

FRANCHISE DISCLOSURE DOCUMENT



Baja Smoothies Franchise, LLC
a Minnesota Limited Liability Company
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Baja Smoothies Franchise, LLC offers franchises for the operation of a uniquely branded smoothie company selling fresh-fruit smoothies in a mobile environment (“Baja Smoothies Business”). We offer franchises for single Baja Smoothies Businesses.

The total investment necessary to begin operation of a Baja Smoothies franchise with two mobile food service carts (“2-Cart Franchise”) ranges from \$144,680 to \$186,500. This includes \$140,300 to \$147,800 that must be paid to us and our affiliates. The total investment necessary to begin operation of a Baja Smoothies franchise with four mobile food service carts (“4-Cart Franchise”) ranges from \$260,360 to \$326,500. This includes \$255,800 to \$270,800 that must be paid to us and our affiliates.

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 government 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 the franchisor at 5995 Oren Ave. N, Ste. 209-270, Stillwater, MN 55083 or by phone at 651-661-4445.

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 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 (the “FTC”). You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, DC 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.

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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 "F" 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 Baja Smoothies 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 Baja Smoothies 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 "A".

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:

1. **Out-of-State Dispute Resolution.** The franchise agreement requires you to resolve disputes with the franchisor by mediation, arbitration and/or litigation only in Minnesota. Out-of-state mediation, arbitration, or litigation may force you to accept a less favorable settlement for disputes. It may also cost more to mediate, arbitrate, or litigate with the franchisor in Minnesota than in your own state.
2. **Short Operating History.** The franchisor is at an early stage of development and has a limited operating history. This franchise is likely to be a riskier investment than a franchise in a system with a longer operating history.

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.

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ITEM 1 FRANCHISOR AND ANY PARENTS, PREDECESSORS AND AFFILIATES

To simplify the language in this Disclosure Document, “we,” “us” and “the Company” mean Baja Smoothies Franchise, LLC - the franchisor. “You” means the person who buys a Baja Smoothies franchise - the franchisee, and includes your partners if you are a partnership, your shareholders if you are a corporation, and your members if you are a limited liability company.

For purposes of this Disclosure Document, a “Baja Smoothies Business” refers to any mobile smoothie business that operates under the name “Baja Smoothies,” including any Baja Smoothies Business operated by us, our affiliate, you, or another franchisee.

Corporate Information

Baja Smoothies Franchise, LLC is a Minnesota Limited Liability Company that was organized on June 7, 2022. Our principal business address is located at 5995 Oren Ave. N, Ste. 209-270, Stillwater, MN 55083 and our telephone number is 651-661-4445. Our agent for service of process is disclosed in EXHIBIT "A" (for registration states) and EXHIBIT "B" (for all other states). We do not do business under any names other than “Baja Smoothies Franchise, LLC” and “Baja Smoothies.”

Business History

Our affiliate, Baja Smoothies, Inc., opened the first and second Baja Smoothies Businesses in Minnesota in 2004. Chad Warzeka founded the Baja Smoothies concept and is also the President of Baja Smoothies, Inc.

We began offering Baja Smoothies Business franchises in 2023. We are not engaged in any business other than offering Baja Smoothies Business franchises and administering the franchise system. We have never offered franchises in any other line of business. We have never directly owned and operated a Baja Smoothies Business.

Predecessors, Parents and Affiliates

We do not have any predecessors or parent companies. Except for the affiliates listed below, we do not have any affiliates that: (a) offer (or have ever offered) franchises in this or any other line of business; and/or (b) provide products or services to our franchisees.

Our affiliate, Baja Smoothies, Inc. (“BSI”) has operated a Baja Smoothies Business since April 2004. BSI’s principal business address is 5995 Oren Ave. N, Ste. 209-270, Stillwater, MN 55083. BSI is the exclusive supplier of (1) proprietary smoothie mixes purchased by our franchisees and (2) the equipment you must use in the operation of your Baja Smoothies Business, including mobile food service carts, trailer and club car. BSI has never offered franchises in this or any other line of business.

Description of Franchised Business

If we award you a franchise, you will establish and operate a uniquely branded mobile smoothie company. The franchised business you acquire is referred to in this Disclosure Document as your “Business” or your “Baja Smoothies Business.” A Baja Smoothies Business operates a mobile business which includes our proprietary Baja Smoothies carts (“Carts”) and trailer that sell fresh-fruit smoothies made from proprietary smoothie mixes. Customers can also schedule your Carts for various events, such as air shows, sporting events, fundraisers, school events, fairs, concerts, festivals, birthday parties, corporate events, etc. You must use the Carts only for the operation of the Baja Smoothies Business and only to sell the products that we authorize.

Because the Baja Smoothies Business is a mobile business, you will most likely operate your Baja Smoothies from your home. Local laws or community rules maybe require you to rent or lease storage space for your Carts and trailer at a commercial location.

You must sign the form of franchise agreement attached to this Disclosure Document as EXHIBIT "C" (the “Franchise Agreement”). You must develop, open and operate your Business in accordance with the terms of the Franchise Agreement. We will grant you a license to use certain logos, service marks and trademarks, including the trademark “Baja Smoothies” (collectively, the “Marks”). The “Marks” also include our distinctive trade

dress used to identify a Baja Smoothies Business, whether now in existence or created in the future. Each Franchise will be granted a protected territory which will be described in the Franchise Agreement (“Protected Territory”).

We have developed a proprietary system (the “System”) for the operation of a Baja Smoothies Business. Distinctive characteristics of the System include logo, trade secrets, concept, proprietary products and programs, and operating system. The operational aspects of a Baja Smoothies Business will be contained within our confidential Franchise Operations Manual (the “Manual”). You will operate your Baja Smoothies Business as an independent business using the Marks, the System and the support, guidance and other methods and materials we make available to you.

Market and Competition

The target market for Baja Smoothies Business products is the general public. The market for frozen drinks or refreshments and other food and beverage products served in a mobile dining atmosphere is competitive and well-developed. Frozen fruit smoothie and related product sales are seasonal with more business activity in the warm months and fewer sales in colder months. The casual dining industry is highly competitive and is often affected by changes in eating trends, by conditions affecting spending habits, and by traffic and population patterns. Baja Smoothies Businesses will compete with other local businesses, as well as local, regional, and national restaurants, street vendors, grocery stores, and other food service businesses offering similar products for mobile consumption, delivery, take out, and catering services. You will also face normal business risks that could have an adverse effect on your Baja Smoothies Business, such as such as consumer tastes, pricing policies of competitors, and supply and demand.

Laws and Regulations

You must comply with all federal, state and local laws applicable to your Baja Smoothies Business, including any required licensure or other regulatory requirements. Many states and local jurisdictions have enacted laws, rules, regulations, and ordinances which may apply to the operation of your Baja Smoothies Business, including those which: (a) regulate matters affecting the health, safety, and welfare of your customers, such as general health and sanitation requirements; employee practices concerning the storage, preparation, and handling of food; special health, food service, and frozen dessert preparation/vending licensing requirements; restrictions on smoking and exposure to tobacco smoke or other carcinogens or reproductive toxicants; availability of and requirements for public accommodations such as restrooms; (b) establish general standards, requirements, and specifications for the construction, design, and maintenance of the Carts and trailer; (c) set standards pertaining to employee safety and health; (d) set requirements and standards for fire safety and general emergency preparedness, (e) regulate the proper use, storage, and disposal of waste, insecticides, and other hazardous materials, (f) establish general standards or restrictions on advertising containing false or misleading claims, or health and nutrient claims on menus or otherwise, such as “low calorie” or “fat free,” and (g) establish requirements concerning withholdings and employee reporting of taxes on tips. Additionally, most states require a food handler’s license as well as a hawkers or peddlers license which authorizes an individual to sell food from a mobile, outdoor business. Certain communities you plan to service may have additional licensing requirements.

