with a copy of the purchase agreement with the buyer.
- 16.5 Transfer Conditions. We will not unreasonably withhold any consent required by Section 16.4 above; provided, if you propose to transfer your obligations hereunder, or any material asset, or if a Principal proposes to transfer any direct or indirect interest in Franchisee, we will have absolute discretion to require any or all of the following as conditions of our approval:
- 16.5.1 If we request, you, at your expense, must upgrade the Franchised Business to conform to the then current standards and specifications for new Stores (as may be set forth in the Manual) then-being established in the System (including installing at the Franchised Business the then-current Kilwins POS (or Required Software) System (and paying the POS Software Fee), related computer equipment, and other equipment that we may specify), and shall complete the upgrading and other requirements within the time we specify;

- 16.5.2 You, the transferor, and any other persons we designate, will have executed and delivered to us a general release, in a form satisfactory to us, of any and all claims against us and our affiliates, successors, and assigns, and their respective directors, officers, members, managers, shareholders, partners, agents, representatives, servants, and employees in their corporate and individual capacities including claims arising under this Agreement, any other agreement between you and us or our affiliates, and federal, state, and local laws and rules;
- 16.5.3 The transferee of a Principal shall be designated as a Principal and each transferee who is designated a Principal shall enter into a written agreement, in a form satisfactory to us, agreeing to be bound as a Principal under the terms of this Agreement as long as such person or entity owns any interest in Franchisee; and, if your obligations were guaranteed by the transferor, the Principal shall guarantee the performance of all such obligations in writing in a form satisfactory to us;
- 16.5.4 The transferee(s) of a Principal must meet our educational, managerial, and business standards; each shall possess a good moral character, business reputation, and credit rating; have the aptitude and ability to operate the Franchised Business, as may be evidenced by prior related business experience and behavior or otherwise; shall not own, operate or have an interest in a Competitive Business (defined below); and have adequate financial resources and capital to operate the Franchised Business;
- 16.5.5 If a proposed transfer would result in a change in control of Franchisee, then we will have the right to require that you execute and deliver to us, for a term ending on the expiration date of this Agreement, the form of franchise agreement that we are then offering to new System franchisees, and such other ancillary agreements we require for the business franchised hereunder, which agreements shall supersede this Agreement and its ancillary documents in all respects, and the terms of which may differ from the terms of this Agreement including a higher royalty and advertising fee;
- 16.5.6 The transferor shall remain liable for all of the obligations to us in connection with the Franchised Business that arose prior to the effective date of the transfer, and any covenants that survive the termination or expiration of this Agreement, and shall execute and deliver to us any and all instruments we may reasonably request to evidence such liability;
- 16.5.7 At your or the transferee's expense, and prior to the completion of the transfer, at least one Principal of the transferee we designate shall attend the "discovery day" activities that we provide and shall successfully complete all training programs we require, upon such terms and conditions as we may reasonably require;
- 16.5.8 For our legal, accounting, training, and other expenses incurred in connection with the transfer, you must pay a transfer fee in the amount of Thirty Thousand Dollars (\$30,000) or seventy-five percent (75%) of our then-current initial franchise fee (whichever is more). The transfer fee shall be paid in the following manner: (a) Ten Thousand Dollars (\$10,000) at the time you provide us with written notice of the intended transfer; and (b) the remaining Twenty Thousand Dollars (\$20,000) (or such higher amount as applicable) on or before the date we provide our written approval for the transfer;

- 16.5.9 We will have the right to communicate with the proposed buyer (and its counsel) and to: truthfully answer their questions about our System, our company, and your operations; exchange information; and seek information from the buyer about their qualifications and characteristics. The proposed transferor(s) and the proposed buyer(s) must cooperate with us in this regard;
- 16.5.10 If you and/or the transferee is represented by counsel, our counsel must have permission to communicate with such counsel, and you and the transferee and, if applicable, your counsel, must cooperate with us and our counsel in connection with the proposed transfer;
- 16.5.11 The transferor must acknowledge and agree that the transferor shall remain bound by the covenants contained in Section 19.2 and Section 19.3 of this Agreement; and
- 16.5.12 If a proposed transfer would mean the transfer or sublease of the lease for the Approved Site, the transferee and landlord must sign and deliver to us a new Lease Addendum for the new lease arrangement.
- 16.6 Right of First Refusal.
- 16.6.1 If you or any Principal wishes to accept a bona fide offer from any party to purchase Franchisee, any material assets of Franchisee, or any direct or indirect interest in Franchisee, you or such Principal shall promptly notify us in writing of such offer and shall provide such information and documentation relating to the offer (including the same information that you provided to the buyer to evaluate the transaction, such as financials and sales information), as we may require. We will have the right and option, exercisable within forty-five (45) days after receipt of all such information, to send written notice to the seller that we intend to purchase the seller's interest on the same terms and conditions offered by the third party. If we elect to purchase the seller's interest, the closing on such purchase shall occur within forty-five (45) days from the date of notice to the seller of our election to purchase.
- 16.6.2 Any material change in the terms of the offer prior to closing shall constitute a new offer subject to our same right of first refusal as in the case of the third party's initial offer.
- 16.6.3 If we do not exercise the option afforded by this Section 16.6, that: **(a)** shall not constitute a waiver of any other provision of this Agreement, including all of the requirements of this Section 16, with respect to a proposed transfer; and **(b)** shall not waive the application of Section 16.6.2 above as to any change in the offer thereafter made.
- 16.6.4 If the consideration, terms, and/or conditions offered by a third party are such that we may not reasonably be required to furnish the same consideration, terms, and/or conditions, then we may purchase the interest proposed to be sold for the reasonable equivalent in cash (as just one example, this would include situations where the buyer proposes to pay with a unique item such as a parcel of real estate instead of cash). If the parties cannot agree within a reasonable time on the reasonable equivalent in cash of the consideration, terms, and/or conditions offered by the third party, they must attempt to appoint a mutually-acceptable independent appraiser to make a binding determination. If the parties are unable

to agree upon one independent appraiser, then we will promptly designate an independent appraiser and you must promptly designate another independent appraiser, which two appraisers shall, in turn, promptly designate a third appraiser. All three appraisers shall promptly confer and reach a single determination, which determination will be binding upon us and you. The cost of any such appraisal shall be shared equally by us and you. If we elect to exercise our right under this Section 16.6, we will have the right to set off all amounts due from you, and one-half (½) of the cost of the appraisal, if any, against any payment to the seller.

- 16.7 Death or Incapacity. If you or any Principal dies, becomes incapacitated, or enters bankruptcy proceedings, that person's executor, administrator, personal representative, or trustee must promptly notify us of the circumstances, and apply to us in writing within three (3) months after the event (death, declaration of incapacity, or filing of a bankruptcy petition) for consent to transfer the person's interest. The transfer will be subject to the provisions of this Section 16, as applicable; however, we will not impose a transfer fee for such a transfer, so long as you reimburse us for any out-of-pocket expenses that we incur in reviewing and/or documenting a transfer under this Section 16.7).
- 16.7.1 In addition, if the deceased or incapacitated person is the Designated Principal, we will have the right (but not the obligation) to take over operation of the Franchised Business until the transfer is completed and to charge a reasonable management fee for our services.
- 16.7.2 For purposes of this Section, "incapacity" means any physical or mental infirmity that will prevent the person from performing his or her obligations under this Agreement: **(a)** for a period of thirty (30) or more consecutive days; or **(b)** for sixty (60) or more total days during a calendar year. In the case of transfer by bequest or by intestate succession, if the heirs or beneficiaries are unable to meet the conditions of Section 16.3, the executor may transfer the decedent's interest to another successor that we have approved, subject to all of the terms and conditions for transfers contained in this Agreement.
- 16.7.3 If an interest is not disposed of under this Section 16.7 within six (6) months after the date of death or appointment of a personal representative or trustee, we may terminate this Agreement under Section 17.2.
- 16.8 Consent to Transfer. Our consent to a transfer which is the subject of this Section 16 shall not constitute a waiver of any claims it may have against the transferring party, nor shall it be deemed a waiver of our right to demand exact compliance with any of the terms of this Agreement by the transferor or transferee.
- 16.9 No Transfers to a Non-Franchisee Party to Operate a Similar Business. You agree that neither you nor any Principal of yours will transfer or attempt to transfer any or all of your Franchised Business to a third party who will operate a Competitive Business (as defined in Section 19.2.2 below) at the Approved Site but not under a franchise agreement with us.
- 16.10 Bankruptcy Issues. If you or any person holding any interest (direct or indirect) in Franchisee becomes a debtor in a proceeding under the U.S. Bankruptcy Code or any similar law in the U.S. or elsewhere, it is the parties' understanding and agreement that any transfer of Franchisee, your obligations and/or rights hereunder, any material assets of Franchisee, or any indirect or direct interest in Franchisee will be subject to all of the terms of this Section 16, including the terms of Sections 16.4, 16.5, and 16.6.

- 16.11 Securities Offers. All materials for an offering of stock, ownership, and/or partnership interests in you or any of your affiliates that are required by federal or state law must be submitted to us for review as described below before such materials are filed with any government agency. Any materials to be used in any exempt offering must be submitted to us for such review before their use.
- 16.11.1 You agree that: (a) no offering by you or any of your affiliates may imply (by use of the Proprietary Marks or otherwise) that we are participating in an underwriting, issuance, or offering of your securities or your affiliates; (b) our review of any offering will be limited solely to the relationship between you and us (and, if applicable, any of your affiliates and us); and (c) we will have the right, but not obligation, to require that the offering materials contain a written statement that we require concerning the limitations stated above.
 - 16.11.2 You (and the offeror if you are not the offering party), your Principals, and all other participants in the offering must fully indemnify us and all of the Kilwins Parties (as defined in Section 21.5.2 below) in connection with the offering.
 - 16.11.3 For each proposed offering, you agree to pay us a non-refundable fee of Five Thousand Dollars (\$5,000) or such greater amount as is necessary to reimburse us for our reasonable costs and expenses (including legal and accounting fees) for reviewing the proposed offering.
 - 16.11.4 You agree to give us written notice at least thirty (30) days before the date that any offering or other transaction described in this Section 16.11 commences. Any such offering will be subject to all of the other provisions of this Section 16, including the terms set forth in Sections 16.4, 16.5, 16.6; and further, without limiting the above, it is agreed that any such offering will be subject to our approval as to the structure and voting control of the offeror (and you, if you are not the offeror) after the financing is completed.
 - 16.11.5 You must also, for the remainder of the term of the Agreement, submit to us for our review and prior written approval all additional securities documents you are required to prepare and file (or use) in connection with any offering of stock, ownership, and/or partnership interests. You must reimburse us for our reasonable costs and expenses we incur in connection with our review of those materials.

17. DEFAULT AND TERMINATION.

- 17.1 Automatic. You must be deemed to be in default under this Agreement, and all rights granted in this Agreement shall automatically terminate without notice to you, if you become insolvent or make a general assignment for the benefit of creditors; or if a petition in bankruptcy is filed by you or such a petition is filed against and not opposed by you; or if you are adjudicated a bankrupt or insolvent; or if a bill in equity or other proceeding for the appointment of a receiver of you or other custodian for your business or assets is filed and consented to by you; or if a receiver or other custodian (permanent or temporary) of your assets or property, or any part thereof, is appointed by any court of competent jurisdiction; or if proceedings for a composition with creditors under any state or federal law should be instituted by or against you; or if a final judgment remains unsatisfied or of record for thirty (30) days or longer (unless appealed or a supersedeas bond is filed); or if you are dissolved; or if execution is levied against your business or property; or if suit to foreclose any lien or mortgage against the Franchised Business is instituted against you and not dismissed within thirty (30) days; or if the real or

personal property of your Franchised Business shall be sold after levy thereupon by any sheriff, marshal, or constable.

- 17.2 With Notice. You will be deemed to be in default and we may, at our option, terminate this Agreement and all rights granted hereunder, without affording you any opportunity to cure the default, effective immediately upon our delivery of written notice to you (in the manner set forth under Section 23 below), upon the occurrence of any one or more of the following:
- 17.2.1 If you fail to construct and open the Franchised Business within the time limits as provided in Section 5.1 of this Agreement, and within the requirements otherwise set forth in Section 5 of the Agreement.
 - 17.2.2 If you at any time you: (a) cease to operate the Franchised Business; (b) indicate to us or it is otherwise apparent to us that you have or intend to abandon the Franchised Business; (c) lose the right to possession of the premises; and/or (d) otherwise forfeit the right to do or transact business in the jurisdiction where the Franchised Business is located; provided, however, that: (i) if, through no fault of your own, the premises are damaged or destroyed by a Force Majeure Event (defined below) such that repairs or reconstruction cannot be completed within ninety (90) days thereafter, then you will have thirty (30) days after such event in which to apply for our approval to relocate and/or reconstruct the premises for your Franchised Business, which approval will not be unreasonably withheld (however, you acknowledge and agree that it is reasonable for us to condition our approval of any such relocation or reconstruction on you demonstrating to our satisfaction that you have the financial capability to complete such relocation or reconstruction); and/or (ii) you will not be deemed to be in default of this clause with respect to seasonal closures as to which we have provided our prior written approval.
 - 17.2.3 If you or any Principal is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that we believe is reasonably likely to have an adverse effect on the System, the Proprietary Marks, the goodwill associated with the Proprietary Marks, or our interest in the Proprietary Marks.
 - 17.2.4 If a threat or danger to public health or safety results from the construction, maintenance, or operation of the Franchised Business.
 - 17.2.5 If you or any Principal purports to transfer any rights or obligations under this Agreement or any interest to any third party in a manner that is contrary to the terms of Section 16 of this Agreement.
 - 17.2.6 If you fail to comply with the covenants in Section 19.3 below or fail to obtain execution of the covenants required under Section 19.8 below.
 - 17.2.7 If, contrary to the terms of Sections 10 or 11 above, you disclose or divulge the contents of the Manual or other confidential information we provide to you.
 - 17.2.8 If an approved transfer of an interest in Franchisee is not effected within a reasonable time, and as required by Sections 16.5 and 16.7 above.
 - 17.2.9 If you are in default of this Agreement and/or any other contract between you (including your Principals and affiliates) and us (including any of affiliates) in connection with the Franchised Business and/or any other Stores that operate

under the System, and those defaults are not curable (or, if they are subject to your right to cure, but you do not cure the defaults within the time period provided in such contracts).

- 17.2.10 If you, after curing a default pursuant to this Section 17, commit the same default again within a twelve (12) month period of the previous default, whether or not cured after notice.
 - 17.2.11 If, after receipt of notice from us of a violation of the provisions of Section 7.1 above, you continue to purchase any Approved Products or Input Items from an unapproved supplier, or sell any products from the Store that are not Approved Products, as prohibited under Section 7.1 above.
 - 17.2.12 If you knowingly maintain false books or records, or submit any false reports (including but not limited to, information provided as part of your application for this franchise) to us.
 - 17.2.13 If you purchase from any unauthorized supplier, and/or if you manufacture (directly or indirectly) any Designated Products that you must buy from us, our affiliate, and/or our designee under Section 7.2 above.
 - 17.2.14 If an inspection discloses that you understated your sales, in any report to us, by four percent (4%) or more.
 - 17.2.15 If you repeatedly are in default under Section 17 for failure substantially to comply with any of the requirements imposed by this Agreement, whether or not cured after notice.
- 17.3 With Notice and Opportunity to Cure. Except as otherwise provided in Sections 17.1 and 17.2 of this Agreement, upon any other default by you, we may terminate this Agreement only by giving written notice of termination (in the manner set forth under Section 23 below) stating the nature of such default to you at least thirty (30) days prior to the effective date of termination; provided, however, that you may avoid termination by immediately initiating a remedy to cure such default, curing it to our satisfaction, and by promptly providing proof thereof to us within the thirty day period. If any such default is not cured within the specified time, or such longer period as applicable law may require, this Agreement shall terminate without further notice to you, effective immediately upon the expiration of the thirty (30) day period or such longer period as applicable law may require.
- 17.4 Our Rights Instead of Termination. If we are entitled to terminate this Agreement in accordance with Sections 17.1, 17.2, and/or 17.3 above, then we will also have the right to take any lesser action instead of terminating this Agreement, including terminating, modifying, or eliminating completely, the Protected Territory described in Section 1.3 above.
- 17.5 Reservation of Rights under Section 17.4. If any rights, options, arrangements, or areas are terminated or modified in accordance with Section 17.4 above, such action shall be without prejudice to our right to terminate this Agreement in accordance with Sections 17.2 or 17.3 above, and/or to terminate any other rights, options or arrangements under this Agreement at any time thereafter for the same default or as a result of any additional defaults of the terms of this Agreement.
- 17.6 Damages. You agree to pay us all damages, costs, and expenses (including but not limited to, reasonable attorneys' fees, court costs, discovery costs, and all other related expenses), that

we incur as a result of any default by you under this Agreement and any other agreement between the parties (and their respective affiliates) (in addition to other remedies that we may have).

18. OBLIGATIONS UPON TERMINATION OR EXPIRATION.

Upon termination or expiration of this Agreement, all rights granted to you under this Agreement will immediately terminate, and you (and your Principals and employees) shall immediately comply with all of the following:

- 18.1 Cease Operation. You must immediately cease to operate the business franchised under this Agreement, and shall not thereafter, directly or indirectly, represent to the public or hold yourself out as our present or former franchisee. You must immediately stop selling products at the Franchised Business, and must not give away, contaminate, damage, or destroy any products.
- 18.2 Stop Using Marks and Intellectual Property. You must immediately and permanently cease to use, in any manner whatsoever, any confidential methods, procedures and techniques associated with the System, the Proprietary Mark "Kilwins," and all other Proprietary Marks and distinctive forms, slogans, signs, symbols, and devices associated with the System. In particular, you must cease to use, without limitation, all signs, advertising materials, displays, stationery, forms, e-mail addresses, and any other articles which display the Proprietary Marks.
- 18.3 Cancel Assumed Names. You agree to take all action that may be necessary to cancel any assumed name or equivalent registration that contains the Proprietary Marks (including "Kilwins") and/or any of our other service marks or trademarks, and you agree to provide us with evidence (satisfactory to us) that you have met this obligation within five (5) days after termination or expiration of this Agreement.
- 18.4 Premises. If you do not own the entirety of the premises, then you must, at our option, assign to us any interest which you have in the lease or sublease for ground upon which the Franchised Business is operated and/or for the building in which the Franchised Business is operated.
 - 18.4.1 If we do not elect or if we are unable to exercise any option we may have to acquire the lease or sublease for the premises of the Franchised Business, or otherwise acquire the right to occupy the premises, you will make such modifications or alterations to the premises operated under this Agreement (including changing of the telephone number) immediately upon termination or expiration of this Agreement as may be necessary to distinguish the appearance of said premises from that of other Stores, and shall make such specific additional changes thereto as we may reasonably request for that purpose. At a minimum, such changes and modifications to the Approved Site will include: (a) re-painting any surface that is finished in distinctive Kilwins-specified colors, removing any Kilwins-specified wall covering, murals or wall graphics, and, where applicable, re-covering both the exterior and interior walls of the Approved Site with totally different colors and finishes, which includes removing of any other Kilwins designs from the walls, ceilings, floors, and exterior facade; (b) removing (or, at our discretion, destroying) furniture, store fixtures, equipment, Kilwins-designed or Kilwins-specified lighting, and other decor items associated with a "Kilwins" Store, and replacing them with other decor items not of the general type and appearance customarily used in "Kilwins" Stores; (c) removing all signs, including exterior awnings displaying any

"Kilwins" Marks or product indicators; (d) immediately discontinuing use of the approved wall decor items, and refraining from using any products or items that may be confusingly similar to those used in a Store; and (e) modifying the premises as necessary to comply with the covenant not to compete provisions set forth in Section 19.3 of this Agreement.

- 18.4.2 You agree to stop making any use of all signs (including exterior directory signs at or near the Approved Site, in a mall directory, or otherwise), telephone numbers, domain names, websites, e-mail addresses, Online Sites, and any other print and electronic identifiers, whether or not we have authorized them, that you have used while operating the Franchised Business. You also agree to promptly execute such documents as we may provide to you, and to take such steps necessary to remove reference to the Franchised Business from all trade or business telephone directories, including "yellow" and "white" pages and electronic directories, and also transfer to us all telephone numbers associated with your Franchised Business.
- 18.4.3 You agree to remove and put into storage all interior and exterior "Kilwins" signs (unless we request otherwise), which you agree to sell to us (at our option) for the amount of Ten Dollars (\$10) each. You agree that we have the right to file a mechanics lien upon the signs if you do not comply with the terms of this Section 18.4.3.
- 18.4.4 If you fail or refuse to comply with all of the requirements of this Section 18.4, then we (or our designee) shall have the right to enter upon the premises of the Franchised Business, without being guilty of trespass or any other tort, for the purpose of making or causing to be made such changes as may be required, at your cost, which expense you agree to pay upon demand.
- 18.4.5 If you choose to retain your computer hardware you agree to have all Required Software and associated components removed from your Computer System and you may only retain data required to support tax or legal claims.
- 18.4.6 You must make current any software license commitments through us and/or directly with an approved vendor of our choice through the end of any contractual obligations.
- 18.5 Our Option to Buy Your Assets. We will have the right (but not the obligation), which we may exercise at any time within thirty (30) days after expiration, termination, or default under this Agreement (and/or default under your lease/sublease for the premises of your Store) to buy from you (and/or your affiliates), any or all of your furnishings, equipment, signs (to the extent we have not exercised our purchase rights under Section 18.4.3 above), fixtures, supplies, or inventory related to the operation of the Franchised Business, at the lesser of your cost or fair market value, and free of any liens, encumbrances, and/or other interests that may apply to any such assets. The parties agree that "fair market value" shall be determined based upon a five (5) year straight-line depreciation of original costs beginning on the original Store opening date. For equipment and fixtures that are between five (5) years old and ten (10) years old, the parties agree that fair market value shall be deemed to be ten percent (10%) of the equipment and fixture's original cost. For equipment and fixtures that are more than ten (10) years old, the parties agree that fair market value shall be deemed to be five percent (5%) of the equipment and fixture's original cost. If we elect to exercise any option to purchase provided in this Section 18.5, we shall have the right to set off all amounts due from you. The

original Store opening date will serve as the start date to calculate the age of the equipment and fixtures.

- 18.6 No Use of the Marks in Other Businesses. You agree, if you continue to operate or subsequently begin to operate any other business, not to use any reproduction, counterfeit, copy, or colorable imitation of the Proprietary Marks, either in connection with such other business or the promotion thereof, which is likely to cause confusion, mistake, or deception, or which is likely to dilute our rights in and to the Proprietary Marks, and further agree not to utilize any designation of origin, description, trademark, service mark, or representation which suggests or represents a present or past association or connection with us, the System, or the Proprietary Marks.
- 18.7 Pay All Sums Due. You must promptly pay all sums owing to us and our subsidiaries and affiliates. In the event of termination for your default, such sums shall include all damages, costs, and expenses, including reasonable attorneys' fees, we incur as a result of the default.
- 18.8 Pay Damages. You must pay us all damages, costs, and expenses, including reasonable attorneys' fees, we incur subsequent to the termination or expiration of this Agreement in obtaining injunctive or other relief for the enforcement of any provisions of this Section 18.
- 18.9 Return Confidential Information. You must immediately deliver to us the Manual, and all other manuals, records, and instructions containing confidential information (including any copies thereof, even if such copies were made in violation of this Agreement), all of which are acknowledged to be our property.
- 18.10 Right to Enter and Continue Operations. In order to preserve the goodwill of the System following termination, we (or our designee) will have the right to enter the Franchised Business (without liability to you, your Principals, or otherwise) for the purpose continuing the Franchised Business's operation and maintaining the goodwill of the business.
- 18.11 Lost Future Royalties. If we terminate this Agreement based on your default, or if you abandon or otherwise cease to operate the Franchised Business, you agree to pay to us, as liquidated damages, an amount calculated as follows: **(a)** the average of your monthly royalty fees that are due under this Agreement for the twelve (12) months (or actual time open if less than twelve (12) months) immediately before your abandonment or our delivery of the notice of default, even if you acquired the Franchised Business through a transfer occurring less than 12 months before your abandonment or our delivery of the notice of default (or if you have been operating for less than twelve (12) months, the average of your monthly royalty fees for the number of months you have operated the Store); **(b)** multiplied by the lesser of 36 or the number of months remaining in the then-current term of this Agreement under Section 2.
- 18.12 Our Rights. You agree not to do anything that would potentially interfere with or impede the exercise of our rights under Section 18.

19. COVENANTS.

- 19.1 Operation and Best Efforts. You agree that throughout the term of this Agreement: **(a)** you (or the Operating Partner) will devote full time, energy, and best efforts to the management and operation of the Franchised Business; and **(b)** the Franchised Business shall remain open and in operation to serve customers during normal business days and hours for a Store.
- 19.2 Understandings.

- 19.2.1 You acknowledge and agree that: **(a)** pursuant to this Agreement, you will have access to valuable trade secrets, specialized training and Confidential Information from us and our affiliates regarding the development, operation, management, purchasing, sales and marketing methods and techniques of the System; **(b)** the System and the opportunities, associations and experience we have established and that you will have access to under this Agreement are of substantial and material value; **(c)** in developing the System, we and our affiliates have made and continue to make substantial investments of time, technical and commercial research, and money; **(d)** we would be unable to adequately protect the System and its trade secrets and Confidential Information against unauthorized use or disclosure and would be unable to adequately encourage a free exchange of ideas and information among franchisees in our system if franchisees were permitted to hold interests in Competitive Businesses (as defined below); and **(e)** restrictions on your right to hold interests in, or perform services for, Competitive Businesses will not unreasonably or unnecessarily hinder your activities.
- 19.2.2 As used in this Section 19, the term “**Competitive Business**” is agreed to mean any business that offers for sale chocolate, fudge, candy, popcorn-based products, ice cream, and/or other frozen dessert products.
- 19.3 Covenant Not to Compete or Engage in Injurious Conduct. Accordingly, you covenant and agree that, during the term of this Agreement and for a continuous period of two (2) years after the expiration or termination of this Agreement, and/or a transfer as contemplated in Section 16 above, you shall not directly, indirectly, for yourself, or through, on behalf of, or in conjunction with any party, in any manner whatsoever, do any of the following:
- 19.3.1 Divert or attempt to divert any actual or potential business or customer of any Kilwins Store to any competitor or otherwise take any action injurious or prejudicial to the goodwill associated with the Marks and the System.
- 19.3.2 Own, maintain, develop, operate, engage in, franchise or license, make loans to, lease real or personal property to, and/or have any whatsoever interest in, or render services or give advice to, any Competitive Business.
- 19.3.3 Sell or transfer any inventory, supplies, furniture, fixtures, and/or equipment of the Franchised Business (directly or indirectly) to any Competitive Business.
- 19.4 Where Restrictions Apply. During the term of this Agreement, there is no geographical limitation on the restrictions set forth in Section 19.3 above. During the two-year period following the expiration or earlier termination of this Agreement, or a transfer as contemplated under Section 16 above, these restrictions shall apply only within ten (10) miles of the Approved Site and also within ten (10) miles of any then-existing Kilwins Store, except as we may otherwise approve in writing. These restrictions shall not apply to Stores that you operate that we (or our affiliates) have franchised to you pursuant to a valid franchise agreement.
- 19.5 Application to Transfers. You further covenant and agree that, for a continuous period of two (2) years after the expiration or termination of this Agreement, and/or a transfer as contemplated in Section 16 above, you will not, either directly or indirectly, for yourself, or through, on behalf of, or in conjunction with any person, firm, partnership, corporation, or other entity, sell, assign, lease or transfer the Approved Site to any person, firm, partnership, corporation, or other entity that you know, or have reason to know, intends to operate a Competitive Business at the Approved Site. You, by the terms of any conveyance selling, assigning, leasing or transferring your interest in the Approved Site, shall include these

restrictive covenants as are necessary to ensure that a Competitive Business that would violate this Section is not operated at the Approved Site for this two-year period, and you shall take all steps necessary to ensure that these restrictive covenants become a matter of public record.

- 19.6 Periods of Non-Compliance. If, at any time during the two-year period following expiration or termination of this Agreement, and/or a transfer as contemplated in Section 16 above, you fail to comply with your obligations under this Section 19, then that period of noncompliance will not be credited toward your satisfaction of the two-year obligation specified above.
- 19.7 Publicly-Held Entities. Section 19.3 above shall not apply to ownership by you of less than one percent (1%) beneficial interest in the outstanding equity securities of any publicly held corporation. As used in this Agreement, the term “publicly held corporation” shall be deemed to refer to a corporation which has securities that have been registered under the federal Securities Exchange Act of 1934.
- 19.8 Personal Covenants. At our request, you must require and obtain execution of covenants similar to those set forth in Sections 9.3.3, 11, 16, 18, and this Section 19 (as modified to apply to an individual) from any or all of the following persons: The Franchised Business’ general managers, supervisors, and Principals. Every covenant required by this Section 19.8 shall be in a form satisfactory to us, including specific identification of us as a third-party beneficiary of such covenants with the independent right to enforce them. Your failure to obtain execution of a covenant required by this Section 19.8 shall constitute a default under Section 17.2.6 above.
- 19.9 Construction. The parties agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Section 19 is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which we are a party, you agree to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Section 19.
- 19.10 Claims Not a Defense. You agree that the existence of any claims you may have against us, whether or not arising from this Agreement, shall not constitute a defense to our enforcement of the covenants in this Section 19. You agree to pay all damages, costs, and expenses (including reasonable attorneys’ fees) we incur in connection with the enforcement of this Section 19.
- 19.11 Covenant as to Anti-Terrorism Laws. You and the owners of your business (“**Owners**”) agree to comply with and/or to assist us to the fullest extent possible in our efforts to comply with Anti-Terrorism Laws (as defined below). In connection with such compliance, you and the Owners certify, represent, and warrant that none of their respective property or interests are “blocked” under any of the Anti-Terrorism Laws and that neither you nor any of the Owners are in violation of any of the Anti-Terrorism Laws. You also agree not to knowingly hire or do business with (or continue to employ or do business with) any party who is blocked under any of the Anti-Terrorism Laws. The term “**Anti-Terrorism Laws**” means Executive Order 13224 issued by the President of the United States, as supplemented, the USA PATRIOT Act, and all other laws and regulations addressing or in any way relating to terrorist acts and/or acts of war.
- 19.12 Defaults. You acknowledge that your violation of the terms of this Section 19 would result in irreparable injury to us for which no adequate remedy at law may be available, and you

accordingly consent to the issuance of an injunction prohibiting any conduct in violation of the terms of this Section 19.

20. TAXES, PERMITS, AND INDEBTEDNESS.

- 20.1 Payment of Taxes. You agree to promptly pay when due all taxes levied or assessed, including unemployment and sales taxes, and all accounts and other indebtedness of every kind that you incur in the conduct of the business franchised under this Agreement. You agree to pay us an amount equal to any sales tax, gross receipts tax, or similar tax (other than income tax) imposed on us with respect to any payments that you make to us as required under this Agreement, unless the tax is credited against income tax that we otherwise pay to a state or federal authority.
- 20.2 Payment of Trade Creditors. You agree to promptly pay when due all trade creditors, lenders, and vendors (including any that are affiliated with us, and your landlord) that supply goods, services, leases and/or financing to you and/or the Franchised Business. You also agree to promptly pay us for any expenditures or payments we choose (or are required) to make to trade creditors, lenders or vendors on your behalf to pay for obligations that you incurred in connection with the Franchised Business (for example, products and/or services that you ordered but did not pay for), plus a ten percent (10%) surcharge. We may share credit information with our affiliates, and each of our affiliates have the right to use this information in order to determine how much, if any, credit to provide to you.
- 20.3 Your Right to Contest Liabilities. If there is a bona fide dispute as to your liability for taxes assessed or other indebtedness, you may contest the validity or the amount of the tax or indebtedness in accordance with procedures of the taxing authority or applicable law; however, in no event will you permit a tax sale or seizure by levy of execution or similar writ or warrant, or attachment by a creditor, to occur against the premises of the Franchised Business, or any improvements thereon.
- 20.4 Compliance with Law. You agree to comply with all federal, state, and local laws, rules, and regulations, and shall timely obtain any and all permits, certificates, or licenses necessary for the full and proper conduct of the business franchised under this Agreement (including licenses to do business, healthcare, labeling, nutritional disclosures, food preparation, food handling, food service, health certificates, fictitious name registrations, sales tax permits, and fire clearances). To the extent that the requirements of any such laws are in conflict with the terms of this Agreement, the Manual, or our other instructions, you agree to: **(a)** comply with said laws; **(b)** immediately provide us with written notice describing the nature of the conflict; and **(c)** cooperate with us and our counsel in developing a way to comply with the terms of this Agreement, as well as applicable law, to the extent that it is possible to do so.
- 20.5 Notice of Violations and Actions. You agree to notify us in writing within five (5) days after you receive notice of any health or safety violation, the commencement of any action, suit, or proceeding, and of the issuance of any order, writ, injunction, award, or decree of any court, agency, or other governmental instrumentality, or within five (5) days occurrence of any accident or injury which may adversely affect the operation of the Franchised Business or your financial condition, or give rise to liability or a claim against either party to this Agreement.

21. INDEPENDENT CONTRACTOR AND INDEMNIFICATION.

- 21.1 Independent Contractor Relationship. The parties acknowledge and agree that:

21.1.1 this Agreement does not create a fiduciary relationship between them;

- 21.1.2 that you will be an independent contractor;
 - 21.1.3 you are the only party that is in day-to-day control of your franchised business, even though we will share the brand and Proprietary Marks as specified in this Agreement, and neither this Agreement nor any of the systems, guidance, processes, or requirements under which you operate alter that basic fact;
 - 21.1.4 nothing in this Agreement is intended to make either party an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever; and
 - 21.1.5 neither this Agreement nor our course of conduct is intended, nor may anything in this Agreement (nor our course of conduct) be construed, to state or imply that we are the employer of your employees and/or independent contractors, nor vice versa.
- 21.2 Notice of Status. At all times during the term of this Agreement and any extensions hereof, you will hold yourself out to the public as an independent contractor operating the business pursuant to a franchise from us. You agree to take such action as may be necessary to do so, including exhibiting a notice of that fact in a conspicuous place at the Approved Site, the content of which we reserve the right to specify.
- 21.3 No Contracts in our Name. It is understood and agreed that nothing in this Agreement authorizes you to make any contract, agreement, warranty, or representation on our behalf, or to incur any debt or other obligation in our name; and that we will in no event assume liability for, or be deemed liable under this Agreement as a result of, any such action; nor shall we be liable by reason of any act or omission in your conduct of the Franchised Business or for any claim or judgment arising therefrom against either party to this Agreement.
- 21.4 Indemnification.
- 21.4.1 You agree to indemnify, defend, and hold harmless each of the Kilwins Parties harmless against any and all Expenses arising directly or indirectly from any Claim, as well as from any claimed breach by you of this Agreement. Your indemnity obligations shall: **(a)** survive the expiration or termination of this Agreement, and shall not be affected by any insurance coverage that you and/or any Kilwins Party may maintain; and **(b)** exclude any Claim and/or Expense that a court with competent jurisdiction determines was caused solely by a Kilwins Party's gross negligence and/or willful misconduct.
 - 21.4.2 We will give you notice of any Claim and/or Expense for which the Kilwins Parties intend to seek indemnification; however, if we do not give that notice, it will not relieve you of any obligation (except to the extent of any actual prejudice to you). You will have the opportunity to assume the defense of the Claim, at your expense and through legal counsel reasonably acceptable to us, provided that in our judgment, you proceed in good faith, expeditiously, and diligently, and that the defense you undertake does not jeopardize any defenses of the Kilwins Parties. We shall have the right: **(a)** to participate in any defense that you undertake with counsel of our own choosing, at our expense; and **(b)** to undertake, direct, and control the defense and settlement of the Claim (at your expense) if in our sole judgment you fail to properly and competently assume defense of the Claim within a reasonable time and/or if, in our sole judgment, there would be a conflict of interest between your interest and that of any Kilwins Party.

21.4.3 We agree to indemnify you with respect to the Proprietary Marks as provided in Section 9.2.10 above.

21.5 Definitions. As used in Section 21.4 above, the parties agree that the following terms shall have the following meanings:

21.5.1 “**Claim**” means any allegation, cause of action, and or complaint asserted by a third party that is the result of, or in connection with, your exercise of your rights and/or carrying out of your obligations under this Agreement (including any claim associated with your operation of the Store, sale of Products or Services, events occurring at the Store, data theft or other data-related event, or otherwise, whether asserted by a customer, vendor, employee, or otherwise), a violation of any Operating Code, and/or any default by you under this Agreement (including all claims, demands, causes of action, suits, damages, settlement costs, liabilities, fines, penalties, assessments, judgments, losses, and Expenses). For the sake of clarify, the parties confirm that the indemnification obligations under Sections 9.2.10.2 and 16.11.2 are included within this definition of a Claim.

21.5.2 “**Kilwins Parties**” means us, our shareholders, parents, subsidiaries, and affiliates, and their respective officers, directors, members, managers, shareholders, employees, and agents.

21.5.3 “**Expense**” means all claims, demands, causes of action, suits, damages, liabilities, fines, penalties, assessments, judgments, losses, and expenses (including expenses, costs and lawyers’ fees incurred for any indemnified party’s primary defense or for enforcement of its indemnification rights).

22. APPROVALS AND WAIVERS.

22.1 Request for Approval. Whenever this Agreement requires our prior approval or consent, you agree to make a timely written request to us therefor, and such approval or consent must be obtained in writing. In any instance in which we do not give our consent in writing, we will be deemed to have been denied the request for our consent.

22.2 No Warranties or Guarantees. You acknowledge and agree that we make no warranties or guarantees upon which you may rely, and that we assume no liability or obligation to you, by providing any waiver, approval, consent, or suggestion to you in connection with this Agreement, or by reason of any neglect, delay, or denial of any request therefor.