Many local or state jurisdictions require permits for those handling, preparing, and serving food to the public, and you and your employees may need to pass a test or other certification process to obtain these permits. There may also be local ordinances and regulations regarding food storage, preparation and serving. The operation of your Baja Smoothies Business, including maintenance of the equipment, conduct of personnel, and the preparation and sale of products from your Baja Smoothies Business may be regulated by various laws, regulations, rules, and ordinances. Should the food items, premises, equipment, personnel or operation of the Baja Smoothies Business pose a health risk to the public, or if any product dispensed at your Baja Smoothies Business be in violation of any applicable law or regulations, governing authorities or agencies may require you to immediately close your Baja Smoothies Business, dispose all contaminated products, eliminate the source of contamination, and remedy all unsanitary conditions present. These governing authorities or agencies may

require that you undergo and pass inspection(s) before you reopen for business.

Your equipment must be properly licensed and registered, and any person who drives in connection with the Baja Smoothies Business must have a valid driver's license. The requirements for these licenses may vary, depending on your location. If we require safety additions to your equipment or your equipment is subject to a manufacturer's vehicle safety recall, you must immediately perform the required repairs, maintenance and/or inspections before using your equipment in the operation of your Baja Smoothies Business.

There may be other local, state and/or federal laws or regulations that apply to your Business. We strongly suggest that you investigate these laws before buying this franchise.

ITEM 2 BUSINESS EXPERIENCE

Chad Warzeka – Founder and Owner

Mr. Warzeka is our founder and owner since inception in Stillwater, Minnesota. Mr. Warzeka has been the President of our affiliate, BSI, since 2004 in Stillwater, Minnesota. Mr. Warzeka has operated a Baja Smoothies business since April 2004 in Stillwater, Minnesota.

Brooke DiSanto – Project Manager

Ms. DiSanto has been our Project Manager since June 2022 in Stillwater, Minnesota. Ms. DiSanto also serves as Technical Manager for Icario Health since October 2019, a Client Experience Representative for Revel Health since September 2019, and in Inside Sales for The YES Group since October 2011 in Minneapolis, Minnesota.

ITEM 3 LITIGATION

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

You will pay us a \$29,900 initial franchise fee at the time you sign the Franchise Agreement to operate either a 2-Cart Franchise or 4-Cart Franchise. Each Franchise Agreement will grant you the right to operate either a 2-Cart Franchise or 4-Cart Franchise in the Protected Territory. The Initial Franchise Fee is due in full at the time you sign the Franchise Agreement, and is deemed fully earned by us once paid and is not refundable. The initial franchise fee is uniformly imposed.

Baja Smoothies Carts

If you purchase a 2-Cart Franchise, you will be required to purchase two Carts plus a 14-foot trailer from us. The current price to obtain two Carts and a 14-foot trailer from us is \$109,900. You will pay a nonrefundable initial installment of 50% of the cost of the Carts (i.e. \$54,950) when you sign the Franchise Agreement and the remaining balance when you take delivery of the Carts and trailer. If you purchase a 4-Cart Franchise, you will be required to purchase four Carts, a 28-foot trailer and a club car from us. The current price to obtain four Carts, a 28-foot trailer and club car from us is \$224,900. You will pay a nonrefundable initial installment of 50% of the cost of the Carts (i.e. \$112,450) when you sign the Franchise Agreement and the remaining balance when you take delivery of the Carts and trailer. You will be required to pay for any optional customization or additional features that you request that are not standard on the Carts. Cart payments are nonrefundable even if you do not open a Baja Smoothies Franchise. The Carts will come equipped with initial equipment including an ice bin, two blenders, two cash drawers, and a sunshade and will be wrapped in Baja Smoothies branding.

Cart Compliance Fee

We may require you to pay a fee in the event that we or our affiliate needs to modify any part of the Cart from our standard specifications in order to meet with relevant state or local health department requirements in your Protected Territory. If required, these modifications usually cost between \$0 and \$5,000 for a 2-Cart Franchise, and between \$0 and \$10,000 for a 4-Cart Franchise. These payments are nonrefundable.

Initial Inventory

An initial supply of proprietary smoothie mixes, branded cups, a graphics package, and a Baja Smoothies welcome box that includes branded t-shirt uniforms is included with your purchase of the equipment. You may also choose to purchase additional inventory from us before you begin operation of your Baja Smoothies Business. We estimate that the cost of additional pre-opening initial inventory will range from \$500 to \$3,000 for a 2-Cart Franchise, and between \$1,000 and \$6,000 for a 4-Cart Franchise, which must be paid prior to the start of your Baja Smoothies Business and is nonrefundable.

ITEM 6 OTHER FEES

TYPE OF FEE ¹	AMOUNT	DUE DATE	REMARKS
Annual Fee	\$2,995 per year for a 2-Cart Franchise and \$3,995 for a 4-Cart Franchise	June 1 st (payable beginning the first calendar year in which you take delivery of the Carts)	This annual fee is an ongoing payment that allows you to use the Marks and the intellectual property of the System and pays for our ongoing support and assistance. If you are renewing your franchise agreement, you must pay our then-current successor franchise annual fee payments. If you are purchasing an existing Franchise, the date for determining annual fee payments will be determined from the date the initial franchise agreement was signed.
Brand Fund Fee	\$750 per year	Same as annual fee	See Note 2 and Item 11 for additional information.
Training Fee	Up to \$200 per person per day (plus reimbursement of expenses for onsite training)	10 days after invoice	See Note 3.
Conference Registration Fee	Then-current fee (not currently charged)	10 days after invoice	See Note 4.
Technology Fee	Then-current fee (not currently charged)	10 days after invoice or as otherwise specified by us	See Note 5.
Product Purchases	Varies depending on item purchased	10 days after invoice	Our affiliate, BSI, is a supplier for certain items purchased by franchisees, which may include inventory, marketing material, equipment and operating supplies. We will provide you with a price list upon request.
New Product or Supplier Testing	Cost of testing (not currently charged)	10 days after invoice	This covers the costs of testing new products or inspecting new suppliers you propose.
Renewal Fee	\$7,000	At time you sign Renewal Agreement	Payable if you qualify to renew your Franchise Agreement and choose to enter into a successor franchise agreement.