22.3 No Waivers. No delay, waiver, omission, or forbearance on our part to exercise any right, option, duty, or power arising out of any breach or default by you or any other franchisee under any of the terms, provisions, covenants, or conditions of this Agreement, and no custom or practice by the parties at variance with the terms of this Agreement, shall constitute our waiver of our right to enforce any such right, option, duty, or power as against you, or as to subsequent breach or default by you. If we accept late payments from you or any payments due, that shall not be deemed to be our waiver of any earlier or later breach by you of any terms, provisions, covenants, or conditions of this Agreement. No course of dealings or course of conduct will be effective to amend, modify, or waive any of the terms of this Agreement.

23. NOTICES.

Any and all notices that are required or permitted under this Agreement shall be in writing and shall be personally delivered, sent by certified U.S. mail, or by other means that affords the

sender evidence of delivery, of rejected delivery, or attempted delivery to the respective parties at the addresses shown for each party in the introduction on page 1 of this Agreement (unless and until a different address has been designated by written notice to the other party). Any notice by a means that gives the sender evidence of delivery, rejected delivery, or delivery not possible because the recipient has moved and left no forwarding address shall be deemed to have been given at the date and time of receipt, rejected, and/or attempted delivery. The Manual, any changes that we make to the Manual, and/or any other written instructions that we provide relating to operational matters, are not considered to be “notices” for the purpose of the delivery requirements in this Section 23.

24. ENTIRE AGREEMENT AND AMENDMENT.

- 24.1 Entire Agreement. This Agreement and the exhibits referred to in this Agreement constitute the entire, full, and complete Agreement between the parties to this Agreement concerning the subject matter hereof and supersedes all prior agreements, communications, statements, and representations. The parties confirm that: (a) they were not induced by (nor did they rely upon) any other representations other than the words of this Agreement (and the FDD) before deciding whether to sign this Agreement; and (b) they relied only on the words printed in this Agreement in deciding whether to enter into this Agreement. However, nothing in this Agreement or any other document is meant to (or shall have the effect of) disclaiming any representation that we made in our Franchise Disclosure Document (“**FDD**”) (including its exhibits).
- 24.2 Amendment. Except for those changes that we are permitted to make unilaterally under this Agreement, no amendment, change, or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing.

25. SEVERABILITY AND CONSTRUCTION.

- 25.1 Introductory Paragraphs. The parties agree that the introductory paragraphs of this Agreement, under the heading “Introduction,” are accurate, and the parties agree to incorporate those paragraphs into the text of this Agreement as if they were printed here.
- 25.2 Severability. Except as expressly provided to the contrary in this Agreement, each portion, section, part, term, and/or provision of this Agreement shall be considered severable. If for any reason, any section, part, term, and/or provision in this Agreement is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, such shall not impair the operation of, or have any other effect upon, such other portions, sections, parts, terms, and/or provisions of this Agreement as may remain otherwise intelligible; and the latter shall continue to be given full force and effect and bind the parties to this Agreement; and said invalid portions, sections, parts, terms, and/or provisions shall be deemed not to be a part of this Agreement.
- 25.3 No Third-Party Rights. Except as expressly provided to the contrary in this Agreement, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than you, we, and such of our respective successors and assigns as may be contemplated (and, as to you, permitted) by Section 16 above, any rights or remedies under or by reason of this Agreement.
- 25.4 Captions Don’t Amend Terms. All captions in this Agreement are intended solely for the convenience of the parties, and no caption shall be deemed to affect the meaning or construction of any provision of this Agreement.

- 25.5 Survival. All provisions of this Agreement which, by their terms or intent, are designed to survive the expiration or termination of this Agreement, shall so survive the expiration and/or termination of this Agreement.
- 25.6 How We Exercise Our Rights. Although we may exercise any of our rights, carry out any of our obligations, or otherwise discharge any of our duties under this Agreement directly, through the use of employees, independent contractors, professional advisors (for example, a lawyer or a CPA), or otherwise, we will still remain responsible for the proper performance of our obligations to you under this Agreement. You agree that in any instance in which we have a right as set out in this Agreement, we may exercise that right (unless otherwise provided) once and/or at any additional times that we deem it appropriate to do so.
- 25.7 Including. The parties agree that when used in this Agreement, the terms “include”, “includes”, and “including” shall be understood to mean “including but not limited to”.
- 25.8 Expenses. Each party shall bear all of the costs of exercising its rights and carrying out its responsibilities under this Agreement, except as otherwise provided.
- 25.9 Counterparts. This Agreement may be signed in counterparts, and signature pages may be exchanged by fax, each such counterpart, when taken together with all other identical copies of this Agreement also signed in counterpart, shall be considered as one complete Agreement.
- 26. APPLICABLE LAW AND DISPUTE RESOLUTION.**
- 26.1 Choice of Law. This Agreement takes effect only if and when all of the parties have signed this document, and shall be interpreted and construed exclusively under the laws of the State of Michigan, which laws shall prevail in the event of any conflict of law (without regard to, and without giving effect to, the application of Michigan choice-of-law rules); provided, however, that if the covenants in Section 19 of this Agreement would not be enforceable under the laws of Michigan, and the Franchised Business is located outside of Michigan, then such covenants shall be interpreted and construed under the laws of the state in which the Franchised Business is located. Nothing in this Section 26.1 is intended by the parties to subject this Agreement to any franchise or similar law, rule, or regulation of the State of Michigan to which this Agreement would not otherwise be subject.
- 26.2 Choice of Venue. Subject to Sections 26.3 and 26.5 below, the parties agree that any action that you bring against us, in any court, whether federal or state, must be brought only within such state and in the judicial district in which we have our principal place of business. Any action brought by us against you in any court, whether federal or state, may be brought within the state and judicial district in which we maintain our principal place of business.
- 26.2.1 The parties agree that this Section 26.2 shall not be construed as preventing a party from removing an action from state to federal court; provided, however, that venue shall be as specified above.
- 26.2.2 The parties waive all questions of personal jurisdiction or venue for the purpose of carrying out this provision.
- 26.2.3 Any such action shall be conducted on an individual basis, and not as part of a consolidated, common, or class action.
- 26.3 Mediation. Before any party may bring an action in court against the other, the parties agree that they must first meet to mediate the dispute (except as otherwise provided in Section 26.5

below). Any such mediation shall be non-binding and shall be conducted in accordance with the then-current rules for mediation of commercial disputes of Judicial Arbitration and Mediation Services, Inc. (JAMS) at its location nearest to our principal place of business. Notwithstanding anything to the contrary, this Section 26.3 shall not bar either party from obtaining injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions, without having to engage in mediation.

- 26.4 **Parties Rights are Cumulative.** No right or remedy conferred upon or reserved to us or you by this Agreement is intended to be, nor shall be deemed, exclusive of any other right or remedy provided under this Agreement or provided or permitted under law or equity; rather, each remedy shall be cumulative of every other right or remedy.
- 26.5 **Injunctions.** Nothing in this Agreement shall bar our right to obtain injunctive relief against threatened conduct that will cause us loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions. You agree that we will not be required to obtain or post a performance bond or other security in connection with seeking such injunctive relief, and you also agree not to claim otherwise in any filing with a court.
- 26.6 **Waiver of Jury Trials.** Each party to this Agreement irrevocably waives trial by jury in any action, proceeding, or counterclaim, whether at law or in equity, brought by either of them against the other, whether or not there are other parties in such action or proceeding.
- 26.7 **Must Bring Claims Within One Year.** Any and all claims and actions arising out of or relating to this Agreement, the parties' relationship, or your operation of the Franchised Business, brought by any party hereto against the other, shall be commenced within one (1) year from the occurrence of the facts giving rise to such claim or action, or such claim or action shall be barred; provided, however, that the parties agree that this Section 26.7 shall not apply to a claim by either party seeking indemnification under this Agreement.
- 26.8 **Waiver of Punitive Damages.** Each party to this Agreement waives to the fullest extent permitted by law any right to or claim of any punitive or exemplary damages against the other, and agree that in the event of a dispute between them each shall be limited to the recovery of any actual damages it has sustained. Such actual damages include lost future royalties.
- 26.9 **Payment of Legal Fees.** You agree to pay us all damages, costs and expenses (including reasonable attorneys' fees, court costs, discovery costs, and all other related expenses) that we incur in: (a) obtaining injunctive or other relief for the enforcement of any provisions of this Agreement (including Sections 9 and 17 above); and/or (b) successfully defending a claim from you that we misrepresented the terms of this Agreement, fraudulently induced you to sign this Agreement, that the provisions of this Agreement are not fair, were not properly entered into, and/or that the terms of this Agreement (as it may be amended by its terms) do not exclusively govern the parties' relationship.
27. **FORCE MAJEURE.**
- 27.1 **Impact.** Neither party shall be responsible to the other for non-performance or delay in performance occasioned by causes beyond its control (a "**Force Majeure Event**"), including: (a) acts of nature; (b) acts of war, terrorism, or insurrection; (c) strikes, lockouts, labor actions,

boycotts, floods, fires, hurricanes, tornadoes, public health emergencies, epidemics, pandemics, and/or other casualties; and/or **(d)** our inability (and that of our affiliates and/or suppliers) to manufacture, purchase, and/or cause delivery of any Approved Products or Input Items used in the operation of the Franchised Business.

27.2 Transmittal of Funds. The inability of either party to obtain and/or remit funds shall be considered within control of such party for the purpose of Section 27.1 above. If any such delay occurs, any applicable time period shall be automatically extended for a period equal to the time lost; provided, however, that the party affected makes reasonable efforts to correct the reason for such delay and gives to the other party prompt notice of any such delay; and further provided, however, that you will remain obligated to promptly pay all fees owing and due to us under this Agreement, without any such delay or extension.

27.3 Royalties During Closure. If the Franchised Business temporarily closes due to a Force Majeure Event, and for so long as we approve the temporary closure of the Franchised Business for that reason, you must pay to us continuing royalty fees on the imputed Gross Sales of the Franchised Business during such closure, determined as follows: **(a)** the Gross Sales of the Franchised Business for the same period of time during the previous calendar year, or **(b)** if the Franchised Business was not open and operational during the entire same period in the last calendar year, then the average daily Gross Sales of the Franchised Business over the period of time you have operated the Store during the immediately preceding twelve (12) months (or, if shorter, the period of time after the Store originally opened) multiplied by the number of days that the Store is temporarily closed as provided in this Section 27.3.

28. ACKNOWLEDGMENTS.

28.1 Your Investigation of the Business Possibilities. You acknowledge that you have conducted an independent investigation of the business franchised under this Agreement, recognize that this business venture involves business risks, and that your success will be dependent upon your ability (or, if you are an entity, your owners as independent businesspersons).

28.2 Our Advice. You acknowledge and agree that our advice is simply advice; that our advice is not a guarantee of success; and that you are the party that must reach and implement your own decisions about how to operate your Franchised Business on a day-to-day basis under the System.

28.3 No Warranties or Guarantees. We expressly disclaim the making of, and you acknowledge that you have not received, any warranty or guarantee, express or implied, as to the potential volume, profits, or success of the business venture contemplated by this Agreement. You acknowledge, agree, and confirm that except for the information disclosed in Item 19 of our FDD, we did not provide you (or your representatives) with data on the historic performance of Stores nor did we give you (or your representatives) data to predict the potential performance of your Franchised Business.

28.4 Receipt of FDD and Complete Agreement. You acknowledge receipt of a copy of this Agreement, the exhibit(s), and agreements relating to this Agreement (if any), with all of the blank lines filled in, with ample time within which to review with applicable advisors. You also acknowledge that you received the FDD at least fourteen (14) calendar days before the date on which this Agreement was executed, or as otherwise provided under applicable state law.

28.5 You Have Read the Agreement. You acknowledge and agree that you have read and understood the FDD, this Agreement, and the exhibits to this Agreement.

- 28.6 Your Advisors. You acknowledge that we have recommended that you seek advice from advisors of your own choosing (including a lawyer and an accountant) about the potential benefits and risks of entering into this Agreement, and that you have had sufficient time and opportunity to consult with those advisors.
- 28.7 No Conflicting Obligations. Each party represents and warrants to the others that there are no other agreements, court orders, or any other legal obligations that would preclude or in any manner restrict such party from: **(a)** negotiating and entering into this Agreement; **(b)** exercising its rights under this Agreement; and/or **(c)** fulfilling its responsibilities under this Agreement.
- 28.8 Your Responsibility for the Choice of the Approved Site. You acknowledge that you have sole and complete responsibility for the choice of the Approved Site; that we have not (and shall not be deemed to have, even by our approval of the site that is the Approved Site) given any representation, promise, or guarantee of your success at the Approved Site; and that you will be solely responsible for your own success at the Approved Site.
- 28.9 Your Responsibility for Operation of the Franchised Business. Although we retain the right to establish and periodically modify System standards, which you have agreed to maintain in the operation of your franchised Store, you retain the right and sole responsibility for the day-to-day management and operation of the Franchised Business and the implementation and maintenance of system standards at the Franchised Business.
- 28.10 Different Franchise Offerings to Others. You acknowledge and agree that we may modify the terms under which we will offer franchises to other parties in any manner and at any time, which offers and agreements have or may have terms, conditions, and obligations that may differ from the terms, conditions, and obligations in this Agreement.
- 28.11 Your Independence. You acknowledge and agree that:
- 28.11.1 you are the only party that employs your employees (even though we may provide you with advice, guidance, and training);
 - 28.11.2 we are not the employer of any of your employees, and we will not play any role in decisions regarding their employment (including matters such as recruitment, hiring, compensation, scheduling, employee relations, labor matters, review, discipline, and/or dismissal);
 - 28.11.3 the guidance that we provide and requirements under which you will operate are intended to promote and protect the value of the brand and the Proprietary Marks;
 - 28.11.4 when forming and in operating your business, you had to adopt standards to operate that business, and that instead of developing and implementing your own standards (or those of another party), you chose to adopt and implement our standards for your business (including our System and the requirements under this Agreement); and
 - 28.11.5 you have made (and will remain responsible at all times for) all of the organizational and basic decisions about establishing and forming your entity, operating your business (including adopting our standards as your standards), and hiring employees and employment matters (including matters such as recruitment, hiring, compensation, scheduling, employee relations, labor matters,

review, discipline, and/or dismissal) engaging professional advisors, and all other facets of your operation.

28.12 Success Depends on You. You acknowledge and agree that the success of the business venture contemplated under this Agreement is speculative and depends, to a large extent, upon your ability as an independent businessperson, your active participation in the daily affairs of the business, market conditions, area competition, availability of product, quality of services provided as well as other factors. We do not make any representation or warranty express or implied as to the potential success of the business venture contemplated under this Agreement.

28.13 Two or More Signatories. If two or more persons are signing this Agreement as the "Franchisee" (each, a "**Signatory**"), the parties agree that:

28.13.1 Each Signatory shall have the power to individually bind "Franchisee" with respect to us and third parties;

28.13.2 We will have the right to treat each Signatory as having the full authority to bind all other Signatories in any and all matters;

28.13.3 We will have the right to treat each Signatory as if s/he represents and can act on behalf of all the other Signatory(ies) in all matters;

28.13.4 We will have the right to communicate with or provide notice to any Signatory, and such communication or notice shall be deemed as having been given to all Signatories; and

28.13.5 If there is a conflict among the Signatories (including us receiving conflicting information from or requests between the Signatories), we will have the right to select from among any conflicting or inconsistent requests by, or information from, any of the Signatories, and our selection in such case will be final and dispositive with respect to any such conflict.

28.14 General Release. If this Agreement is not the first contract between you (and/or your affiliates) and us, then you agree to the following:

You (on behalf of yourself and your parent, subsidiaries and affiliates and their respective past and present officers, directors, shareholders, members, managers, agents and employees, in their corporate and individual capacities) and all guarantors of your obligations under this Agreement (collectively, "**Releasors**") freely and without any influence forever release and covenant not to sue Kilwins Chocolates Franchise, Inc., our parent, subsidiaries and affiliates, and their respective past and present officers, directors, members, managers, shareholders, agents and employees, in their corporate and individual capacities (collectively "**Releasees**"), with respect to any and all claims, demands, liabilities and causes of action of whatever kind or nature, whether known or unknown, vested or contingent, suspected or unsuspected (collectively, "**claims**"), which any Releasor now owns or holds or may at any time have owned or held, including claims arising under federal, state and local laws, rules and ordinances and claims arising out of, or relating to this Agreement and all other agreements between any Releasor and any Releasee, the sale of any franchise to any Releasor, the development and operation of the Franchised Store and the development and operation of all other stores operated by any Releasor that are franchised by any Releasee. You understand as well that you may later learn of new or different facts, but still, it is your intention to fully, finally, and forever release all of the claims that are released above. This includes your waiver of state

laws that may otherwise limit a release (for example, Calif. Civil Code Section 1542, which states that “[a] general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”). You agree that fair consideration has been given by us for this General Release and you fully understand that this is a negotiated, complete and final release of all claims. This General Release does not release any claims arising from representations made in our Franchise Disclosure Document and its exhibits or otherwise affect any claims arising after the date of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly signed and delivered this Agreement in duplicate on the day and year first above written.

Kilwins Chocolates Franchise, Inc.
Franchisor:

By: _____

Name: _____

Title: _____

Franchisee Entity:

By: _____

Printed Name: _____

Title: _____

Exhibit A

KILWINS CHOCOLATES FRANCHISE, INC.
FRANCHISE AGREEMENT
SITE ADDENDUM

¶	Section Cross- Reference	Item
1	1.2	Subject to Section 1.2 of this Agreement, the Approved Site under this Agreement shall be: _____ _____.
2	1.3	Subject to Section 1.3 of this Agreement, the Protected Area under this Agreement shall be: [A circle having as its center the front door of the Franchised Business, with a radius of _____ (____) feet.]

Initials	
Franchisor	Franchisee

Exhibit B

KILWINS CHOCOLATES FRANCHISE, INC.
FRANCHISE AGREEMENT
FEE SCHEDULE

#	Section of Agreement	Type of Fee	Amount (Subject to Section 4.6 of the Agreement)
1.	2.2.4	Renewal Fee	See Section 2.2.4 for details
2.	3.11	Additional Assistance, if needed	Five Hundred Dollars (\$500) per day
3.	4.1	Initial Franchise Fee	See Section 4.1 for details
4.	4.2	Royalty Fee	See Section 4.2 for details
5.	4.4	Interest on late payments	See Section 4.4 for details
6.	5.8.8	Store Construction Oversight and Review Fee	See Section 5.8.8 for details
7.	6.2.2	Additional Training	See Section 6.2.2 for details
8.	6.2.4	Replacement Training	See Section 6.2.4 for details
9.	6.2.9	Web-based Training Fee	See Section 6.2.9 for details
10.	13.2	Marketing Contribution	See Section 13.2 for details
11.	13.9	Opening Marketing Program expenditure	Ten Thousand Dollars (\$10,000), at least \$5,000 of which must be spent before the Store opens, and \$5,000 of which must be spent after the Store opens.
12.	15.1.3	Technology Fee	Currently \$200/month
13.	15.1.4	POS Software Fee	See Section 15.1.4 for details. Currently \$210/month (based on two POS stations)
14.	12.1.2	Accounting & back-office Software	See Section 12.1.2 for details. Currently not mandated required
15.	12.5	Gift Cards, Loyalty, and Incentive Programs Incentive Program (Loyalty) Software	See Section 12.5 for details.
16.	15.1.6	Network, Internet, Telephone Service, and Support Fee	See Section 15.1.6 for details Currently \$250/month

#	Section of Agreement	Type of Fee	Amount (Subject to Section 4.6 of the Agreement)
17.	16.11	Securities Offering Review Fee	See Section 16.11 for details
18.	16.5.8	Transfer Fee	See Section 16.5.8 for details

Initials	
Franchisor	Franchisee

Exhibit C

KILWINS CHOCOLATES FRANCHISE, INC.
FRANCHISE AGREEMENT
GUARANTEE, INDEMNIFICATION, AND ACKNOWLEDGMENT

In order to induce Kilwins Chocolates Franchise, Inc. ("**Franchisor**") to sign and deliver the Kilwins Franchise Agreement between Franchisor and _____ ("**Franchisee**") dated _____, _____ (the "**Agreement**"), the undersigned, jointly and severally, unconditionally guarantee to Franchisor and Franchisor's successors and assigns that all of Franchisee's monetary obligations under the Agreement, as well as any other contract between Franchisee and Franchisor (and/or Franchisor's affiliates), will be punctually paid and performed.

Each person signing this Personal Guarantee acknowledges and agrees, jointly and severally, that:

- Upon Franchisor's demand, s/he will immediately make each payment required of Franchisee under the Agreement and/or any other contract (including another franchise agreement) with Franchisor and/or its affiliates.
- S/he waives any right to require Franchisor to: **(a)** proceed against Franchisee for any payment required under the Agreement (and/or any other contract with Franchisor and/or its affiliates); **(b)** proceed against or exhaust any security from Franchisee; **(c)** pursue or exhaust any remedy, including any legal or equitable relief, against Franchisee; and/or **(d)** give notice of demand for payment by Franchisee.
- Without affecting the obligations of the undersigned persons under this Guarantee, Franchisor may, without notice to the undersigned, extend, modify, or release any indebtedness or obligation of Franchisee, or settle, adjust, or compromise any claims against Franchisee. Each of the undersigned persons waive notice of amendment of the Agreement (and any other contract with Franchisor and Franchisor's affiliates) and notice of demand for payment by Franchisee, and agrees to be bound by any and all such amendments and changes to the Agreement (and any other contract with Franchisor and Franchisor's affiliates).
- S/he will defend, indemnify and hold Franchisor harmless against any and all losses, damages, liabilities, costs, and expenses (including reasonable attorneys' fees, court costs, discovery costs, and all other related expenses) resulting from, consisting of, or arising out of or in connection with any failure by Franchisee to perform any obligation of Franchisee under the Agreement (and any other contract with Franchisor and Franchisor's affiliates) and/or any amendment to the Agreement.
- S/he will be personally bound by all of Franchisee's covenants, obligations, and promises in the Agreement.
- S/he agrees to be personally bound by all of Franchisee's covenants, obligations, and promises in the Agreement, which include, but are not limited to, the covenants in the following Sections of the Agreement: **Section 9** (generally regarding trademarks), **Section 11** (generally regarding confidentiality), **Section 16** (generally regarding transfers), **Section 18** (generally regarding obligations upon termination or expiration of this Agreement), and **Section 19** (generally regarding covenants against competition) of the Agreement.

- S/he understands and agrees that: **(a)** this Guarantee does not grant her/him any rights under the Agreement (including but not limited to the right to use any of Franchisor's marks such as the "KILWINS" marks) or the system licensed to Franchisee under the Agreement; **(b)** s/he have read, in full, and understands, all of the provisions of the Agreement that are referred to above in this paragraph, and that s/he intends to fully comply with those provisions of the Agreement as if they were printed here in full; and **(c)** s/he have had the opportunity to consult with a lawyer of her/his own choosing in deciding whether to sign this Guarantee.

This Guarantee shall terminate upon the termination or expiration of the Agreement, except that all obligations and liabilities of the undersigned which arose from events which occurred on or before the effective date of such termination shall remain in full force and effect until satisfied or discharged by the undersigned, and all covenants which by their terms continue in force after the expiration or termination of the Agreement shall remain in force according to their terms. Upon the death of an individual guarantor, that this Guarantee shall bind guarantor's estate but only for defaults and obligations hereunder existing at the time of death; and the obligations of the other guarantors will continue in full force and effect.

This Guarantee shall be interpreted and construed in accordance with **Section 26** of the Agreement (including but not limited to the waiver of punitive damages, waiver of jury trial, agreement to bring claims within one year, and agreement not to engage in class or common actions). Among other things, that means that this Guarantee shall be interpreted and construed exclusively under the laws of the State of Michigan, and that in the event of any conflict of law, Michigan law will prevail (without applying Michigan conflict of law rules).

IN WITNESS WHEREOF, each of the undersigned has signed this Guarantee as of the same date as when the Agreement was signed by Franchisee.

_____ (in his/her personal capacity)	_____ (in his/her personal capacity)	_____ (in his/her personal capacity)
Printed Name:_____	Printed Name:_____	Printed Name:_____
Date:_____	Date:_____	Date:_____
Home Address: _____ _____	Home Address: _____ _____	Home Address: _____ _____

Exhibit D

KILWINS CHOCOLATES FRANCHISE, INC.
FRANCHISE AGREEMENT
LIST OF PRINCIPALS

Name of Principal	Home Address	Interest (%)

Initials	
Franchisor	Franchisee

Exhibit E

KILWINS CHOCOLATES FRANCHISE, INC.
FRANCHISE AGREEMENT

AUTHORIZATION AGREEMENT FOR PAYMENTS BY AUTOMATED CLEARING HOUSE (ACH)
NETWORK (DIRECT DEBITS)

_____ (Name of Person or Legal Entity)

_____ (Federal Tax ID Number)

The undersigned depositor (“**Depositor**” or “**Franchisee**”) hereby authorizes Kilwins Chocolates Franchise, Inc. (“**Franchisor**”) to initiate debit entries and/or credit correction entries to the undersigned’s checking and/or savings account(s) indicated below and the depository designated below to debit or credit such account(s) pursuant to Franchisor’s instructions.

Depository (Bank Name)

Branch (Location Name)

City

State

Zip Code

Routing/Bank Transit/ABA Number

Account Number

This authorization is to remain in full force and effect until sixty days after Franchisor has received written notification from Franchisee of its termination.

Depositor

Depositor

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit FKILWINS CHOCOLATES FRANCHISE, INC.
FRANCHISE AGREEMENT

KILWINS LEASE ADDENDUM

THIS LEASE ADDENDUM (the "**Addendum**") has been executed as of _____, _____, by _____ and _____ between _____ (**"Franchisee"**) and _____ (**"Landlord"**), as an addendum to the lease, as modified, amended, supplemented, renewed and/or extended from time to time as contemplated herein ("**Lease**") dated as of _____, _____ for the premises located at _____, _____ (address) in the State of _____ (**"Premises"**).

Franchisee has also entered (or will also enter) into a Franchise Agreement ("**Franchise Agreement**") with Kilwins Chocolates Franchise, Inc. ("**Franchisor**") for the development and operation of a "Kilwins" store at the Premises. As a condition to obtaining Franchisor's approval of the Lease, the Lease must contain the provisions of this Addendum.

NOW THEREFORE, in consideration of mutual covenants set forth herein, the execution and delivery of the Lease, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Franchisee hereby agree as follows:

1. The Premises may be used solely for the operation of a "Kilwins" business. Franchisee, as the tenant under the Lease, shall have the right to display and use the "Kilwins" marks and signs in the manner required by the Franchisor, provided that such signs comply with applicable development or governmental sign ordinances.
2. Franchisor, along with its successors and assigns, is an intended third-party beneficiary of the provisions of this Addendum.
3. Franchisee and Landlord acknowledge and agree that Franchisor shall have no liability or obligation whatsoever under the Lease unless and until Franchisor assumes the Lease in writing pursuant to this Addendum. The parties also agree that by signing this Addendum, Franchisor has not guaranteed Franchisee's obligations to Landlord.
4. Franchisee and Landlord agree that they will not modify, amend, supplement, and/or extend, nor (in the case of Franchisee) assign the Lease rights, without Franchisor's prior written consent, which shall not be unreasonably withheld. (The parties acknowledge that it would be reasonable for Franchisor not to consent to an assignment of Franchisee's rights to another chocolate or ice cream shop operator, or another similar competitor.) Landlord and Franchisee acknowledge and agree that under the Franchise Agreement, Franchisee has agreed to assign to Franchisor all of Franchisee's rights, title and interests to and under the Lease upon any termination or non-renewal of the Franchise Agreement, but no such assignment shall be effective unless and until: (a) the Franchise Agreement is terminated or expires without renewal; (b) Franchisor has exercised its Option to Purchase under the Franchise Agreement; and (c) Franchisor notifies the Franchisee and Landlord in writing that Franchisor assumes Franchisee's obligations under the Lease.

5. Landlord agrees to deliver to Franchisor a copy of any notice of default or termination of the Lease at the same time such notice is delivered to Franchisee. In addition, Landlord agrees to provide Franchisor notice of a non-renewal by Franchisee, and to grant Franchisor 15 days to exercise a renewal of the Lease with Franchisor as the tenant under the Lease.
6. Franchisor shall have the right, but not the obligation, to cure any breach of the Lease upon giving written notice of its election to Franchisee and Landlord, and, if so stated in the notice, to also succeed to Franchisee's rights, title and interests thereunder. If Franchisor assumes the Lease as provided above, Franchisor may, with Landlord's prior written consent, which shall not be unreasonably withheld, further assign the Lease to another franchisee of Franchisor to operate a "Kilwins" shop at the Premises. Landlord and Franchisee agree to execute such further documentation to confirm Landlord's consent to the assignment permitted under this Addendum as Franchisor or Landlord may reasonably request for that purpose. Upon such assignment, Franchisor shall be released from any further liability under the terms and conditions of the Lease.
7. Landlord and Franchisee acknowledge that Franchisee has agreed under the Franchise Agreement that Franchisor and its employees or agents shall have the right to enter the Premises for certain purposes. Landlord agrees not to interfere with or prevent such entry. Landlord and Franchisee further acknowledge that if the Franchise Agreement expires (without renewal) or is terminated, then Franchisee has an obligation under the Franchise Agreement to take certain steps to properly de-identify the Premises as a "Kilwins" store (unless Franchisor takes an assignment of the lease, as provided above). Landlord agrees to permit Franchisor, its employees or agent, to enter the Premises and remove signs (both interior and exterior), décor and materials displaying any marks, designs or logos owned by Franchisor, provided that Franchisor shall provide at least five (5) days' notice to Landlord before entering the site and shall bear the expense of repairing any damage to the Premises as a result thereof.
8. Landlord and Franchisee acknowledge that upon expiration or termination of the Franchise Agreement for any reason, Franchisor has the right to purchase the assets of the "Kilwins" store operated at the Premises, and that nothing set out in the Lease shall prohibit Franchisor's exercise of such purchase right as set out under the Franchise Agreement.
9. Franchisee agrees that Franchisor and Landlord may communicate as to the status of (and Franchisee's compliance under) the Lease and the Franchise Agreement, as well as related contracts and obligations.
10. Landlord and Franchisee agree that the terms in this Addendum shall supersede any terms to the contrary set forth in the Lease.
11. Landlord and Franchisee agree that copies of any and all notices required or permitted under this Addendum, or under the Lease, shall also be sent to Franchisor at 1050 Bay View Road, Petoskey, Michigan 49770 (attention Chief Operating Officer), formalnotices@kilwinsfranchise.com, or to such other address as Franchisor may specify by giving written notice to Landlord.

--- Signatures on following page ---

The parties to this Addendum have signed and delivered this Addendum as of the date(s) noted below.

Landlord:

Kilwins Chocolates
Franchise, Inc. *

Franchisee:

Date:

Date:

Date:

*The Franchisor has signed
this lease addendum only to
acknowledge its terms and
not to accept any obligations
under the lease.

Exhibit G

KILWINS CHOCOLATES FRANCHISE, INC.
FRANCHISE AGREEMENT
E-MAIL AUTHORIZATION LETTER



_____, _____

[_____]
[_____]
[_____]

Re: E-mail Account

Dear _____,

We at Kilwins Chocolates Franchise, Inc. ("KCF") are pleased to provide you with permission to use a Kilwins e-mail address (that is, one that will contain the Top Level Domain Name "kilwins.com") (the "Kilwins e-mail address") in connection with your franchised Kilwins Store ("the Franchise"). This letter sets out the standards for your use of the Kilwins e-mail address:

1. KCF will assign the Kilwins e-mail address to you and maintain the e-mail account.
2. KCF will allow you to use the Kilwins e-mail address in accordance with the requirements that KCF may periodically issue with respect to the establishment, use, and format of the e-mail addresses. KCF may furnish you with notice of those requirements in a letter, an e-mail, an online message, or otherwise.
3. You acknowledge and agree that KCF owns all right, title and interest in the Kilwins e-mail address and the goodwill that is associated with (and that may become associated with) the Kilwins e-mail address.
4. You agree not to seek, register, reserve, or use (not to permit or authorize anyone else to do so) any of KCF's names and/or marks as domain names, electronic addresses, e-mail addresses, or other similar identifiers.
5. You shall indemnify and hold KCF, KCF's corporate affiliates, and their respective officers, directors, agents, and employees, harmless against any and all claims arising directly or indirectly from, as a result of, or in connection with your use by you and/or any of your employees of the Kilwins e-mail address(es), as well as all the costs (including attorneys' fees) of defending and/or settling such claims.

6. You agree to use the Kilwins e-mail address only for the purpose of sending and receiving e-mail in connection with the proper operation of the Franchise, and for no other purpose. You specifically agree not to use the Kilwins e-mail address for any illegal or immoral purposes.

7. You agree not to send any message (including text, attachments, and hyperlinks) that is harassing, vexatious, threatening, that you know to contain a virus, Trojan horse, worm, or other damaging executable file or other program, or that would reflect poorly on KCF, the Kilwins name, marks, and system.

8. KCF reserves the right to monitor your usage of the Kilwins e-mail address, as well as intercept any messages that are sent to or from your Kilwins e-mail address.

9. KCF can terminate your right to use the Kilwins e-mail address(es) at any time upon thirty (30) days' prior written notice, with or without cause. Any right to use a Kilwins e-mail address shall also terminate, automatically and without notice, if the franchisee's right to operate the Store expires or is terminated.

10. KCF may charge you a fee commensurate with KCF's costs necessary to maintain your e-mail account.

Your signature at the end of this letter indicates your acceptance of the terms set out above.

Sincerely,

Kilwins Chocolates Franchise, Inc.

By: _____
(Name/Title)

ACCEPTED AND AGREED:

Signed: _____ Signed: _____ Signed: _____

Printed Name: _____ Printed Name: _____ Printed Name: _____

Title: _____ Title: _____ Title: _____

Date: _____ Date: _____ Date: _____

Signed: _____ Signed: _____ Signed: _____

Printed Name: _____ Printed Name: _____ Printed Name: _____

Title: _____ Title: _____ Title: _____

Date: _____ Date: _____ Date: _____

Exhibit HKILWINS CHOCOLATES FRANCHISE, INC.
FRANCHISE AGREEMENT
EXTRANET AGREEMENT

This Extranet Agreement (the “**Agreement**”) is made as of _____, by and between Kilwins Chocolates Franchise, Inc. (“**KCF**”) and the Kilwins Franchisee noted below at the signature line of this Agreement.

Introduction

KCF will provide you with a purchased, or custom developed communication network that utilizes a password-protected internet website (the “**Extranet**”) for the benefit of the Kilwins system, its franchisees, and vendors. To have access privileges to use the Extranet, you must agree to the terms and conditions set forth in this Agreement and to the Terms of Use (“**TOU**”) that are attached as Exhibit H-1. This Agreement and the TOU establish the terms and conditions of your access privileges to use the Extranet. (KCF reserves the right to periodically change the TOU.) With the use of a password and a user ID, you will be given access privileges to use the Extranet for obtaining information about the KCF system.

The parties to this Agreement – KCF and the Kilwins Franchisee – are also parties to a Franchise Agreement relating to the establishment and operation of a Kilwins Store at the address noted in the signature block of this Agreement.

In this Agreement, the words “**you**” and “**your**” mean the Kilwins Franchisee and/or your accountant, financial advisor, or any other person or agent logging onto the Extranet on your behalf or otherwise using your password and/or your computer. The words “**we**,” “**us**” and “**our**” mean KCF. The term “**KCF**” includes KCF and its affiliates, such as Kilwins Quality Confections, Inc.

IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS, PLEASE DO NOT SIGN BELOW AND PLEASE DO NOT LOGON TO THE EXTRANET.

System Requirements

In order to use the Extranet, you will need a computer with performance and security features to our standards, to include reliable internet access at the bit speed, related peripheral equipment with approved cyber and physical security, current internet browser software, and other compatible software (collectively, your “**computer system**”). Our standards for the minimum computer configuration that you will need to obtain and maintain are specified in our Manuals.

We are not responsible for any errors or failures caused by any malfunction of your computer, and we are not responsible for any computer virus or related problems that may be associated with your use of the Extranet or of your computer.

You are solely and completely responsible for the installation, maintenance and operation of your computer system. This includes but is not limited to:

- Your computer hardware and software;
- Your telecom costs and your Internet connection;

- The manner in which your computer system interacts with our computer systems and those of other third parties; and
- Any and all consequences that may arise if your computer system is not properly maintained, upgraded, and/or operated.

System Charges

You are solely and completely responsible for all costs and expenses that you will incur in connection with installing, maintaining, and operating your computer system, as well as telephone and/or cable charges incurred while connecting to the Extranet, and for any charges by any internet provider you choose to use to gain access to the Internet which may be paid directly to us or a vendor we designate or approve, and, ultimately, the Extranet.

Security

Kilwins is committed to helping to keep your information private and secure. However, we cannot guarantee that this will be the case. You play a critical role in maintaining the security of your system. By using this system, you agree to the following:

- To keep your password and user ID confidential, and not to post them on or in the proximity of your computer, nor to store your password or other sensitive data on your computer. You further agree not to disclose your password and/or user ID to anyone.
- That your password and user ID are your authorization for using the Extranet.
- To log out of the Extranet when you are finished using the service.
- To physically secure your computer at all times.

The Extranet permits you to electronically communicate with us, but at present, it does not permit you to transfer money, give notices, or otherwise communicate with us so as to satisfy the obligations under your Franchise Agreement or any other agreements with KCF.