TYPE OF FEE ¹	AMOUNT	DUE DATE	REMARKS
Transfer Fee	\$7,500	Before transfer	Payable when you transfer or sell your franchise. If the franchise is transferred to an entity you control or for certain transfers of ownership interests between existing owners, you will not be required to pay this fee, but must pay our actual costs, including legal fees. If the buyer is found by a broker we engage, you must also reimburse us for all commissions we pay to the broker.
Cart Remodel or Upgrades	Will vary under the circumstances	Upon execution of successor franchise agreement, upon a Cart or trailer rewrap or upon a transfer of an existing Cart that has not completed the required remodels	You must keep your Cart and trailer in compliance with current System Standards which includes a rewrap when required (at least every seven years of operation). You may need to pay this fee for the Carts and trailer: (1) upon execution of successor franchise agreement for a Baja Smoothies Franchise that has not completed the required remodels or is not in compliance with current standards; (2) for the transfer of a Baja Smoothies Business that has not completed the required remodels; or (3) if they are not in compliance with current standards.
Mystery Shopper / Quality Assurance Program Expense	Varies	10 days after invoice	See Note 6.
Reimbursement of Reinspection Costs	All costs we incur to travel to and inspect your Baja Smoothies Business	10 days after invoice	Payable if we inspect your Baja Smoothies Business to determine if you remedied (a) a health or safety issue identified by a government agency or (b) breach of system standards we bring to your attention.
Reimbursement of Insurance Costs	Amount of expenses we incur (including premiums)	10 days after invoice	If you fail to obtain and maintain the insurance we require, and we elect to do so on your behalf, you must reimburse us.
Audit Fee	Actual cost of audit (including travel and lodging expenses for audit team)	10 days after invoice	Payable only if audit is necessary because you fail to send us required information or reports in a timely manner.
Late Fee	\$100 plus default interest at lesser of (a) 18% per annum (prorated on daily basis) or (b) highest rate allowed by applicable law	10 days after invoice	If we debit your account but there are insufficient funds, or a check you issue is returned due to insufficient funds, then we may charge (in addition to the late fee) an NSF fee of \$50 per incident.
Fines	Up to \$1,000 per incident	Upon demand	Payable if you infringe on another Baja Smoothies franchisee's Protected Territory, or fail to comply with a mandatory standard or operating procedure (including timely submission of required reports) and do not cure within the time period we require. We may impose an additional fine for every 48 hours the non-compliance issue remains uncured after we impose the initial fine. Payments for territory infringement are payable to the brand and system development fund.

TYPE OF FEE ¹	AMOUNT	DUE DATE	REMARKS
Management Fee	Up to \$500 per day plus reimbursement of travel and living expenses	10 days after invoice	If you default under the Franchise Agreement or the Managing Owner becomes disabled or deceased, we can designate a temporary manager to manage your Baja Smoothies Business until you cure the default or find a replacement Managing Owner, as applicable.
Indemnification	Amount of our damages, losses or expenses	10 days after invoice	You must indemnify and reimburse us for any damages, losses or expenses we incur due to the operation of your Baja Smoothies Business or your breach of the Franchise Agreement.
Attorneys' Fees and Costs	Amount of attorneys' fees and costs we incur	Upon demand	You must reimburse us for all attorneys' fees and costs we incur relating to your breach of the Franchise Agreement or other agreement with us or our affiliates.

Notes:

1. All fees are imposed by and payable to us or our affiliate. All fees are nonrefundable and uniformly imposed. You must sign an ACH Authorization Form (attached to the Franchise Agreement as ATTACHMENT "C"), permitting us to electronically debit your designated bank account for all amounts owed to us and our affiliates (other than the initial franchise fee). You must ensure sufficient funds are available for withdrawal before each due date. You must pay us all taxes that are imposed upon us or that we are required to collect and pay by reason of the furnishing of products, intangible property (including trademarks) or services to you.
2. We will establish and maintain a brand and system development fund to promote public awareness of our brand and improve our System. As of the issuance date of this Disclosure Document, we have not yet formed the fund. You will have no voting rights pertaining to the administration of the fund, the creation and placement of the marketing materials or the amount of the required contribution. In addition to your contributions to the brand and system development fund, we recommend you spend at least \$500 per year on local advertising.
3. Before you open, we will provide our initial training program at no additional charge for your Managing Owner and up to two additional individuals. You must pay us a training fee of up to \$200 per person per day for:
 - each person that attends our initial training program after you open your Business (such as new Managing Owners or managers)
 - any person who retakes training after failing a prior attempt
 - any remedial training we require based on your operational deficiencies
 - each person to whom we provide additional training that you request
 - each person who attends a system-wide or additional training program we conduct

If we agree to provide onsite training or assistance, you must also reimburse us for all costs incurred by our representative for meals, travel and lodging (this reimbursement obligation does not apply to any onsite training that is part of our initial training program). You are responsible for all expenses and costs your trainees incur for training, including wages, travel and living expenses. If you transfer your franchise, we may charge the new franchisee the \$200 training fee (per person, per day) for each of the transferee's owners and employees that attends our initial training program.

4. We may hold periodic national or regional conferences to discuss business and operational issues

affecting the franchise and the industry. If held, attendance at these conferences is mandatory, although we will not require your owners or employees to attend more than one conference during any calendar year. You are also responsible for all expenses and costs the conference attendees incur, including wages, travel and living expenses.

- If required by us, you must acquire and utilize information and communication technology systems that we specify (the “Technology Systems”). The “technology fee” includes all amounts you pay us and/or our affiliates relating to the Technology Systems, including amounts paid for proprietary items and amounts we collect from you and remit to third-party suppliers based on your use of their systems, software, technology or services. The amount of the technology fee may change based on changes to the Technology Systems or the prices charged by third-party suppliers with whom we enter into master agreements. The technology fee does not include any amounts you pay directly to third-party suppliers for any component of the Technology Systems. As of the issuance date of this Disclosure Document, we do not charge a technology fee.

We will provide you one email address free-of-charge. Additional email addresses will be provided for \$200 per year for each additional email address.

- We reserve the right to engage the services of one or more “mystery shoppers” or quality assurance inspection firms for purposes of inspecting Baja Smoothies Businesses for quality control purposes. These inspections may address a variety of issues, including customer service, food safety, sanitation, inventory rotation, etc. If we implement such a program, we intend to utilize the program for all Baja Smoothies Businesses, including Baja Smoothies Businesses owned by us and our affiliates. Franchisees may be invoiced directly by the mystery shopper or quality assurance firm for the services rendered. Alternatively, we may be invoiced by the mystery shopper or quality assurance firm, in which case all franchisees must pay their proportionate share of the total fee based on the number of open Baja Smoothies Businesses owned by the franchisee as compared to the total number of all open Baja Smoothies Businesses at the time of the program (including company and affiliate-owned Baja Smoothies Businesses). We agree to pay our proportionate share of these costs with respect to each Baja Smoothies Business that is owned by us or our affiliates. We do not mark up these fees or retain any portion of the amounts that you pay to us for our mystery shopper / quality assurance program.

ITEM 7 ESTIMATED INITIAL INVESTMENT

Table A: Estimated Initial Investment for the purchase of a 2-Cart Franchise:

YOUR ESTIMATED INITIAL INVESTMENT				
TYPE OF EXPENDITURE ¹	AMOUNT	METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
Initial Franchise Fee	\$29,900	Lump sum	At time you sign Franchise Agreement	Us
Carts, Trailer and Installed Equipment ²	\$109,900	Two Installments	50% due upon signing the Franchise Agreement and 50% due upon receipt of the Carts and equipment	Our affiliate
Food, Lodging & Travel Expenses (3 people while training)	\$150 to \$900	As incurred	During training	Hotels, restaurants and airlines
Insurance ³	\$1,500 to \$2,500	As incurred	Before opening	Insurance Companies
Cart Compliance Fee	\$0 to \$5,000	As incurred	Before opening	Our affiliate

YOUR ESTIMATED INITIAL INVESTMENT				
TYPE OF EXPENDITURE ¹	AMOUNT	METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
Tax, Title and Licensing ⁴	\$180 to \$17,000	Lump sum	Before opening	Government Agencies
Technology Systems and POS System ⁵	\$2,300 to \$3,100	Lump sum	Before opening	Suppliers
Additional Pre-Opening Inventory ⁶	\$500 to \$3,000	Lump sum	Before opening	Our affiliate
Grand Opening Advertising ⁷	\$0 to \$500	Lump sum	60 days before through 30 days after opening	Suppliers
Permits and Business Licenses	\$250 to \$1,500	Lump sum	Before opening	Government agencies
Professional Fees	\$0 to \$5,000	Lump sum	Before opening	Lawyers & accountants
Real Estate for Equipment Storage ⁸	\$0 to \$1,200	As incurred	Before opening	Third Parties
Additional Funds ⁹ (3 months)	\$0 to \$7,000	As incurred	As incurred	Suppliers and employees
Total Estimated Initial Investment ¹⁰	\$144,680 to \$186,500			