Other Users

Upon your request, we will allow certain other parties (such as your accountant, bookkeeper, Store manager) to have a password and user ID, and to use the Extranet on your behalf and in your name. These parties will be considered “**Other Users**.” If you wish to do this, you will need to complete a copy of the Other Users’ Access Privilege Agreement (attached as Exhibit H-2) and have that document signed by the Other User before submitting it to us for our approval. You will be fully responsible for any Other Users’ use of the Extranet, and we will be entitled to rely upon those Other Users as speaking for you in any communication. You and/or the Other Users will be responsible for all of the costs associated with the Other Users’ use of the Extranet.

Signing

We have the right to require that you and Other Users sign Exhibits H-1 and/or H-2 digitally and/or in paper-and-ink format.

Limits on Our Responsibility

We will make reasonable efforts to ensure the performance of the Extranet, but we cannot guarantee that it will operate. We are not responsible for any losses or delays in transmission arising out of the

use of any Internet service provider providing connection to the Internet or caused by any browser software. We are not responsible for any direct, indirect, special, incidental or consequential damages arising in any way out of your use of the Extranet. Because some states do not allow the exclusion or limitation of liability for incidental or consequential damages, in those states our liability is limited to the extent permitted by law.

KCF makes no express or implied warranties concerning the Extranet service, including but not limited to any warranties of merchantability, fitness for a particular purpose or non-infringement of third party proprietary rights.

Franchise Agreement and Other Agreements

This Agreement is part of your Franchise Agreement with KCF and all other agreements you may enter into in connection with the Franchise Agreement, including and as applicable, the Kilwins "Store Construction Agreement," "Equipment Management Agreement," "Architectural and Engineering Agreement" and Search Area Agreement. If you are in default under this Agreement, that will also constitute a default under your Franchise Agreement and all other applicable agreements you have entered into with KCF, including the Store Construction Agreement, Equipment Management Agreement, Architectural Engineering Agreement and Search Area Agreement. The provisions of the Franchise Agreement relating to matters such as confidential information, use of the system, use of the trademarks, and your indemnification of KCF will also apply to your use of the Extranet.

Approved Product Ordering

Approved Product viewing and ordering may be available through the Site, or other business system as we may direct. Only pre-existing account holders will be able to access and use online ordering. You will use the same login ID and password for the Extranet and online ordering. You will be required to use online ordering. You will be required to identify Other Users who will be authorized to order products on your account. You will be responsible for any orders made by these Other Users.

Changes to the Extranet

We reserve the right to change, modify, or discontinue the Extranet and/or any of its components, features or vendors.

Governing Law

This Agreement shall be governed by, and construed, exclusively in accordance with the laws of the State of Michigan (without giving effect to Michigan conflicts of law principles). If any provision of this Agreement shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of any remaining provisions.

No Other Agreements

This Agreement and the exhibits hereto are the only agreements between us concerning the Extranet and supersede any and all prior communication on the subject matter hereof. Neither of us is relying on anything other than the words of this Agreement and the exhibits hereto in deciding whether to enter into this Agreement.

Amendments

This Agreement may be amended but only with both parties' written consent; however, revisions we make to the TOU shall be deemed to have been consented to, in writing, if you, your designees, and/or your Other Users receive notice of any such changes online, and then continue to use the Extranet.

IN WITNESS HEREOF, and intending to be legally bound, the parties have entered into this Agreement as of the date first written above.

Kilwins Chocolates Franchise, Inc.

Franchisee Entity

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Exhibit H-1
to Extranet Agreement

TERMS OF USE FOR KILWINS EXTRANET FOR FRANCHISEES

Kilwins Chocolates Franchise, Inc. (“**KCF**” or “**we**” or “**us**”) welcomes you to Kilwins Extranet (“**Extranet**”) which may be custom built by KCF or purchased for our franchisees. Please read these Terms of Use (the “**TOU**”) carefully before using this Website (the “**Site**”). (As used here, the term “KCF” includes KCF and its affiliates, such as Kilwins Quality Confections, Inc.)

By making any use of this Site (such as reading or perusing the Site’s content, or downloading material from it), you will indicate your agreement to abide by these TOU. If you do not agree with any of these terms, please do not use this Site or download any materials from it.

We reserve the right to modify, replace, alter or otherwise update these TOU at any time and you agree to be bound by such modifications, alterations or updates. You should review the then-current terms because they will be binding on you if you continue to use this Site after receiving notice of any such changes.

Objectives

The Extranet is intended solely for the business use of KCF, its franchisees, and invited guests. Any other use of the Extranet is not permitted.

The TOU are designed to assist in protecting the Extranet, the KCF franchisees, and other users of the Extranet from improper and/or illegal activity over the Internet. You are expected to use the Extranet in a reasonable fashion and to adhere to commonly-accepted practices of the Internet community.

The categories listed below are intended merely to serve as guidelines regarding appropriate and inappropriate conduct. This list is by no means exhaustive and should not be interpreted as such. We reserve the right to take action to stop any activity that we deem to be inappropriate for the Extranet.

While we do not intend to control or monitor your use of the Extranet or the content of your online communications, and we are not obligated to do so, we reserve the right to edit or remove content that we deem to be in violation of the TOU or that we otherwise deem harmful or offensive. The TOU apply to all aspects of the Extranet, including (without limitation) e-mail, message posting, chatting, and browsing.

Trademarks and Copyright

The materials on this Site are copyrighted and are protected by U.S. and international copyright laws and treaty provisions. All content included on this Site, such as text, graphics, logos, button icons, images, audio clips and software, is the property of KCF. The compilation (meaning the collection, arrangement and assembly) of all content on this site is the exclusive property of KCF. No material from this Extranet or any Web site owned, operated, licensed, or controlled by KCF may be copied, reproduced, republished, uploaded, posted, transmitted, or distributed in any way, except that you may view the materials online, download the materials and retain one electronic copy on any single computer and one print copy of any individual file solely for your use in connection with the business of operating your Kilwins franchise under the terms of the relevant Franchise Agreement, provided that you keep intact all copyright and other proprietary notices. Modification, decompiling, reverse engineering or any use of the materials for any other purpose is a violation of KCF copyrights. All other brands and names are property of their respective owners.

KCF trademarks may only be used with express prior written consent from KCF.

Except as expressly provided in these TOU, KCF does not grant any express or implied right to you under any copyrights, trademarks, or other proprietary rights.

You agree that you will not upload, post, or otherwise distribute or facilitate distribution of any content -- including text, communications, software, images, sounds, data or other information -- that:

- a. is unlawful;
- b. is threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortuous, contains explicit or graphic descriptions or accounts of sexual acts (including sexual language of a violent or threatening nature directed at another individual or group of individuals) or otherwise violates KCF rules or policies;
- c. victimizes, harasses, degrades, or intimidates an individual or group of individuals on any basis, including but not limited to, the basis of religion, gender, sexual orientation, race, ethnicity, age or disability;
- d. infringes on any patent, trademark, trade secret, copyright, right of publicity, or any other proprietary right of any party;
- e. constitutes unauthorized or unsolicited advertising, junk or bulk e-mail (also known as "spamming"), chain letters, any other form of unauthorized solicitation or any form of lottery or gambling; or
- f. contains software viruses or any other computer code, files, or programs that are designed or intended to disrupt, damage or limit the functioning of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any data or other information of any third party.

We have no obligation to monitor, do not control, and are not responsible for the content of postings made by Kilwins franchisees, their guests, and others. If we become aware of posted information that is illegal, infringing upon any intellectual property rights, otherwise improper, or that violates the TOU, we reserve the rights at all times to disclose any information as necessary to satisfy any law, regulation or governmental request, or to edit, refuse to post or to remove any information or materials, in whole or in part, that in KCF's sole discretion are objectionable or in violation of the TOU.

You also agree not to harvest or collect information about the users or members of this Extranet or use such information for any purpose.

Brand Standards Manual

The Kilwins Brand Standards Manual will be made available to you on the Site. You may use the Brand Standards Manual only as provided under the terms of your Franchise Agreement with us. We will periodically provide updates to the Brand Standards Manual online. You may not download or print the Brand Standards Manual, in whole or in part, except as we may otherwise permit by written consent.

Approved Product Ordering

Approved Product viewing and ordering may be available through the Site. Only pre-existing account holders will be able to access and use Online Ordering. You will use the same login ID and password for the Extranet and Online Ordering. When you sign up to use Online Ordering, you may identify third

parties authorized to order products on your account. You will be responsible for any orders made by these parties.

Linked Sites

We or our affiliates or designees may provide links from our Site to other websites. Linked sites are not under the control of KCF and KCF is not responsible for the content of any linked site or any link contained in a linked site. KCF reserves the right to terminate any link or linking program at any time. KCF does not endorse companies or products to which it links and reserves the right to note as such on its Web pages. We cannot predict, and do not know, the primary policy or terms of use that will apply to linked sites. If you decide to access any of the third party sites that may be linked to this Site, you do so entirely at your own risk.

Access Rights

We are granting you the right to access the Extranet using the login ID and password that we create. You agree to accept the affirmative duty to keep your login ID and password secure, and further agree that you will not share or post that information anywhere in, on, or near your computer or otherwise where it can be easily found by someone else. If your computer or password is lost, stolen, or otherwise compromised, you must immediately notify KCF, and we will take reasonable steps to deactivate the compromised password. KCF is not responsible for any data that is lost, altered, or that becomes public through your failure to protect your password.

We will allow you access to the Extranet so long as you comply with these TOU and for so long as you remain a Kilwins franchisee (or authorized "Other User") in good standing. We reserve the right to terminate your access to the Extranet or, in our sole judgment, to discontinue the Extranet itself. We will have no liability to you if we terminate your access to the Extranet.

Rights of KCF

If you engage in conduct while using the Extranet that is in violation of the TOU or is otherwise illegal or improper, we reserve the right to suspend or terminate your access to the Extranet without prior notice to you. In most cases, we may attempt to notify you of any activity in violation of the TOU and request that you cease such activity; however, we are not required to do so. In addition, we may take any other appropriate action against you for violations of the TOU. We do not make any promise, nor do we have any obligation, to monitor or police activity occurring via the Extranet and will have no liability to any party, including you, for any violation of the TOU.

Unauthorized Access/Interference

You may not attempt to gain unauthorized access to, or attempt to interfere with or compromise the normal functioning, operation or security of the Extranet. You may not use the Extranet to engage in any activities that may interfere with the ability of others to access or use the Extranet. You may not attempt to gain unauthorized access to the user accounts or passwords of other users.

Online Communication

We reserve the right at some time in the future, and with at least six months prior notice to you, to use the Extranet as the exclusive means by which to provide certain communications, including for example, our Brand Standards Manual and updates, as well as bulletins, newsletters, and other information.

Spamming/Mail bombing

You may not use the Extranet to transmit unsolicited e-mail messages (whether commercial or otherwise) or deliberately send very large attachments to one recipient. Any unsolicited e-mail messages sent to ten or more recipients, or a series of unsolicited e-mail messages or large attachments (as defined in the Manual) sent to one recipient, constitutes "spamming" or "mail bombing"

and is prohibited. Likewise, you may not use the Extranet to collect responses from mass unsolicited e-mail messages.

Spoofing/Fraud

You may not attempt to send e-mail messages or transmit any electronic communications using a name or address of someone other than yourself for purposes of deception. Any attempt to impersonate someone else using forged headers or other identifying information is prohibited.

Any attempt to fraudulently conceal, forge or otherwise falsify your identity in connection with your use of the Extranet is prohibited.

E-Mail Relay Any use of another party's electronic mail server to relay e-mail without express permission from such other party is prohibited.

Illegal Activity You agree to use the Extranet only for lawful purposes. Use of the Extranet for transmission, distribution, retrieval or storage of any information, data or other material in violation of any applicable law, regulation, tariff or treaty is prohibited. This includes, without limitation, the use or transmission of any data or material protected by copyright, trademark, trade secret, patent or other intellectual property right without proper authorization and the transmission of any material that constitutes an illegal threat, violates export control laws or is obscene, defamatory or otherwise unlawful.

Copying The Extranet contains materials published by KCF (the "**Materials**"). We authorize you to copy the Materials only for the internal use of your employees in conducting your franchised Kilwins business. No other use of the Materials is permitted. In consideration of this authorization, you agree that any copy of the Materials (or any portion of the Materials) that you make will retain all copyright and other proprietary notices contained thereon.

Privacy

Any data or information submitted to or provided by us through the Extranet will be subject to any Privacy Statement that KCF has or may develop in the future. Any data or information submitted through the Extranet to any party or person will be transmitted at your own risk. We make no guarantee regarding, and assume no liability for, the security and privacy of any data or information you transmit via the Extranet or over the Internet (including data or information transmitted via any server designated as "secure").

Excessive Usage

If we have specified bandwidth limitations for your user account, we will inform you and you will not use the Extranet in excess of those limitations. Also, if you are accessing the Extranet via a dial-up connection, we may terminate your user session if you are connected for an excessive amount of time in order to protect our network resources and maintain Extranet availability for others.

Other Prohibited Activities

The following activities are also prohibited:

- Attempting to intercept, redirect or otherwise interfere with communications intended for others.
- Transmitting files, data or other materials containing a computer virus, corrupted data, worms, Trojan horses or other limiting routine, instruction or design that would erase data or programming or cause the Extranet or any other equipment or system to become inoperable or incapable of being used in the full manner for which it was designed.
- Using the Extranet to threaten, harass, stalk, abuse or otherwise violate the legal rights of others.

Any other inappropriate activity or abuse of the Extranet (as we determine in our sole discretion), whether or not specifically listed in these TOU, may result in suspension or termination of your access to and use of the Extranet.

Restrictions on Use of Account

It is your responsibility to keep your password secure and not share your user identification with anyone. You may not log-on to more than one user session at a time.

You may not offer any public information service via the Extranet (including running a web server or FTP server).

Inactivity Disconnects

You may keep your user session connected only when you are actively using the Extranet. We may disconnect your user session if there appears to be no interactive activity within a prescribed amount of time. Activity that is automatically generated by your computer system through automated programs, scripts, re-dialers or any other software or hardware device will not be considered "interactive." The use of any automated method to avoid inactivity disconnects or to automatically reinstate an inactive connection is prohibited.

Transfer of Account

You may not transfer your user account to anyone, or allow anyone else to use your login, or display the Site to anyone else, without our prior written consent.

Property Rights

The Extranet and the Materials are our property or, as applicable, the property of third party vendors we have engaged. Nothing contained in this Agreement will confer upon you in any manner, whether by implication, estoppel or otherwise, any license, title or ownership of or to any intellectual property right of KCF or any third party. You may not use our trademarks except with our express written consent to do so.

Disclaimer

KCF does not promise that software or other material will work on your computer and we are not responsible if they do not. KCF makes no representation or warranty as to the timeliness or availability of the Extranet or the information contained therein or that the Extranet will be error-free. KCF has no obligation to maintain or support the Extranet and may, at its option, discontinue the Extranet at any time.

THE MATERIALS ON THIS SITE ARE PROVIDED "AS IS" AND WITHOUT EXPRESS OR IMPLIED WARRANTIES OF ANY KIND INCLUDING WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. KCF DOES NOT WARRANT THAT THE INFORMATION ON OUR SITE WILL BE ACCURATE, COMPLETE, UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THIS SITE OR THE SERVERS THAT MAKE IT AVAILABLE ARE FREE OF VIRUSES, WORMS, TROJAN HORSES OR OTHER HARMFUL COMPONENTS. KCF DOES NOT MAKE ANY REPRESENTATIONS REGARDING THE USE OF THE MATERIALS ON THIS SITE IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE.

KCF WILL NOT BE LIABLE FOR ANY DAMAGES SUFFERED BY OR INJURY CAUSED TO ANY PARTY (INCLUDING YOU AND/OR YOUR EMPLOYEES), INCLUDING ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL AND/OR INCIDENTAL DAMAGES, RESULTING FROM YOUR ACCESS TO, OR INABILITY TO ACCESS, THE EXTRANET, OR FROM YOUR RELIANCE ON ANY

INFORMATION PROVIDED ON THE EXTRANET, EVEN IF KCF AND ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Digital Bulletin Boards

This service may include bulletin boards and chat rooms (together, “**Digital Bulletin Boards**”), which allow feedback to KCF and real-time interaction between users. KCF does not control the messages, information or files delivered to Digital Bulletin Boards. It is a condition of your use of the Digital Bulletin Boards and this Site that you do not:

- Restrict or inhibit any other user from using and enjoying the Digital Bulletin Boards.
- Post or transmit any unlawful, threatening, abusive, libelous, defamatory, obscene, vulgar, pornographic, profane or indecent information of any kind, including any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any local, state, national or international law.
- Post or transmit any information, software or other material that violates or infringes upon the rights of others, including material that is an invasion of privacy or publicity rights or that is protected by copyright, trademark or other proprietary right, or derivative works with respect thereto, without first obtaining permission from the owner or right holder.
- Post or transmit any information, software or other material that contains a virus or other harmful component.
- Post, transmit or in any way exploit any information, software or other material for commercial purposes, or that contains advertising.

KCF has no obligation to monitor the Digital Bulletin Boards. However, KCF reserves the right at all times to disclose any information as necessary to satisfy any law, regulation or governmental request, or to edit, refuse to post or remove any information or materials, in whole or in part, that in KCF's sole discretion are objectionable or in violation of these TOU.

Indemnification

You agree to indemnify and hold harmless KCF and KCF's corporate affiliates, as well as their respective direct and indirect owners, officers, directors, agents, and employees from and against any and all claims brought by any other party relating to your use of the Extranet (as well as the associated costs of defense, including legal fees).

Cooperation with Investigations

We will cooperate with appropriate law enforcement agencies and other parties involved in investigating claims of illegal or inappropriate activity. You agree to assist us and any such law enforcement agencies or other parties in any investigation.

Submissions

Notes, messages, ideas, suggestions, concepts or other material submitted to KCF (“**Submissions**”) will be considered non-confidential and non-proprietary. KCF will have no obligation regarding Submissions. KCF and its designees will be entitled to copy, distribute, incorporate, modify and otherwise use the Submissions for any type of commercial or non-commercial use, including in any media whether now known or not yet conceived. You agree that KCF has the right to publish Submissions for any type of use as outlined above, including promotional and advertising purposes.

KCF is not responsible for any Submissions posted on our forums. You will not submit or otherwise publish through these forums any content that:

- Defames, libels, or invades the privacy of other persons, is obscene, pornographic, abusive or threatening;
- Infringes on any intellectual property or other right of any person or entity, including but not limited to copyrights and trademarks;
- Violates any law;
- Advocates any illegal activity; or
- Advertises or solicits funds for goods or services.

Governing Law and Venue This agreement shall be governed by and construed exclusively in accordance with the laws of the State of Michigan (without giving effect to Michigan conflicts of law principles). If any provision of these TOU is unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from the TOU and shall not affect the validity and enforceability of any remaining provisions. You must bring any actions, claims, and/or lawsuits relating to or arising out of your use of the Extranet only in the state and county where we maintain our principal offices (currently, in Petoskey, Michigan).

Your Assent to These Terms

Your use of the Extranet is subject to the conditions of the TOU, the Extranet Agreement, and any applicable Other Users Access Privilege Agreement, and to the terms and conditions in your Franchise Agreement.

By checking the "YES" box below, you are confirming to us that you agree to all the terms and conditions set forth in the TOU.

YES _____ NO _____

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Exhibit H-2
to Extranet Agreement

USERS' ACCESS PRIVILEGE AND E-MAIL AGREEMENT

The undersigned, a Kilwins Franchisee ("**Franchisee**"), and the representatives of Franchisee ("**Users**"), ask that Kilwins Chocolates Franchise, Inc. ("**KCF**") permit the Users to have access to the Kilwins Extranet, and that KCF issue a user ID and password to the Users.

1. The Users represent, warrant, and agree that they: **(a)** have read and understand the Extranet Agreement, TOU, and this Users' Access Privilege and E-Mail Agreement ("**Users' Agreement**"); and **(b)** will comply with and be bound by the terms of said Extranet Agreement, TOU, and this Other Users' Agreement.
2. Franchisee represents, warrants, and agrees that the Users' status, identity, and other information provided below is true and accurate.
3. Franchisee asks that the Users be granted access privileges to the Extranet on Franchisee's behalf, to read and review material, to post and retrieve messages and data, and otherwise use the Extranet, as if the Users were Franchisee. Franchisee and the Users agree that KCF shall be entitled to rely upon communications with the Users as if the Users were the Franchisee.
4. Franchisee agrees to be responsible for all use of the Extranet by Users, and to indemnify and hold harmless Kilwins and Kilwins' corporate affiliates, as well as their respective owners (direct and indirect), officers, directors, agents, and employees from and against any and all claims brought by Users and/or any other party relating to the Users' use of the Extranet (as well as the associated costs of defense, including legal fees).
5. You must have the right at any time to instruct KCF to discontinue the Users' access privileges by giving KCF written notice at least three (3) business days in advance of the date on which the access privileges are to be revoked.
6. KCF reserves the right to approve or reject any application for access privileges, and, at any time, to suspend or terminate access privileges for Users if KCF determines, in its sole and absolute judgment, that the Users have failed to comply with the Extranet Agreement, TOU, and/or this Users' Agreement, or otherwise have made use of the Extranet in a manner that KCF deems undesirable.
7. A violation of this Users' Agreement will be a violation of the Extranet Agreement and, in turn, the Franchisee's Franchise Agreement.
8. The terms of this Users' Agreement shall be governed by, and construed, exclusively in accordance with the laws of the State of Michigan (without giving effect to Michigan conflicts of law principles).
9. KCF and certain of its employees, vendors, and affiliates, on matters pertaining to the Franchisee's business (together, these are referred to as "**Official Senders**") need to communicate with the Franchisee and the Users by use of e-mail and by sending faxes. Because the undersigned serves the Franchisee, and as a condition of that position, they each agree to accept (and not to opt-out of receiving) e-mails and faxes from Official Senders.
10. The authorization provided in the previous paragraph will continue for so long as the undersigned serve in any capacity with the Franchisee, and applies to any e-mail address or fax number that the undersigned uses in connection with handling business for the Franchisee, including home e-mail addresses and fax numbers when used for that purpose.

Franchisee Entity

By: _____
Name: _____
Title: _____
Fax: _____
E-Mail: _____

Other Users:
By our signature below, we agree in our personal capacity
to this Users' Access Privilege and E-Mail Agreement

By: _____
Name: _____
Title: _____
Fax: _____
E-Mail: _____

By: _____
Name: _____
Title: _____
Fax: _____
E-Mail: _____

By: _____
Name: _____
Title: _____
Fax: _____
E-Mail: _____

By: _____
Name: _____
Title: _____
Fax: _____
E-Mail: _____

Exhibit IKILWINS CHOCOLATES FRANCHISE, INC.
FRANCHISE AGREEMENTCONDITIONAL ASSIGNMENT AND POWER OF ATTORNEY
TELEPHONE NUMBERS AND LISTINGS

This Assignment and Power of Attorney ("**Assignment**") is made as of _____, by and between Kilwins Chocolates Franchise, Inc. and _____ (the "**Franchisee**").

FOR VALUE RECEIVED, and pursuant to Franchisee's obligations under the Kilwins Chocolates Franchise, Inc. Franchise Agreement dated _____, _____ by and between Franchisor and Franchisee (the "**Franchise Agreement**"), Franchisee hereby assigns to Franchisor all of Franchisee's right, title and interest in and to those certain telephone numbers and regular, classified or other telephone directory listings (collectively, the "**Telephone Numbers and Listings**") used from time to time in connection with Franchisee's operations under the Franchise Agreement.

Assignment.

- Upon termination or expiration of the Franchise Agreement (without renewal or extension), Franchisor will have the right (and Franchisor is hereby empowered) to implement this Assignment of the Telephone Numbers and Listings, and, in such event, Franchisee will have no further right, title or interest in the Telephone Numbers and Listings but will remain liable to the telephone company and/or the listing agencies with which Franchisee has placed telephone directory listings (all such entities are collectively referred to herein as the "**Telephone Company**") for all past due fees owing to the Telephone Company on or before the effective date of this Assignment.
- Franchisee acknowledges and agrees that as between Franchisor and Franchisee, upon termination or expiration of the Franchise Agreement (without renewal or extension), Franchisor will have the sole right to and interest in the Telephone Numbers and Listings.

Power of Attorney.

- Franchisee appoints Franchisor as Franchisee's true and lawful attorney in fact to direct the Telephone Company to assign same to Franchisor (or to the party Franchisor designates) and execute such documents and take such actions as may be necessary to effectuate the assignment. Upon such event, Franchisee will immediately notify the Telephone Company to assign the Telephone Numbers and Listings to Franchisor (or Franchisor's designee). If Franchisee fails to promptly direct the Telephone Company to assign the Telephone Numbers and Listings to Franchisor (or Franchisor's designee), Franchisor may direct the Telephone Company to effectuate the assignment contemplated hereunder to Franchisor (or Franchisor's designee).
- The parties agree that the Telephone Company may accept Franchisor's written direction, the Franchise Agreement or this Assignment as conclusive proof of Franchisor's exclusive rights in and to the Telephone Numbers and Listings upon such termination or expiration (without renewal or extension) and that such assignment will be made automatically and immediately effective upon Telephone Company's receipt of such notice from Franchisor or Franchisee.

- The parties further agree that if the Telephone Company requires that the parties execute the Telephone Company's assignment forms or other documentation at the time of termination or expiration (without renewal or extension) of the Franchise Agreement, Franchisor's execution of such forms or documentation on behalf of Franchisee will be sufficient to document that Franchisee has given its consent and agreement to the assignment.
- The parties agree that at any time after the date hereof, they will perform such acts and execute and deliver such documents as may be necessary to assist in or accomplish the assignment described herein upon termination or expiration (without renewal or extension) of the Franchise Agreement.

This Assignment will inure to the benefit of Franchisor and will be binding upon Franchisee and its successors and assigns.

IN WITNESS WHEREOF, the parties to this Assignment have executed and delivered this Assignment effective as of the date indicated above.

Kilwins Chocolates Franchise, Inc.

Franchisor

Franchisee Entity

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

KILWINS CHOCOLATES FRANCHISE, INC.
FRANCHISE AGREEMENT
EXHIBIT J-1

SAMPLE FORM OF
NON-DISCLOSURE AND NON-COMPETITION AGREEMENT
(to be signed by franchisee with its
senior executives)

THIS NON-DISCLOSURE AND NON-COMPETITION AGREEMENT ("**Agreement**") is made this _____ day of _____, _____, by and between _____ (the "**Franchisee**"), and _____, who is a Principal, manager, supervisor, member, partner, or a person in an executive or managerial position with, Franchisee (the "**Member**").

Background:

A. Kilwins Chocolates Franchise, Inc. ("**Franchisor**") owns a format and system (the "**System**") relating to the establishment and operation of "Kilwins" businesses operating in structures that bear Franchisor's interior and exterior trade dress, and under its Proprietary Marks, as defined below (each, a "**Kilwins Store**").

B. Franchisor identifies Kilwins Stores by means of certain trade names, service marks, trademarks, logos, emblems, and indicia of origin (including for example the mark "Kilwins") and certain other trade names, service marks, and trademarks that Franchisor currently and may in the future designate in writing for use in connection with the System (the "**Proprietary Marks**").

C. Franchisor and Franchisee have executed a franchise agreement (the "**Franchise Agreement**") granting Franchisee the right to operate a Kilwins Store (the "**Franchised Business**") and to offer and sell products, services, and other ancillary products approved by Franchisor and use the Proprietary Marks in connection with operating the Kilwins Store under the terms and conditions of the Franchise Agreement.

D. The Member, by virtue of its position with Franchisee, will gain access to certain of Franchisor's Confidential Information, as defined in this Agreement, and must be bound by the same confidentiality and non-competition terms by which the Franchisee is bound.

IN CONSIDERATION of these premises, the conditions stated herein, and for other good and valuable consideration, the sufficiency and receipt of which are acknowledged, the parties agree as follows:

1. Confidential Information.

(a) During the time that Member is engaged by Franchisee, and after that engagement ends, Member will not communicate, divulge, or use for the benefit of any other party the methods of operation of the Franchised Business that the Member learns about during the Member's engagement by Franchisee. Any and all information, knowledge, know-how, and techniques that are deemed confidential will be deemed confidential for purposes of this Agreement.

(b) Any and all non-public information about the Kilwins Store (including knowledge, know-how, and techniques that the Franchisor designates as confidential) will be deemed confidential for purposes of this Agreement.

2. Covenants Not to Compete.

(a) Member acknowledges that by virtue of working with Franchisee, Member will receive valuable specialized training and confidential information, including information regarding the operational, sales, promotional, and marketing methods and techniques of Franchisor and the System.

(b) Member covenants and agrees that during its employment, unless otherwise approved in writing by Franchisee (with Franchisor's approval as well), Member will not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity:

(i) Divert or attempt to divert any business or customer of the Franchised Business or of any Franchised Business using the System to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with Franchisor's Proprietary Marks and the System; or

(ii) Either directly or indirectly for him/herself or on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity, own, maintain, operate, engage in, or have any interest in any business which is the same as or similar to the Franchised Business.

(c) Member also covenants and agrees that during the Post-Term Period (defined below), except as otherwise approved in writing by Franchisor, Member will not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity, Member will not own, maintain, operate, engage in, or have any interest in any business which is the same as or similar to the Franchised Business and which business is, or is intended to be, located within a three (3) mile radius of the Approved Site.

(d) As used in this Agreement, the term "**same as or similar to the Franchised Business**" includes, but is not limited to, any business that offers for sale chocolate, fudge, candy, popcorn-based products, ice cream, and/or other frozen dessert products.

(e) As used in this Agreement, the term "**Post-Term Period**" means a continuous uninterrupted period of two (2) years from when the Member stops working for the Franchisee at the Kilwins Store.

3. Injunctive Relief. Member acknowledges that any failure to comply with the requirements of this Agreement will cause Franchisor irreparable injury, and Member agrees to pay all costs (including reasonable attorneys' fees, court costs, discovery costs, and all other related expenses) incurred by Franchisor in obtaining specific performance of, or an injunction against violation of, the requirements of this Agreement.

4. Severability. All agreements and covenants contained herein are severable. If any of them, or any part or parts of them, will be held invalid by any court of competent jurisdiction for any reason, then the Member agrees that the court will have the authority to reform and modify that provision in order that the restriction will be the maximum necessary to protect Franchisor's and/or Member's legitimate business needs as permitted by applicable law and public policy. In so doing, the Member agrees that the court will impose the provision with retroactive effect as close as possible to the provision held to be invalid.

5. Delay. No delay or failure by the Franchisor or Franchisee to exercise any right under this Agreement, and no partial or single exercise of that right, will constitute a waiver of that or any other right provided herein, and no waiver of any violation of any terms and provisions of this Agreement will be construed as a waiver of any succeeding violation of the same or any other provision of this Agreement.

6. Third-Party Beneficiary. Member hereby acknowledges and agrees that Franchisor is an intended third-party beneficiary of this Agreement with the right to enforce it, independently or jointly with Franchisee.

7. Employer. Member acknowledges and agrees that: (a) the Franchisee is its employer; (b) Franchisor does not employ the Member; (c) Franchisor is not a “joint employer” with the Franchisee; and (d) Franchisor has no role whatsoever in the Member’s employment or other similar relationship to the Franchisee.

IN WITNESS WHEREOF, the Franchisee and the Member attest that each has read and understands the terms of this Agreement, and voluntarily signed this Agreement on the date first written above.

FRANCHISEE

MEMBER

By:_____

By:_____

Name:_____

Name:_____

Title:_____

Title:_____

KILWINS CHOCOLATES FRANCHISE, INC.
FRANCHISE AGREEMENT
EXHIBIT J-2

SAMPLE FORM OF
NON-DISCLOSURE AGREEMENT
*(to be signed by franchisee with its
non-executive/management staff)*

THIS NON-DISCLOSURE AND NON-COMPETITION AGREEMENT ("Agreement") is made this _____ day of _____, _____, by and between _____ (the "**Franchisee**"), and _____, who is a Principal, manager, supervisor, member, partner, or a person in a non-executive or non-managerial position with, Franchisee (the "**Member**").

Background:

A. Kilwins Chocolates Franchise, Inc. ("**Franchisor**") owns a format and system (the "**System**") relating to the establishment and operation of "Kilwins" businesses operating in structures that bear Franchisor's interior and exterior trade dress, and under its Proprietary Marks, as defined below (each, a "**Kilwins Store**").

B. Franchisor identifies Kilwins Stores by means of certain trade names, service marks, trademarks, logos, emblems, and indicia of origin (including for example the mark "Kilwins") and certain other trade names, service marks, and trademarks that Franchisor currently and may in the future designate in writing for use in connection with the System (the "**Proprietary Marks**").

C. Franchisor and Franchisee have executed a franchise agreement (the "**Franchise Agreement**") granting Franchisee the right to operate a Kilwins Store (the "**Franchised Business**") and to offer and sell products, services, and other ancillary products approved by Franchisor and use the Proprietary Marks in connection with operating the Kilwins Store under the terms and conditions of the Franchise Agreement.

D. The Member, by virtue of its position with Franchisee, will gain access to certain of Franchisor's Confidential Information, as defined in this Agreement, and must be bound by the same confidentiality terms by which the Franchisee is bound.

IN CONSIDERATION of these premises, the conditions stated herein, and for other good and valuable consideration, the sufficiency and receipt of which are acknowledged, the parties agree as follows:

1. Confidential Information.

(a) During the time that Member is engaged by Franchisee, and after that engagement ends, Member will not communicate, divulge, or use for the benefit of any other party the methods of operation of the Kilwins Store that the Member learns about during the Member's engagement by Franchisee. Any and all information, knowledge, know-how, and techniques that Franchisee deems confidential will be deemed confidential for purposes of this Agreement.

(b) Any and all non-public information about the Kilwins Store (including knowledge, know-how, and techniques that the Franchisor designates as confidential) will be deemed confidential for purposes of this Agreement.

2. Injunctive Relief. Employee acknowledges that any failure to comply with the requirements of this Agreement will cause Franchisor irreparable injury, and Employee agrees to pay all costs (including reasonable attorneys' fees, court costs, discovery costs, and all other related expenses) incurred by Franchisor in obtaining specific performance of, or an injunction against violation of, the requirements of this Agreement.

3. Severability. All agreements and covenants contained herein are severable. If any of them, or any part or parts of them, will be held invalid by any court of competent jurisdiction for any reason, then the Employee agrees that the court will have the authority to reform and modify that provision in order that the restriction will be the maximum necessary to protect Franchisor's and/or Employee's legitimate business needs as permitted by applicable law and public policy. In so doing, the Employee agrees that the court will impose the provision with retroactive effect as close as possible to the provision held to be invalid.

4. Delay. No delay or failure by the Franchisor or Franchisee to exercise any right under this Agreement, and no partial or single exercise of that right, will constitute a waiver of that or any other right provided herein, and no waiver of any violation of any terms and provisions of this Agreement will be construed as a waiver of any succeeding violation of the same or any other provision of this Agreement.

5. Third-Party Beneficiary. Employee hereby acknowledges and agrees that Franchisor is an intended third-party beneficiary of this Agreement with the right to enforce it, independently or jointly with Franchisee.

IN WITNESS WHEREOF, the Franchisee and the Employee attest that each has read and understands the terms of this Agreement, and voluntarily signed this Agreement on the date first written above.

FRANCHISEE

EMPLOYEE

By:_____

By:_____

Name:_____

Name:_____

Title:_____

Title:_____

KILWINS CHOCOLATES FRANCHISE, INC.
FRANCHISE AGREEMENT
EXHIBIT K

SEARCH AREA ADDENDUM

THIS ADDENDUM ("**Addendum**") is made as of _____ (the "**Effective Date**") by and between:

- Kilwins Chocolates Franchise, Inc., a Michigan corporation with offices at 1050 Bay View Road, Petoskey, Michigan 49770 ("**we**," **us**," "**our**" and "**Franchisor**"); and
- _____, which is a _____ [resident of] [corporation organized in] [limited liability company organized in] the State of _____ and having offices at _____ ("**you**" or "**Franchisee**").

Introduction:

KCF and Franchisee are parties to a "Kilwin's Chocolate Franchise, Inc. Franchise Agreement" entered into as of the Effective Date (the "**Franchise Agreement**") for the operation of a "Kilwins" store (the "**Store**") to be located within the Search Area (as defined below).

The parties, in consideration of their respective undertakings and commitments to one another as specified in the Franchise Agreement and this Addendum, and for other good and valuable consideration (the sufficiency and receipt of which is acknowledged) agree as follows:

1. **Time to Locate Site:** Within _____ (____) days after the date of this Addendum, you agree to acquire or lease/sublease, at your own expense, commercial real estate that is properly zoned for the use of the business that you will conduct under the Franchise Agreement (the "**Approved Site**") at a site that we will have approved in writing as provided below, and will open the Store within seven (7) months following our approval of the Approved Site.
 - a. The search area for the Store shall be within the following area: _____ (the "**Search Area**").
 - b. The only reason that the Search Area is described is for the purpose of selecting a site for the Approved Site.
 - c. If, during the term of the Search Period (defined below), we find a location where we wish for a Store to be in operations within the Search Area, we will provide you with written notice detailing the proposed Store location (a "**Store Location Notice**"). You will have thirty (30) days after receipt of the Store Location Notice to decide whether or not to establish and operate a new "Kilwins" store at the location indicated in the Store Location Notice by delivering written notice to us.

- i. If you elect to develop and operate a Store at the location indicated in the Store Location Notice, then the Store site in the Store Location Notice will become the Approved Site under the Franchise Agreement, and you will proceed to develop and operate the Franchised Business at that Approved Site according to the terms of the Franchise Agreement.
 - ii. If you do not respond to the Store Location Notice within this 30-day period, or if you choose not to exercise your right to establish and operate a new “Kilwins” Store at the location indicated in the Store Location Notice, then:
 - 1. You shall have relinquished any and all rights that you may have to operate a “Kilwins” Store at the location indicated in the Store Location Notice (and within the area defined as the protected area that we define for that location); and
 - 2. We will have the right to proceed ahead with developing and operating a “Kilwins” Store at the location indicated in the Store Location Notice without having to give notice or compensation to you.
 - d. For the purpose of this Addendum, the term “**Search Period**” means _____ (____) months from the date of this Addendum, or the date when we have approved in writing a location for your Approved Site (whichever occurs first). You must report your search activity efforts to us on a monthly basis during the Search Period with the information that we periodically require (but which will include, among other things, the area searched, communications with real estate professionals and landlords, developers, property owners and surrounding retailers/business owners). Any failure to timely report to us as required under this Paragraph 1.d shall be a default under this Addendum and the Franchise Agreement.
 - e. Upon expiration of the Search Period, the provisions of this Paragraph 1 will expire and you will have no further rights in and to the Search Area.
2. **Site Evaluation Services**: We will provide you with our site selection guidelines, including our minimum construction standards for a location for the Approved Site, and such site selection counseling and assistance as we may deem advisable. We will perform such on site evaluations as we may deem advisable in response to your requests for site approval; provided, however, that we will not provide on site evaluation for any proposed site before we have received from you a completed site approval form for the site (prepared as set forth in Paragraph 3 below). You must report your search activity efforts to us on a monthly basis during the Search Period with the information that we periodically require (but which will include, among other things, the area searched, communications with real estate professionals and landlords, developers, property owners and surrounding retailers/business owners).
3. **Site Selection Package Submission and Approval**: For any proposed site, you must submit to us, in the form that we specify: **(a)** a completed site approval form (in the form that we require); **(b)** any additional information and/or materials that we may reasonably require; and **(c)** a lease, sublease, option contract, letter of intent, or other evidence satisfactory to us that confirms your favorable prospects for obtaining the right to use the site. We will have twenty one (21) days after receipt of all such information and materials from you to approve or disapprove the proposed site as the location for the Approved Site. We have the right to approve or disapprove any such site. If we do not approve a proposed site by giving you written notice within the 21-day period, then we will be deemed to have disapproved the site.
4. **Approved Site**: After we have approved the location for the Approved Site and you have leased or acquired that location, the location shall constitute the **Approved Site** described in

Section 1.2 of the Franchise Agreement. The Approved Site shall be specified on Exhibit A to the Franchise Agreement, and shall become a part the Franchise Agreement. The Protected Territory, as defined under Section 1.3 of the Franchise Agreement, shall be the geographic area that is described in Exhibit A to the Franchise Agreement.

- a. You hereby acknowledge and agree that our approval of a site does not constitute an assurance, representation, or warranty of any kind, express or implied, as to the suitability for or potential business results that you may achieve at the Approved Site, or for any other purpose. Our approval of the site indicates only that we believe the site complies with our minimum acceptable criteria solely for our own purposes as of the time of the evaluation. The parties each acknowledge that application of criteria that we may choose to use may not be predictive of the potential for your site and that, subsequent to our approval of a site, demographic and/or economic factors, such as competition from other similar businesses, included in or excluded from criteria that we used could change, thereby altering the potential of a site. Such factors are unpredictable and are beyond our control and you will not rely on our approval in determining your potential business performance. In addition, you understand that the financial performance of your Store will be impacted by many factors including your active participation in the Store, your employees, and other factors that we have no control over and that may not relate to the location of the Store.
 - b. We will not be responsible if a site (even if we have approved that site) does not meet your expectations as to revenue or operational performance.
5. **Construction:** This Addendum is an integral part of the Franchise Agreement, and the terms of this Addendum shall control with respect to the subject matter covered by this Addendum. Except as modified or supplemented by this Addendum, the terms of the Franchise Agreement are unchanged.

Now, therefore, the parties, intending to be legally bound by this Addendum, have signed, sealed, and delivered this Addendum, all as of the Effective Date.

Kilwins Chocolates Franchise, Inc.

Franchisee Entity

By:_____

By:_____

Printed
Name:_____

Printed
Name:_____

Title: _____

Title: _____

EXHIBIT A-2

Ice Cream Shop Addendum

Kilwins Chocolates Franchise, Inc.
Ice Cream Shop Addendum to Franchise Agreement

This Ice Cream Shop Addendum to Franchise Agreement (the “**Addendum**”) is made and entered into on _____ (the “**Effective Date**”), by and between:

- Kilwins Chocolates Franchise, Inc. (“**we**,” “**us**,” “**our**,” and “**KCF**”); and
- _____, (“**you**”).

Introduction:

*Today, you and we are entering into a Kilwins Chocolates Franchise, Inc. Franchise Agreement (the “**Agreement**”) for the operation of a Kilwins Full Line Chocolates, Confectionery & Ice Cream Store (the “**Store**” or “**Franchised Business**”). Instead of operating full-line a Store, you wish to operate a new, smaller-format “Kilwins Ice Cream & Chocolate Shop” (the “**Shop**”). The parties mutually agree to that concept, under the terms and subject to the conditions set out in this Addendum.*

In recognition of all of the details noted above, the parties have decided to enter into this Addendum, taking into account (and in consideration of) all of the promises and commitments that they are each making to one another, and they agree as follows:

1. **The Shop.** Under the Franchise Agreement and this Addendum, you are granted the right, and you accept the obligation, to operate one (1) Shop, rather than a full-line Store.
2. **The Franchise Agreement.** The parties agree that all of the provisions of the Agreement that relate to the establishment and operation of a Store refer to, and apply equally to, the establishment and operation of your Shop. The provisions of this Addendum are in addition to, not in place of, the terms and conditions in the Agreement.
3. **Initial Franchise Fee.** We offer a reduced initial franchise fee for a Shop, and therefore, the first sentence of Section 4.1 of the Agreement is deleted and replaced with the following:

*When you sign this Agreement, you must pay us an initial franchise fee in the amount of Twenty Thousand Dollars (\$20,000) (the “**Initial Franchise Fee**”).*

4. **Renewal.** Section 2.2 of the Agreement, relating to renewal, is deleted. If the parties wish to discuss additional operational rights at the end of the Initial Term, they may do so (without obligation) and any renewal would be by the parties’ mutual agreement on the terms that KCF is then offering for new Shop franchises (which may be materially different than those under the Agreement and this Addendum).
5. **Operation of the Shop.** In addition to the other terms of the Agreement and this Addendum, you acknowledge and agree to all of the following:
 - a. There will be some modifications to the operation of your Shop due to the nature of the format. These modifications will come in the form of guidance and instructions, verbal and written, whether in the Manuals or otherwise (collectively, the “**Shop Manual**”).

- b. You agree to develop, construct, equip, open, maintain, and operate the Shop in strict conformity with the terms and conditions of the Agreement, this Addendum, the Shop Manual, and our other written instructions.
 - c. You are prohibited from transferring or moving any Approved Products between any of your Stores and any of your Shops.
 - d. Notwithstanding the requirements of Section 14.1.2 of the Agreement regarding property insurance for the Store, you must purchase for the Shop property insurance coverage of at least Seventy-Five Thousand Dollars (\$75,000) for building improvements and betterments. In addition, notwithstanding the requirements of Section 14.1.3 of the Agreement regarding business personal property insurance for the Store, for the Shop you must purchase business personal property coverage for the Shop with at least Ninety Thousand Dollars (\$90,000) coverage in special form coverage at full replacement cost, with no coinsurance.
6. Transfer. Notwithstanding the terms of Section 16.5.8 of the Franchise Agreement, there is no transfer fee for a Shop; provided, that the transferee must (as required under Section 16.5.5 of the Franchise Agreement for any transfer resulting in a change in control of Franchisee): (a) enter into the new form of franchise agreement that we are then offering to new System franchisees; and (b) pay us the initial franchise fee for a Shop that is payable under that agreement.
7. General Terms. The parties agree that: (a) this Addendum is an integral part of, and is incorporated into, the Agreement; (b) the terms of this Addendum are in addition to, and not instead of, the provisions of the Agreement, all of which apply to this Addendum; (c) the Agreement is in full force and effect as amended by this Addendum; and (d) the Agreement is incorporated by reference into the Addendum as if it were printed here in full.

IN WITNESS WHEREOF, you and we, intending to be legally bound by this Addendum, confirm that by signing this Addendum below, as of the Effective Date.

Kilwins Chocolates Franchise, Inc.

Franchisee Entity:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT B-1

Store Construction Agreement



**KILWINS CHOCOLATES FRANCHISE, INC.
STORE CONSTRUCTION AGREEMENT**

THIS STORE CONSTRUCTION AGREEMENT (the “**Agreement**”) is made and entered into on this _____ (the “**Effective Date**”), by and between:

- Kilwins Chocolates Franchise, Inc., a Michigan corporation with offices at 1050 Bay View Road, Petoskey, Michigan 49770 (“**KCF**”); and
- _____ a [resident of] [corporation organized in] [limited liability company organized in] the State of _____ and having offices at _____ (“**Franchisee**”).

RECITALS:

WHEREAS, KCF and Franchisee have entered into a Kilwins Chocolates Franchise, Inc. Franchise Agreement dated _____, 202____ (the “**Franchise Agreement**”), for the operation by Franchisee of a Kilwins Store (the “**Store**”) at _____ (the “**Premises**”); and

WHEREAS, Franchisee wishes to have KCF develop the Store at the Premises as agent for, and in the name of, Franchisee; and KCF is willing to do so; all in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties, it is hereby agreed as follows:

1. KCF will prepare or obtain the preparation of suitable plans and specifications for the Store at the Premises reflecting KCF’s requirements for design, materials, layout, signs, awnings, equipment, display fixtures, and decorating of Stores, modified to the extent necessary to comply with applicable ordinances, building codes, permit requirements, lease requirements, and restrictions and market considerations.

2. KCF agrees that it will do or cause to be done the following with respect to development of the Store, as agent for and in the name of Franchisee:

- (a) obtain all required construction and sign/awning permits and licenses;
- (b) select and retain a general contractor to construct and develop the Store;
- (c) obtain an insurance policy from the general contractor covering the construction and development process;
- (d) inspect the construction and decoration of the Premises and consult with contractors and suppliers as required; and

(e) purchase and install signs, awnings, fixtures, and equipment and provide an initial supply of operating supplies and materials (**Note:** Once the equipment package is delivered to the Store, any requests for additional equipment and/or materials shall be handled as a separate transaction and will not be considered part of this Agreement).

Franchisee agrees that it shall fully cooperate with KCF and provide prompt and complete answers to KCF when and if KCF requests information from Franchisee.

Franchisee further agrees that it shall obtain and put in place an insurance policy or policies covering the Premises, Store and its contents, with the coverages required under Section 14 of the Franchise Agreement, not later than when Franchisee takes possession of the space for the Store.

Franchisee acknowledges and agrees that KCF bears no responsibility for the payment or collection of any “tenant improvement” amounts or other allowances Franchisee may negotiate with the Landlord under the lease for the Premises.

3. KCF agrees to complete development of and have the Store ready for opening order delivery and store opening preparations within _____ () calendar days after KCF obtains physical access to the Premises and all required construction permits and licenses have been obtained from the relevant issuing authorities. If KCF has exerted its best efforts to obtain the required access, construction permits and licenses and has been unable to do so, KCF shall be excused from performance of its development obligations hereunder.

4. In consideration for the services provided under this Agreement, Franchisee shall pay KCF the Cost of Work, which includes management fees as noted in Exhibit A. The term “**Cost of Work**” means the entire cost of the work to be performed by KCF hereunder, including but not limited to the Total Estimated Construction Cost, the Total Estimated Equipment Cost, the Total Estimated Exterior Signs and Awning Costs, and the Deposit Costs, and management fees, as specified in Exhibit A to this Agreement. The Cost of Work shall also be adjusted to take into account any changes required under the Change Management Process, or additional deposits, charges, or other amounts associated with the project that KCF incurs as part of the work contemplated under this Agreement.

(a) The Cost of Work shall be paid to KCF in the form of progress payments that shall be due and payable, and that Franchisee agrees to pay, at the times indicated in Exhibit A and as provided in Section 4(b) below.

(b) Franchisee shall pay the progress payment amount to KCF within ten (10) days after KCF presents to Franchisee an invoice for cost of work advanced on Franchisee’s behalf.

(c) KCF shall have the right to immediately terminate this Agreement and stop all efforts in furtherance of the construction and development of the Store if Franchisee fails to: (i) make any required payments to KCF; (ii) comply with any material term and condition of this Agreement; (iii) comply with the terms and conditions of the Franchise Agreement or any other agreement between Franchisee (or a person or entity affiliated with or controlled by the Franchisee) and KCF or its affiliates; or (iv) pay rent for, or is otherwise in default of, any lease for the Premises. In addition, Franchisee shall be required to immediately pay KCF all overdue amounts, plus interest in addition to the overdue amount from the date that amount was originally due until the date when the amount has been paid at the rate of one-and-one-half percent (1½%) per month, up to the maximum rate permitted by law (if there is any such maximum rate). Stopping work and entitlement to interest shall be in addition to any other remedies KCF may have at law or in equity.

5. Within a reasonable time after the completion of the development of the Store, KCF shall furnish to Franchisee:

- (a) copies of invoices for inventory;
- (b) a final accounting of the Cost of Work;
- (c) all partial and final waivers of lien; and
- (d) copies of equipment warranties provided by the Original Equipment Manufacturers (OEM) of the equipment. (Franchisee acknowledges and agrees that: (i) KCF will not be providing any warranty, but will merely furnish to Franchisee the OEM's warranty, if any, for the equipment; and (ii) all warranty claims shall be handled and processed directly between Franchisee and the OEM, without KCF's involvement.

6. Franchisee agrees to use in the development and operation of the Store only those brands, types or models of fixtures, furnishings, signs, awnings and equipment that KCF has approved as meeting its specifications and standards for quality, design, appearance and function. Franchisee may purchase (and, in connection with the development of the Store, may direct KCF to purchase) approved brands, types or models of signs, awnings, fixtures, furnishings and equipment only from approved suppliers as provided in the Franchise Agreement.

7. Franchisee acknowledges and agrees that: (i) for the period of one year from substantial completion (date of certificate of occupancy) all warranty claims shall be handled and processed directly between Franchisee and the general contractor, with KCF being copied on any communication, and (ii) KCF will not be providing any warranty but will merely aid Franchisee in the process to ensure correction of work is completed in a timely manner). For any warranty claims:

- (a) Franchisee must send a notification in writing, which includes a clear description of the concern including the approved site and photos, to the general contractor and copy KCF;
- (b) The general contractor must respond in writing, with a copy to KCF, with an explanation of correction for the warranty area of concern" within two (2) days; and
- (c) All corrections are expected to be completed within two (2) weeks of first notification (if completion cannot be completed within two (2) weeks, the general contractor must send written communication to Franchisee and KCF with the anticipated timeframe for completion).

8. If Franchisee requests any changes, modifications, additions and/or omissions in the work and materials to be provided by KCF under this Agreement, and/or if any changes are subsequently required by circumstances and/or mandated by any governmental authorities, agency or inspector, Franchisee must submit a written request to KCF to change the work and materials required under this Agreement through KCF's "Change Management Process." The written request for a change, through the Change Management Process, must be accepted by KCF. If KCF accepts the request for a change, it will issue to Franchisee (and to the contractor) a written change order/change directive, which shall specify the change in the work and materials, change in the contract sum, and extension of the time for completion of the work. If Franchisee issues orders to, or directs, changes by the contractors without following the Change Management Process as set out above, or if KCF declines to make a change, then Franchisee shall have sole responsibility to pay the contractor directly.

9. KCF and Franchisee shall enter into the Amendment to the Franchise Agreement in the form that is appended to this Agreement as Exhibit B in order to address the provisions in the Franchise Agreement that must change in accordance with the terms and conditions of this Agreement.

10. Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered, sent by registered mail, or by other means which affords the sender evidence of delivery, or of rejected delivery, to the respective parties at the addresses shown on the signature page of this Agreement, unless and until a different address has been designated by written notice to the other party. Any notice by a means which affords the sender evidence of delivery, or rejected delivery, shall be deemed to have been given at the date and time of receipt or rejected delivery.

11. Apart from the Franchise Agreement, this Agreement constitutes the entire understanding and agreement between the parties relating to the development of the Store and supersedes any and all prior agreements, whether written or oral, that may exist between the parties regarding the development of the Store. This Agreement may be amended only by a written instrument signed by each party. However, nothing in this Section 11 is intended as, nor shall it be interpreted to be, a disclaimer by KCF of any, representation made in its Franchise Disclosure Document (“FDD”), including the exhibits and any amendments to the FDD.

12. This Agreement takes effect upon its acceptance and execution by KCF, and shall be interpreted and construed exclusively under the laws of the State of Michigan, which laws shall prevail in the event of any conflict of law (without regard to, and without giving effect to, the application of Michigan choice-of-law rules). The parties agree that if there is any dispute or controversy involving the construction or development of the Store, or the parties’ performance under this Agreement, they shall bring the case in front of the courts having jurisdiction within the state and in the judicial district in which KCF maintains its principal place of business. The parties agree that this Section shall not be construed as preventing either party from removing an action from state to federal court.

13. **KCF AND FRANCHISEE IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF THEM AGAINST THE OTHER, WHETHER OR NOT THERE ARE OTHER PARTIES IN SUCH ACTION OR PROCEEDING.**

14. **ANY AND ALL CLAIMS AND ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE COMMENCED WITHIN ONE (1) YEAR FROM THE OCCURRENCE OF THE FACTS GIVING RISE TO SUCH CLAIM OR ACTION, OR SUCH CLAIM OR ACTION SHALL BE BARRED.**

15. **ANY AND ALL CLAIMS AND ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE CONDUCTED ON AN INDIVIDUAL BASIS, AND NOT AS PART OF A CONSOLIDATED, COMMON, OR CLASS ACTION.**

16. **KCF AND FRANCHISEE HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM OF ANY CONSEQUENTIAL AND PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER, AND AGREE THAT IN THE EVENT OF A DISPUTE BETWEEN THEM EACH SHALL BE LIMITED TO THE RECOVERY OF ACTUAL DAMAGES SUSTAINED BY IT, BUT IN NO EVENT SHALL SUCH ACTUAL DAMAGES EXCEED THE COST OF THE WORK, THE DEPOSIT AMOUNTS, AND THE EQUIPMENT FEE.**

17. Neither party shall be responsible to the other for non-performance or delay in performance under this Agreement occasioned by causes beyond its control, including without limiting the generality of the foregoing: (a) acts of nature; (b) acts of war, terrorism, or insurrection; (c) strikes, lockouts, labor actions, boycotts, floods, fires, hurricanes, tornadoes, public health emergencies, and/or other casualties; and/or (d) Franchisor's inability (and that of its affiliates and/or suppliers and contractors) to purchase, transport and/or cause delivery of any materials or equipment necessary for or used in connection with the construction of the Store.

18. Franchisee acknowledges that it has sole and complete responsibility for selecting the approved site for the Premises; that KCF has not (and shall not be deemed to have, even by virtue of KCF's approval of the Premises) given any representation, promise, or guarantee of Franchisee's success at the Premises; and that Franchisee shall be solely responsible for its own success at the Premises.

IN WITNESS WHEREOF, the parties hereto have duly signed and delivered this Agreement in duplicate on the day and year first above written.

Kilwins Chocolates Franchise, Inc.
KCF:

By: _____

Name: _____

Title: _____

Address for Notices:

Kilwins Chocolate Franchise, Inc.
1050 Bay View Road
Petoskey, Michigan 49770
Fax: (231) 439-6829

Franchisee Entity:

By: _____

Printed Name: _____

Title: _____

Address for Notices:

Fax: () -

Attn: _____

Exhibit A – Cost of Work**Note: Construction cost valid for 30 days. Equipment and sign cost valid for 15 days**

Note: Franchisee is responsible to pay for all sales and use taxes associated with the Work and all materials used in connection with the Work.

Cost of Construction based on a fixed price plus management fee – See **Schedule 1 (Note: Actual cost + 10%)**

Equipment Costs – See **Schedule 2** and Kilwins Generated Equipment List plus management fee (**Note: Actual cost + 7.5%**)

Exterior Signs and Awning Costs plus management fee– See **Schedule 3 (Note: Actual cost + 7.5%)**

Schedule 1 – Construction Costs (Note: Actual cost + 10%. Does not include change orders)

Construction Cost	\$
Other fees (unknown at this time, i.e., tap fees, utilities, permitting, etc.)	\$
Management Fee of 10%	\$
Construction Sub-Total	\$
Other	\$
Total Construction Cost (w/o change orders)	\$

Schedule 2 – Equipment Costs (Note: Actual cost + 7.5%)

Equipment Cost	\$
Management Fee of 7.5%	\$
Equipment Sub-Total	\$
Applicable sales taxes (7%) - estimated	\$
Total Equipment Cost	\$

Schedule 3 – Exterior Signs and Awning Costs (Note: Actual cost + 7.5%)

Exterior Signs and Awning Cost (includes estimated engineered drawings and permitting fees)	\$
Management Fee of 7.5%	\$
Sub-Total	\$
Applicable sales taxes (7%) - estimated	\$
Total Exterior Signs and Awning Cost	\$

Total Cost of Work (w/o change orders) \$ _____

Initialed:

KCF_____
Franchisee

Exhibit A (page 2)
Progress Payment Schedule

1. Progress Payment #1 – Minimum \$60,000 deposit to be used, in whole or in part, to procure long lead time equipment. Due upon execution of this Agreement.
2. Progress Payment #2 – 50% of the Total Cost of the Work (\$_____), less Progress Payment #1 Amount (\$_____) which equals (\$_____). Due Ten (10) business days prior to the start of construction and, if applicable, upon execution of Amendment 1 to the Construction Agreement which adds construction and signage/awning costs.
3. Progress Payment #3 – 40% of the Total Cost of the Work (\$_____). Due on or prior to KCF's delivery of the Store keys to Franchisee or _____ 202__, whichever occurs first.
4. Progress Payment #4 (Final) – 10% of the Total Cost of the Work (\$_____). Due 30 days after Franchisee's receipt of Store keys from KCF, the Store's opening of business to the public, or receipt of final release of liens from the General Contractor, whichever occurs first.

NOTES:

- 1) Approved change orders will be invoiced in conjunction with the above progress payments and shall be paid promptly in addition to the progress payment amounts.
- 2) If applicable, credit for Store Construction Deposit (\$5,000) will be applied at final invoice.
- 3) If any progress payment is not paid when due, then in addition to any other rights or remedies set forth in the Agreement, including the obligation to pay interest, legal costs or costs of collection on such amount, Franchisee shall pay to KCF a late fee in the amount of five percent (5%) of such overdue amount. In addition to the payment of such late fee and the overdue amount, Franchisee shall also pay to KCF interest on the overdue amount from the date it was due until paid, at the rate of eighteen percent (18%) per annum (but not more than the maximum rate permitted by law, if any).
- 4) Franchisee may be responsible for any cabinetry or equipment storage fees which may be incurred due to delays in permitting, Landlord turn-over of space, or other delays beyond KCF's control.
- 5) If all construction, equipment, and sign & awning costs have not been determined at the time this Agreement is signed, an Amendment 1 to this document will be released with updated cost schedules in Exhibit A once all costs are known.

Initialed:

KCF

Franchisee

EXHIBIT B

AMENDMENT TO
KILWINS CHOCOLATES FRANCHISE INC.
FRANCHISE AGREEMENT

THIS AMENDMENT (the “**Amendment**”) is made and entered into as of _____,
by and between Kilwins Chocolates Franchise Inc. (“**KCF**”) and
_____ (“**Franchisee**”).

RECITALS:

A. WHEREAS, KCF and Franchisee are parties to a KCF Franchise Agreement dated as of _____ (the “**Franchise Agreement**”) for the operation by Franchisee of a *Kilwins* Store located at _____ (the “**Approved Site**”);

B. WHEREAS, the KCF and Franchisee entered into a construction agreement (“**Construction Agreement**”) for KCF to construct and equip a *Kilwins* Store (the “**Store**”) at the Approved Site; and

C. WHEREAS, KCF and Franchisee wish to amend terms of the Franchise Agreement as described below.

NOW THEREFORE, KCF and Franchisee hereby mutually agree as follows:

- 1 The following provisions of the Franchise Agreement are agreed **not** to apply because KCF shall build the Store at the Approved Site in accordance with the terms of the Construction Agreement and the Architectural and Engineering Agreement: Sections 5.1.1, 5.4, 5.7, 5.8.1-5.8.7 and 5.8.10.
- 2 This Amendment constitutes an integral part of the Franchise Agreement between the parties hereto.
- 3 Except as modified or supplemented by this Amendment, the terms of the Franchise Agreement are hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment on the date first above written.

Kilwins Chocolates Franchise, Inc. _____

Franchisee _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT B-2

Equipment Management Agreement



**CHOCOLATES FRANCHISE, INC.
EQUIPMENT MANAGEMENT AGREEMENT**

THIS EQUIPMENT MANAGEMENT AGREEMENT (the “**Agreement**”) is made and entered into on ____
____ (the “**Effective Date**”), by and between:

- Kilwins Chocolates Franchise, Inc., a Michigan corporation with offices at 1050 Bay View Road, Petoskey, Michigan 49770 (“**KCF**”); and
- _____ a [resident of] [corporation organized in] [limited liability company organized in] the State of _____ and having offices at _____ (“**Franchisee**”).

RECITALS:

WHEREAS, KCF and Franchisee have entered into a Kilwins Chocolates Franchise, Inc. Franchise Agreement dated _____ (the “**Franchise Agreement**”), for the operation by Franchisee of a Kilwins Store (the “**Store**”) at _____ (the “**Premises**”); and

WHEREAS, Franchisee wishes to have KCF purchase, deliver and install certain equipment for the Store at the Premises; and KCF is willing to do so; all in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties, it is hereby agreed as follows:

1. KCF will prepare and submit the necessary purchase orders for the procurement of all equipment necessary for the operation of the Store at the Premises reflecting KCF’s requirements for signs, awnings, equipment, and display fixtures.
2. KCF agrees that it will do or cause to be done the following with respect to equipment for the Store:
 - (a) generate and place purchase orders for all house wares type equipment;
 - (b) receive and inventory house wares equipment in preparation for shipment to the Store;
 - (c) generate and place purchase orders for the following refrigeration equipment:
 1. Walk-in freezer;
 2. Single or double door refrigerator;

3. Ice maker, if applicable;
4. Under counter refrigerator;
5. Upright gourmet cake and ice cream display freezer; and
6. Ice cream dipping case(s).

(d) coordinate the delivery of all refrigeration equipment to the Store for installation by others, including, but not limited to, casters, water supply lines, drain lines, condensate lines, electrical, start-up and checkout, etc., unless otherwise specified in equipment estimate;

(e) generate and place purchase orders for all Store cabinetry and interior signage; and

(f) coordinate the delivery and installation of all cabinetry as well as interior flavor board signage (if specifically included in the scope of work and cost estimate).

Franchisee agrees that it shall fully cooperate with KCF and provide prompt and complete answers to KCF when and if KCF requests information from Franchisee.

Franchisee further agrees that it shall obtain and put in place an insurance policy or policies covering the Premises, Store and its contents, with the coverages required under Section 14 of the Franchise Agreement, not later than when Franchisee takes possession of the space for the Store.

3. In consideration for the services provided under this Agreement, Franchisee shall pay KCF the Cost of Equipment and a management fee as noted in Exhibit A. The term “**Cost of Equipment**” means the entire cost of the equipment and materials to be installed at the Store by KCF hereunder, plus management fees, as specified in Exhibit A. The Cost of Equipment shall also be adjusted to take into account any changes required under the Return Equipment Authorization (REA) Process, which may include re-stocking fees for returned equipment, (set forth in Exhibit B hereto), or additional deposits, charges, or other amounts associated with the project that KCF incurs as part of the work contemplated under this Agreement.

(a) The Cost of Equipment shall be paid to KCF in the form of progress payments that shall be due and payable, and that Franchisee agrees to pay, at the times indicated in Exhibit A and as provided in Section 4(b) below.

(b) KCF shall have the right to immediately terminate this Agreement and stop all efforts in furtherance of the equipment procurement for the Store if Franchisee fails to: (i) make any required payments to KCF; (ii) comply with any material term and condition of this Agreement; (iii) comply with the terms and conditions of the Franchise Agreement or any other agreement between Franchisee (or a person or entity affiliated with or controlled by the Franchisee) and KCF or its affiliates; or (iv) pay rent for, or is otherwise in default of, any lease for the Premises. In addition, Franchisee shall be required to immediately pay KCF all overdue amounts, plus interest in addition to the overdue amount from the date that amount was originally due until the date when the amount has been paid at the rate of one-and-one-half percent (1½%) per month, up to the maximum rate permitted by law (if there is any such maximum rate). Stopping work and entitlement to interest shall be in addition to any other remedies KCF may have at law or in equity.

4. Within a reasonable time after the completion and opening of the Store, KCF shall furnish to Franchisee:

- (a) copies of invoices for inventory;
- (b) a final accounting of all equipment; and
- (c) copies of equipment warranties provided by the Original Equipment Manufacturers (OEM) of the equipment. (Franchisee acknowledges and agrees that: (i) KCF will not be providing any warranty, but will merely furnish to Franchisee the OEM's warranty, if any, for the equipment; (ii) all warranty claims shall be handled and processed directly between Franchisee and the OEM, without KCF's involvement.; and (iii) KCF may offer Franchisee the option to contract with an outside provider to manage Franchisee's equipment warranty and service at Franchisee's expense.)

5. Franchisee agrees to use in the development of the Store only those types or models of fixtures, furnishings, signs, awnings and equipment that KCF has approved as meeting its specifications and standards for quality, design, appearance and function.

6. If Franchisee requests any changes, modifications, additions and/or omissions in the materials to be provided by KCF under this Agreement, and/or if any changes are subsequently required by circumstances and/or mandated by any governmental authorities, agency or inspector, Franchisee must submit a written request to KCF to change the materials required under this Agreement through KCF's "Return Equipment Authorization (REA) Process." The written request for a change, through the REA Process, must be accepted by KCF. If KCF accepts the request for a change, it will issue to Franchisee a written REA Number, which shall specify the change in materials, change in the contract sum, and extension of the time for implementation of the change.

7. Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered, sent by registered mail, or by other means which affords the sender evidence of delivery, or of rejected delivery, to the respective parties at the addresses shown on the signature page of this Agreement, unless and until a different address has been designated by written notice to the other party. Any notice by a means which affords the sender evidence of delivery, or rejected delivery, shall be deemed to have been given at the date and time of receipt or rejected delivery.

8. Apart from the Franchise Agreement, this Agreement constitutes the entire understanding and agreement between the parties relating to equipment procurement and installation for the Store and supersedes any and all prior agreements, whether written or oral, that may exist between the parties regarding the equipment procurement for the Store. This Agreement may be amended only by a written instrument signed by each party. However, nothing in this Section 8 is intended as, nor shall it be interpreted to be, a disclaimer by KCF of any, representation made in its Franchise Disclosure Document ("FDD"), including the exhibits and any amendments to the FDD.

9. This Agreement takes effect upon its acceptance and execution by KCF, and shall be interpreted and construed exclusively under the laws of the State of Michigan, which laws shall prevail in the event of any conflict of law (without regard to, and without giving effect to, the application of Michigan choice-of-law rules). The parties agree that if there is any dispute or controversy involving equipment procurement for the Store, or the parties' performance under this Agreement, they shall bring the case in front of the courts having jurisdiction within the state and in the judicial district in which KCF maintains its principal place of business. The parties agree that this Section shall not be construed as preventing either party from removing an action from state to federal court.

10. KCF AND FRANCHISEE IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF THEM AGAINST THE OTHER, WHETHER OR NOT THERE ARE OTHER PARTIES IN SUCH ACTION OR PROCEEDING.

11. ANY AND ALL CLAIMS AND ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE COMMENCED WITHIN ONE (1) YEAR FROM THE OCCURRENCE OF THE FACTS GIVING RISE TO SUCH CLAIM OR ACTION, OR SUCH CLAIM OR ACTION SHALL BE BARRED.

12. ANY AND ALL CLAIMS AND ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE CONDUCTED ON AN INDIVIDUAL BASIS, AND NOT AS PART OF A CONSOLIDATED, COMMON, OR CLASS ACTION.

13. NEITHER PARTY SHALL BE RESPONSIBLE TO THE OTHER FOR NON-PERFORMANCE OR DELAY IN PERFORMANCE UNDER THIS AGREEMENT OCCASIONED BY CAUSES BEYOND ITS CONTROL, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (A) ACTS OF NATURE; (B) ACTS OF WAR, TERRORISM, OR INSURRECTION; (C) STRIKES, LOCKOUTS, LABOR ACTIONS, BOYCOTTS, FLOODS, FIRES, HURRICANES, TORNADOES, PUBLIC HEALTH EMERGENCIES, AND/OR OTHER CASUALTIES; AND/OR (D) FRANCHISOR'S INABILITY (AND THAT OF ITS AFFILIATES AND/OR SUPPLIERS AND CONTRACTORS) TO PURCHASE, TRANSPORT AND/OR CAUSE DELIVERY OF ANY MATERIALS OR EQUIPMENT NECESSARY FOR OR USED IN CONNECTION WITH THE CONSTRUCTION OF THE STORE.14.

14. KCF AND FRANCHISEE HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM OF ANY CONSEQUENTIAL AND PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER, AND AGREE THAT IN THE EVENT OF A DISPUTE BETWEEN THEM EACH SHALL BE LIMITED TO THE RECOVERY OF ACTUAL DAMAGES SUSTAINED BY IT, BUT IN NO EVENT SHALL SUCH ACTUAL DAMAGES EXCEED THE COST OF THE EQUIPMENT, THE DEPOSIT AMOUNTS, AND THE EQUIPMENT SERVICE CHARGE.

IN WITNESS WHEREOF, the parties hereto have duly signed and delivered this Agreement in duplicate on the day and year first above written.

Kilwins Chocolates Franchise, Inc.
KCF:

By: _____

Name: _____

Title: _____

Address for Notices:

Kilwins Chocolate Franchise, Inc.
1050 Bay View Road
Petoskey, Michigan 49770
Fax: (231) 439-6829

Franchisee Entity:

By: _____

Printed Name: _____

Title: _____

Address for Notices:

Fax: () -
Attn: _____

Exhibit A – Cost of Equipment**Note: Equipment and sign and awning cost valid for 15 days**

Note: Franchisee is responsible for all sales and use taxes.

Equipment Costs plus management fee – See **Schedule 1 (Note: Actual cost + 7.5%)****Schedule 1 – Equipment Costs (Note: Actual cost + 7.5%)**

Equipment Cost	
Management Fee of 7.5%	
Equipment Sub-Total	
Applicable sales taxes (7%) - estimated	
Total Equipment Cost*	

Initialed:

KCF_____
Franchisee

***Subject to adjustment based on additional charges or credits arising from written and signed change orders, changes under the REA Process, and additional deposits, changes, and amounts, as described in Sections 3 and 6 of the Agreement.**

Exhibit A (page 2)
Progress Payment Schedule

1. Progress Payment #1 ~ 40% of Total Cost of Equipment due upon execution of this Agreement. (\$_____).
2. Progress Payment #2 ~ 52.5% of Total Cost of Equipment due fifteen (15) business days prior to delivery of cabinetry and large equipment, or by _____, whichever occurs first. (\$_____).
3. Progress Payment #3 ~ Final 7.5% of Total Cost of Equipment due no later than thirty (30) days after Store opening. (\$_____). This final balance may be adjusted as outlined under sections 3 and 6 of the Agreement.

NOTES:

- 1) Franchisee is responsible for any cabinetry or equipment storage fees which may be incurred due to delays in franchisee requested delivery schedule from the dates initially requested at time of executing this agreement.**
- 2) If any progress payment is not paid when due, then in addition to any other rights or remedies set forth in the Agreement, including the obligation to pay interest on such amount, Franchisee shall pay to KCF a late fee in the amount of five percent (5%) of such overdue amount. In addition to the payment of such late fee and the overdue amount, Franchisee shall also pay to KCF interest on the overdue amount from the date it was due until paid, at the rate of eighteen percent (18%) per annum (but not more than the maximum rate permitted by law, if any).**
- 3) Automatic Clearing House (ACH) method of payment preferred. Please contact Kilwins Chocolates Franchise, Inc., Accounting Department, at (231) 758-3920 for additional information.**

Initialed:

KCF

Franchisee

Exhibit B – Return Equipment Authorization Process

KCF's policy for a new Store returning equipment is as follows.

Any and all equipment returns should be made and processed during the initial Store and equipment setup while KCF representatives are on-site. All returned equipment will be credited at the original invoice price (less any re-stocking fees, if applicable) as indicated on the final equipment billing provided the equipment has not been damaged.

If Franchisee desires to return an item after the initial Store equipment setup, KCF will grant the return if processed no more than 10 calendar days after the actual Store opening date. The amount that will be credited back to Franchisee from the return of such equipment will be determined after the item(s) is/are returned to KCF for inspection. This request and process will be handled by the KCF project manager.

Process:

- I. A Return Equipment Authorization Form (REAF) is to be completed in full by a KCF representative. KCF Store openers will provide this form at the Store opening.
- II. The KCF representative will contact a KCF project manager before issuing any credit for an authorization. The actual credit amount will be determined by KCF. It may also be required for the KCF representative to submit photos to KCF before credit may be determined.
- III. Franchisee and the KCF representative are both required to sign the REAF, agreeing on the amount to be credited to Franchisee. The KCF representative will leave a signed copy of the REAF with the Franchisee.
- IV. The KCF representative will arrange for a pickup for the item or items and indicate the pickup date on the REAF.
- V. If an item(s) is being returned directly to the supplier, the KCF representative will schedule all arrangements with that supplier. Any shipping fees accrued will be at the Franchisee's expense.
- VI. A signed copy of the REAF is to be returned to the KCF accounting department. The credit will then be issued on the final equipment billing once the KCF accounting department receives the paperwork. A copy of the invoice must be attached to the REAF.