Table B: Estimated Initial Investment for the purchase of a 4-Cart Franchise:

YOUR ESTIMATED INITIAL INVESTMENT				
TYPE OF EXPENDITURE ¹	AMOUNT	METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
Initial Franchise Fee	\$29,900	Lump sum	At time you sign Franchise Agreement	Us
Carts, Trailer, Club Car and Installed Equipment ²	\$224,900	Two Installments	50% due upon signing the Franchise Agreement and 50% due upon receipt of the Carts and equipment	Our affiliate
Food, Lodging & Travel Expenses (3 people while training)	\$150 to \$900	As incurred	During training	Hotels, restaurants and airlines
Insurance ³	\$1,500 to \$2,500	As incurred	Before opening	Insurance Companies
Cart Compliance Fee	\$0 to \$10,000	As incurred	Before opening	Our affiliate
Tax, Title and Licensing ⁴	\$360 to \$34,000	Lump sum	Before opening	Government Agencies
Technology Systems and POS System ⁵	\$2,300 to \$3,100	Lump sum	Before opening	Suppliers
Additional Pre-Opening Inventory ⁶	\$1,000 to \$6,000	Lump sum	Before opening	Our affiliate

YOUR ESTIMATED INITIAL INVESTMENT				
TYPE OF EXPENDITURE ¹	AMOUNT	METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
Grand Opening Advertising ⁷	\$0 to \$500	Lump sum	60 days before through 30 days after opening	Suppliers
Permits and Business Licenses	\$250 to \$1,500	Lump sum	Before opening	Government agencies
Professional Fees	\$0 to \$5,000	Lump sum	Before opening	Lawyers & accountants
Real Estate for Equipment Storage ⁸	\$0 to \$1,200	As incurred	Before opening	Third Parties
Additional Funds ⁹ (3 months)	\$0 to \$7,000	As incurred	As incurred	Suppliers and employees
Total Estimated Initial Investment ¹⁰	\$260,360 to \$326,500			

Notes to Table A and Table B:

1. We do not offer direct or indirect financing for any of these items. No fees paid to us are refundable. We are unaware of any fees paid to third-party suppliers that are refundable.
2. Only the Carts may be used in the operation of your Baja Smoothies Business. No other cart, trailer or vehicle may be used in the operation of your Baja Smoothies Business. These items must be purchased from our affiliate.
3. You must obtain and maintain, at your own expense, the insurance coverage we require, and satisfy other insurance-related obligations. Please note that if you have had prior issues or claims from previous operations unrelated to the operation of a Baja Smoothies Business, your rates may be significantly higher than those estimated above.
4. You are required to pay all federal and state tax, title, licenses, and other costs of titling the equipment. The estimates above include a sales (or usage) tax of an estimated 6% of the purchase price of the Carts and trailer. The actual amount may be more depending on the tax rate in the jurisdiction where you title your equipment. You should check with your local county clerk's office or other governmental titling office for your state's tax rate and the exact cost to title and license your equipment.
5. This includes your initial cost to purchase and set up your Technology Systems and POS System. We do not currently require you to purchase or use any specific POS System.
6. You must offer for sale at your Baja Smoothies Business all goods that we specify. You are required to maintain a reasonable supply of these items at your Baja Smoothies Business at all times. An initial supply of proprietary smoothie mixes, branded cups, a graphics package, and a Baja Smoothies welcome box that includes branded t-shirt uniforms is included with your purchase of the equipment. The estimate in the chart above represents the cost for an additional supply of these items.
7. During the period beginning 60 days before opening through 30 days after opening, we recommend, but do not require, that you spend a minimum of \$500 on grand opening marketing activities.
8. Because most of our franchisees will operate their Baja Smoothies Business out of their homes, this chart does not include estimates for items such as real property, real estate deposits, leases, leasehold improvements, furniture, fixtures, fixed assets, remodeling, construction, decorating costs, utility

deposits, or security deposits, which will likely not apply unless you choose to acquire a business premises. In addition, we assume that you will not need to obtain desks, chairs, and other standard office supplies and equipment and do not include estimates for these items. You may need to rent a storage area for your equipment. The low end assumes that you can store your equipment at your personal residence. The high estimate provides for three months of storage at an outdoor vehicle storage area.

9. This estimates your expenses during the first 3 months of operation, including payroll costs (excluding any wage or salary paid to you) and other miscellaneous expenses and required working capital. Your initial 3 months of rent is separately stated in the table above. We have not included or accounted for any fees paid to the franchisor or an affiliate that are calculated as a percentage of revenues. These figures are estimates based on the past experience of our affiliate in operating a Baja Smoothies Business.
10. We strongly recommend you hire an accountant, business advisor or other professional to assist you in developing a budget for the construction, opening and operation of your Baja Smoothies Business.

ITEM 8 RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES

Source Restricted Purchases and Leases - Generally

You must purchase or lease certain “source restricted” goods and services for the development and operation of your Business. By “source restricted,” we mean the good or service must meet our specifications and/or must be purchased from an approved or designated supplier (in some cases, an exclusive designated supplier, which may be us or an affiliate). The Manual includes our specifications and list of suppliers. We notify you of changes to our specifications or supplier list by email, written notice, telephone, updates to the Manual, bulletins or other means of communication.

Supplier Criteria

Our criteria for evaluating a supplier include standards for quality, delivery, performance, design, appearance and price of the product or service as well as the dependability, reputation and financial viability of the supplier. Upon request, we will provide you with any objective specifications pertaining to our evaluation of a supplier, although certain important subjective criteria (e.g., product appearance, taste, design, functionality, etc.) are important to our evaluation but cannot be described in writing.

If you want to purchase or lease a source restricted item from a non-approved supplier, you must send us a written request for approval and submit all additional information we request. We may require that you send us samples from the supplier for testing. We may also require that we be allowed to inspect the supplier’s facilities. We will notify you of our decision within 30 days after we receive your request for approval and all additional information and samples we require. We may, at our option, re-inspect the facilities and products of any approved supplier and revoke our approval if the supplier fails to meet any of our then-current criteria. You must reimburse us for all costs we incur in reviewing products and suppliers you propose.

Current Source Restricted Items

We estimate that nearly 90% of the total purchases and leases that will be required to establish your Business and 25% of your ongoing operating expenses will consist of source restricted goods or services, as further described below.

Carts and Trailer

You must purchase the Carts and trailer only from a designated supplier, our affiliate. No other cart, trailer or vehicle may be used in the operation of your Baja Smoothies Business.

Technology Systems

In the future, we may require your Technology Systems (including hardware, software, equipment, software applications, mobile apps and similar items) to meet our standards and specifications. Certain components of

your Technology Systems may be purchased from approved or designated suppliers while other components may be purchased from any supplier of your choosing. We may also require that certain services relating to the establishment, use, maintenance, monitoring, security or improvement of your Technology Systems be purchased from approved or designated suppliers.

Operating Supplies

You must purchase certain operating supplies that meet our standards and specifications. You may purchase these items from any supplier of your choosing.

Uniforms

Your employees must wear the uniforms we require. You must purchase these uniforms from a designated or approved supplier.