This procedure is only available to Franchisees entering into an Equipment Management Agreement with KCF for the equipment installation process. A Franchisee handling their own equipment installation will need to contact the vendor directly regarding potential equipment returns.

EXHIBIT B-3

Architectural & Engineering Agreement



**KILWINS CHOCOLATES FRANCHISE, INC.
ARCHITECTURAL & ENGINEERING AGREEMENT**

THIS ARCHITECTURAL & ENGINEERING AGREEMENT (the “**Agreement**”) is made and entered into on this _____ (the “**Effective Date**”), by and between:

- Kilwins Chocolates Franchise, Inc., a Michigan corporation with offices at 1050 Bay View Road, Petoskey, Michigan 49770 (“**KCF**”); and
- _____, a [resident of] [corporation organized in] [limited liability company organized in] the State of _____ and having offices at: _____ (“**Franchisee**”).

RECITALS:

WHEREAS, KCF and Franchisee have entered into a Kilwins Chocolates Franchise, Inc. Franchise Agreement dated _____, 20____ (the “**Franchise Agreement**”), for the operation by Franchisee of a Kilwins Store (the “**Store**”) at _____ (the “**Premises**”); and

WHEREAS, Franchisee wishes to have KCF act as an agent for, and in the name of, Franchisee in order to hire the appropriate professionals, and to manage and procure architectural and engineering drawings in support of the development of a construction drawing package for the Store to be used for plan review/permitting purposes; and KCF is willing to do so; all in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties, it is hereby agreed as follows:

1. KCF agrees that it will do or cause to be done the following with respect to the architectural design and engineering of the Store, as agent for, and in the name of, Franchisee:

- (a) obtain the following professional services with respect to the Store:
 - i. review of prototype document (the “**Layout**”) provided by KCF for compliance with state and local building codes;
 - ii. provide minor design changes to adapt the Layout;
 - iii. review tenant information handbook, if applicable;
 - iv. conduct site survey to verify build conditions, utility requirements, and Layout accuracy;



- v. provide mechanical, electrical and plumbing engineering and construction documents (the “**Construction Documents**”);
- vi. provide signed and sealed energy calculations and all forms of work required by the governing jurisdiction engineering department;
- vii. provide one (1) review/comment/revision cycle by KCF prior to signing and sealing the Construction Documents;
- viii. seal all Construction Documents by the architect and engineer(s) registered in the jurisdiction(s) in which construction will occur;
- ix. plot, print and distribute Construction Documents and plan review/permit governing jurisdiction;
- x. respond to building official review comments on the Construction Documents. (Note: one (1) review/comment/revision cycle of the Construction Documents is included in the fee(s) noted in Section 2 below. If additional review/comment/revisions are required, that will be subject to the Change Management Process as described in Paragraph 3 below); and
- xi. respond to requests for information from contractors during construction of the Store.

(b) hire an architect to conduct a site survey that will include: digital photography of all existing conditions, field verification of locations of existing utilities, and field verification of all critical dimensions at the affected space. The architect will deliver to Franchisee a site survey, in the form KCF prescribes. KCF will coordinate with the architect to be sure that any site-specific conditions or restrictions are reflected in the site survey.

(c) obtain three (3) sets of hard copies of the Construction Documents signed and sealed will be provided in the format requested by KCF and the governing jurisdiction. One (1) set of unsigned and unsealed Construction Documents will be provided to KCF for distribution to bidding general contractors. (Note: the actual number of sets of signed and sealed Construction Documents required will be determined by the governing jurisdiction.) Additional cost above and beyond the three (3) sets of Construction Documents provided under this Agreement will be the sole responsibility of Franchisee. Construction Documents will be produced in AutoCAD format using a standard layering system. Specifications will be in outline form and incorporated into the drawing sheets. A project manual will not be provided.

2. In consideration for the services provided under this Agreement, Franchisee shall pay to KCF, upon execution of this agreement, the architectural and engineering fees, plus a management fee, as described in Exhibit A.

(a) All amounts described in Exhibit A shall be paid to KCF in the form of a single lump sum payment that shall be due and payable, and that Franchisee agrees to pay, at the time this Agreement is signed.



(b) KCF shall have the right to adjust the architectural and engineering fees after signing this Agreement, up or down, to take into account any changes required by the governing jurisdiction, or additional deposits, charges, or other amounts associated with the project that KCF incurs as part of the work contemplated under this Agreement. If the amounts described in Exhibit A are reduced by any amount, KCF will refund to Franchisee such amounts, in lump sum, within ten (10) days after KCF presents to Franchisee information indicating the reduction. If the amounts described in Exhibit A are increased by any amount, Franchisee shall pay to KCF such amounts, in lump sum, within ten (10) days after KCF presents to Franchisee an invoice for such amounts.

(c) KCF shall have the right to immediately terminate this Agreement and stop all efforts in furtherance of this Agreement and the development of the Store if Franchisee fails to: (i) make any required payments to KCF; (ii) comply with any material term and condition of this Agreement; (iii) comply with the terms and conditions of the Franchise Agreement or any other agreement between Franchisee (or a person or entity affiliated with or controlled by the Franchisee) and KCF or its affiliates; or (iv) pay rent for, or is otherwise in default of, any lease for the Premises. In addition, Franchisee shall be required to immediately pay KCF all overdue amounts, plus interest in addition to the overdue amount from the date that amount was originally due until the date when the amount has been paid at the rate of one-and-one-half percent (1½%) per month, up to the maximum rate permitted by law (if there is any such maximum rate). Stopping work and entitlement to interest shall be in addition to any other remedies KCF may have at law or in equity.

3. If Franchisee requests any changes, modifications, additions and/or omissions in the work and materials to be provided by KCF under this Agreement, and/or if any changes are subsequently required by circumstances and/or mandated by any governmental authorities, agency or inspector, Franchisee must submit a written request to KCF to change the work and materials required under this Agreement through KCF's "**Change Management Process.**" The written request for a change, through the Change Management Process, must be accepted by KCF. If KCF accepts the request for a change, it will issue to Franchisee (and to the architect) a written change order/change directive, which shall specify the change in the work and materials, change in the contract sum, and extension of the time for completion of the work. If Franchisee issues orders to, or directs, changes by the architect without following the Change Management Process as set out above, or if KCF declines to make a change, then Franchisee shall have sole responsibility to pay the architect directly.

4. KCF and Franchisee shall enter into the Amendment to the Franchise Agreement in the form that is appended to this Agreement as Exhibit B in order to address the provisions in the Franchise Agreement that must change in accordance with the terms and conditions of the Agreement.

5. Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered, sent by registered mail, or by other means which affords the sender evidence of delivery, or of rejected delivery, to the respective parties at the addresses shown on the signature page of this Agreement, unless and until a different address has been designated by written notice to the other party. Any notice by a means which affords the sender evidence of delivery, or rejected delivery, shall be deemed to have been given at the date and time of receipt or rejected delivery.



6. Apart from the Franchise Agreement, this Agreement constitutes the entire understanding and agreement between the parties relating to the development of construction drawings and supersedes any and all prior agreements, whether written or oral, that may exist between the parties regarding the development of the construction drawing package. This Agreement may be amended only by a written instrument signed by each party. However, nothing in this Section 6 is intended as, nor shall it be interpreted to be, a disclaimer by KCF of any, representation made in its Franchise Disclosure Document (“FDD”), including the exhibits and any amendments to the FDD.

7. This Agreement takes effect upon its acceptance and execution by KCF, and shall be interpreted and construed exclusively under the laws of the State of Michigan, which laws shall prevail in the event of any conflict of law (without regard to, and without giving effect to, the application of Michigan choice-of-law rules). The parties agree that if there is any dispute or controversy involving the development of the construction drawings, or the parties’ performance under this Agreement, they shall bring the case in front of the courts having jurisdiction within the state and in the judicial district in which KCF maintains its principal place of business. The parties agree that this Section shall not be construed as preventing either party from removing an action from state to federal court.

8. **KCF AND FRANCHISEE IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF THEM AGAINST THE OTHER, WHETHER OR NOT THERE ARE OTHER PARTIES IN SUCH ACTION OR PROCEEDING.**

9. **ANY AND ALL CLAIMS AND ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE COMMENCED WITHIN ONE (1) YEAR FROM THE OCCURRENCE OF THE FACTS GIVING RISE TO SUCH CLAIM OR ACTION, OR SUCH CLAIM OR ACTION SHALL BE BARRED.**

10. **ANY AND ALL CLAIMS AND ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE CONDUCTED ON AN INDIVIDUAL BASIS, AND NOT AS PART OF A CONSOLIDATED, COMMON, OR CLASS ACTION.**

11. **KCF AND FRANCHISEE HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM OF ANY CONSEQUENTIAL AND PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER, AND AGREE THAT IN THE EVENT OF A DISPUTE BETWEEN THEM EACH SHALL BE LIMITED TO THE RECOVERY OF ACTUAL DAMAGES SUSTAINED BY IT, BUT IN NO EVENT SHALL SUCH ACTUAL DAMAGES EXCEED THE FEE QUOTED.**



IN WITNESS WHEREOF, the parties hereto have duly signed and delivered this Agreement in duplicate on the day and year first above written.

Kilwins Chocolates Franchise, Inc.
KCF:

By: _____

Name: _____

Title: _____

Address for Notices:

Kilwins Chocolate Franchise, Inc.
1050 Bay View Road
Petoskey, Michigan 49770
Fax: (231) 439-6829

Franchisee Entity:

By: _____

Printed Name: _____

Title: _____

Address for Notices:

Email: _____

Attn: _____



EXHIBIT A

Architectural/Engineering Cost Schedule

Architectural & Engineering Cost	\$
Management Fee (10% of Architectural & Engineering Cost)	\$
Total Architectural & Engineering Cost plus Management Fee (w/o change orders)	\$

Initialed:

KCF

Franchisee



EXHIBIT B

AMENDMENT TO KILWINS CHOCOLATES FRANCHISE INC. FRANCHISE AGREEMENT

THIS AMENDMENT (the “**Amendment**”) is made and entered into as of _____, by and between Kilwins Chocolates Franchise Inc. (“**KCF**”) and _____ (“**Franchisee**”).

RECITALS:

A. WHEREAS, KCF and Franchisee are parties to a KCF Franchise Agreement dated as of _____ (the “**Franchise Agreement**”) for the operation by Franchisee of a *Kilwins* Store (“**Store**”) located at _____ (the “**Approved Site**”);

B. WHEREAS, the KCF and Franchisee entered into an architectural and engineering agreement (“the **Agreement**”) for KCF to hire, manage and procure architectural and engineered drawings in support of the development of a construction drawing package to be used for plan review/permitting purposes in support of a Store at the Approved Site; and

C. WHEREAS, KCF and Franchisee wish to amend terms of the Franchise Agreement as described below.

NOW THEREFORE, KCF and Franchisee hereby mutually agree as follows:

1 Because KCF shall hire an architectural firm in support of the design of the Store at the Approved Site in accordance with the terms of the Architectural & Engineering Agreement, you and we agree that the Franchise Agreement will be amended in the following manner:

- a. Sections 5.8.1, 5.8.3, and 5.8.7 are deleted in their entirety.
- b. The second and third sentences of Section 5.8.1.1 are deleted.
- c. Section 5.8.4 is deleted in its entirety and replaced with the following:

You agree not to start construction without obtaining our prior written approval. Our approval shall not relate to your obligations with respect to any federal, state and local laws, codes and regulations including, without limitation, the applicable provisions of the Americans with Disabilities Act (the “**ADA**”) regarding the construction, design and operation of the Franchised Business, which subjects shall be your sole responsibility.

2 This Amendment constitutes an integral part of the Franchise Agreement between the parties hereto.

3 Except as modified or supplemented by this Amendment, the terms of the Franchise Agreement are hereby ratified and confirmed.



IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment on the date first above written.

Kilwins Chocolates Franchise, Inc.

Franchisee

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT C
LIST OF ADMINISTRATORS

We intend to register this disclosure document as a “franchise” in some or all of the following states, if required by the applicable state laws. If and when we pursue franchise registration (or otherwise comply with the franchise investment laws) in these states, the following are the state administrators responsible for the review, registration, and oversight of franchises in these states:

CALIFORNIA Commissioner of Financial Protection and Innovation Department of Financial Protection and Innovation 320 West Fourth Street, Suite 750 Los Angeles, California 90013-2344 (213) 576-7500 / Toll Free: (866) 275-2677	NEW YORK New York State Department of Law Investor Protection Bureau 28 Liberty Street, 21 st Floor New York, New York 10005 (212) 416-8285
HAWAII Commissioner of Securities of the State of Hawaii Department of Commerce & Consumer Affairs Business Registration Division Securities Compliance Branch 335 Merchant Street, Room 203 Honolulu, Hawaii 96813 (808) 586-2722	NORTH DAKOTA North Dakota Securities Department State Capitol Department 414 600 East Boulevard Avenue, Fifth Floor Bismarck, North Dakota 58505-0510 (701) 328-4712
ILLINOIS Illinois Office of the Attorney General Franchise Bureau 500 South Second Street Springfield, Illinois 62706 (217) 782-4465	RHODE ISLAND Department of Business Regulation Securities Division, Building 69, First Floor John O. Pastore Center 1511 Pontiac Avenue Cranston, Rhode Island 02920 (401) 462-9527
INDIANA Secretary of State Franchise Section 302 West Washington, Room E-111 Indianapolis, Indiana 46204 (317) 232-6681	SOUTH DAKOTA Division of Insurance Securities Regulation 124 South Euclid Avenue, 2 nd Floor Pierre, South Dakota 57501 (605) 773-3563
MARYLAND Office of the Attorney General Securities Division 200 St. Paul Place Baltimore, Maryland 21202-2020 (410) 576-6360	VIRGINIA State Corporation Commission Division of Securities and Retail Franchising 1300 East Main Street, 9th Floor Richmond, Virginia 23219 (804) 371-9051
MICHIGAN Michigan Attorney General's Office Corporate Oversight Division, Franchise Section 525 West Ottawa Street G. Mennen Williams Building, 1 st Floor Lansing, Michigan 48913 (517) 335-7567	WASHINGTON Department of Financial Institutions Securities Division PO Box 41200 Olympia, WA 98504-1200 (360) 902-8760
MINNESOTA Minnesota Department of Commerce 85 7 th Place East, Suite 280 St. Paul, Minnesota 55101 (651) 539-1600	WISCONSIN Division of Securities 4822 Madison Yards Way, North Tower Madison, Wisconsin 53705 (608) 266-2139

EXHIBIT D
AGENTS FOR SERVICE OF PROCESS

We intend to register this disclosure document as a “franchise” in some or all of the following states, if required by the applicable state law. If and when we pursue franchise registration (or otherwise comply with the franchise investment laws) in these states, we will designate the following state offices or officials as our agents for service of process in these states:

CALIFORNIA Commissioner of Financial Protection and Innovation Department of Financial Protection and Innovation 320 West Fourth Street, Suite 750 Los Angeles, California 90013-2344 (213) 576-7500 / Toll Free: (866) 275-2677	NEW YORK New York Secretary of State New York Department of State One Commerce Plaza, 99 Washington Avenue, 6 th Floor Albany, New York 12231-0001 (518) 473-2492
HAWAII Commissioner of Securities of the State of Hawaii Department of Commerce & Consumer Affairs Business Registration Division Securities Compliance Branch 335 Merchant Street, Room 203 Honolulu, Hawaii 96813 (808) 586-2722	NORTH DAKOTA North Dakota Securities Commissioner State Capitol 600 East Boulevard Avenue, Fifth Floor Bismarck, North Dakota 58505-0510 (701) 328-4712
ILLINOIS Illinois Attorney General 500 South Second Street Springfield, Illinois 62706 (217) 782-4465	RHODE ISLAND Director of Department of Business Regulation Department of Business Regulation Securities Division, Building 69, First Floor John O. Pastore Center 1511 Pontiac Avenue Cranston, Rhode Island 02920 (401) 462-9527
INDIANA Secretary of State Franchise Section 302 West Washington, Room E-111 Indianapolis, Indiana 46204 (317) 232-6681	SOUTH DAKOTA Division of Insurance Director of the Securities Regulation 124 South Euclid Avenue, 2 nd Floor Pierre, South Dakota 57501 (605) 773-3563
MARYLAND Maryland Securities Commissioner 200 St. Paul Place Baltimore, Maryland 21202-2020 (410) 576-6360	VIRGINIA Clerk of the State Corporation Commission 1300 East Main Street, 1 st Floor Richmond, Virginia 23219 (804) 371-9733
MICHIGAN Michigan Attorney General's Office Corporate Oversight Division, Franchise Section 525 West Ottawa Street G. Mennen Williams Building, 1 st Floor Lansing, Michigan 48913 (517) 335-7567	WASHINGTON Director of Department of Financial Institutions Securities Division PO Box 41200 Olympia, WA 98504-1200 (360) 902-8760
MINNESOTA Commissioner of Commerce Minnesota Department of Commerce 85 7 th Place East, Suite 280 St. Paul, Minnesota 55101 (651) 539-1600	WISCONSIN Division of Securities 4822 Madison Yards Way, North Tower Madison, Wisconsin 53705 (608) 266-2139

Exhibit E**Kilwins Franchisees**
(as of December 31, 2023)

Location	Franchisee Address	Phone No.
Fairhope, AL (Note 2)	Green Enterprises Fairhope, LLC 23160 Stablewood Circle Pass Christian, MS 39571	228-860-5768
Hoover, AL	CM Stadium Trace, LLC 5220 Peridot Place, Ste E112, Hoover, AL, 35244	205-438-6264
Orange Beach, AL	Gulf Coast Confections, LLC 4751 Main Street Unit F113 Orange Beach, AL 36561	251-981-3120
Hot Springs, AR	Peggy's Chocolates & More, LLC 264 Central Avenue Hot Springs, AR 71913	501-701-4464
Little Rock, AR	Crazy Dog Confections, Inc 415 President Clinton Avenue Little Rock, AR 72201	501-379-9865
Northwest AR (Note 2)	ZIP CONFECTIONS, INC 1590 E. Joyce Blvd Unit 10695 Fayetteville, AR 72703	561-424-1071
Colorado Springs, CO (Note 2)	KAGE, LLC 5166 North Nevada Avenue Suite 100, Colorado Springs, CO, 80918	719-761-6125
Denver, CO	PitaPito, LLC 618 16 th Street Denver, CO 80202	303-587-5272
Fort Collins, CO	Old Town Ice Cream & Sweets, LLC 114 S College Ave Fort Collins, CO, 80524	970-221-9444
Parker, CO	Euclid Avenue Chocolates Corp. 19501 East Mainstreet, Suite 104 Parker, CO 80138	720-638-0941
Darien, CT (Note 2)	Sanni, Seif and Sons, Inc. 1111 Market Street Unit 3144 Dresher, PA 19025	339-224-7429
West Hartford, CT	JK Allen Enterprises Corp. 38 Isham Rd West Hartford, CT, 6107	860-904-6740
Washington, DC	Cherry Sweets Ballpark DC, LLC 1250 Half Street Washington, DC	202-481-4193
Washington, DC	Cherry Sweets Wharf, LLC 663 Water Street S.W. Washington, DC, 20024	202-464-0024

Location	Franchisee Address	Phone No.
Rehoboth Beach, DE	Henlopen Holdings, LLC 140 Rehoboth Avenue Rehoboth Beach, DE 19971	302-227-3611
Celebration, FL	Red Dot Chocolates, Inc. 671 Front Street, Suite 140 Celebration, FL 34747	407-566-8555
Clearwater Beach, FL	Three Blind Mice Too, LLC 391 Mandalay Avenue Clearwater Beach, FL 33767	772-400-6802
Coral Springs, FL	Ventures III, Inc. 2758 North University Drive Coral Springs, FL 33065	954-227-5599
Deerfield Beach, FL	Larson-Wulff, Inc. 123 NE 20 th Avenue, A1A, Suite 3 Deerfield Beach, FL 33441	954-418-9710
Delray Beach, FL	EW Sweets, LLC 402 East Atlantic Avenue Delray Beach, FL 33483	561-278-0808
Destin – Destin Commons, FL	CM White Sand Sweets, LLC 4142 Legendary Drive #B 106 Destin, FL 32541	850-460-7868
Ft. Lauderdale, FL	Sugar Madness, LLC 809 E Las Olas Blvd Fort Lauderdale, FL, 33301	954-523-8338
Ft. Myers, FL	Sweet Cents Investments, Inc. 9903 Gulf Coast Main Street, Suite 160Ft. Myers, FL 33913	239-561-5300
Gainesville, FL	JNE Candy Co, LLC 4949 Celebration Pointe Avenue, Suite T540 Gainesville, FL 32608	352-271-1060
Gainesville, FL	JNE Candy Co, LLC 3625 SW 32 nd Ct Gainesville, FL 32608	352-378-5035
Jacksonville, FL	VADA Chocolates, Inc. 10281 Midtown Parkway, Suite 125 Jacksonville, FL 32246	904-996-7002
Jupiter, FL	Morgan UK LLC 201 US-1 Suite C-1 Jupiter, FL 33477	561-747-2231
Key West, FL	Henriquez Portfolio Management, LLC 505 Duval St Key West, FL, 33040	305-320-0986
Lake Worth Beach, FL	Pura Vida Treats, Inc. 10 Ocean Boulevard Lake Worth, FL 33460	561-249-1568
Lauderdale-By-The-Sea, FL	SJ Sweets, LLC 117 Commercial Boulevard Lauderdale-By-The-Sea, FL 33308	954-267-8991

Location	Franchisee Address	Phone No.
Madeira Beach, FL	JLS-1, LLC 160 John's Pass Boardwalk Madeira Beach, FL, 33708	727-397-9800
Miramar Beach, FL	CM Ventures, Inc 1200 Scenic Gulf Dr. Unit K Miramar Beach, FL, 32550	850-353-2641
Naples, FL	Sue's Sweet Shop of Naples, LLC 743 Fifth Avenue South Naples, FL 34102	239-261-9898
Naples, FL	Naples Confections, LLC 9106 Strada Place, Suite 4105 Mercato Development Naples, FL 34108	239-260-5161
Panama City Beach, FL	Emerald Coast Confections, Inc. 821 Pier Park Drive, Suite 100 Panama City Beach, FL 32413	850-230-4177
Pensacola, FL	Pensacola Confections, LLC 40 S. Palafox St. Unit 101 Pensacola, FL, 32502	850-860-6775
Pensacola Beach, FL	PB Confections, LLC 400 Quietwater Beach Road, Suite 2 Pensacola Beach, FL 32561	251-981-3120
Pompano Beach, FL	Sweet Discovery, LLC 245 N. Pompano Beach Blvd Pompano Beach, FL 33062	954-590-8237
Pompano Beach, FL (Note 2)	Endless Sweets Pompano, LLC 777 Isle of Capri Blvd, Pompano Beach, FL, 33069	239.986.1336
Port St. Lucie, FL	Three Blind Mice, LLC 10478 SW Village Center Drive Port St. Lucie, FL 34987	772-344-6464
Rosemary Beach, FL	Green Enterprises I, LLC 8 Georgetown Avenue Unit A, Rosemary Beach, FL, 32461	850-399-4000
Royal Palm Beach, FL (Note 2)	Pura Vida Sweets, LLC 3898 Hamilton Key West Palm Beach, FL 33411	804-874-4478
Sandestin, FL	Green Enterprises II, LLC 625 Grand Blvd, E-102 Destin, FL, 32550	850-608-2028
Sarasota, FL	Southern Possessions, Inc. 312 John Ringling Boulevard Sarasota, FL 34236	941-388-3200
Sarasota, FL	KTJ Sweets, LLC 1561 Lakefront Drive Unit 107, Lakewood Ranch, FL, 34240	941-358-7444
Siesta Key, FL	Pioneer Ventures Siesta Key, LLC 5140 Ocean Boulevard Siesta Village, Sarasota, FL, 34242	941-346-3699

Location	Franchisee Address	Phone No.
St. Augustine, FL #1	Dallaire Development Group, Inc. 140 St. George Street St. Augustine, FL 32084	904-826-0008
St. Augustine, FL #2	Dallaire Development Group, Inc. 6 St. George Street, Suite 101 St. Augustine, FL 32084	904-823-9226
St. Johns, FL (Note 2)	Vada Chocolates Inc. 30 Beachwalk Shore Drive St. Johns, FL 32259	904-996-7002
St. Petersburg, FL	L & W by the Sea, Corp. 222 Beach Dr., NE St. Petersburg, FL 33701	727-803-6821
Stuart, FL	Moore Delights, Inc. 41 SW Osceola Street Stuart, FL 34994	772-223-6446
The Villages, FL	CM Villages, LLC 1108 Main St The Villages, FL, 32162	352-630-4704
Venice, FL	Ameriquet Enterprises, Inc. 207 West Venice Avenue Venice, FL 34285	941-485-5900
Vero Beach, FL	Team JD Squared, Inc. 3001 Ocean Dr., #108 Vero Beach, FL 32963	772-584-3281
Winter Garden, FL (Note 2)	JNE Candy Co., LLC 11117 Rockport St. Orlando, FL 32836	231-360-2544
Winter Park, FL	JNE Candy Co., LLC 122 N. Park Avenue Winter Park, FL 32789	407-622-6292
Alpharetta, GA	Bridges Chocolatier, LLC 251 Market Street Alpharetta, GA 30009	470-268-4328
Alpharetta, GA	Royal Confections, LLC 710 McFarland Road Alpharetta, GA 30005	484-885-6537
Athens, GA (Note 2)	M & P Sweet Treats, LLC 283 E. Broad St. Athens, GA, 30601	770-905-9079
Atlanta, GA	CLJ Investments Corporation 1380 Atlantic Dr Ste 14160 Atlanta, GA, 30363	404-936-1130
Atlanta, GA	CM Brookhaven, LLC 705 Town Boulevard Suite S500, Atlanta, GA, 30319	470-639-8148
Columbus, GA	CM Treats, LLC 1230 Broadway Columbus, GA 31901	706-221-2486

Location	Franchisee Address	Phone No.
Columbus, GA	CM Midland, LLC 6801 Flat Rock Rd Bldg 2, Ste M, Columbus, GA, 31909	762-583-1469
Cumming, GA (Note 2)	Naomi Rochelle, LLC 410 Peachtree Parkway Suite 136, Cumming, GA, 30041	404-388-3018
Dahlonega, GA	Copper Kettle Confections, LLC 40 Public Square S Dahlonega, GA 30533	706-525-7227
Gainesville, GA	GA Chocolate and Ice Cream LLC 106 Spring Street SE Suite 120, Gainesville, GA, 30501	678-696-5169
Lawrenceville, GA (Note 2)	M & P Sweet Treats, LLC 164 Browning Shoals Road Social Circle, GA 30025	770-905-9079
Marietta, GA (Note 2)	Old Flame, LLC 405 Main Street Franklin, TN 37064	864-404-9956
Roswell, GA (Note 2)	Feels So Right, LLC 405 Main Street Franklin, TN 37064	864-404-9956
Thomasville, GA (Note 2)	Thomasville Confectioners, LLC 117 Pheasant Ridge Thomasville, GA 31792	941-915-9223
Woodstock, GA	BCL Realty Group, LLC 450 Chambers Street Woodstock, GA 30188	678-310-0241
Arlington Heights, IL	Cloud 9 Confections, Inc 16 W. Campbell Avenue Arlington Heights, IL 60005	224-347-2910
Chicago, IL Andersonville	Dark Chocolate, Inc. 5224 N. Clark Street Chicago, IL, 60640	773-754-0902
Chicago, IL Hyde Park	Ah-Ha Chocolates, Fudge & Ice Cream Corp. 5226 S. Harper Chicago, IL 60615	773-675-6731
Chicago, IL Michigan Ave	Chocolate Girl Explosion, Inc. 310 S. Michigan Ave Chicago, IL 60604	312-988-0156
Chicago, IL Navy Pier	Highly Favored Confections, Inc. Navy Pier 600 E. Grand Avenue Chicago, IL 60611	312-888-3161
Chicago, IL River North (Note 2)	Chocoholics, Inc. 737 N. Dearborn St. Retail Space D Chicago, IL, 60654	773-456-5442
Elmhurst, IL	Harris Chocolatiers, LLC 148 North York Street Elmhurst, IL 60126	630-903-6056

Location	Franchisee Address	Phone No.
Evanston, IL	Chocolate Legacy, Inc. 1724 Sherman Ave Evanston, IL, 60201	847-868-8739
Geneva, IL	Chocolate Blessings, Inc. 407 South 3rd St, Ste 186 Geneva, IL, 60134	630-232-7122
Naperville, IL	Naperville Sweet Shop, Inc. 36 W. Jefferson Avenue Naperville, IL 60540	331-472-4236
Park Ridge, IL (Note 2)	Cloud 9 Confections, Inc. 591 W Wing St Arlington Heights, IL 60005	630-336-8908
St. Charles, IL	St. Charles Sweet Shop, Inc. 190 S. First Street St. Charles, IL 60174	630-549-7943
Wheaton, IL	Republic Systems, LLC 100 Hale Street Wheaton, IL 60187	630-668-2353
Fishers, IN (Note 2)	CAK Confections, LLC 11594 Whistle Drive Fishers, IN, 46037	765-491-9734
Fort Wayne, IN	Hometown Sweets, LLC 626 S. Harrison Street Fort Wayne, IN 46802	260-444-3569
Indianapolis, IN	Sun Group Properties, LLC 530 Massachusetts Ave Ste 110, Indianapolis, IN, 46204	317-388-5488
New Orleans, LA (Note 2)	CC 416, LLC 709 Canal Street New Orleans, LA	321-591-8551
New Orleans, LA	KPLV, LLC 600 Decatur Street New Orleans, LA 70130	504-345-2462
Hyannis, MA	DG Enterprises, LLC 386 Main Street Hyannis, MA 02601	508-771-2200
Plymouth, MA	BA Zipeto, LLC 150-158 Water Street Plymouth, MA 02361	781-248-5368
Annapolis, MD	LGLP, LLC 128 Main Street Annapolis, MD 21401	410-263-2601
Baltimore, MD	Sweet Vida, LLC 1625 Thames Street Baltimore, MD 21231	410-276-9300
Ann Arbor, MI	KDP, Inc. 107 East Liberty Street Ann Arbor, MI 48104	734-769-7759

Location	Franchisee Address	Phone No.
Big Rapids, MI	Carleen Rose 118 North Michigan Avenue Big Rapids, MI 49307	231-796-2502
Boyne City, MI	Harbaugh Enterprises, LLC 102 East Water Street Boyne City, MI 49712	231-582-2505
Charlevoix, MI	CSOKOLADE LLC 233 Bridge St Charlevoix, MI, 49720	231-547-5013
Cheboygan, MI	Dar's Hallmark, Inc. 1006 South Main Street Cheboygan, MI 49721	231-627-6732
East Grand Rapids, MI	KTY, LLC 2226 Wealthy Street East Grand Rapids, MI 49506	616-649-0288
Frankfort, MI	Bissell Holdings, LLC 413 Main Street Frankfort, MI 49635	231-399-0350
Grand Haven, MI	Another Direction, LLC 101 Washington Avenue Grand Haven, MI 49417	616-935-7609
Grand Rapids, MI	BKTY, LLC 146 Monroe Center Grand Rapids, MI 49503	616-608-6574
Holland, MI	Heaven's Scents, LLC 62 East 8 th Street Holland, MI 49423	616-393-8961
Ludington, MI	Sweet Anya, Inc. 118 West Ludington Avenue Ludington, MI 49431	231-845-5858
Mackinaw City, MI (Central)	Falkner's Confection Connection, Inc. 226 E. Central Avenue Mackinaw City, MI 49701	231-436-5889
Mackinac Island, MI	Falkner's Confection Connection, Inc. 7416 Main Street, Unit B1 Mackinac Island, MI 49757	906-847-4108
Mt. Pleasant, MI	Paul & Linda Elliott 800 W. Broadway Mount Pleasant, MI 48858	989-772-0262
Plymouth, MI	Loree Holdings, LLC 298 S. Main Street Plymouth, MI 48170	734-404-6719
Saugatuck MI #1	Pollyanna's Confectionery Shoppe, LLC 152 Butler Street Saugatuck, MI 49453	269-857-1195
Saugatuck, MI #2	Pollyanna's Confectionery Shoppe, LLC 214 Butler Street Saugatuck, MI 49453	269-857-1195

Location	Franchisee Address	Phone No.
South Haven, MI	Pollyanna's Confectionery Shoppe, LLC 415 Phoenix Street South Haven, MI 49090	269-639-1195
St. Joseph, MI	Gold Coast Confections, LLC 217 State St #1126 St. Joseph, MI 49085	269-982-1330
Traverse City, MI	Falkner's Confection Connection, Inc 129 E. Front St Traverse City, MI, 49684	231-946-2403
Branson, MO	Double D's Sweet Treats, Inc. 813 Branson Landing Blvd. Suite 813 Branson, MO 65616	417-334-9240
St. Charles, MO	GOJOCO, Inc. 300 South Main Street St. Charles, MO 63301	636-395-7081
Ocean Springs, MS	Green Enterprises Ocean Springs, LLC 711 Washington Ave Ocean Springs, MS, 39564	228-334-5252
Apex, NC	M. A. Makers, Inc 108-A N. Salem Street Apex, NC, 27502	610-597-2263
Asheville, NC	MAG's Dulce, LLC 26 Battery Park Avenue Asheville, NC 28801	828-252-2639
Black Mountain, NC	Shea's Sweets, LLC 116 W. State St. Black Mountain, NC 28711	828-669-6119
Blowing Rock, NC #1	BilCat, Inc. 1103 Main Street Blowing Rock, NC 28605	828-295-3088
Blowing Rock, NC #2	BilCat, Inc. Shoppes Parkway, Hwy. 321 Bypass Blowing Rock, NC 28605	828-295-4805
Brevard, NC	Mathieu Investments, LLC 52 West Main Street Brevard, NC, 28712	828-526-3788
Cary, NC	MAG's Dulce, LLC 2004 Boulderstone Way Cary, NC 27519	919-463-9360
Hendersonville, NC	Mountain Music, LLC 506 N Main St Hendersonville, NC, 28792	828-698-9794
Highlands, NC	Born Country, LLC 341 Main Street Highlands, NC 28741	828-526-3788

Location	Franchisee Address	Phone No.
Huntersville, NC	Kenney Consulting, LLC 16926 Birkdale Commons Pkwy. Ste A Huntersville, NC 28078	704-237-4869
Morrisville, NC	MAG's Dulce, LLC 3308 Village Market Place Morrisville, NC 27560	919-377-2245
Raleigh, NC	MAG's Dulce, LLC 200 Park at North Hills Street Raleigh, NC 27609	919-594-1809
Waynesville, NC	Chocolates on Main, LLC 90 N. Main Street Waynesville, NC 28786	828-246-0896
West Jefferson, NC (Note 2)	BCPI Confections, LLC 110 N. Jefferson Ave West Jefferson, NC, 28649	336-840-7256
Wilmington, NC	Willbran, Inc. 16 Market Street Wilmington, NC 28401	910-772-1298
Wilmington, NC	Legendaury Trio, Inc. 1474 Barclay Pointe Blvd #204, Wilmington, NC, 28412	910-399-1042
Winston-Salem, NC	Hummingbird Confections Inc. 308-A S. Stratford Rd. Winston-Salem, NC 27103	336-602-1399
Portsmouth, NH	Sunshine Sweets, LLC 20 Congress Street Portsmouth, NH 03801	603-319-8842
Cliffside Park, NJ	LEXSOZO, LLC 1 Towne Centre Drive Cliffside Park, NJ 07010	201-943-4444
Ridgewood, NJ	PDMC Enterprises, Inc. 121 E. Ridgewood Avenue Ridgewood, NJ 07450	201-445-4837
Babylon, NY	Elmur Fudge, Inc 130 Deer Park Babylon, NY 11702	631-482-8551
Huntington, NY	SJH Sweets, LLC 293 Main Street Huntington, NY 11743	631-271-4200
Patchogue, NY	Practical Murphy, Inc. 74 East Main Street Patchogue, NY 11772	631-622-8584
Port Jefferson, NY	Chrissy's Confections, LLC 109 Main Street Port Jefferson, NY 11777	631-509-6555
Saratoga Springs, NY	The Saratoga Sweet Tooth, LLC 420 Broadway Saratoga Springs, NY 12866	518-682-3500

Location	Franchisee Address	Phone No.
Dublin, OH	Rock Candy, LLC. 4549 Bridge Park Ave Dublin, OH, 43017	614-389-0575
Tulsa, OK	Cedarwood Sweets, LLC 418 2nd Street Tulsa, OK, 74120	918-619-9044
Ardmore, PA	Sugarush Enterprises, Inc. 85 Coulter Avenue Ardmore, PA 19003	908-202-5139
Dresher, PA	Sanni, Seif and Sons, Inc. 1115 Market Street Dresher, PA, 19025	215-346-2091
Gettysburg, PA	R&B Sweets, LLC 37 Steinwehr Avenue Gettysburg, PA, 17325	717-398-2857
King of Prussia, PA	Choco KOP, LLC King of Prussia Town Center 255 Main St, Ste 100 King of Prussia, PA, 19406	484-681-9457
Newtown Square, PA (Note 2)	Choco NSQ, LLS 103 Squire Drive Suite E Newtown Square, PA, 19073	215-880-8648
Philadelphia, PA	Midtown Chocolatiers, LLC 143-145 S 13th Street Philadelphia, PA 19107	301-676-3440
West Chester, PA	Bird Dub-C, LLC 1 North Church Street West Chester, PA 19380	610-255-2255
Newport, RI	The Sailor's Sweet Tooth, LLC 262 Thames Street Newport, RI 02840	401-619-3998
Newport, RI	The Sailor's Sweet Tooth II, LLC 359 Thames Street Newport, RI 02840	401-619-3998
Beaufort, SC	MJ Scoops & Confections, LLC 808 Bay St, Beaufort, SC, 29902	843-379-8008
Bluffton, SC	Charlee's Chocolate Factory, LLC 1414 Fording Island Road, Suite C200 Bluffton, SC 29910	843-837-9777
Charleston, SC (Note 1)	Kilwins Development, LLC 59 South Market Street Charleston, SC 29401	843-722-6887
Greenville, SC	Rocky Road Enterprises, LLC 220 North Main Street, Suite 202 Greenville, SC 29601	864-241-2003
Hilton Head Island, SC	Underwood Acquisitions, LLC 28 Shelter Cove Lane, Unit 112B Hilton Head Island, SC 29928	843-785-2727

Location	Franchisee Address	Phone No.
Myrtle Beach, SC	F Squared, LLC 1316 Celebrity Circle Myrtle Beach, SC 29577	843-545-9467
Myrtle Beach, SC	F Squared 2, LLC 2101 N. Oak Street Sheraton Myrtle Beach, SC, 29577	843-545-9467
Franklin, TN	Tennessee River, LLC 405 Main Street Franklin, TN 37064	615-472-1244
Gatlinburg, TN	Willbran Too, Inc. 645 Parkway Gatlinburg, TN 37738	865-436-3720
Knoxville, TN	CM Tennesseesweets, LLC 408 South Gay Street Knoxville, TN 37902	865-219-1233
Nashville, TN (Note 2)	Close Enough To Perfect, LLC 405 Main Street Franklin, TN 37064	615-472-1244
Cypress, TX	Open Barrel Inc. 9945 Barker Cypress Rd Suite 126, Cypress, TX, 77433	281-304-2673
Georgetown, TX	CTX Confectionary, LLC 120 West 8 th Street Georgetown, TX 78626	512-240-4485
Grapevine, TX	Lizzybell Sweets, LLC 338 S Main St. Grapevine, TX, 76051	817-527-7676
Katy, TX (Note 2)	L&M's Sweet Shoppe, LLC The District Katy Boardwalk, Bldg 6 Katy, TX 77494	832-630-7163
Katy, TX	L&M's Sweet Shoppe, LLC 5000 Katy Mills Circle Suite #670, Katy, TX, 77494	346-306-0196
Katy, TX	L&M's Sweet Shoppe 2, LLC 23501 Cinco Ranch Blvd #F120 Katy, TX, 77494	346-387-9651
Plano, TX	MAR Sweet Shop, LLC 7161 Bishop Road Plano, TX 75024	469-298-0941
San Antonio, TX	M:61-34 Company 109 Alamo Plaza San Antonio, TX 78205	210-507-2100
San Antonio, TX (Note 2)	Diana & Larry Rosenberger 610 E. Market Street San Antonio, TX	210-606-7236
Sugar Land, TX	L&M's Sweet Shoppe, LLC 16029 City Walk Sugar Land Town Square Sugar Land, TX 77479	832-630-7163

Location	Franchisee Address	Phone No.
The Colony, TX	L&W by the Colony, LLC 5752 Grandscape Blvd Suite 300 The Colony, TX 75056	727-803-6821
Waco, TX (Note 2)	Lizzybell Sweets, LLC 323 S 6th St, Waco, TX, 76701	304-224-8106
Alexandria, VA	Georgetown KICS, LLC 212 King Street Alexandria, VA 22302	703-566-4094
Charlottesville, VA	CS Confections LLC 313 East Main St. Charlottesville, VA, 22902	631-627-8584
Chesterfield County, VA (Note 2)	Brothers Best KW LLC The Lake Project Phase 1, Bldg A, Unit 3, Chesterfield, VA, 23322	202-806-8877
Richmond, VA	Carytown Confections, Inc. 3115 West Cary Street Richmond, VA 23221	804-358-5000
Virginia Beach, VA	Holy Scoopers 24, LLC 2420 Atlantic Avenue Virginia Beach, VA 23451	321-591-8551
Williamsburg, VA	ALL TAP, LLC 421 Prince George Street Williamsburg, VA 23185	757-378-2727
Glendale, WI	Gruling & Clark, LLC 5756 North Bayshore Dr, STE Q-101 Glendale, WI 53217	414-967-4803
Lake Geneva, WI	LG Sweets, LLC 772 Main Street Lake Geneva, WI 53147	262-248-4400
Madison, WI	STW Investments, LLC 208 State Street Madison, WI 53703	608-661-4431
Minocqua, WI	Minocqua Sweets, LLC 320 Oneida Street Minocqua, WI 54548	715-358-0777

Notes:

1. One of our owners holds a 100% ownership interest in this unit.
2. This franchisee signed a franchise agreement with us but was not yet operational on December 31, 2023.