Inventory

All of your inventory must meet our standards and specifications. You must purchase these items only from approved or designated suppliers. You may not utilize any inventory items we have not approved. You must purchase all proprietary smoothie mixes from a designated supplier, our affiliate.

Marketing Materials and Services

All marketing materials must comply with our standards and requirements. You may be required to purchase branded marketing materials from us or other suppliers we designate or approve. We may require that you utilize a designated supplier to provide social media marketing on your behalf.

Insurance Policies

You must obtain the insurance coverage we require from time to time (whether in the Franchise Agreement or in the Manual). You agree to obtain these insurance policies from insurance carriers that are rated A or better by Alfred M. Best & Company, Inc. and that are licensed and admitted in the state in which you operate your Business. The required coverage currently includes:

Policy Type	Minimum Coverage
“All risk” Property Insurance	Replacement Value
Comprehensive General Liability Insurance	\$1,000,000 per occurrence and \$2,000,000 in the aggregate
Automobile Liability Insurance	\$1,000,000 per occurrence and \$2,000,000 in the aggregate
Theft and Dishonesty Insurance	\$1,000,000 per occurrence and \$2,000,000 in the aggregate
Commercial Umbrella Insurance	\$1,000,000 per occurrence and \$2,000,000 in the aggregate
Business Interruption Insurance	At least 6 months
Employer’s Liability Insurance	\$500,000 per occurrence and \$1,000,000 in the aggregate
Worker’s Compensation Insurance	As required by law

The required coverage and policies are subject to change. All insurance policies must be endorsed to: (a) name us (and our members, officers, directors, and employees) as additional insureds; (b) contain a waiver by the insurance carrier of all subrogation rights against us; and (c) provide that we receive 10 days’ prior written notice of the termination, expiration, cancellation or modification of the policy.

Purchase Agreements

At this time, we do not negotiate purchase agreements with suppliers. However, we may in the future try to establish relationships with suppliers to enable our affiliates and franchisees to purchase certain items at

discounted prices. If we succeed, you will be able to purchase these items at the discounted prices that we negotiate (less any rebates or other consideration paid to us).

We may also purchase items in bulk and resell them to you at our cost plus a reasonable markup (your total cost to purchase the items from us will not exceed your total cost to purchase the items directly from the supplier without the benefit of our group purchasing power).

Currently there are no purchasing cooperatives, although we may establish them in the future. You do not receive any material benefits for using designated or approved suppliers other than having access to any discounted pricing we negotiate.

Franchisor Revenues from Source Restricted Purchases

Although we are not currently an approved supplier for any source restricted items, we reserve the right to designate ourselves as an approved or designated supplier in the future. BSI is currently the designated supplier for Carts, trailer, club car and certain inventory, including proprietary smoothie mixes. No other persons affiliated with us are currently an approved (or the only approved) supplier. Our principal owner, Chad Warzeka owns an interest in BSI. There are no other approved or designated suppliers in which any of our officers owns an interest.

We may receive rebates, payments or other material benefits from suppliers based on franchisee purchases and we have no obligation to pass them on to our franchisees or use them in any particular manner. As of the issuance date of this Disclosure Document, we do not have any relationships with suppliers that involve rebates, payments or other material benefits based upon franchisee purchase or leases.

During the fiscal year ended December 31, 2023, neither we nor our affiliates received any revenue as a result of franchisee purchases or leases of goods or services from designated or approved suppliers (including purchases from us or our affiliates).

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 other items in this Disclosure Document.

OBLIGATION	SECTIONS IN FRANCHISE AGREEMENT	DISCLOSURE DOCUMENT ITEM
a. Site selection and acquisition/lease	Section 7.1 & 7.2	Item 7 & Item 11
b. Pre-opening purchases/leases	Section 7.3, 11.6 & 14.1	Item 5, Item 7, Item 8 & Item 11
c. Site development and other pre-opening requirements	Section 7.1 & 7.3	Item 6, Item 7 & Item 11
d. Initial and ongoing training	Section 5	Item 6 & Item 11
e. Opening	Section 7.3	Item 11
f. Fees	Section 4.2, 5.7, 6.6, 6.7, 8.4, 10.1, 11.6, 11.8, 11.13, 12, 14.1, 15.2 & 18.2	Item 5 & Item 6
g. Compliance with standards and policies/Operating Manuals	Section 6.1, 7.1, 7.2, 10.3, 11 & 16.1	Item 11
h. Trademarks and proprietary information	Section 16	Item 13 & Item 14
i. Restrictions on products/services offered	Section 11.3	Item 16

OBLIGATION	SECTIONS IN FRANCHISE AGREEMENT	DISCLOSURE DOCUMENT ITEM
j. Warranty and client service requirements	Section 11.11	Not Applicable
k. Territorial development and sales quotas	Section 3	Item 12
l. Ongoing product/service purchases	Section 11.6	Item 8
m. Maintenance, appearance and remodeling requirements	Section 11.7 & 11.9	Item 11
n. Insurance	Section 14.1	Item 6, Item 7 & Item 8
o. Advertising	Section 10	Item 6, Item 7 & Item 11
p. Indemnification	Section 17	Item 6
q. Owner's participation/management/staffing	Section 8	Item 11 & Item 15
r. Records/reports	Section 14.2 & 14.3	Item 6
s. Inspections/audits	Section 15	Item 6 & Item 11
t. Transfer	Section 18	Item 17
u. Renewal	Section 4	Item 17
v. Post termination obligations	Section 20	Item 17
w. Non-competition covenants	Section 13	Item 17
x. Dispute resolution	Section 21	Item 17
y. Franchise Owner Agreement (brand protection covenants, transfer restrictions and financial assurance for owners and spouses)	Section 9 & ATTACHMENT "B"	Item 15

ITEM 10 FINANCING

We do not offer direct or indirect financing. We do not guarantee any of your notes, leases or obligations.

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

Except as listed below, we are not required to provide you with any assistance.

Before you open your Business, we will:

1. Provide access to our Manual, which will help you establish and operate your Business. See Section below entitled "Manual" for more information. (Section 6.1)
2. Because you do not have to locate a site from which to operate your Baja Smoothies Business, we do not provide you with assistance in doing so. You may open an office, but it is not required and does not need to be approved by us. You must find a location to store the equipment, which may be at your residence if permitted. Before you purchase the Baja Smoothies Franchise, you and we will jointly agree on the Protected Territory in which you will operate your Baja Smoothies Business. (Section 3, 7.1, 7.1, 7.2, 7.3)
3. Provide our written specifications for the goods and services you must purchase to develop, equip and operate your Business and a list of approved and/or designated suppliers for these goods and services. We do not deliver or install any items that you purchase. (Section 11.2)
4. Provide an initial training program. See Section below entitled "Training Program" for more information.

(Section 5)

During the operation of your Business, we will:

1. Provide our guidance and recommendations to improve the operation of your Business. (Section 6.2)
2. Provide periodic training programs. See Section below entitled “Training Program” for more information. (Section 5)
3. Maintain a corporate website to promote our brand and provide contact information for your Baja Smoothies Business. See Section below entitled “Advertising and Marketing” for more information. (Section 6.5 & 10.3)
4. Establish and implement the brand and system development fund. See Section below entitled “Advertising and Marketing” for additional information. (Section 10.1)
5. Provide you with our suggested retail pricing. You may deviate from our suggested retail pricing in your discretion. To the extent permitted by applicable law, we may set maximum or minimum prices on the goods and services you sell. (Section 11.4)

During the operation of your Business, we may, but need not:

1. Conduct periodic field visits to provide onsite consultation, assistance and guidance pertaining to the operation and management of your Baja Smoothies Business. (Section 6.3)
2. Develop new merchandise, menu items or other goods or services for sale by Baja Smoothies Businesses. (Section 6.8)
3. Negotiate purchase agreements with suppliers to allow you to purchase certain goods or services at discounted prices. We may also purchase items in bulk at discounted prices and resell them to you at our cost plus shipping and a reasonable markup. (Section 6.7)
4. Hold periodic conferences to discuss business and operational issues affecting franchisees, including industry changes, new services and/or merchandise, marketing strategies and the like. (Section 5)
5. Provide additional training or assistance that you request (either at our headquarters or at your Baja Smoothies Business). See Section below entitled “Training Program” for more information. (Section 5)

Training Program (Section 5)

Overview

We will provide an initial training program for the Managing Owner (defined in Item 15). You may send other owners and employees to initial training, but it is not required. Your Managing Owner must successfully complete initial training to our satisfaction before you open your Business. However, there is no specific period of time after signing or before opening that training must be completed.

The initial training program includes approximately 5 days of training at our corporate headquarters located in Stillwater, Minnesota (or at any other location we designate). A portion of the corporate training may also take place at a company-owned Baja Smoothies Business. Currently, we intend to offer the initial training program on a continual basis, assuming sufficient demand.

Training Topics

The initial training program consists of the following:

TRAINING PROGRAM

SUBJECT	HOURS OF CLASSROOM TRAINING	HOURS ON THE JOB TRAINING	LOCATION
Welcome	.5	0	Stillwater, MN
Resources	.5	0	Stillwater, MN
Corporate Structure & Financing	.5	0	Stillwater, MN
Opening Timetable	1.5	0	Stillwater, MN
Approved Vendors & Products	1.5	0	Stillwater, MN
Franchise Owner Training	3	0	Stillwater, MN
Food Safety Handling	.5	0	Stillwater, MN
Hiring & Staffing	1.5	0	Stillwater, MN
Policies & Procedures	2.5	0	Stillwater, MN
Operations	5	3	Stillwater, MN
Office Equipment, IT, Supplies	.5	0	Stillwater, MN
Finance	.5	0	Stillwater, MN
Inventory Management	1	1	Stillwater, MN
Local Market Advertising & Marketing	4	2	Stillwater, MN
Event Scheduling	2	1	Stillwater, MN
Sales & Pricing	2	1	Stillwater MN
Insurance Requirements & Risk Management	.5	0	Stillwater, MN
Resale, Transfer, Renewal & Closing	.5	0	Stillwater, MN
Protocol Training	0	8	Stillwater, MN
Totals	28	16	

Training Materials

For the classroom training, the training materials will consist of the Manual. You will not be charged an additional fee for any of the training materials.

Instructors

Chad Warzeka and Brooke DiSanto are in charge of our training program and the two instructors. Both Chad Warzeka and Brooke DiSanto will participate in two days of classroom and hands on training. Chad Warzeka currently has 19 years of experience operating a Baja Smoothies business, and has 19 years of experience with the franchisor or an affiliate. Brooke DiSanto has 11 years of sales experience and has less than 2 years of experience with the franchisor.

Ongoing Training

From time to time, we may require that your Managing Owner, managers and other employees attend system-wide refresher or additional training courses.

Any new Managing Owner or manager you appoint must successfully complete our initial training program before assuming responsibility for the management of your Business.

If we inspect your Baja Smoothies Business and determine you are not operating in compliance with the Franchise Agreement and/or the Manual, we may require that the Managing Owner, manager and other employees attend remedial training that addresses your operational deficiencies.

You may also request that we provide additional training (either at corporate headquarters or at your Baja Smoothies Business). We are not required to provide this additional training.

Training Fees and Costs

We provide our pre-opening initial training program at no additional charge. You must pay us a training fee of up to \$200 per person per day for:

- each person that attends our initial training program after you open your Business (such as new Managing Owners or managers)
- any person who retakes training after failing a prior attempt
- any remedial training we require based on your operational deficiencies
- each person to whom we provide additional training that you request
- each person who attends a system-wide or additional training program we conduct

If we agree to provide onsite training or assistance, you must also reimburse us for all costs incurred by our representative for meals, travel and lodging. You are responsible for all expenses and costs that your trainees incur for training, including wages, travel and living expenses. If you transfer your franchise, we may charge the new franchisee the \$200 training fee (per person, per day) for each of the transferee's owners and employees that attends our initial training program.

Manual (Section 6.1, 11.2 & 23.8)

We will provide you with access to our Manual in text or electronic form during the term of your franchise. The Manual may include, among other things:

- a description of the authorized goods and services that you may offer at your Business
- specifications, operating procedures, and quality standards for products, services and procedures that we prescribe from time to time for Baja Smoothies Businesses
- reporting and insurance requirements
- policies and procedures pertaining to any gift card program or loyalty program that we establish
- policies and procedures pertaining to marketing and advertising
- policies and procedures relating to data ownership, protection, sharing and use
- a list of (a) the goods and services (or specifications for goods and services) you must purchase to develop and operate your Baja Smoothies Business and (b) any designated or approved suppliers for

these goods and services

The Manual is designed to establish and protect our brand standards and the uniformity and quality of the goods and services offered by our franchisees. All mandatory provisions contained in the Manual are binding on you. We can modify the Manual at any time, but the modifications will not alter your status or fundamental rights under the Franchise Agreement. Any modification to the Manual is effective at the time we notify you of the change. However, we may provide you with a reasonable period of time to implement certain changes (for example, implementing new software or technology). The Manual is confidential and remains our property. As of the Issuance Date, the Manual contains approximately 193 pages. A copy of the Table of Contents to the Manual is attached to this Disclosure Document as EXHIBIT "D".

Advertising and Marketing (Section 6.5 & 10)

You must participate at your own expense in all advertising, promotional and marketing programs we require. We will provide you with certain advertising and marketing support as further discussed below. You are not required to participate in an advertising cooperative.

Grand Opening Marketing

We recommend, but do not require, that you spend at least \$500 on your grand opening marketing activities. We do not require that you utilize a designated marketing company to implement your grand opening marketing plan.

Ongoing Local Marketing By You

After opening, we recommend you spend \$500 annually on local advertising. You may develop your own advertising and marketing materials and programs, provided they adhere to any standards and requirements in the Manual. You must immediately cease using any advertising and marketing materials that we deem fail to meet these standards.

You may not advertise or market to customers outside your Protected Territory.

Local Marketing Assistance From Us

We may create and make available to you advertising and marketing materials at no additional charge. We may use the brand and system development fund to pay for the creation and distribution of these materials, in which case there will be no additional charge. We may make these materials available over the Internet, in which case you must arrange for printing the materials and paying all printing costs. Alternatively, we may enter into relationships with third-party suppliers who will create the advertising or marketing materials for your purchase.

We will provide reasonable marketing consulting, guidance and support throughout the franchise term on an as needed basis.

Websites, Social Media and Digital Advertising

We will maintain a corporate website to promote our brand. Your franchise contact information will be listed on the website. We can modify or discontinue this website at any time.

Under current policy, you may not: (a) develop, host, or otherwise maintain a website or other digital presence relating to your Business (including any website bearing any of our Marks); or (b) utilize the Internet to conduct digital or online advertising or otherwise engage in ecommerce. However, we do permit you to market your Business through approved social media channels, subject to the following requirements:

- you may only conduct social media utilizing the social media platforms that we approve
- you must strictly comply with our social media policy (as revised from time to time)
- you must immediately remove any post we disapprove (even if it complies with our social media policy)

- we may require that you utilize a supplier we designate for social media marketing services you provide us with full administrative rights to your social media accounts; and
- we retain ownership of all social media accounts relating to your Baja Smoothies Business

Gift Card and Loyalty Programs

We may require that you participate in a gift card or other customer loyalty program in accordance with our policies and procedures. In order to participate, you may be required to purchase additional equipment, software and/or apps and pay fees relating to the use of that equipment, software and/or apps. We have the right to determine how the proceeds from the sale of gift cards will be divided or otherwise accounted for, and we reserve the right to retain the amount of any unredeemed gift cards. You must follow all of our policies regarding any gift card or loyalty program that we establish.