Kilwins -- Former Franchisees (Note 1)

(as of December 31, 2023 or who has not communicated with us within
10 weeks of the date of this disclosure document)

Location	Franchisee Address	Phone No.
Jupiter, FL	BNLM, LLC 201 N. US Highway One, Suite D-1 Jupiter, FL 33477	561-747-2231
Atlanta, GA	CM Terminus Treats, LLC 1380 Atlantic Drive, Suite 14160 Atlanta, GA 30363	404-817-7500
Chicago, IL	Harty Enterprises, LLC 3519 N. Clark Street Chicago, IL 60657	847-502-7337
Evanston, IL	JRS Ventures, LLC 1724 Sherman Avenue Evanston, IL	847-868-8739
Indianapolis, IN	Mass Avenue Sweets, LLC 530 Mass Avenue Indianapolis, IN 46204	317-508-4800
St. Joseph, MI	P & J Enterprises, LLC 217 State Street St. Joseph, MI 49085	269-982-1330
Traverse City, MI	Brimar 1, Inc. 129 East Front Street Traverse City, MI 49684	231-946-2403
Brevard, NC	Song of the South, LLC 52 West Main Street Brevard, NC 28712	828-526-3788
King of Prussia, PA	AZTARALUM, LLC 255 Main Street King of Prussia, PA 19406	484-681-9457
Gatlinburg, TN	Willbran Too, Inc. 645 Parkway Gatlinburg, TN 37738	865-436-3720
Charlottesville, VA	Knightro Enterprizes, Inc. 313 East Main Street Charlottesville, VA 22902	631-627-8584

Exhibit F

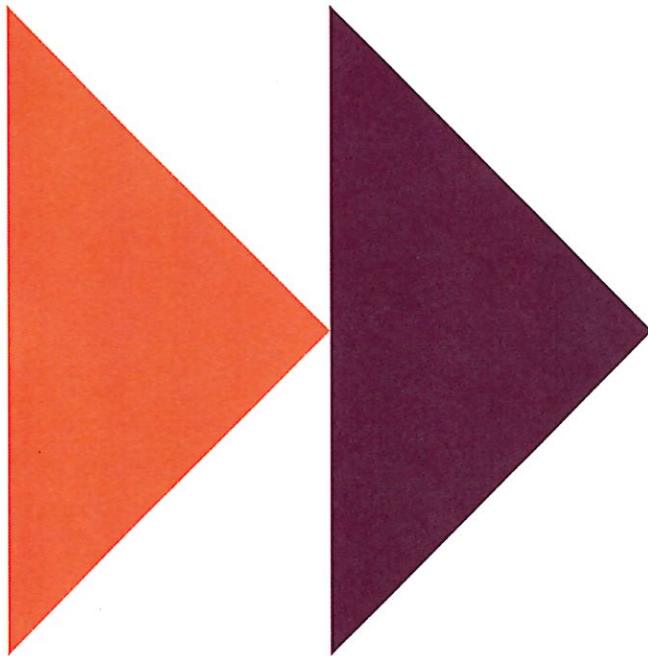
Kilwins Company-Owned Stores (as of December 31, 2023)

Location	Address
Harbor Springs, MI	139 East Main Street Harbor Springs, MI 49740
Petoskey, MI	1050 Bay View Road Petoskey, MI 49770
Petoskey, MI	316 Howard St Petoskey, MI 49770
Princeton, NJ	16 Witherspoon Street Princeton, NJ 08542
Columbus, OH	662 N High Street Columbus, OH 43215

Exhibit G

Kilwins Chocolates Franchise Inc.'s Audited Financial Statements

**(December 31, 2023, December 31, 2022
and December 31, 2021)**



**KILWINS CHOCOLATES
FRANCHISE, INC.
AND SUBSIDIARIES**

CONSOLIDATED FINANCIAL STATEMENTS

As of December 31, 2023 and Period from
February 17, 2023 through December 31, 2023
(Post-Transaction) and Period from January 1,
2023 through February 16, 2023 (Pre-Transaction)

(With Independent Auditor's Report Thereon)

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**TABLE OF CONTENTS**

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56 Cesar E. Chavez Ave. SW, Suite 100
Grand Rapids, Michigan 49503
» 616.235.5200 | doeren.com

INDEPENDENT AUDITOR'S REPORT

Officers and Stockholders
Kilwins Chocolates Franchise, Inc.

Opinion

We have audited the accompanying consolidated financial statements of Kilwins Chocolates Franchise, Inc. and Subsidiaries (a Michigan corporation) (Post-Transaction), which comprise the consolidated balance sheet as of December 31, 2023, and the related consolidated statements of operations, equity, and cash flows for the period from February 17, 2023 through December 31, 2023, and the related notes to the consolidated financial statements.

In our opinion, the accompanying consolidated financial statements referred to above present fairly, in all material respects, the financial position of Kilwins Chocolates Franchise, Inc. and Subsidiaries (Post-Transaction) as of December 31, 2023, and the results of its operations and its cash flows for the period from February 17, 2023 through December 31, 2023 in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Consolidated Financial Statements section of our report. We are required to be independent of Kilwins Chocolates Franchise, Inc. and Subsidiaries and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Responsibilities of Management for the Consolidated Financial Statements

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about Kilwins Chocolates Franchise, Inc. and Subsidiaries' ability to continue as a going concern within one year after the date that the consolidated financial statements are available to be issued.



Auditor's Responsibilities for the Audit of the Consolidated Financial Statements

Our objectives are to obtain reasonable assurance about whether the consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements, including omissions, are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the consolidated financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the consolidated financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of Kilwins Chocolates Franchise, Inc. and Subsidiaries' internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the consolidated financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about Kilwins Chocolates Franchise, Inc. and Subsidiaries' ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

A handwritten signature in black ink that reads "Doeren Mayhew".

Grand Rapids, Michigan
April 22, 2024



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Grand Rapids, Michigan 49503

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INDEPENDENT AUDITOR'S REPORT

Officers and Stockholders
Kilwins Chocolates Franchise, Inc.

Opinion

We have audited the accompanying consolidated financial statements of Kilwins Chocolates Franchise, Inc. and Subsidiaries (a Michigan corporation) (Pre-Transaction), which comprise the consolidated statements of operations and cash flows for the period from January 1, 2023 through February 16, 2023, and the related notes to the consolidated financial statements.

In our opinion, the accompanying consolidated financial statements referred to above present fairly, in all material respects, the results of operations and cash flows of Kilwins Chocolates Franchise, Inc. and Subsidiaries (Pre-Transaction) for the period from January 1, 2023 through February 16, 2023 in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audits of the Consolidated Financial Statements section of our report. We are required to be independent of Kilwins Chocolates Franchise, Inc. and Subsidiaries and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Responsibilities of Management for the Consolidated Financial Statements

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about Kilwins Chocolates Franchise, Inc. and Subsidiaries' ability to continue as a going concern within one year after the date that the consolidated financial statements are available to be issued.



Auditor's Responsibilities for the Audit of the Consolidated Financial Statements

Our objectives are to obtain reasonable assurance about whether the consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements, including omissions, are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the consolidated financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the consolidated financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of Kilwins Chocolates Franchise, Inc. and Subsidiaries' internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the consolidated financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about Kilwins Chocolates Franchise, Inc. and Subsidiaries' ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

A handwritten signature in black ink that reads "Doeren Mayhew".

Grand Rapids, Michigan
April 22, 2024

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**CONSOLIDATED BALANCE SHEET
DECEMBER 31, 2023****Assets****Current assets**

Cash	\$ 1,228,898
Accounts receivable	
Trade and royalties	768,571
Construction	123,761
Related party	1,217,849
Other	353
Refundable taxes	154,984
Note receivable - current	40,000
Inventories	272,185
Contract assets	15,603
Prepaid expenses and other assets	17,736

Total current assets 3,839,940

Property and equipment 571,759

Deferred income taxes 1,174,000

Other assets

Right-of-use asset, operating leases	1,768,922
Lease deposits	57,218
Note receivable - long-term, net of current portion	206,301
Goodwill, net of accumulated amortization of \$4,729,643	50,772,784

Total other assets 52,805,225

Total assets \$ 58,390,924

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**CONSOLIDATED BALANCE SHEET
DECEMBER 31, 2023****Liabilities and Stockholders' Equity**

Current liabilities

Accounts payable	\$ 1,053,217
Lease liabilities - operating, current portion	337,511
Accrued liabilities	801,102
Deposits and advances	115,090
Contract liabilities	<u>1,440,522</u>

Total current liabilities 3,747,442

Long-term liabilities

Lease liabilities - operating, net of current portion	1,472,315
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Total liabilities 5,219,757

Stockholders' equity

Retained earnings	<u>53,171,167</u>
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Total liabilities and stockholders' equity \$ 58,390,924

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS

	Post-Transaction Period From February 17, 2023 Through December 31, 2023	Pre-Transaction Period From January 1, 2023 Through February 16, 2023
Operating revenues		
Royalties	\$ 6,308,985	\$ 584,223
Sale of franchises	799,500	104,000
Marketing fund revenue	1,262,932	117,044
Sale of goods	3,390,780	248,579
Construction revenues earned	2,949,553	414,710
Technology fees	188,125	32,925
Total operating revenues	14,899,875	1,501,481
Cost of revenues earned		
Cost of goods and services	2,548,208	215,360
Cost of construction revenues earned	2,698,543	383,724
Total cost of revenues earned	5,246,751	599,084
Gross Profit	9,653,124	902,397
Selling, general and administrative expenses	13,165,403	955,959
Operating loss	(3,512,279)	(53,562)
Other income (expense)		
Interest income	67,266	2,169
Miscellaneous income	313,552	1,514
Transaction costs and related bonuses	-	(10,905,836)
Total other income (expense)	380,818	(10,902,153)
Loss before income taxes	(3,131,461)	(10,955,715)
Provision for (benefit from) income taxes	339,632	(1,133,652)
Net loss	\$ (3,471,093)	\$ (9,822,063)

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY
PERIOD FROM FEBRUARY 17, 2023 THROUGH DECEMBER 31, 2023**

	<u>Retained Earnings</u>
Post Transaction	
Balance -February 17, 2023	\$ -
Equity contribution	60,978,001
Absorption of non-controlling interest	(17,005)
Dividends	(4,318,736)
Net loss	<u>(3,471,093)</u>
Balance - December 31, 2023	<u>\$ 53,171,167</u>

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**CONSOLIDATED STATEMENTS OF CASH FLOWS**

	<u>Post-Transaction</u> <u>Period From</u> <u>February 17, 2023</u> <u>Through</u> <u>December 31, 2023</u>	<u>Pre-Transaction</u> <u>Period From</u> <u>January 1, 2023</u> <u>Through</u> <u>February 16, 2023</u>
Cash Flows from Operating Activities		
Net loss	\$ (3,471,093)	\$ (9,822,063)
Adjustments to reconcile net loss to net cash (used by) provided from operating activities		
Depreciation and amortization	4,833,394	10,399
Deferred income taxes	176,000	(1,134,000)
Decrease/(increase) in assets		
Accounts receivable	(1,809,046)	755,397
Refundable taxes	27,904	(52,573)
Inventories	204,132	25,552
Contract assets	(10,799)	48,869
Prepaid expenses	103,390	7,175
Lease deposits	(15,660)	15,660
Leases - right of use asset and liabilities	13,766	4,268
Increase/(decrease) in liabilities		
Accounts payable	31,917	(134,661)
Accrued liabilities	(10,375,355)	10,464,468
Deposits and advances	49,500	-
Contract liabilities	(370,700)	32,950
Total adjustments	(7,141,557)	10,043,504
Net cash (used by) provided from operating activities	(10,612,650)	221,441
Cash Flows from Investing Activities		
Purchase of property and equipment	(25,465)	(6,294)
Transaction adjustments	7,685,048	-
Collections on notes receivable	38,432	3,640
Net cash provided from (used by) investing activities	7,698,015	(2,654)
Cash Flows from Financing Activities		
Capital contributions	1,745,000	-
Dividends	(4,318,736)	-
Net cash used by financing activities	(2,573,736)	-
Net (decrease) increase in cash	(5,488,371)	218,787
Cash - beginning	6,717,269	6,498,482
Cash - Ending	\$ 1,228,898	\$ 6,717,269

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS

	<u>Post-Transaction</u> <u>Period From</u> <u>February 17, 2023</u> <u>Through</u> <u>December 31, 2023</u>	<u>Pre-Transaction</u> <u>Period From</u> <u>January 1, 2023</u> <u>Through</u> <u>February 16, 2023</u>
<u>Supplemental Cash Flow Information</u>		
Cash paid for taxes	\$ 183,880	\$ 52,572
Transaction expenses identified	5,562,367	-
Initial cash capitalization	2,122,681	-
Transaction adjustments	\$ 7,685,048	\$ -
<u>Schedule of Noncash Financing Activities</u>		
Recognize fair value step up associated with the transaction	\$ 46,815	\$ -
Goodwill recorded as result of the transaction	\$ 55,474,460	\$ -

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2023**

Note 1 - Summary of Significant Accounting PoliciesBusiness Activity

Kilwins Chocolates Franchise, Inc. (a wholly owned subsidiary of Kilwins MidCo, LLC) and Subsidiaries ("KCF") franchises and operates Kilwins stores primarily in the eastern United States. All Kilwins stores are operated either by the Company or by franchisees under a franchise agreement. As of December 31, 2023, there were 164 total Kilwins stores, of which 159 stores were franchised and 5 were Company owned.

KCF also provides construction and equipment management services related to franchise activity. These services are provided in various states and contract length varies by project.

Principles of Consolidation

The accompanying consolidated financial statements include the accounts of Kilwins Chocolates Franchise, Inc. as well as its wholly owned subsidiaries, Kilwins Chocolate Kitchen, Kilwins Harbor Springs, Columbus Short North, Kilwins Petoskey Downtown, and Princeton Confections LLC (collectively, the Company).

All significant intercompany transactions and balances have been eliminated. All Companies included in the consolidated financial statements are under common management and control.

Post-Transaction

The Transaction, as described in Note 2, closed on February 17, 2023. The accompanying consolidated balance sheet of the Company as of December 31, 2023, and the related consolidated statements of operations, equity and cash flows for the period February 17, 2023 through December 31, 2023 are labeled as "Post-Transaction." The post-transaction financial statements as of December 31, 2023 and for the period from February 17, 2023 through December 31, 2023 reflect pushdown accounting and other transaction related adjustments resulting from the Transaction.

Pre-Transaction

The accompanying consolidated statements of operations and cash flows for the period January 1, 2023 to February 16, 2023 include adjustments attributable to the Transaction, and are labeled as "Pre-Transaction". As a result of the application of pushdown accounting as of the transaction date, the financial statements for the Post-transaction period and the Pre-Transaction period are presented on a different basis and are, therefore, not comparable.

Revenue Recognition

Revenue from the sale of franchises is recognized as certain benchmarks are achieved. The Company recognizes a certain percentage of franchise fee revenue when the franchisee signs the franchise agreement and secures a store lease, and the remaining percentage is recognized on the date the store opens. Payment is due at the signing of the franchise agreement, and a contract liability is recorded until the benchmarks are achieved. The Company has a commissions program in place surrounding the sale of franchises and the opening of the related store. Because store opening generally occurs within one year (or less), the Company has elected the practical expedient to expense commissions as incurred.

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2023**

Franchisees are required to pay a royalty of 5% of sales to Kilwins Chocolates Franchise, Inc., as the franchisor. Royalty revenues are recognized by the Company when earned, as sales are made by the franchisees, and are billed monthly. Royalty receivables are due from the franchisee within 10 days after the close of each month. Franchisee sales were approximately \$130,000,000 and \$12,000,000 for the post-transaction period ended December 31, 2023 and the pre-transaction period January 1, 2023 through February 16, 2023, respectively. Related royalty revenues were approximately \$6,300,000 and \$584,000 for the post-transaction period ended December 31, 2023 and the pre-transaction period January 1, 2023 through February 16, 2023, respectively.

Marketing fund revenues include franchisee contributions to a marketing fund billed on a monthly basis, as required under the franchise agreements. Contributions are based on a percentage of sales and recognized as earned. The Company uses these funds to pay for franchisee advertising and other marketing expenses.

The Company operates five wholly owned retail stores. Revenue is recognized at the time the sale occurs as most of these transactions are point of sale. For online orders the Company recognizes revenue at the time of shipment. The Company has elected to account for shipping and handling as activities to fulfill the promise to transfer the goods. Since revenue is recognized for the related goods before the shipping and handling activities occur, the Company records the related costs at the time revenue is recognized. Gift cards, upon customer purchase, are recorded as a contract liability and recognized in revenue as they are redeemed. The Company assesses the likelihood of redemption based on periods of inactivity, and unredeemed card balances may then be recognized as revenue.

Revenues from construction contracts are recognized as costs are incurred over time. Progress toward completion of these contracts is measured by the percentage of costs incurred to date to estimated total costs for each contract. This method is used because management considers expended costs incurred to be the best available measure of progress on these contracts. Because of the inherent uncertainties in estimating costs, it is at least reasonably possible that estimates of costs and revenues will change in the near term. Contracts typically require progress billings to be made over time, in most cases, once per month. Payment terms for these billings are generally thirty days.

Costs of construction include all direct construction related costs. Direct costs include material, labor, subcontractor, equipment costs, and various other job specific expenses. Selling and general and administrative expenses are charged to expense as incurred. Provisions for estimated losses on uncompleted contracts are made in the period in which such losses are determined. Changes in job performance, job conditions, and estimated profitability may result in revisions to costs and income and are recognized in the period in which the revisions are determined.

Certain states in which the Company has sales impose sales or similar taxes on qualifying sales to non-exempt customers. The Company collects the sales or similar taxes from customers and remits the entire amount to the respective states. The Company has elected to exclude the tax collected and remitted to the states from the measurement of the sales transaction price and costs of goods sold.

Cash

The Company maintains its cash balances at two financial institutions. Deposits are insured by the Federal Deposit Insurance Corporation. From time to time, the Company's cash balances may exceed the federally insured limit.

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2023**

Accounts Receivable

Trade and royalties accounts receivable are stated at the amount management expects to collect from outstanding balances, based on management's evaluation of individual franchisee circumstances. Construction accounts receivable include billed amounts for services provided to franchisees for which the Company has an unconditional right to payment. These billings are made in accordance with the underlying contract and are stated at the amount management expects to collect from outstanding balances.

The Company recognizes an allowance for losses on accounts receivable and contract assets in an amount equal to the current expected credit losses. The estimation of the allowance is based on an analysis of historical loss experience, current receivables aging, and management's assessment of current conditions and reasonable and supportable expectation of future conditions, as well as an assessment of specific identifiable customer accounts considered at risk or uncollectible. The Company assesses collectability by pooling receivables where similar characteristics exist and evaluates receivables individually when specific customer balances no longer share those risk characteristics and are considered at risk or uncollectible. The expense associated with the allowance for expected credit losses is recognized in administrative expenses. The Company did not experience significant write-offs during 2023, and the allowance was not significant as of December 31, 2023. The Company has omitted all credit loss related disclosures.

Contract Assets

Contract assets include costs and estimated earnings in excess of billings on uncompleted contracts. Amounts are billable according to contract terms and generally are billed and collected over the next twelve months. When events or conditions indicate it is probable the amounts are unbillable, the associated contract asset is reduced.

Contract Liabilities

Contract liabilities include billings in excess of costs and estimated earnings on uncompleted contracts, deferred revenue on franchise sales, and unredeemed gift cards. Unearned contract revenue is generally recognized over the next twelve months specific to progress measured for each contract, or as the benchmarks of franchise agreements are achieved. Unredeemed gift cards are recorded net of management's estimate of card breakage.

Inventories

Inventories consist of equipment and fixtures for resale, as well as raw material (ingredients), packaging, and product held for sale. Inventories are valued at the lower of cost or net realizable value, with cost determined by the first-in, first-out (FIFO) method.

Property and Equipment

Property and equipment are stated at cost, net of accumulated depreciation. Depreciation is computed using the straight-line method based on the estimated useful lives of the respective assets. Costs of repairs and maintenance are charged to expense when incurred.

Property and equipment are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. If the expected future cash flow from the use of the asset and its eventual disposition is less than the carrying amount of the asset, an impairment loss is recognized and measured using the asset's fair value. No such losses were recognized during 2023.

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2023**

Goodwill

Goodwill represents the amount by which the cost of the net assets purchased exceeds the fair value of the net assets acquired. The Company has elected to adopt the alternative accounting standard to amortize goodwill over 10 years. Management will evaluate goodwill for impairment should a triggering event occur.

The Company has also elected to adopt the alternative accounting standard for identifiable intangible assets in a business combination. The Company will not recognize identifiable intangible assets separately from goodwill.

Amortization expense for the post-transaction period ended December 31, 2023 was approximately \$4,730,000. Amortization expense for the pre-transaction period January 1, 2023 through February 16, 2023 was insignificant. Amortization expense for goodwill is expected to be approximately \$5,550,000 annually for the next five years.

Equity

Total authorized capital stock is comprised of 80,000 shares of common stock, including 60,000 shares of Class A Common Stock and 20,000 shares of Class B Common Stock, each with \$0 par value. Each share of each class of common stock has equal and identical rights, preferences, and limitations, except for voting rights with respect to the election of directors. A total of 42,499 shares of Class A Common Stock and 15,625 shares of Class B Common Stock are issued and outstanding at December 31, 2023.

Income Taxes

Income taxes are provided for the tax effects of transactions reported in the financial statements and consist of taxes currently due plus deferred taxes. Deferred income taxes are recognized for differences between the basis of assets and liabilities for financial statement and income tax purposes. The differences relate primarily to depreciable assets (use of different depreciation methods and lives for financial statement and income tax purposes), the tax treatment of the gift card liability and reserve, and certain accruals (deductible for tax when paid), and a net operating loss carryforward. The deferred tax assets and liabilities represent the future tax return consequences of those differences, which will either be deductible or taxable when the assets and liabilities are recovered or settled.

The Company files consolidated federal and state income tax returns. Substantially all tax provisions and benefits are recorded on the books of Kilwins Chocolates Franchise, Inc.

Princeton Confections LLC is a limited liability company created under the provisions of the Internal Revenue Code. Under those provisions, Princeton Confections LLC does not pay federal income taxes on taxable income. Instead, KCF is liable for federal income taxes on the taxable income. A separate tax return is filed for Princeton Confections LLC.

Tax positions taken are assessed for uncertainty and a provision may be recorded if a tax position is not likely to be sustained upon examination.

Advertising Costs

The Company expenses advertising costs as they are incurred. Total advertising costs were approximately \$162,000 and \$9,000 for the post-transaction period ended December 31, 2023 and the pre-transaction period January 1, 2023 through February 16, 2023, respectively.

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2023**

Use of Estimates

The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Significant estimates include the revenue and cost recognition on construction contracts, estimates related to the obligation for gift card redemption and fair value measurements in connection with business combination. Management believes that any future adjustments to these estimates would not be material to the accompanying financial statements.

Leases

The Company recognizes right-of-use assets and lease liabilities for leases with terms greater than 12 months. Leases are classified as either finance or operating leases. This classification dictates whether lease expense is recognized based on an effective interest method (finance leases) or on a straight-line basis over the term of the lease (operating leases). The Company's right-of-use assets and lease liabilities primarily relate to retail store locations. Renewal periods are included in the expected lease term if they are reasonably certain of being exercised.

Right-of-use assets and lease liabilities are recorded at the net present value of future lease payments and include any initial direct costs incurred at lease commencement. The incremental borrowing rate is used to determine the net present value of the lease when the rate implicit in the lease is not readily determinable. Right-of-use assets under finance leases are amortized over the life of the lease or, if shorter, the life of the leased asset, on a straight-line basis. Right-of-use assets under operating leases are reduced as lease expense is incurred.

Short-term leases (initial terms less than 12 months) are expensed on a straight-line basis over the lease term.

Subsequent Events

Management has evaluated significant events or transactions occurring subsequent to December 31, 2023 for potential recognition or disclosure in these financial statements. The evaluation was performed through April 22, 2023, the date the financial statements were available for issuance.

Note 2 - Business Combination

On February 17, 2023, the stockholders of KCF entered into a Stock Purchase Agreement with Kilwins Midco, LLC (the Acquirer) whereby the Acquirer purchased the outstanding stock of KCF noted within the Stock Purchase Agreement (the Agreement).

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2023**

The Agreement is being accounted for as a business combination in accordance with ASC 805 whereby the total purchase consideration was allocated to intangible assets acquired based on their respective estimates in fair values. The acquisition method of accounting uses the fair value concept defined in ASC 820. ASC 805 requires, among other things, that most assets acquired, and liabilities assumed, if any, in a business purchase combination be recognized at their fair values as of the acquisition date. The process for estimating fair values of identifiable intangible assets requires the use of significant estimates and assumptions, including estimating future cash flows, developing appropriate discount rates, estimating the costs, and timing.

The purchase was facilitated through cash on the entity of \$6,717,269 with the remaining amount contributed via capital. The Company has elected to use pushdown accounting, which results in the Acquirer's cost being assigned to the Company's assets and liabilities. Accordingly, the Company revised its balance sheet amounts by assigning the Acquirer's acquisition cost to estimated fair values of the Company's assets and liabilities as of February 17, 2023, as follows:

	As Recorded Pre Transaction February 16, 2023	Fair Value Adjustments February 17, 2023	As Recorded Post Transaction February 17, 2023
<u>Assets</u>			
Cash	\$ 6,717,269	\$ -	\$ 6,717,269
Accounts receivable	295,327	-	295,327
Inventory	476,317	-	476,317
Right-of-use assets	2,041,410	-	2,041,410
Property and equipment	603,231	46,815	650,046
Deferred tax assets	1,350,000	-	1,350,000
Other assets	641,270	-	641,270
Goodwill	27,966	55,474,460	55,502,426
	<u>\$ 12,152,790</u>	<u>\$ 55,521,275</u>	<u>\$ 67,674,065</u>
<u>Liabilities</u>			
Accounts payable and accrued liabilities	\$ 8,130,118	\$ -	\$ 8,130,118
Deferred revenue	380,500	-	380,500
Lease liabilities - operating	2,068,548	-	2,068,548
	<u>\$ 10,579,166</u>	<u>\$ -</u>	<u>\$ 10,579,166</u>

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2023****Note 3 - Notes Receivable**

Note receivable from a franchisee relating to a purchase of a franchise location. Monthly principal payments of \$1,000 are required, plus interest calculated at 6.50%. A final lump sum payment is due May 2027

\$ 163,428

Note receivable from a franchisee relating to the purchase of a franchise location. The Company will recover the balance through an additional 5% of franchisee sales through January 2029

82,873

Current maturities

246,301

(40,000)

\$ 206,301

Note 4 - Contract Balances

Contract balances related to contracts with customers as of December 31, 2023 (post-transaction) and February 16, 2023 (pre-transaction) were as follows:

	<u>Post-Transaction</u> <u>December 31, 2023</u>	<u>Pre-Transaction</u> <u>February 16, 2023</u>
Accounts receivable	<u>\$ 892,332</u>	<u>\$ 295,327</u>
Contract assets		
Costs and estimated earnings in excess of billings on uncompleted contracts	<u>\$ 15,603</u>	<u>\$ 4,804</u>
Contract liabilities		
Billings in excess of costs and estimated earnings on uncompleted contracts	\$ 383,486	\$ 808,734
Deferred revenue on franchise sales	520,500	380,500
Unredeemed gift cards	<u>536,536</u>	<u>621,988</u>
	<u><u>\$ 1,440,522</u></u>	<u><u>\$ 1,811,222</u></u>

At January 1, 2023, accounts receivable were \$1,050,724, contract assets were \$53,673 and contract liabilities were \$1,778,272.

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2023**

Information with respect to construction contracts-in-progress is as follows:

	<u>Post-Transaction December 31, 2023</u>	<u>Pre-Transaction February 16, 2023</u>
Costs incurred on uncompleted contracts	\$ 520,981	\$ 959,453
Estimated earnings	<u>46,604</u>	<u>107,384</u>
	567,585	1,066,837
Less: Billings to date	<u>935,468</u>	<u>1,870,767</u>
	<u><u>\$ (367,883)</u></u>	<u><u>\$ (803,930)</u></u>

Note 5 - Property & Equipment

Property and equipment consists of the following:

Equipment	\$ 103,516
Leasehold improvements	554,395
Software and web development	<u>17,600</u>
	675,511
Accumulated depreciation and amortization	<u>(103,752)</u>
	<u><u>\$ 571,759</u></u>

Depreciation expense was \$103,752 and \$10,620 for the post-transaction period ended December 31, 2023 and the pre-transaction period January 1, 2023 through February 16, 2023, respectively.

Note 6 - Operating Leases

The Company leases certain office facilities and retail store locations under long-term, non-cancellable operating leases that expire at various dates through 2033, some of which may include options to extend the leases for up to 15 years. Monthly payments range from \$1,803 to \$8,373, with certain leases requiring annual increases based on the Consumer Price Index and a monthly charge for common area maintenance based on actual costs incurred.

The Company also leases office space, equipment and additional retail locations from related parties on a short-term basis. Monthly payments range from \$1,058 to \$12,569. Rent expense charged under these leases are represented as short-term lease cost in the below table.

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2023**

The Company's lease expense consists of the following for the post-transaction period ending December 31, 2023, and pre-transaction period January 1, 2023 through February 16, 2023:

	<u>Post-Transaction Period From February 17, 2023 Through December 31, 2023</u>	<u>Pre-Transaction Period From January 1, 2023 Through February 16, 2023</u>
Operating lease cost	\$ 343,855	\$ 66,711
Short-term lease cost	261,203	42,829
Variable lease cost	54,667	5,182
Sublease income	<u>(106,463)</u>	<u>(16,447)</u>
Total lease cost	<u>\$ 553,262</u>	<u>\$ 98,275</u>

Supplemental lease information is as follows for the post-transaction period ending December 31, 2023, and pre-transaction period January 1, 2023 through February 16, 2023:

	<u>Post-Transaction Period From February 17, 2023 Through December 31, 2023</u>	<u>Pre-Transaction Period From January 1, 2023 Through February 16, 2023</u>
Cash paid for amounts included in measurement of lease liabilities		
Operating cash flows from operating leases	\$ 330,089	\$ 62,443
Right-of-use assets obtained in exchange for operating lease liabilities	-	201,787
Weighted-average remaining lease term - operating leases	5.16 years	5.93 years
Weighted-average discount rate - operating leases	4.45%	4.45%

Remaining lease payments are as follows:

<u>Years ending December 31</u>	<u>Operating Leases</u>
2024	\$ 409,829
2025	420,742
2026	425,048
2027	365,167
2028	218,206
Thereafter	<u>184,392</u>
Total minimum lease payments	2,023,384
Less: imputed interest	<u>(213,558)</u>
Present value of lease liabilities	<u>\$ 1,809,826</u>

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2023****Note 7 - Related Party**

Kilwins Chocolates Franchise, Inc. is related to Kilwin's Quality Confections through partial common ownership and management. Related party transactions with Kilwin's Quality Confections for the post-transaction period ending December 31, 2023, and pre-transaction period January 1, 2023 through February 16, 2023 are as follows:

	<u>Post-Transaction Period From February 17, 2023 Through December 31, 2023</u>	<u>Pre-Transaction Period From January 1, 2023 Through February 16, 2023</u>
Accounting and management services purchased	\$ 591,860	\$ 115,172
Insurance reimbursement paid	41,068	7,260
Purchase of resale products	1,152,555	86,541
Maintenance	27,015	4,492
Equipment rental	356,390	6,766
Freight charges on marketing materials	49,800	-
Office facility and retail store location rent (note 6)	261,203	39,584
	<u>\$ 2,479,891</u>	<u>\$ 259,815</u>

Amounts payable to Kilwin's Quality Confections at December 31, 2023 related to these goods and services were \$10,130.

The Company also has amounts due from Kilwin's Quality Confections for payments made on their behalf at December 31, 2023 of approximately \$1,220,000. Management has indicated these balances will be settled during 2024.

Note 8 - Guarantee

The Company along with Kilwins Quality Confections are named guarantors on the borrowings of Kilwins Midco, LLC (their parent company). The total outstanding under these obligations is \$25,000,000 at December 31, 2023. The assets of the Company are also pledged as collateral for this debt. The Company would be obligated to perform if the related party failed to pay principal and interest payments to the lender when due. Management of the Company believes the likelihood of material loss from these guarantees is remote.

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2023****Note 9 - Income Taxes**

The provision for income taxes consists of the following:

	<u>Post-Transaction Period From February 17, 2023 Through December 31, 2023</u>	<u>Pre-Transaction Period From January 1, 2023 Through February 16, 2023</u>
Federal income taxes currently payable (refundable)	\$ 312,272	\$ -
Benefit of net operating loss carryforward	(261,640)	-
Change in deferred taxes due to timing differences	176,000	(1,134,000)
State taxes currently payable	<u>113,000</u>	<u>348</u>
	<u>\$ 339,632</u>	<u>\$ (1,133,652)</u>

The effective tax rate differs from statutory rates principally because of certain nondeductible expenses related to the transaction. The Company has a net operating loss carryforward that does not expire but is limited to 80% of taxable income annually of approximately \$3,800,000.