Brand and System Development Fund

We will establish and maintain a brand and system development fund to promote public awareness of our brand and improve our System. We may use the fund to pay for any of the following in our discretion:

- developing maintaining, administering, directing, preparing, or reviewing advertising and marketing materials, promotions and programs
- conducting and administering promotions, contests or giveaways
- expanding public awareness of the Marks
- public and consumer relations and publicity
- brand development
- sponsorships
- charitable and nonprofit donations and events
- research and development of technology, products and services
- website development and search engine optimization
- development and maintenance of an ecommerce platform
- development and implementation of quality control programs, including the use of mystery shoppers or customer satisfaction surveys
- conducting market research
- changes and improvements to the System
- the fees and expenses of any advertising agency we engage to assist in producing or conducting advertising or marketing efforts
- collecting and accounting for contributions to the fund
- preparing and distributing financial accountings of the fund
- any other programs or activities we deem appropriate to promote or improve the System
- direct and indirect labor, administrative, overhead and other expenses incurred by us and/or our affiliates in relation to any of these activities (including salary, benefits and other compensation of any of our, and any of our affiliate's, officers, directors, employees or independent contractors based upon time spent working on any brand fund matters described above)

We direct and have complete control and discretion over all advertising programs paid for by the fund, including the creative concepts, content, materials, endorsements, frequency, placement and media used for the programs. Currently, most advertising is local or regional in coverage and utilizes digital and print. The fund will not be used to pay for advertisements principally directed at selling additional franchises, although consumer advertising may include notations such as "franchises available" and one or more pages on our website may

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promote the franchise opportunity.

You must contribute to the fund the amount we specify from time to time. We will deposit into the fund: (a) fund contributions paid by you and other franchisees and (b) certain fines paid by you and other franchisees. Affiliate-owned Baja Smoothies Business do not contribute to the fund. Except as stated in this paragraph, we have no obligation to expend our own funds or resources for any marketing activities in your area.

All monies deposited into the fund that are not used in the fiscal year in which they accrue will be utilized in the following fiscal year. Any surplus of monies in the fund may be invested and we may lend money to the fund if there is a deficit. An unaudited financial accounting of the operations of the fund will be prepared annually and made available to you upon request.

During the fiscal year ended December 31, 2023, we did not collect or spend any monies from the brand and system development fund.

We assume no direct or indirect liability or obligation to you with respect to the maintenance, direction or administration of the fund. The fund is not a trust and we have no fiduciary obligations with respect to our administration of the fund. Once established, we may discontinue the fund at any time upon at least 30 days' prior notice.

Computer System (Section 6.6, 11.6, 11.7, 11.8, 14.3 & 15.1)

If required by us, you must purchase and use all Technology Systems we designate. Our required Technology Systems may include computer systems, point-of-sale system, webcam systems, telecommunications systems, security systems, music systems, and similar systems, together with the associated hardware, software (including cloud-based software) and related equipment, software applications, mobile apps and third-party services relating to the establishment, use, maintenance, monitoring, security or improvement of these systems.

One component of our Technology Systems is your “computer system,” which consists of the following items: one laptop computer, or smartphone or other device capable of accessing the internet and email. We may change the components of the Technology Systems from time to time, including your computer system.

Email Addresses

We will provide you with one or more email addresses for use with your Business. You must exclusively use the email address(es) we provide for all communications with us, customers, suppliers and other persons relating to your Business. You may not use any email address we provide for any purpose unrelated to your Business. We will own the email addresses and accounts but allow you to use them during the term of your Franchise Agreement.

How Computer System Is Used

The computer system will generally be used to communicate with us, access the digital version of the Manual and other training, perform accounting or bookkeeping tasks, prepare accounting records and reports, and operate the POS system of your choice.

Fees and Costs

We estimate the initial cost of your computer system (including any upfront license fees, setup fees, software training fees, data migration fees, etc.) will be as follows:

COMPUTER SYSTEM					
Program	Initial Fee/ Cost	Ongoing Fee	Purpose & Use	Data Collected	Maintenance, Support, Updates & Upgrades
POS System	\$300-\$600	N/A	Tracking and transactions	N/A	Varies based on chosen vendor

COMPUTER SYSTEM					
Program	Initial Fee/ Cost	Ongoing Fee	Purpose & Use	Data Collected	Maintenance, Support, Updates & Upgrades
Accounting Software	\$500-\$1000	N/A	Tracking and transactions	N/A	Varies based on chosen vendor

COMPUTER SYSTEM – INITIAL FEES AND COSTS		
Item	Quantity	Cost
Desktop/Laptop or Smartphone	1	\$1,500

As further detailed in Item 6, if required by us, you must pay us a technology fee for certain software, technology and related services that we provide. As of the issuance date of this Disclosure Document, we do not charge a technology fee. The table below identifies the ongoing fees and costs you must pay for the software, technology, Apps, subscriptions and related services (including the software, technology and related services covered by the technology fee):

COMPUTER SYSTEM – ONGOING FEES AND COSTS			
Item	Fee (Monthly)	Fee (Annual)	To Whom Paid?
Additional Email Address (Optional)	\$0	\$200	Us

Maintenance, Support, Updates and Upgrades

Unless otherwise disclosed above: (a) neither we nor any other party has any obligation to provide ongoing maintenance, repairs, upgrades or updates to your computer system; and (b) we are not aware of any optional or required maintenance, updating, upgrading or support contracts relating to your computer system.

Collection and Sharing of Data

Your computer system will collect customer purchase data and accounting/bookkeeping data. We will not have independent access to the data collected on your computer system. However, we may inspect your computer system and access the data as part of an inspection.

We own all data relating to your operations and customers. We grant you a license to use this data solely for purposes of operating your Business. You must protect all customer data with a level of control proportionate to the sensitivity of data. You must comply with all applicable data protection laws as well as our data processing and data privacy policies set forth in the Manual from time to time. You must also comply with the standards established by PCI-DSS to protect the security of credit card information.

Computer System Maintenance and Changes

You must maintain the computer system in good condition at your cost. We may require that you upgrade or update your computer system and other Technology Systems to conform to our then-current specifications. There are no contractual limitations on the frequency or cost of these updates or upgrades.

Opening Requirements (Section 7.3)

We anticipate a typical franchisee will open his or her Baja Smoothies Business within 4 months after signing the Franchise Agreement. Factors that may affect this time include:

- the amount of time needed to secure third-party financing, insurance, licenses and permits

- the amount of time needed to obtain the Carts, trailer and other equipment
- delivery or installation of equipment and fixtures
- the amount of time needed to comply with equipment storage requirements and other laws and regulations
- the amount of time needed to complete training
- the amount of time needed to hire and train your staff

You may not open your Baja Smoothies Business prior to receipt of our written authorization to open. We will not issue our authorization to open until all of the following conditions are met:

- the initial trainees successfully complete the initial training program
- you purchase all required insurance policies and provide us with evidence of coverage
- you obtain all required licenses, permits and other governmental approvals
- you obtain the equipment necessary to begin operations

Unless we agree to the contrary, you must open your Business within 6 months after signing the Franchise Agreement. If you fail to open by this deadline, we may grant you an extension of up to 90 days. We may terminate the Franchise Agreement if you fail to open by the deadline and any extensions.