Amounts for deferred tax assets and liabilities as of December 31, 2023 and February 16, 2023 are as follows:

	<u>Post-Transaction December 31, 2023</u>	<u>Pre-Transaction February 16, 2023</u>
Deferred tax asset	\$ 1,201,000	\$ 1,388,000
Deferred tax liability	<u>(27,000)</u>	<u>(38,000)</u>
Net Asset	<u>\$ 1,174,000</u>	<u>\$ 1,350,000</u>

Note 10 - Retirement Plan

The Company has a Section 401(k) retirement plan which covers substantially all employees who meet certain eligibility requirements. The Company may elect to match a portion of the employees' contribution and may make a discretionary contribution to the plan. Contributions to the plan amounted to approximately \$131,000 and \$15,000 for the post-transaction period ended December 31, 2023 and the pre-transaction period January 1, 2023 through February 16, 2023, respectively.

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES

CONSOLIDATED FINANCIAL STATEMENTS

*Years Ended December 31, 2022 and 2021
(With Independent Auditor's Report Thereon)*

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INDEPENDENT AUDITOR'S REPORT

Officers and Stockholders
Kilwins Chocolates Franchise, Inc.
Petoskey, MI

Opinion

We have audited the accompanying consolidated financial statements of Kilwins Chocolates Franchise, Inc. and Subsidiaries (a Michigan corporation), which comprise the consolidated balance sheets as of December 31, 2022 and 2021, and the related consolidated statements of income, equity, and cash flows for the years then ended, and the related notes to the consolidated financial statements.

In our opinion, the accompanying consolidated financial statements referred to above present fairly, in all material respects, the financial position of Kilwins Chocolates Franchise, Inc. and Subsidiaries as of December 31, 2022 and 2021, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audits of the Consolidated Financial Statements section of our report. We are required to be independent of Kilwins Chocolates Franchise, Inc. and Subsidiaries and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Emphasis of Matter – Change in Accounting Principle

As discussed in Note 2 to the consolidated financial statements, the Company changed its method of accounting for leases January 1, 2022. Our opinion is not modified with respect to this matter.

Responsibilities of Management for the Consolidated Financial Statements

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about Kilwins Chocolates Franchise, Inc. and Subsidiaries' ability to continue as a going concern within one year after the date that the consolidated financial statements are available to be issued.

Auditor's Responsibilities for the Audits of the Consolidated Financial Statements

Our objectives are to obtain reasonable assurance about whether the consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements, including omissions, are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the consolidated financial statements.

In performing audits in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audits.
- Identify and assess the risks of material misstatement of the consolidated financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements.
- Obtain an understanding of internal control relevant to the audits in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of Kilwins Chocolates Franchise, Inc. and Subsidiaries' internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the consolidated financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about Kilwins Chocolates Franchise, Inc. and Subsidiaries' ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audits, significant audit findings, and certain internal control related matters that we identified during the audits.



Beene Garter
A Doeren Mayhew Firm
Grand Rapids, Michigan
April 13, 2023

CONSOLIDATED FINANCIAL STATEMENTS

	2022	2021
ASSETS		
Current Assets		
Cash	\$ 6,498,482	\$ 5,006,194
Accounts receivable		
Trade and royalties	655,752	684,238
Construction	394,972	53,775
Related party	-	43,008
Other	6,161	245,298
Refundable taxes	130,315	-
Note receivable - current	37,000	26,000
Inventories	501,869	415,583
Contract assets	53,673	30,629
Prepaid expenses and other assets	128,301	17,944
TOTAL CURRENT ASSETS	8,406,525	6,522,669
Property and Equipment	607,336	642,271
Deferred Income Taxes	216,000	161,000
Other Assets		
Right-of-use asset, operating leases	1,891,590	-
Lease deposits	57,218	44,718
Note receivable - long-term, net of current portion	251,373	111,482
Goodwill	27,967	27,967
	2,228,148	184,167
TOTAL ASSETS	\$ 11,458,009	\$ 7,510,107

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**CONSOLIDATED BALANCE SHEETS**

December 31, 2022 and 2021

	<u>2022</u>	<u>2021</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current Liabilities		
Accounts payable	\$ 1,155,961	\$ 949,644
Lease liabilities - operating, current portion	294,509	-
Accrued liabilities	711,989	760,613
Income taxes payable	-	577,605
Deposits and advances	65,590	97,590
Contract liabilities	1,778,272	990,100
TOTAL CURRENT LIABILITIES	4,006,321	3,375,552
Long-Term Liabilities		
Lease liabilities - operating, net of current portion	1,619,951	-
TOTAL LIABILITIES	5,626,272	3,375,552
Stockholders' Equity		
Controlling interests		
Common stock	1,164,486	1,164,486
Treasury stock	(266,541)	(266,541)
Retained earnings	4,947,933	3,234,287
	5,845,878	4,132,232
Noncontrolling interest	(14,141)	2,323
	5,831,737	4,134,555
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	\$ 11,458,009	\$ 7,510,107

See accompanying notes

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**CONSOLIDATED STATEMENTS OF INCOME**

Years Ended December 31, 2022 and 2021

	<u>2022</u>	<u>2021</u>
Operating Revenues		
Royalties	\$ 6,320,755	\$ 5,891,688
Sale of franchises	603,500	536,000
Marketing fund revenue	1,256,870	1,170,594
Sale of goods	3,370,409	3,522,592
Construction revenues earned	2,150,899	2,339,463
Technology fees	190,800	167,650
Total Operating Revenues	13,893,233	13,627,987
Cost of Revenues Earned		
Cost of goods and services	2,630,274	2,502,273
Cost of construction revenues earned	1,921,726	2,096,034
Total Cost of Revenues Earned	4,552,000	4,598,307
GROSS PROFIT	9,341,233	9,029,680
Selling, General and Administrative Expenses	7,358,811	6,662,352
OPERATING INCOME	1,982,422	2,367,328
Other Income		
Paycheck Protection Program forgiveness	-	679,776
Interest income	12,085	1,459
Gain on sale of Company owned store	68,007	-
Miscellaneous income	149,668	111,018
NET INCOME BEFORE TAXES	2,212,182	3,159,581
Provision for Income Taxes	515,000	605,000
NET INCOME	1,697,182	2,554,581
Net Loss Attributable to the Non-controlling Interest	(16,464)	(7,118)
NET INCOME ATTRIBUTABLE TO CONTROLLING INTEREST	\$ 1,713,646	\$ 2,561,699

See accompanying notes

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**CONSOLIDATED STATEMENTS OF EQUITY**

Years Ended December 31, 2022 and 2021

	Controlling Interest			Non-Controlling Interest	Total Equity
	Common Stock	Treasury Stock	Retained Earnings		
Balance - January 1, 2021	\$ 1,164,486	\$ (266,541)	\$ 1,675,226	\$ 9,441	\$ 2,582,612
Dividend	-	-	(1,002,638)	-	(1,002,638)
Net income (loss)	-	-	2,561,699	(7,118)	2,554,581
Balance - December 31, 2021	1,164,486	(266,541)	3,234,287	2,323	4,134,555
Net income (loss)	-	-	1,713,646	(16,464)	1,697,182
Balance - December 31, 2022	\$ 1,164,486	\$ (266,541)	\$ 4,947,933	\$ (14,141)	\$ 5,831,737

See accompanying notes

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**CONSOLIDATED STATEMENTS OF CASH FLOWS**

Years Ended December 31, 2022 and 2021

	<u>2022</u>	<u>2021</u>
Cash Flows from Operating Activities		
Net income	\$ 1,697,182	\$ 2,554,581
Noncash items included in net income		
Gain on sale of company owned store	(68,007)	-
Depreciation	125,609	109,630
Deferred income taxes	(55,000)	(78,000)
Changes in operating assets and liabilities		
Accounts receivable	(30,566)	(173,337)
Refundable taxes	(130,315)	-
Inventories	(86,286)	(240,403)
Contract assets	(23,044)	(30,629)
Prepaid expenses	(110,357)	61,647
Lease deposits	(12,500)	-
Leases - right of use asset and liabilities	22,870	-
Accounts payable	206,317	493,396
Accrued liabilities	(48,624)	311,708
Income taxes payable	(577,605)	516,524
Deposits and advances	(32,000)	(378,715)
Contract liabilities	788,172	325,854
NET CASH PROVIDED BY OPERATING ACTIVITIES	1,665,846	3,472,256
Cash Flows from Investing Activities		
Purchase of property and equipment	(205,095)	(56,189)
Collections on notes receivable	31,537	26,280
NET CASH USED BY INVESTING ACTIVITIES	(173,558)	(29,909)
Cash Flows from Financing Activities		
Dividend paid	-	(1,002,638)
NET INCREASE IN CASH	1,492,288	2,439,709
Cash at Beginning of Year	5,006,194	2,566,485
CASH AT END OF YEAR	\$ 6,498,482	\$ 5,006,194
Supplemental Cash Flow Disclosures		
Note receivable in exchange for sale of Company owned store	\$ 182,428	-
Cash paid for taxes	\$ 1,276,376	\$ 165,453

See accompanying notes

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

December 31, 2022 and 2021

NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**Business Activity**

Kilwins Chocolates Franchise, Inc. and Subsidiaries ("KCF") franchises and operates Kilwins stores primarily in the eastern United States. All Kilwins stores are operated either by the Company or by franchisees under a franchise agreement. As of December 31, 2022, there were 149 total Kilwins stores, of which 145 stores were franchised and 4 were Company owned. As of December 31, 2021 there were 150 total stores, of which 146 were franchised and 4 were Company owned.

KCF also provides construction and equipment management services related to franchise activity. These services are provided in various states and contract length varies by project.

Principles of Consolidation

The accompanying consolidated financial statements include the accounts of Kilwins Chocolates Franchise, Inc. as well as its wholly owned subsidiaries, Kilwins Chocolate Kitchen, Kilwins Harbor Springs, Kilwins Gettysburg (2021), Columbus Short North (2022), Kilwins Petoskey Downtown (2022), and its 91.6% owned subsidiary Princeton Confections LLC (collectively, the "Company").

All significant intercompany transactions and balances have been eliminated. All Companies included in the consolidated financial statements are under common management and control.

Revenue Recognition

Revenue from the sale of franchises is recognized as certain benchmarks are achieved. The Company recognizes a certain percentage of franchise fee revenue when the franchisee signs the franchise agreement and secures a store lease, and the remaining percentage is recognized on the date the store opens. Payment is due at the signing of the franchise agreement, and a contract liability is recorded until the benchmarks are achieved. The Company has a commissions program in place surrounding the sale of franchises and the opening of the related store. Because store opening generally occurs within one year (or less), the Company has elected the practical expedient to expense commissions as incurred.

Franchisees are required to pay a royalty of 5% of sales to Kilwins Chocolates Franchise, Inc., as the franchisor. Royalty revenues are recognized by the Company when earned, as sales are made by the franchisees, and are billed monthly. Royalty receivables are due from the franchisee within 10 days after the close of each month. Franchisee sales were approximately \$129,000,000 and \$120,000,000 for the years ended December 31, 2022 and 2021, respectively. Related royalty revenues were approximately \$6,300,000 and \$5,900,000 for the years ended December 31, 2022 and 2021, respectively.

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

December 31, 2022 and 2021

Marketing fund revenues include franchisee contributions to a marketing fund billed on a monthly basis, as required under the franchise agreements. Contributions are based on a percentage of sales and recognized as earned. The Company uses these funds to pay for franchisee advertising and other marketing expenses.

The Company operates three wholly owned and one majority owned retail store. Revenue is recognized at the time the sale occurs as most of these transactions are point of sale. For online orders the Company recognizes revenue at the time of shipment. The Company has elected to account for shipping and handling as activities to fulfill the promise to transfer the goods. Since revenue is recognized for the related goods before the shipping and handling activities occur, the Company records the related costs at the time revenue is recognized. Gift cards, upon customer purchase, are recorded as a contract liability and recognized in revenue as they are redeemed. The Company assesses the likelihood of redemption based on periods of inactivity, and unredeemed card balances may then be recognized as revenue.

Revenues from construction contracts are recognized as costs are incurred over time. Progress toward completion of these contracts is measured by the percentage of costs incurred to date to estimated total costs for each contract. This method is used because management considers expended costs incurred to be the best available measure of progress on these contracts. Because of the inherent uncertainties in estimating costs, it is at least reasonably possible that estimates of costs and revenues will change in the near term. Contracts typically require progress billings to be made over time, in most cases, once per month. Payment terms for these billings are generally thirty days.

Costs of construction include all direct construction related costs. Direct costs include material, labor, subcontractor, equipment costs, and various other job specific expenses. Selling and general and administrative expenses are charged to expense as incurred. Provisions for estimated losses on uncompleted contracts are made in the period in which such losses are determined. Changes in job performance, job conditions, and estimated profitability may result in revisions to costs and income and are recognized in the period in which the revisions are determined.

Certain states in which the Company has sales impose sales or similar taxes on qualifying sales to non-exempt customers. The Company collects the sales or similar taxes from customers and remits the entire amount to the respective states. The Company has elected to exclude the tax collected and remitted to the states from the measurement of the sales transaction price and costs of goods sold.

Cash

The Company maintains its cash balances at three financial institutions. Deposits are insured by the Federal Deposit Insurance Corporation. From time to time, the Company's cash balances may exceed the federally insured limit.

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

December 31, 2022 and 2021

Accounts Receivable

Trade and royalties accounts receivable are stated at the amount management expects to collect from outstanding balances, based on management's evaluation of individual franchisee circumstances. Construction accounts receivable include billed amounts for services provided to franchisees for which the Company has an unconditional right to payment. These billings are made in accordance with the underlying contract and are stated at the amount management expects to collect from outstanding balances.

An allowance for doubtful accounts is established based on specific assessments of invoices that remain unpaid following normal franchisee payment periods. All amounts deemed uncollectible are written off through a charge to the valuation allowance and a credit to accounts receivable in the period that determination is made. Management considers the amounts currently recorded to be fully collectible.

Other Accounts Receivable – Employee Retention Credits

Under the provisions of the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") signed into law on March 27, 2020 and the subsequent extension of the CARES Act, the Company was eligible for a refundable employee retention credit ("ERC") subject to certain criteria. \$239,000 of the December 31, 2021 other receivable on the accompanying consolidated balance sheet represents this receivable due from the Internal Revenue Service for the ERC. The Company recognized \$239,000 of ERC income during the year ended December 31, 2020 and received payment during 2022.

Contract Assets

Contract assets include costs and estimated earnings in excess of billings on uncompleted contracts. Amounts are billable according to contract terms and generally are billed and collected over the next twelve months. When events or conditions indicate it is probable the amounts are unbillable, the associated contract asset is reduced.

Contract Liabilities

Contract liabilities include billings in excess of costs and estimated earnings on uncompleted contracts, deferred revenue on franchise sales, and unredeemed gift cards. Unearned contract revenue is generally recognized over the next twelve months specific to progress measured for each contract, or as the benchmarks of franchise agreements are achieved. Unredeemed gift cards are recorded net of management's estimate of card breakage.

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

December 31, 2022 and 2021

Inventories

Inventories consist of equipment and fixtures for resale, as well as raw material (ingredients), packaging, and product held for sale. Inventories are valued at the lower of cost or net realizable value, with cost determined by the first-in, first-out (FIFO) method.

Property and Equipment

Property and equipment are stated at cost, net of accumulated depreciation. Depreciation is computed using the straight-line method based on the estimated useful lives of the respective assets. Costs of repairs and maintenance are charged to expense when incurred.

Property and equipment are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. If the expected future cash flow from the use of the asset and its eventual disposition is less than the carrying amount of the asset, an impairment loss is recognized and measured using the asset's fair value. No such losses were recognized during 2022 or 2021.

Goodwill

Goodwill resulted from the opening of the Harbor Springs location in 2003 and represents the excess of the purchase price over the fair value of the acquired tangible and identifiable intangible assets over liabilities. Management has evaluated the goodwill recorded on its books and has determined that no provision for impairment is necessary at December 31, 2022 or 2021.

In 2021, the Company adopted ASU 2021-03, Accounting Alternative for Evaluating Triggering Events, to perform goodwill impairment evaluation as of the end of the reporting period. The Company has also elected to adopt the alternative accounting standard for identifiable intangible assets in a business combination. The Company does not recognize identifiable intangible assets separately from goodwill.

Equity

Total authorized capital stock is comprised of 80,000 shares of common stock, including 60,000 shares of Class A Common Stock and 20,000 shares of Class B Common Stock. Each share of each class of common stock has equal and identical rights, preferences, and limitations, except for voting rights with respect to the election of directors. A total of 49,000 shares of Class A Common Stock and 15,625 of Class B Common Stock are issued and outstanding at December 31, 2022 and 2021.

Treasury stock represents the cost of 6,501 shares of Class A Common Stock held by the Company.

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

December 31, 2022 and 2021

Income Taxes

Income taxes are provided for the tax effects of transactions reported in the financial statements and consist of taxes currently due plus deferred taxes. Deferred income taxes are recognized for differences between the basis of assets and liabilities for financial statement and income tax purposes. The differences relate primarily to depreciable assets (use of different depreciation methods and lives for financial statement and income tax purposes), the tax treatment of the gift card liability and reserve, and certain accruals (deductible for tax when paid). The deferred tax assets and liabilities represent the future tax return consequences of those differences, which will either be deductible or taxable when the assets and liabilities are recovered or settled.

The Company files consolidated federal and state income tax returns. Substantially all tax provisions and benefits are recorded on the books of Kilwins Chocolates Franchise, Inc.

Princeton Confections LLC is a limited liability company created under the provisions of the Internal Revenue Code. Under those provisions, Princeton Confections LLC does not pay federal income taxes on taxable income. Instead, each owner is liable for federal income taxes on the taxable income. A separate tax return is filed for Princeton Confections LLC.

Tax positions taken are assessed for uncertainty and a provision may be recorded if a tax position is not likely to be sustained upon examination.

Advertising Costs

The Company expenses advertising costs as they are incurred. Total advertising costs were approximately \$66,000 and \$70,000 for the years ended December 31, 2022 and 2021, respectively.

Use of Estimates

The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Significant estimates include the revenue and cost recognition on construction contracts and estimates related to the obligation for gift card redemption. Management believes that any future adjustments to these estimates would not be material to the accompanying financial statements.

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

December 31, 2022 and 2021

Leases

The Company recognizes right-of-use assets and lease liabilities for leases with terms greater than 12 months. Leases are classified as either finance or operating leases. This classification dictates whether lease expense is recognized based on an effective interest method (finance leases) or on a straight-line basis over the term of the lease (operating leases). The Company's right-of-use assets and lease liabilities primarily relate to retail store locations. Renewal periods are included in the expected lease term if they are reasonably certain of being exercised.

Right-of-use assets and lease liabilities are recorded at the net present value of future lease payments and include any initial direct costs incurred at lease commencement. The incremental borrowing rate is used to determine the net present value of the lease when the rate implicit in the lease is not readily determinable. Right-of-use assets under finance leases are amortized over the life of the lease or, if shorter, the life of the leased asset, on a straight-line basis. Right-of-use assets under operating leases are reduced as lease expense is incurred.

Short-term leases (initial terms less than 12 months) are expensed on a straight-line basis over the lease term.

Subsequent Events

Management has evaluated significant events or transactions occurring subsequent to December 31, 2022 for potential recognition or disclosure in these financial statements. The evaluation was performed through April 13, 2023, the date the financial statements were available for issuance. See Note 13 for subsequent event.

NOTE 2 - ADOPTION OF NEW ACCOUNTING STANDARD

On January 1, 2022 the Company adopted new guidance under Accounting Standards Codification (ASC) Topic 842, Leases. Under the new guidance the Company recognizes right of-use assets and lease liabilities for leases with terms greater than 12 months. Leases are now classified as either finance or operating leases which dictates whether lease expense is recognized based on an effective interest method or on a straight-line basis over the term of the lease.

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

December 31, 2022 and 2021

The Company adopted Topic 842 using the modified retrospective method. Accordingly, the new guidance was applied retrospectively to leases that existed as of January 1, 2022 (the date of initial application). As result, the Company recorded right-of-use assets of \$1,658,760 and current and long-term lease liabilities of \$190,567 and \$1,468,193, respectively. The adoption did not have a significant impact on the Company's retained earnings, results of operations or cash flows.

The Company elected the following practical expedients and accounting policy elections:

- 1) Expired or existing contracts were not reassessed to determine whether they are or contain leases upon adoption.
- 2) Previous classification of existing leases (operating or finance) was retained as of the date of adoption.
- 3) Initial direct costs were not reassessed upon adoption.
- 4) Hindsight is used in determining the lease term and in evaluating impairment of right-of use assets.

NOTE 3 - NOTES RECEIVABLE

	<u>2022</u>	<u>2021</u>
Note receivable from a franchisee relating to a purchase of a franchise location. Monthly principal payments of \$1,000 are required, plus interest calculated at 6.50%. A final lump sum payment is due May 2027	\$ 175,428	\$ -
Note receivable from a franchisee relating to the purchase of a franchise location. The Company will recover the balance through an additional 5% of franchisee sales through January 2029	<u>112,945</u>	<u>137,482</u>
	<u>288,373</u>	<u>137,482</u>
Current maturities	<u>(37,000)</u>	<u>(26,000)</u>
	<u>\$ 251,373</u>	<u>\$ 111,482</u>

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

December 31, 2022 and 2021

NOTE 4 - CONTRACT BALANCES

Contract balances related to contracts with customers as of December 31, 2022 and 2021, were as follows:

	<u>2022</u>	<u>2021</u>
Accounts receivable	<u><u>\$ 1,050,724</u></u>	<u><u>\$ 738,013</u></u>
Contract assets		
Costs and estimated earnings in excess of billings on uncompleted contracts	<u><u>\$ 53,673</u></u>	<u><u>\$ 30,629</u></u>
	<u><u>\$ 53,673</u></u>	<u><u>\$ 30,629</u></u>
Contract liabilities		
Billings in excess of costs and estimated earnings on uncompleted contracts	<u><u>\$ 816,784</u></u>	<u><u>\$ 107,282</u></u>
Deferred revenue on franchise sales	<u><u>339,500</u></u>	<u><u>315,731</u></u>
Unredeemed gift cards	<u><u>621,988</u></u>	<u><u>567,087</u></u>
	<u><u>\$ 1,778,272</u></u>	<u><u>\$ 990,100</u></u>

At January 1, 2021, accounts receivable were \$579,964 and contract liabilities were \$664,246. There were no contract assets at January 1, 2021.

Information with respect to construction contracts-in-progress is as follows:

	<u>2022</u>	<u>2021</u>
Costs incurred on uncompleted contracts	<u><u>\$ 597,010</u></u>	<u><u>\$ 499,294</u></u>
Estimated earnings	<u><u>62,204</u></u>	<u><u>45,630</u></u>
	<u><u>659,214</u></u>	<u><u>544,924</u></u>
Less: Billings to date	<u><u>1,422,325</u></u>	<u><u>621,577</u></u>
	<u><u>\$ (763,111)</u></u>	<u><u>\$ (76,653)</u></u>

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

December 31, 2022 and 2021

NOTE 5 - PROPERTY & EQUIPMENT

Property and equipment consists of the following:

	<u>2022</u>	<u>2021</u>
Equipment	\$ 368,093	\$ 345,795
Leasehold improvements	791,912	716,506
Software and web development	154,334	154,334
Construction in progress	<u>24,792</u>	<u>34,689</u>
	1,339,131	1,251,324
Accumulated depreciation and amortization	<u>(731,795)</u>	<u>(609,053)</u>
	<u><u>\$ 607,336</u></u>	<u><u>\$ 642,271</u></u>

NOTE 6 - OPERATING LEASES

The Company leases certain office facilities and retail store locations under long-term, non-cancellable operating leases that expire at various dates through 2029, some of which may include options to extend the leases for up to 15 years. Monthly payments range from \$3,417 to \$8,373, with certain leases requiring annual increases based on the Consumer Price Index and a monthly charge for common area maintenance based on actual costs incurred.

The Company also leases office space, equipment and additional retail locations from related parties on a short term basis. Monthly payments range from \$1,058 to \$12,569. Rent expense charged under these leases are represented as short-term lease cost in the below table.

The Company's lease expense consists of the following for the year ended December 31, 2022:

Operating lease cost	\$ 336,706
Variable lease cost	32,257
Short-term lease cost	352,583
Sublease income	<u>(107,488)</u>
Total lease cost	<u><u>\$ 614,058</u></u>

Total lease expense for the year ended December 31, 2021 was approximately \$534,000.

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

December 31, 2022 and 2021

Supplemental lease information is as follows for the year ended December 31, 2022:

Cash paid for amounts included in measurement of lease liabilities	
Operating cash flows from operating leases	\$ 308,636
Right-of-use assets obtained in exchange for operating lease liabilities	2,147,669
Weighted-average remaining lease term - operating leases	5.66 years
Weighted-average discount rate - operating leases	4.50%

Remaining lease payments are as follows:

	Operating Leases
<u>Years ending December 31</u>	
2023	\$ 373,413
2024	387,604
2025	397,850
2026	401,470
2027	340,881
Thereafter	267,442
Total minimum lease payments	2,168,660
Less: imputed interest	(254,200)
Present value of lease liabilities	<u>\$ 1,914,460</u>

NOTE 7 - RELATED PARTY

Kilwins Chocolates Franchise, Inc. is related to Kilwin's Quality Confections through partial common ownership and management. Related party transactions with Kilwin's Quality Confections for the years ended December 31, 2022 and 2021 are as follows:

	2022	2021
Accounting and management services purchased	\$ 526,432	\$ 614,112
Insurance reimbursement paid	49,002	49,306
Purchase of resale products	1,249,677	1,246,257
Maintenance	30,612	27,042
Equipment rental	60,842	49,584
	<u>\$ 1,916,565</u>	<u>\$ 1,986,301</u>

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

December 31, 2022 and 2021

Amounts payable to Kilwin's Quality Confections at December 31, 2022 and 2021 related to these goods and services were \$17,181 and \$34,549, respectively.

In addition, Kilwin's Quality Confections owes the Company \$0 and \$43,008 as of December 31, 2022 and 2021, respectively. This is shown as accounts receivable - related party in the accompanying consolidated balance sheet.

NOTE 8 - INCOME TAXES

The provision for income taxes consists of the following:

	<u>2022</u>	<u>2021</u>
Federal income taxes currently payable	\$ 464,000	\$ 551,000
Change in deferred taxes due to timing differences	(55,000)	(78,000)
State taxes currently payable	<u>106,000</u>	<u>132,000</u>
	<u>\$ 515,000</u>	<u>\$ 605,000</u>

The effective tax rate for 2021 differs from statutory rates principally because of certain nondeductible expenses and the Paycheck Protection Program forgiveness income (not taxable).

Amounts for deferred tax assets and liabilities are as follows:

	<u>2022</u>	<u>2021</u>
Deferred tax asset	\$ 231,000	\$ 168,000
Deferred tax liability	<u>(15,000)</u>	<u>(7,000)</u>
Net Asset	<u>\$ 216,000</u>	<u>\$ 161,000</u>

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

December 31, 2022 and 2021

NOTE 9 - BUY AND SELL AGREEMENT

The Company's stockholders have a buy and sell agreement which stipulates restrictions on the purchase and disposition of shares of the Company's stock. Under the terms of the agreement, in the event of the death of the majority stockholder, a certain minority stockholder shall have the first right to purchase the shares. If the minority stockholder does not purchase the shares, the Company then has the option. Upon death of a minority stockholder, the Company shall purchase the shares. Upon termination of employment, the Company shall have the option to purchase the stock. The remaining stockholders have the second option. The purchase price for the stock is to be determined by appraisal at the time the option is triggered.

NOTE 10 - 401(K) RETIREMENT PLAN

The Company has a Section 401(k) retirement plan which covers substantially all employees who meet certain eligibility requirements. The Company may elect to match a portion of the employees' contribution and may make a discretionary contribution to the plan. For the years ended December 31, 2022 and 2021, the Company made contributions of approximately \$174,000 and \$146,000, respectively.

NOTE 11 - COMMITMENTS AND CONTINGENCIES

The Company guarantees lease payments for certain franchisees under sublease and lease guarantee arrangements. The guarantees are in connection with sales or anticipated sales of Company stores to franchisees. The Company remains secondarily liable for rents under these leases with primary responsibility for the leases resting with the franchisees and/or sub-lessees. The lease agreements terminate at various dates through December 2029. The maximum contingent lease obligation is not determinable as the lease agreements often provide for rent escalation clauses. The liabilities associated with these leases were recorded on the Company's balance sheet with the implementation of ASC 842. See Note 6.

NOTE 12 - PAYCHECK PROTECTION PROGRAM LOAN

During 2021, the Company secured two additional notes with a bank and the U.S. Small Business Administration totaling \$679,776 pursuant to the PPP of the CARES Act and Economic Aid Act.

KILWINS CHOCOLATES FRANCHISE, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

December 31, 2022 and 2021

The Company used the entire proceeds for qualifying expenses during the year ended December 31, 2021 and received full forgiveness in December 2021. In accordance with the AICPA Technical Questions and Answers, the Company elected to account for these transactions in accordance with International Accounting Standards ("IAS") 20, Accounting for Government Grants, and recognized \$679,776 as Paycheck Protection Program loan forgiveness in the accompanying consolidated statements of income for the year ended December 31, 2021.

NOTE 13 - SUBSEQUENT EVENT

Subsequent to year end the Company sold to an unrelated third party. A greater than 50% ownership change occurred as a result of the transaction. Assets and liabilities will be revalued at fair value with the remainder of the proceeds being recorded as goodwill.

NOTE 14 - RECLASSIFICATIONS

Certain reclassifications have been made to the 2021 financial statements in order to conform to the 2022 presentation.

Exhibit H

Table of Contents for Manual

Kilwins**Brand Standards Manual Table of Contents****Brand Standards Manual – 2023**

	<u>Topic</u>	<u># of pages on topic</u>
1.	Welcome	63
2.	Kilwins Brand	33
3.	Pre-Opening	17
4.	Building Your Team (Hiring)	55
5.	Education and Training	172
6.	Merchandising	277
7.	Creating Happy Customers	20
8.	Approved Products	3,680
9.	Kilwins Hand-Crafted Chocolates	47
10.	Original Recipe Ice Cream	74
11.	Handcrafted Confections	14
12.	Making Your Products	141
13.	Marketing and Connecting with your Customers	2,154
14.	Daily Operations	162
15.	Administrative	313
16.	Support Resources	11
17.	Staying Informed and Updated	310
18.	Design, Construction and Equipment Standards	251
19.	Document and Video Library	24
20.	ACA Compliance	6
21.	Kilwins 2020 Resource Kit	44
	Total Pages in Manual	7,868

Exhibit I

State-Specific Disclosures

EXHIBIT I-1**Illinois Disclosure**

In recognition of the requirements of the Illinois Franchise Disclosure Act, Ill. Comp. Stat. §§ 705/1 to 705/44 the Franchise Disclosure Document for Kilwins Chocolates Franchise, Inc. for use in the State of Illinois shall be amended as follows:

1. Item 17, "Renewal, Termination, Transfer and Dispute Resolution," shall be amended by the deletion of provision "w" in its entirety, and the following provision shall be substituted in its place:

Provision	Section in Franchise Agreement	Summary
w. Choice of law	§ 26.1 of Franchise Agreement	Illinois

2. Item 17, "Renewal, Termination, Transfer and Dispute Resolution," shall be amended by the addition of the following at the conclusion of the Item:

Sec. 705/4 of the Illinois Franchise Disclosure Act provides that "any provision in a franchise agreement that designates jurisdiction or venue in a forum outside this state [Illinois] is void."

Sec. 705/41 of the Illinois Franchise Disclosure Act provides that any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with the Illinois Franchise Disclosure Act or any other law of Illinois is void.

Your rights upon termination or non-renewal of a Franchise Agreement are set forth in sections 19 and 20 of the Illinois Franchise Disclosure Act.

Illinois law governs the Franchise Agreement.

3. Please note the following:

In conformance with Section 4 of the Illinois Franchise Disclosure Act, any provision in a franchise agreement that designates jurisdiction and venue in a forum outside of the State of Illinois is void. However, a franchise agreement may provide for arbitration to take place outside of Illinois.

In 2021, the Franchisor's affiliate derived 96% of its \$31,497,754 revenue from purchases that franchisees were required to make from the affiliate.

The Franchisor reserves the right to set restrictions on the minimum and maximum prices you may charge for products and services sold at your franchised business.

"National Accounts" exist in this franchise system. The Franchisor reserves 'the right to establish, identify, negotiate terms and service National Account clients in your Territory. You do not receive an exclusive territory.

4. Each provision of this addendum shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Illinois Franchise Disclosure Act are met independently, without reference to this addendum.

Illinois Disclosure (Page 2 of 2)

EXHIBIT I-2

Maryland Disclosure

In recognition of the requirements of the Maryland Franchise Registration and Disclosure Law, the Franchise Disclosure Document for Kilwins Chocolates Franchise, Inc. for use in the State of Maryland shall be amended as follows:

1. Item 17, "Renewal, Termination, Transfer and Dispute Resolution," shall be amended by the addition of the following language:

The general releases required for renewal or transfer will not apply with respect to any liability arising under the Maryland Franchise Registration and Disclosure Law.

A franchisee may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.

The Franchise Agreement provides for termination upon bankruptcy of the franchisee. This provision may not be enforceable under the U.S. Bankruptcy Code (11 U.S.C. Section 101, *et seq.*).

Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within 3 years after the grant of the franchise.

2. No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

EXHIBIT I-3

Michigan Disclosure

THE STATE OF MICHIGAN PROHIBITS CERTAIN UNFAIR PROVISIONS THAT ARE SOMETIMES IN FRANCHISE DOCUMENTS. IF ANY OF THE FOLLOWING PROVISIONS ARE IN THESE FRANCHISE DOCUMENTS, THE PROVISIONS ARE VOID AND CANNOT BE ENFORCED AGAINST YOU:

- (A) A PROHIBITION ON THE RIGHT OF A FRANCHISEE TO JOIN AN ASSOCIATION OF FRANCHISEES.**
- (B) A REQUIREMENT THAT A FRANCHISEE ASSENT TO A RELEASE, ASSIGNMENT, NOVATION, WAIVER, OR ESTOPPEL WHICH DEPRIVES A FRANCHISEE OF RIGHTS AND PROTECTIONS PROVIDED IN THIS ACT. THIS SHALL NOT PRECLUDE A FRANCHISEE, AFTER ENTERING INTO A FRANCHISE AGREEMENT, FROM SETTLING ANY AND ALL CLAIMS.**
- (C) A PROVISION THAT PERMITS A FRANCHISOR TO TERMINATE A FRANCHISE PRIOR TO THE EXPIRATION OF ITS TERM EXCEPT FOR GOOD CAUSE. GOOD CAUSE SHALL INCLUDE THE FAILURE OF THE FRANCHISEE TO COMPLY WITH ANY LAWFUL PROVISIONS OF THE FRANCHISE AGREEMENT AND TO CURE SUCH FAILURE AFTER BEING GIVEN WRITTEN NOTICE THEREOF AND A REASONABLE OPPORTUNITY, WHICH IN NO EVENT NEED BE MORE THAN 30 DAYS, TO CURE SUCH FAILURE.**
- (D) A PROVISION THAT PERMITS A FRANCHISOR TO REFUSE TO RENEW A FRANCHISE WITHOUT FAIRLY COMPENSATING THE FRANCHISEE BY REPURCHASE OR OTHER MEANS FOR THE FAIR MARKET VALUE, AT THE TIME OF EXPIRATION, OF THE FRANCHISEE'S INVENTORY, SUPPLIES, EQUIPMENT, FIXTURES, AND FURNISHINGS. PERSONALIZED MATERIALS WHICH HAVE NO VALUE TO THE FRANCHISOR AND INVENTORY, SUPPLIES, EQUIPMENT, FIXTURES, AND FURNISHINGS NOT REASONABLY REQUIRED IN THE CONDUCT OF THE FRANCHISED BUSINESS ARE NOT SUBJECT TO COMPENSATION. THIS SUBSECTION APPLIES ONLY IF: (i) THE TERM OF THE FRANCHISE IS LESS THAN 5 YEARS; AND (ii) THE FRANCHISEE IS PROHIBITED BY THE FRANCHISE OR OTHER AGREEMENT FROM CONTINUING TO CONDUCT SUBSTANTIALLY THE SAME BUSINESS UNDER ANOTHER TRADEMARK, SERVICE MARK, TRADE NAME, LOGOTYPE, ADVERTISING, OR OTHER COMMERCIAL SYMBOL IN THE SAME AREA SUBSEQUENT TO THE EXPIRATION OF THE FRANCHISE OR THE FRANCHISEE DOES NOT RECEIVE AT LEAST 6 MONTHS ADVANCE NOTICE OF FRANCHISOR'S INTENT NOT TO RENEW THE FRANCHISE.**

- (E) A PROVISION THAT PERMITS THE FRANCHISOR TO REFUSE TO RENEW A FRANCHISE ON TERMS GENERALLY AVAILABLE TO OTHER FRANCHISEES OF THE SAME CLASS OR TYPE UNDER SIMILAR CIRCUMSTANCES. THIS SECTION DOES NOT REQUIRE A RENEWAL PROVISION.
- (F) A PROVISION REQUIRING THAT ARBITRATION OR LITIGATION BE CONDUCTED OUTSIDE THIS STATE. THIS SHALL NOT PRECLUDE THE FRANCHISEE FROM ENTERING INTO AN AGREEMENT, AT THE TIME OF ARBITRATION, TO CONDUCT ARBITRATION AT A LOCATION OUTSIDE THIS STATE.
- (G) A PROVISION WHICH PERMITS A FRANCHISOR TO REFUSE TO PERMIT A TRANSFER OF OWNERSHIP OF A FRANCHISE, EXCEPT FOR GOOD CAUSE. THIS SUBDIVISION DOES NOT PREVENT A FRANCHISOR FROM EXERCISING A RIGHT OF FIRST REFUSAL TO PURCHASE THE FRANCHISE. GOOD CAUSE SHALL INCLUDE, BUT IS NOT LIMITED TO:
 - (i) THE FAILURE OF THE PROPOSED FRANCHISEE TO MEET THE FRANCHISOR'S THEN CURRENT REASONABLE QUALIFICATIONS OR STANDARDS.
 - (ii) THE FACT THAT THE PROPOSED TRANSFEREE IS A COMPETITOR OF THE FRANCHISOR OR SUBFRANCHISOR.
 - (iii) THE UNWILLINGNESS OF THE PROPOSED TRANSFEREE TO AGREE IN WRITING TO COMPLY WITH ALL LAWFUL OBLIGATIONS.
 - (iv) THE FAILURE OF THE FRANCHISEE OR PROPOSED TRANSFEREE TO PAY ANY SUMS OWING TO THE FRANCHISOR OR TO CURE ANY DEFAULT IN THE FRANCHISE AGREEMENT EXISTING AT THE TIME OF THE PROPOSED TRANSFER.
- (H) A PROVISION THAT REQUIRES THE FRANCHISEE TO RESELL TO THE FRANCHISOR ITEMS THAT ARE NOT UNIQUELY IDENTIFIED WITH THE FRANCHISOR. THIS SUBDIVISION DOES NOT PROHIBIT A PROVISION THAT GRANTS TO A FRANCHISOR A RIGHT OF FIRST REFUSAL TO PURCHASE THE ASSETS OF A FRANCHISE ON THE SAME TERMS AND CONDITIONS AS A BONA FIDE THIRD PARTY WILLING AND ABLE TO PURCHASE THOSE ASSETS, NOR DOES THIS SUBDIVISION PROHIBIT A PROVISION THAT GRANTS THE FRANCHISOR THE RIGHT TO ACQUIRE THE ASSETS OF A FRANCHISE FOR THE MARKET OR APPRAISED VALUE OF SUCH ASSETS IF THE FRANCHISEE HAS BREACHED THE LAWFUL PROVISIONS OF THE FRANCHISE AGREEMENT AND HAS FAILED TO CURE THE BREACH IN THE MANNER PROVIDED IN SUBDIVISION (C).
- (I) A PROVISION WHICH PERMITS THE FRANCHISOR TO DIRECTLY OR INDIRECTLY CONVEY, ASSIGN, OR OTHERWISE TRANSFER ITS OBLIGATIONS TO FULFILL CONTRACTUAL OBLIGATIONS TO THE

FRANCHISEE UNLESS PROVISION HAS BEEN MADE FOR PROVIDING THE REQUIRED CONTRACTUAL SERVICES.

*** * * ***

THE FACT THAT THERE IS A NOTICE OF THIS OFFERING ON FILE WITH THE ATTORNEY GENERAL DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION, OR ENDORSEMENT BY THE ATTORNEY GENERAL.

*** * * ***

IF THE FRANCHISOR'S MOST RECENT FINANCIAL STATEMENTS ARE UNAUDITED AND SHOW A NET WORTH OF LESS THAN \$100,000.00, THE FRANCHISOR MUST, AT THE REQUEST OF THE FRANCHISEE, ARRANGE FOR THE ESCROW OF INITIAL INVESTMENT AND OTHER FUNDS PAID BY THE FRANCHISEE UNTIL THE OBLIGATIONS TO PROVIDE REAL ESTATE, IMPROVEMENTS, EQUIPMENT, INVENTORY, TRAINING, OR OTHER ITEMS INCLUDED IN THE FRANCHISE OFFERING ARE FULFILLED. AT THE OPTION OF THE FRANCHISOR, A SURETY BOND MAY BE PROVIDED IN PLACE OF ESCROW.

*** * * ***

THE NAME AND ADDRESS OF THE FRANCHISOR'S AGENT IN THIS STATE AUTHORIZED TO RECEIVE SERVICE OF PROCESS IS: MICHIGAN DEPARTMENT OF COMMERCE, CORPORATION AND SECURITIES BUREAU, 6546 MERCANTILE WAY, P.O. BOX 30222, LANSING, MICHIGAN 48910.

ANY QUESTIONS REGARDING THIS NOTICE SHOULD BE DIRECTED TO:

**DEPARTMENT OF THE ATTORNEY GENERAL'S OFFICE
CONSUMER PROTECTION DIVISION
ATTN: FRANCHISE
670 G. MENNEN WILLIAMS BUILDING
LANSING, MICHIGAN 48913**

NOTE: NOTWITHSTANDING PARAGRAPH (F) ABOVE, WE INTEND TO, AND YOU AGREE THAT WE AND YOU WILL, ENFORCE FULLY THE PROVISIONS OF THE ARBITRATION SECTION OF OUR AGREEMENTS. WE BELIEVE THAT PARAGRAPH (F) IS UNCONSTITUTIONAL AND CANNOT PRECLUDE US FROM ENFORCING THE ARBITRATION PROVISIONS.

EXHIBIT I-4

Minnesota Disclosure

In recognition of the requirements of the Minnesota Franchises Law, Minn. Stat. §§ 80C.01 through 80C.22, and of the Rules and Regulations promulgated thereunder by the Minnesota Commissioner of Commerce, Minn. Rules §§ 2860.0100 through 2860.9930, the Franchise Disclosure Document for Kilwins Chocolates Franchise, Inc. for use in the State of Minnesota shall be amended to include the following:

1. Item 17, "Renewal, Termination, Transfer and Dispute Resolution," shall be amended by the addition of the following paragraphs:

With respect to franchisees governed by Minnesota law, we will comply with Minn. Stat. Sec. 80C.14, Subds. 3, 4, and 5 which require, except in certain specified cases, that a franchisee be given 90 days' notice of termination (with 60 days to cure) and 180 days notice of non-renewal of the Franchise Agreement, and that consent to the transfer of the franchise not be unreasonably withheld.

Pursuant to Minn. Rule 2860.4400D, any general release of claims that you or a transferor may have against us or our shareholders, directors, employees and agents, including without limitation claims arising under federal, state, and local laws and regulations shall exclude claims you or a transferor may have under the Minnesota Franchise Law and the Rules and Regulations promulgated thereunder by the Commissioner of Commerce.

Minn. Stat. §80C.21 and Minn. Rule 2860.4400J prohibit us from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring you to consent to liquidated damages, termination penalties or judgment notes. In addition, nothing in the disclosure document or agreement can abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

2. Each provision of this addendum shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Minnesota Franchises Law or the Rules and Regulations promulgated thereunder by the Minnesota Commission of Commerce are met independently without reference to this addendum to the disclosure document.

3. No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including, fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed with the franchise.

EXHIBIT I-5

New York Disclosure

In recognition of the requirements of the New York General Business Law, Article 33, Sections 680 through 695, and of the regulations promulgated thereunder (N.Y. Comp. Code R. & Regs. tit. 13, §§ 200.1 through 201.16), the Franchise Disclosure Document for Kilwins Chocolates Franchise, Inc. for use in the State of New York shall be amended as follows:

1. The following information is added to the cover page of the Franchise Disclosure Document:

INFORMATION COMPARING FRANCHISORS IS AVAILABLE. CALL THE STATE ADMINISTRATORS LISTED IN EXHIBIT D OR YOUR PUBLIC LIBRARY FOR SOURCES OF INFORMATION. REGISTRATION OF THIS FRANCHISE BY NEW YORK STATE DOES NOT MEAN THAT NEW YORK STATE RECOMMENDS IT OR HAS VERIFIED THE INFORMATION IN THIS FRANCHISE DISCLOSURE DOCUMENT. IF YOU LEARN THAT ANYTHING IN THE FRANCHISE DISCLOSURE DOCUMENT IS UNTRUE, CONTACT THE FEDERAL TRADE COMMISSION AND NEW YORK STATE DEPARTMENT OF LAW, INVESTOR PROTECTION BUREAU, 28 LIBERTY STREET, 21ST FLOOR, NEW YORK, NEW YORK 10005.

THE FRANCHISOR MAY, IF IT CHOOSES, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE FRANCHISE DISCLOSURE DOCUMENT. HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE FRANCHISEE TO ACCEPT TERMS WHICH ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS FRANCHISE DISCLOSURE DOCUMENT.

2. The following is added at the end of Item 3:

Except as provided above, with regard to the franchisor, its predecessor, a person identified in Item 2, or an affiliate offering franchises under the franchisor's principal trademark:

- A. No such party has an administrative, criminal or civil action pending against that person alleging: a felony, a violation of a franchise, antitrust, or securities law, fraud, embezzlement, fraudulent conversion, misappropriation of property, unfair or deceptive practices, or comparable civil or misdemeanor allegations.
- B. No such party has pending actions, other than routine litigation incidental to the business, which are significant in the context of the number of franchisees and the size, nature or financial condition of the franchise system or its business operations.
- C. No such party has been convicted of a felony or pleaded *nolo contendere* to a felony charge or, within the 10 year period immediately preceding the application for registration, has been convicted of a misdemeanor or pleaded *nolo contendere* to a misdemeanor charge or has been the subject of civil action alleging: violation of a franchise, antifraud, or securities law; fraud; embezzlement; fraudulent conversion or misappropriation of property; or unfair or deceptive practices or comparable allegations.

New York Disclosure (Page 1 of 4)

D. No such party is subject to a currently effective injunctive or restrictive order or decree relating to the franchise, or under a Federal, State, or Canadian franchise, securities, antitrust, trade regulation, or trade practice law, resulting from a concluded or pending action or proceeding brought by a public agency; or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange; or is subject to a currently effective injunctive or restrictive order relating to any other business activity as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or sales agent.

3. The following is added at the end of Item 4:

Neither we, our affiliate, predecessor, officers or general partner, during the 10 year period immediately preceding the date of this franchise disclosure document: (a) filed as debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code; (b) obtained a discharge of its debts under the bankruptcy code; or (c) was a principal officer in a company, or a general partner in a partnership that either filed as a debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code or that obtained a discharge of its debts under the U.S. Bankruptcy Code during or within one year of the time that the officer or general partner held this position in the company or partnership.

4. The following is added to the end of Item 5:

The initial franchise fee constitutes part of our general operating funds and will be used as such in our discretion.

5. The first paragraph in Item 12, "Territory" is amended by the addition of the following language at the conclusion of the second sentence of the first paragraph:

Typically, the protected area in New York State will be a radius of: (a) one city block where the Store is located in a high pedestrian traffic/tourist area; (b) the confines of the shopping center where the Store is located in a shopping center; or (c) one mile where the Store is located in a suburban or local downtown (not high pedestrian traffic/tourist) area.

6. The following is added to the end of the "Summary" sections of Item 17(c), titled "Requirements for franchisee to renew or extend," and Item 17(m), entitled "Conditions for franchisor approval of transfer":

However, to the extent required by applicable law, all rights you enjoy and any causes of action arising in your favor from the provisions of Article 33 of the General Business Law of the State of New York and the regulations issued thereunder shall remain in force; it being the intent of this proviso that the non-waiver provisions of the General Business Law Sections 687.4 and 687.5 be satisfied.

New York Disclosure (Page 2 of 4)

7. The following language replaces the “Summary” section of Item 17(d), titled “Termination by franchisee”:

You may terminate the agreement on any grounds available by law.

8. The following language is added to the end of the “Summary” section of Item 17(j), titled “Assignment of contract by franchisor”:

However, no assignment will be made except to an assignee who in good faith and judgment of the franchisor, is willing and financially able to assume the franchisor’s obligations under the Franchise Agreement.

9. The following is added to the end of the “Summary” sections of Item 17(v), titled “Choice of forum” and Item 17(w), titled “Choice of Law”:

The foregoing choice of law should not be considered a waiver of any right conferred upon the franchisor or upon the franchisee by Article 33 of the General Business Law of the State of New York.

New York Disclosure (Page 3 of 4)

STATEMENT OF DISCLOSURE DOCUMENT ACCURACY

THE FRANCHISOR REPRESENTS THAT THIS DISCLOSURE DOCUMENT DOES NOT KNOWINGLY OMIT ANY MATERIAL FACT OR CONTAIN ANY UNTRUE STATEMENT OF A MATERIAL FACT.

EXHIBIT I-6

Rhode Island Disclosure

In recognition of the requirements of the Rhode Island Franchise Investment Act, §§ 19-28.1-1 through 19-28.1-34 the Franchise Disclosure Document for Kilwins Chocolates Franchise, Inc. for use in the State of Rhode Island shall be amended to include the following:

1. Item 17, "Renewal, Termination, Transfer and Dispute Resolution," shall be amended by the addition of the following:

§ 19-28.1-14 of the Rhode Island Franchise Investment Act provides that "A provision in a franchise agreement restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under this Act."

2. This addendum to the Disclosure document shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Rhode Island Franchise Investment Act, §§ 19-28.1-1 through 19-28.1-34, are met independently without reference to this addendum to the Disclosure document.

EXHIBIT I-7

Virginia Disclosure

In recognition of the restrictions contained in Section 13.1-564 of the Virginia Retail Franchising Act, the Franchise Disclosure Document of Kilwins Chocolates Franchise, Inc. is amended as follows:

Additional Disclosure: The following statements are added to Item 17.h.

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any ground for default or termination stated in the franchise agreement does not constitute "reasonable cause," as that term may be defined in the Virginia Retail Franchising Act or the laws of Virginia, that provision may not be enforceable.

This addendum to the disclosure document will be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Virginia Retail Franchise Act are met independently without reference to this addendum to the Disclosure Document.

Exhibit J

Agreement Amendments

EXHIBIT J-1

Illinois Franchise Amendment

In recognition of the requirements of the Illinois Franchise Disclosure Act, Ill. Comp. Stat. §§ 705/1 to 705/44, the parties to the attached Kilwins Chocolates Franchise, Inc. Franchise Agreement (the "Agreement") agree as follows:

1. Section 2 of the Agreement, under the heading "Term and Renewal," shall be supplemented by the addition of the following new paragraph 2.3, which shall be considered an integral part of the Agreement:

2.3 If any of the provisions of this Section 2 are inconsistent with Sections 19 and 20 of the Illinois Franchise Disclosure Act, the provisions of the Act shall apply. If we refuse to renew this Agreement, we will compensate you if (and to the extent) such compensation is required under Sections 19 and 20 of the Illinois Franchise Disclosure Act.

2. Section 17 of the Agreement, under the heading "Default and Termination," shall be supplemented by the addition of the following new paragraph 17.7, which shall be considered an integral part of the Agreement:

17.7 If any of the provisions of this Section 17 concerning termination are inconsistent with Sections 19 and 20 of the Illinois Franchise Disclosure Act, then said Illinois law shall apply.

3. Section 24 of the Agreement, under the heading "Entire Agreement and Amendment," shall be supplemented by the addition of the following language at the conclusion of the Section:

Nothing in this Section 24 or this Agreement shall act as a waiver of any of your rights under the Illinois Franchise Disclosure Act or other Illinois law.

4. Section 26.1 of the Agreement, under the heading "Applicable Law," shall be deleted in its entirety, and shall have no force or effect; and the following new paragraph shall be substituted in its place:

26.1 This Agreement takes effect upon its acceptance and execution by us, and shall be interpreted and construed under the laws of Illinois.

5. Section 26.2 of the Agreement, under the heading "Applicable Law," shall be deleted in its entirety.

6. The Agreement shall be amended by the addition of the following language:

Sec. 705/41 of the Illinois Franchise Disclosure Act provides that any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with the Illinois Franchise Disclosure Act or any other law of Illinois is void.

Illinois Amendment to the Franchise Agreement (Page 1 of 2)

Your rights upon Termination and Non-Renewal of an agreement are set forth in sections 19 and 20 of the Illinois Franchise Disclosure Act.

7. Please note the following:

In conformance with Section 4 of the Illinois Franchise Disclosure Act, any provision in a franchise agreement that designates jurisdiction and venue in a forum outside of the State of Illinois is void. However, a franchise agreement may provide for arbitration to take place outside of Illinois.

In 2021, the Franchisor's affiliate derived 96% of its \$31,497,754 revenue from purchases that franchisees were required to make from the affiliate.

The Franchisor reserves the right to set restrictions on the minimum and maximum prices you may charge for products and services sold at your franchised business.

"National Accounts" exist in this franchise system. The Franchisor reserves 'the right to establish, identify, negotiate terms and service National Account clients in your Territory. You do not receive an exclusive territory.

8. Each provision of this amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Illinois Franchise Disclosure Act are met independently without reference to this amendment.

IN WITNESS WHEREOF, the parties hereto have duly executed, sealed and delivered this Illinois amendment to the Franchise Agreement on the same date as the Franchise Agreement was executed.

Kilwins Chocolates Franchise, Inc.
Franchisor

Franchisee Entity

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

By: _____

Name: _____

Title: _____

**Illinois Amendment to the Franchise Agreement
(Page 2 of 2)**

EXHIBIT J-2

Maryland Franchise Amendment

In recognition of the requirements of the Maryland Franchise Registration and Disclosure Law, the parties to the attached Kilwins Chocolates Franchise, Inc. Franchise Agreement (the "Agreement") agree as follows:

1. Section 2.2.6 of the Agreement, under the heading "Term And Renewal," shall be deleted in its entirety and shall have no force or effect, and the following shall be substituted in its place:

2.2.6 You (and your direct and indirect owners) must execute and deliver to us a general release, in a form we prescribe, of any and all claims against us and our subsidiaries and affiliates, and their respective officers, directors, agents, and employees, but this release will not apply with respect to any liability arising under the Maryland Franchise Registration and Disclosure Law;

2. Section 16.5.2 of the Agreement, under the heading "Transfer Of Interest," shall be deleted in its entirety and shall have no force or effect, and the following shall be substituted in its place:

16.5.2. You, the transferor, and any other persons we designate, will have executed and delivered to us a general release, in a form satisfactory to us, of any and all claims against us and our affiliates, successors, and assigns, and their respective directors, officers, shareholders, partners, agents, representatives, servants, and employees in their corporate and individual capacities including, without limitation, claims arising under this Agreement, any other agreement between you and us or our affiliates, and federal, state, and local laws and rules, but this release will not apply with respect to any liability arising under the Maryland Franchise Registration and Disclosure Law;

3. Section 24 of the Agreement, under the heading "Entire Agreement and Amendment," shall be amended by the addition of the following language:

All representations requiring prospective franchisees to assent to a release, estoppel or waiver of liability are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

4. Sections 26.3, 26.6, and 26.7 of the Agreement, under the heading "Applicable Law and Dispute Resolution," shall be amended by the addition of the following language:

A franchisee may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law. Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within three (3) years after the grant of the franchise.

Maryland Amendment to the Franchise Agreement (Page 1 of 2)

5. Section 28 of the Agreement, under the heading "Acknowledgements," shall be amended by the deletion of Sections 28.1, 28.2, 28.3, 28.4, 28.5, 28.6, 28.8 and 28.12.
6. Section 28 of the Agreement, under the heading "Acknowledgments," shall be supplemented by the following:

The foregoing acknowledgments are not intended to nor shall they act as a release, estoppel or waiver of any liability under the Maryland Franchise Registration and Disclosure Law.

7. Section 28.14 of the Agreement, under the heading "Acknowledgements," shall be supplemented with the following:

This General Release does not release any claims that you may have under the Maryland Franchise Registration and Disclosure Law.

8. Each provision of this amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Maryland Franchise Registration and Disclosure Law are met independently without reference to this amendment.
9. No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Maryland amendment to the Franchise Agreement on the same date as the Franchise Agreement was executed.

Kilwins Chocolates Franchise, Inc. Franchisor	_____
	Franchisee Entity
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
	By: _____
	Name: _____
	Title: _____

Maryland Store Construction Agreement Amendment

In recognition of the requirements of the Maryland Franchise Registration and Disclosure Law, the parties to the attached Kilwins Chocolates Franchise, Inc. Store Construction Agreement (the "Agreement") agree as follows:

1. The Agreement shall be amended by the addition of the following paragraphs:

Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within 3 years after the grant of the franchise.

All representations requiring prospective franchisees to assent to a release, estoppel or waiver of liability are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.
2. Each provision of this amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Maryland Franchise Registration and Disclosure Law are met independently without reference to this amendment.
3. No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Maryland amendment to the Store Construction Agreement on the same date as the Store Construction Agreement was executed.

Kilwins Chocolates Franchise, Inc. Franchisor	_____ Franchisee Entity
By:_____	By:_____
Name:_____	Name:_____
Title:_____	Title:_____
	By:_____
	Name:_____
	Title:_____

EXHIBIT J-3

Minnesota Franchise Amendment

In recognition of the requirements of the Minnesota Franchises Law, Minn. Stat. §§ 80C.01 through 80C.22, and of the Rules and Regulations promulgated thereunder by the Minnesota Commissioner of Commerce, Minn. Rules §§ 2860.0100 through 2860.9930, the parties to the attached Kilwins Chocolates Franchise, Inc. Franchise Agreement (the "Agreement") agree as follows:

1. Section 2.6.6 of the Agreement, under the heading "Term and Renewal," shall be deleted in its entirety and shall have no force or effect, and the following paragraph shall be inserted in lieu thereof:

2.2.6 You (and your direct and indirect owners) must execute and deliver to us a general release, in a form we prescribe, of any and all claims against us and our subsidiaries and affiliates, and their respective officers, directors, agents, and employees, excluding only such claims as Franchisee may have that have arisen under the Minnesota Franchises Law and the Rules and Regulations promulgated thereunder by the Minnesota Commissioner of Commerce.

2. Section 2 of the Agreement, under the heading "Term and Renewal," shall be supplemented by the addition of the following new Section 2.3:

2.3 Minnesota law provides franchisees with certain non-renewal rights. In sum, Minn. Stat. § 80C.14 (subd. 4) currently requires, except in certain specified cases, that a franchisee be given 180 days' notice of non-renewal of the Franchise Agreement.

3. Section 9 of the Agreement, under the heading "Proprietary Marks," shall be amended by the addition of the following new paragraph 9.4:

9.4 Pursuant to Minnesota Stat. Sec. 80C.12, Subd. 1(g), we are required to protect any rights you may have to the Proprietary Marks.

4. Section 16.5.2 of the Agreement, under the heading "Transfer of Interest," shall be deleted in its entirety and shall have no force or effect, and the following paragraph shall be inserted in lieu thereof:

16.5.2. You, the transferor, and any other persons we designate, will have executed and delivered to us a general release, in a form satisfactory to us, of any and all claims against us and our affiliates, successors, and assigns, and their respective directors, officers, shareholders, partners, agents, representatives, servants, and employees in their corporate and individual capacities including, without limitation, claims arising under this Agreement, any other agreement between you and us or our affiliates, and federal, state, and local laws and rules, excluding only such claims as the transferor may have under the Minnesota Franchises Law and the Rules and Regulations promulgated thereunder by the Minnesota Commissioner of Commerce.

Minnesota Amendment to the Franchise Agreement (Page 1 of 4)

5. Section 16 of the Agreement, under the heading "Transfer of Interest," shall be supplemented by the addition of the following new paragraph 16.12:

16.12 Minnesota law provides franchisees with certain transfer rights. In sum, Minn. Stat. §80C.14 (subd. 5) currently requires that consent to the transfer of the franchise may not be unreasonably withheld.

6. Section 17 of the Agreement, under the heading "Default and Termination," shall be supplemented by the following new paragraph 17.7:

17.7 Minnesota law provides franchisees with certain termination rights. In sum, Minn. Stat. § 80C.14 (subd. 3) currently requires, except in certain specified cases, that a franchisee be given 90 days' notice of termination (with 60 days to cure) of the Franchise Agreement.

7. Section 26.5 of the Agreement, under the heading "Applicable Law and Dispute Resolution," shall be deleted in its entirety and shall have no force or effect; and the following paragraph shall be substituted in lieu thereof:

26.5 Nothing herein contained shall bar our right to seek injunctive relief against threatened conduct that will cause us loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions.

8. Section 26 of the Agreement, under the heading "Applicable Law and Dispute Resolution", shall be supplemented by the following new paragraph 26.10, which shall be considered an integral part of the Agreement:

26.10 Minn. Stat. §80C.21 and Minn. Rule 2860.4400J prohibit us from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring you to consent to liquidated damages, termination penalties or judgment notes. In addition, nothing in the disclosure document or agreement can abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

9. Section 27.10 of the Agreement, under the heading "Acknowledgements," shall be supplemented with the following:

This General Release does not release any claims that you may have under the Minnesota Franchises Law and the Rules and Regulations promulgated thereunder by the Minnesota Commissioner of Commerce.

10. Each provision of this Agreement shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Minnesota Franchises Law or the Rules and Regulations promulgated thereunder by the Minnesota Commissioner of Commerce are met independently without reference to this addendum to the Agreement.

11. No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including, fraud in the

Minnesota Amendment to the Franchise Agreement
(Page 2 of 4)

inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed with the franchise.

Minnesota Amendment to the Franchise Agreement
(Page 3 of 4)

IN WITNESS WHEREOF, the parties hereto have duly executed, and delivered this Minnesota amendment to the Franchise Agreement on the same date as the Franchise Agreement was executed.

Kilwins Chocolates Franchise, Inc.
Franchisor

Franchisee Entity

By:_____

By:_____

Name:_____

Name:_____

Title:_____

Title:_____

By:_____

Name:_____

Title:_____

**Minnesota Amendment to the Franchise Agreement
(Page 4 of 4)**

EXHIBIT J-4

New York Franchise Amendment

In recognition of the requirements of the New York General Business Law, Article 33, Sections 680 through 695, and of the regulations promulgated thereunder (N.Y. Comp. Code R. & Regs., tit. 13, §§ 200.1 through 201.16), the parties to the attached Kilwins Chocolates Franchise, Inc. Franchise Agreement (the "Agreement") agree as follows:

1. Section 2.2.6 of the Agreement, under the heading "Term and Renewal," shall be deleted in its entirety, and shall have no force or effect; and the following paragraph shall be substituted in its place:

2.2.6 You (and your direct and indirect owners) must execute and deliver to us a general release, in a form we prescribe, of any and all claims against us and our subsidiaries and affiliates, and their respective officers, directors, agents, and employees, provided, however, that all rights enjoyed by you and any causes of action arising in your favor from the provisions of New York General Business Law Sections 680-695 and the regulations issued thereunder, shall remain in force; it being the intent of this provision that the non-waiver provisions of N.Y. Gen. Bus. Law Sections 687.4 and 687.5 be satisfied; and

2. Section 16.5.2 of the Agreement, under the heading "Transfer of Interest," shall be deleted in its entirety, and shall have no force or effect; and the following paragraph shall be substituted in its place:

16.5.2 You, the transferor, and any other persons we designate, will have executed and delivered to us a general release, in a form satisfactory to us, of any and all claims against us and our affiliates, successors, and assigns, and their respective directors, officers, shareholders, partners, agents, representatives, servants, and employees in their corporate and individual capacities including, without limitation, claims arising under this Agreement, any other agreement between you and us or our affiliates, and federal, state, and local laws and rules, provided, however, that all rights enjoyed by the transferor and any causes of action arising in its favor from the provisions of New York General Business Law Sections 680-695 and the regulations issued thereunder, shall remain in force; it being the intent of this provision that the non-waiver provisions of N.Y. Gen. Bus. Law Sections 687.4 and 687.5 be satisfied;

3. Section 19.12 of the Agreement, under the heading "Covenants," shall be deleted in its entirety, and shall have no force or effect; and the following paragraph shall be substituted in its place:

19.12 You acknowledge that your violation of the terms of this Section 19 would result in irreparable injury to us for which no adequate remedy at law may be available, and you accordingly agree that we may seek an injunction prohibiting any conduct by you in violation of the terms of this Section 19.

New York Amendment to the Franchise Agreement (Page 1 of 2)

Section 26.5 of the Agreement, under the heading "Applicable Law and Dispute Resolution," shall be deleted in its entirety, and shall have no force or effect; and the following paragraph shall be substituted in lieu thereof:

26.5 Nothing herein contained shall bar our right to seek injunctive relief against threatened conduct that shall cause us loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions.

4. Section 26 of the Agreement, under the heading "Applicable Law and Dispute Resolution," shall be supplemented by the addition of the following language:

Nothing in this Agreement should be considered a waiver of any right conferred upon you by New York General Business Law, Sections 680-695.

5. Section 27.10 of the Agreement, under the heading "Acknowledgements," shall be supplemented with the following:

This General Release does not release us from all rights enjoyed by you and any causes of action arising in your favor from the provisions of New York General Business Law Sections 680-695 and the regulations issued thereunder, which shall remain in force; it being the intent of this provision that the non-waiver provisions of N.Y. Gen. Bus. Law Sections 687.4 and 687.5 be satisfied.

6. There are circumstances in which an offering made by us would not fall within the scope of the New York General Business Law, Article 33, such as when the offer and acceptance occurred outside the state of New York. However, an offer or sale is deemed made in New York if you are domiciled in or the franchise will be opening in New York. We are required to furnish a New York prospectus to every prospective franchisee who is protected under the New York General Business Law, Article 33.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this New York amendment to the Franchise Agreement on the same date as the Franchise Agreement was executed.

Kilwins Chocolates Franchise, Inc. Franchisor	_____
	Franchisee Entity
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
	By: _____
	Name: _____
	Title: _____

New York Amendment to the Franchise Agreement
(Page 2 of 2)

EXHIBIT J-5

Rhode Island Franchise Amendment

In recognition of the requirements of the Rhode Island Franchise Investment Act, §§ 19-28.1-1 through 19-28.1-34, the parties to the attached Kilwins Chocolates Franchise, Inc. Franchise Agreement (the "Agreement") agree as follows:

1. Section 26.2 of the Agreement, under the heading "Applicable Law and Dispute Resolution," shall be deleted in its entirety, and shall have no force or effect; and the following paragraph shall be substituted in its place:

26.2 Section 19-28.1-14 of the Rhode Island Franchise Investment Act provides that "A provision in a franchise agreement restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under this Act."

2. This amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Rhode Island Franchise Investment Act, §§ 19-28.1-1 through 19-28.1-34, are met independently without reference to this amendment.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Rhode Island amendment to the Franchise Agreement on the same date as the Franchise Agreement was executed.

Kilwins Chocolates Franchise, Inc.
Franchisor

Franchisee Entity

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

By: _____

Name: _____

Title: _____

Exhibit K

General Release

EXHIBIT K**GENERAL RELEASE LANGUAGE**

The following is our current general release language that we expect to include in a release that a franchisee and/or transferor may sign as part of a renewal or an approved transfer. We may, in our sole discretion, periodically modify the release.

THIS GENERAL RELEASE (the “**Release**”) is made and entered into on _____, 202__ (the “**Effective Date**”), by and between:

- Kilwins Chocolates Franchise, Inc. a Michigan corporation (“**Franchisor**”); and

• _____
a [resident of] [corporation organized in] [limited liability company organized in] _____
[(“**Franchisee**”)] [(“**Transferor**”)].

BACKGROUND:

A. Franchisor and Franchisee are party to a Franchise Agreement dated _____ (the “**Franchise Agreement**”);

B. Franchisor and Franchisee have agreed, pursuant to the Franchise Agreement, [to renew or extend Franchisee’s rights under the Franchise Agreement (the “**Renewal Transaction**”)] [to permit a transfer or assignment of _____ pursuant to Section 13 of the Franchise Agreement (the “**Transfer Transaction**”)], and in connection with the [Renewal Transaction] [Transfer Transaction], Franchisor and [Franchisee] [Transferor] have agreed to execute this Release, along with such other documents related to the approved [Renewal Transaction] [Transfer Transaction].

NOW, THEREFORE, the parties, in consideration of the undertakings and commitments of each party to the other party set forth herein, hereby agree as follows:

1. Release. [Franchisee] [Transferor], its officers and directors and Principals, and their respective agents, heirs, administrators, successors and assigns (the “**Franchisee Group**”), hereby forever release and discharge, and forever hold harmless Franchisor, its current and former affiliates and predecessors, and their respective shareholders, partners, members, directors, officers, agents, representatives, heirs, administrators, successors and assigns (the “**Franchisor Group**”) from any and all claims, demands, debts, liabilities, actions or causes of action, costs, agreements, promises and expenses of every kind and nature whatsoever, at law or in equity, whether known or unknown, foreseen and unforeseen, liquidated or unliquidated, which [Franchisee] [Transferor] and/or its Principals had, have or may have against any member of the Franchisor Group, including, without limitation, any claims or causes of action arising from, in connection with or in any way related or pertaining, directly or indirectly, to the Franchise Agreement, the relationship created by the Franchise Agreement, or the development, ownership or operation of the Store. The Franchisee Group further indemnifies and holds the Franchisor Group harmless against, and agrees to reimburse them for any loss, liability, expense or damages (actual or consequential) including, without limitation, reasonable attorneys’, accountants’ and expert witness fees, costs of investigation and proof of facts, court costs and other litigation and travel and living expenses, which any member of the Franchisor Group may suffer with respect

to any claims or causes of action which any customer, creditor or other third party now has, ever had, or hereafter would or could have, as a result of, arising from or relating to the Franchise Agreement or the Store. The Franchisee Group and its Principals represent and warrant that they have not made an assignment or any other transfer of any interest in the claims, causes of action, suits, debts, agreements or promises described herein.

2. General Terms.

2.1. This Release shall be binding upon, and inure to the benefit of, each party's respective heirs, representatives, successors, and assigns.

2.2. This Release shall take effect upon its acceptance and execution by each of the parties hereto.

2.3. This Release may be executed in counterparts, and signatures exchanged by fax, and each such counterpart, when taken together with all other identical copies of this Release also signed in counterpart, shall be considered as one Release.

2.4. The captions in this Release are for the sake of convenience only, and shall neither amend nor modify the terms hereof.

2.5. The parties agree that all actions arising under this Release must be commenced in the state or federal court of general jurisdiction in Michigan, and each of the undersigned irrevocably submits to the jurisdiction of those courts and waives any objection he or she might have to either the jurisdiction of or venue in those courts. This Release shall be interpreted and construed under the laws of the State of Michigan. In the event of any conflict of law, the laws of the State of Michigan shall prevail (without regard to, and without giving effect to, the application of Michigan conflict of law rules).

2.6. This Release constitutes the entire, full, and complete agreement between the parties concerning the subject matter hereof, and supersedes all prior agreements and communications concerning the subject matter hereof. No other representations have induced the parties to execute this Release. The parties agree that they have not relied upon anything other than the words of this Release in deciding whether to enter into this Release.

2.7. No amendment, change, or variance from this Release shall be binding on either party unless in writing and agreed to by all of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have duly signed and delivered this Release in duplicate on the day and year first above written.

Kilwins Chocolates Franchise, Inc.
Franchisor

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit L: STATE EFFECTIVE DATES

The following states require that the Franchise Disclosure Document be registered or filed with the state or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington and Wisconsin.

This Franchise Disclosure Document is registered, on file or exempt from registration in the following states having franchise registration and disclosure laws, with the following effective dates:

STATE	EFFECTIVE DATE
Illinois	Pending
Indiana	Pending
Maryland	Pending
Michigan	Pending
Minnesota	Pending
New York	Pending
Rhode Island	Pending
South Dakota	Pending
Virginia	Pending
Wisconsin	Pending

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.

Exhibit M Receipts

ITEM 23 • RECEIPT
(Exhibit M)

This Disclosure Document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If Kilwins Chocolates Franchise, Inc. (**KCF**) offers you a franchise, it must provide this Disclosure Document to you: (a) 14 calendar days before you sign a binding agreement with, or make a payment to, us or an affiliate in connection with the proposed franchise sale, or (b) Under New York law at the earlier of (i) your first personal meeting to discuss the franchise, or (ii) 10 business days before you sign a binding agreement with, or make payment to us or an affiliate in connection with the proposed franchise sale, or (c) Iowa requires that we give you this disclosure document at the earlier of the first personal meeting or 14 days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship, or (d) Michigan requires that we give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

If KCF does not deliver this Disclosure Document on time or if it contains a false or misleading statement or a material omission, a violation of federal and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and to the appropriate state agency listed in Exhibit C.

KCF is the franchisor, located at 1050 Bay View Road, Petoskey, Michigan 49770, (231-347-3800). The franchise sellers are Joseph Benney, Brian Crawford, Ron Galbreath, Steve Hooley, Don McCarty, Tyler McCarty, Brian Ognian and David Selvius at KCF's offices, 1050 Bay View Road, Petoskey, Michigan 49770, telephone (231) 347-3800. Any additional individual franchise sellers involved in offering the franchise are: _____

The issuance date of this Franchise Disclosure Document is April 29, 2024.

KCF authorizes the agents listed in Exhibit D to receive service of process for us.

I have received a Franchise Disclosure Document dated April 29, 2024, and with effective dates of state registration as listed on the State Effective Dates Page. This Disclosure Document included the following exhibits:

A-1	Franchise Agreement and Related Exhibits	F	List of Company-Owned Units
A-2	Ice Cream Shop Addendum	G	Audited Financial Statements
B-1	Store Construction Agreement	H	Table of Contents for Manual
B-2	Equipment Management Agreement	I	State-specific Disclosures
B-3	Architectural & Engineering Agreement	J	State-specific Agreement Amendments
C	List of Administrators	K	General Release
D	Agents for Service of Process	L	State Effective Dates
E	List of Current and Former Franchisees	M	Receipts (2 copies)

Date Received

Prospective Franchisee Signature

Name (Please print)

Address

Email: _____

ITEM 23 • RECEIPT
(Exhibit M)

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If KCF does not deliver this Disclosure Document on time or if it contains a false or misleading statement or a material omission, a violation of federal and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and to the appropriate state agency listed in Exhibit C.

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D	Agents for Service of Process	L	State Effective Dates
E	List of Current and Former Franchisees	M	Receipts (2 copies)

Date Received

Prospective Franchisee Signature

Name (Please print)

Address

Email: _____