ITEM 12 TERRITORY

Your Territory

The Franchise Agreement grants you the right to operate your Baja Smoothies Business solely within the territory described in Part D of ATTACHMENT "A" to the Franchise Agreement.

We will generally grant only one license to a franchisee for any area with a population up to 150,000. We will use the population as listed on zip-codes.com, which is derived from known delivery information, household occupancy rates, as well as any other sources that we believe are reliable for determining the current population in and around your Protected Territory. In certain densely populated metropolitan areas, a territory may be considerably smaller, while franchisees operating in less densely populated urban areas may have significantly larger areas.

You will operate a single Baja Smoothies Business and up to four Carts within the Protected Territory identified in the Franchise Agreement. The boundaries of your territory will coincide with the boundaries of one or more adjacent zip codes. You will be permitted to engage in direct advertising and solicitation of customers only within the boundaries of your Protected Territory unless we approve otherwise.

You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control.

Although we do not grant exclusive territories, we do grant you certain territorial protections. Specifically, while the Franchise Agreement is in effect and you are not in default, we and our affiliate will not, in your Protected Territory, operate a company-owned unit or grant a franchise for a similar or competitive business. You will only have the right to operate the Baja Smoothies Business in your Protected Territory under the terms and conditions of the Franchise Agreement, and we reserve all other rights to ourselves and our affiliate. You may not operate, solicit, or accept orders outside your Protected Territory unless we allow otherwise in our sole discretion.

Upon renewal, we reserve the right to modify the boundaries of your territory in accordance with our then-current territory guidelines and criteria.

If you wish to revise, amend, or relocate your Protected Territory, you must apply to us to do so, and we may, but are not required, to grant your request. We may condition our approval of such request on any terms or

conditions which we deem reasonable.

Limitations on Territorial Rights

We reserve the right to acquire, or be acquired by, another business or chain that may sell competitive or identical goods or services, and those businesses may be converted into Baja Smoothies Businesses operating under the Marks regardless of their location (an “Acquisition”). Any such acquired or converted businesses may be located within your territory. Any such acquired or converted businesses will not be taken into account in the franchise/population calculation described above.

Limitations on Territorial Rights

We reserve the right to develop and operate, and license third parties to develop and operate, Baja Smoothies Businesses that are located in Captive Venues, including Captive Venues located within your territory. A “Captive Venue” means a non-traditional outlet for a Baja Smoothies Business that is located within, or is a part of, another establishment or facility that consumers may visit for a purpose unrelated to the Baja Smoothies Business. Examples of Captive Venues include Baja Smoothies Businesses that are located within or at:

- amusement or theme parks
- college campuses or universities
- stadiums or sporting arenas
- shopping malls
- military bases
- airshows

In instances where a Baja Smoothies Business operates within a Captive Venue, the boundaries of the entire Captive Venue (i.e. the entire theme park) will comprise the Protected Territory.

Alternative Channels of Distribution

We reserve the right to sell, or license others to sell, competitive or identical goods or services (whether under the Marks or under different trademarks) through Alternative Channels of Distribution. An “Alternative Channel of Distribution” means any channel of distribution other than mobile sales to retail customers that are conducted within the territory. Examples of Alternative Channels of Distribution include:

- sales through direct marketing, such as over the Internet or through catalogs or telemarketing
- sales through retail stores that do not operate under the Marks, such as grocery stores, convenience stores or department stores
- sales made at wholesale

Sales through Alternative Channels of Distribution are excluded from your territorial protections. This means that your territorial protections do not limit our ability to sell, or license others to sell, competitive or identical goods or services through Alternative Channels of Distribution within your territory. You are not entitled to any compensation for sales that take place through Alternative Channels of Distribution.

Restrictions on Your Sales and Marketing Activities

You may not market or sell using Alternative Channels of Distribution (such as the Internet, catalog sales, telemarketing or other direct marketing) either within or outside of your territory. Your marketing activities are also subject to the additional restrictions described in Item 11 under the Section entitled “Local Advertising.” You must comply with any minimum advertised pricing policy we establish from time to time.

Additional Franchises and Territories

You are not granted any options, rights of first refusal or similar rights to acquire additional territories or franchises.

Competitive Businesses Under Different Marks

Currently, neither we nor any affiliate of ours intends to operate or franchise another business under a different trademark that sells products or services similar to the products or services offered by a Baja Smoothies Business. However, we reserve the right to do so in the future.

ITEM 13 TRADEMARKS

We grant you the right to operate a franchise under the name “Baja Smoothies” and logo shown on the cover page of this Disclosure Document. By trademark, we mean trade names, trademarks, service marks, and logotypes used to identify your Baja Smoothies Business or the products or services you sell. We may change the trademarks you may use from time to time (including by discontinuing use of the Marks listed in this Item 13). If this happens, we will reimburse you for your tangible costs of compliance (e.g., changing brochures, business cards, etc.). We have no other liability to you for changing the Marks.

Our affiliate, BSI, registered and/or applied for the following trademarks on the Principal Register at the United States Patent and Trademark Office:

REGISTERED MARKS		
Mark	Registration Number	Registration Date (Renewal Date)
BAJA SMOOTHIES	3573237	February 10, 2009 (November 9, 2018)
BAJA SMOOTHIES	3573238	February 10, 2009 (November 9, 2018)
	7182454	October 3, 2023

All required affidavits have been filed and we have filed all required renewals.

On August 31, 2022, we entered into a License Agreement (the “License Agreement”) with BSI. Under the terms of the License Agreement, BSI granted us the right to use the Marks in the Baja Smoothies System and to sublicense the Marks to our franchisees. The term of the License Agreement automatically renews annually, unless it is terminated in accordance with its terms. BSI is permitted to terminate the License Agreement only if we declare bankruptcy or become insolvent, if we and BSI mutually agree to terminate the License Agreement or if we breach BSI’s quality control standards and fail to cure the breach within a 60 day cure period. If the License Agreement is terminated, the agreement states that all sublicenses granted by us to our franchisees will continue in full force and effect until the expiration or termination of the applicable franchise agreement. Except as discussed above, no agreements limit our right to use or sublicense the use of the Marks.

You must follow our rules when using the Marks. You cannot use our name or mark as part of a corporate name or with modifying words, designs, or symbols unless you receive our prior written consent. You may not use the Baja Smoothies name relating to the sale of any product or service that we have not authorized.

You must notify us immediately when you learn about an infringing or challenging use of the Marks. We will take the action we think appropriate. We are not required to take any action if we do not feel it is warranted. We

may require your assistance, but you may not control any proceeding or litigation relating to our Marks. You must not directly or indirectly contest our or BSI's right to the Marks.

We will indemnify you against, and reimburse you for: (a) all damages for which you are held liable in any judicial or administrative proceeding arising out of your use of the Marks in strict compliance with the Franchise Agreement and Manual; and (b) all costs you reasonable incur in defending against any such claim brought against you in any proceeding in which you are named as a party. Our indemnification obligation will only apply if you notify us of the claim or proceeding in a timely manner and you are in full compliance with the Franchise Agreement and Manual.

Except as disclosed above, we are not required under the Franchise Agreement to (a) protect your right to use the Marks or protect you against claims of infringement or unfair competition arising out of your use of the Marks; or (b) participate in your defense or indemnify you for expenses or damages you incur if you are a party to an administrative or judicial proceeding involving our marks or if the proceeding is resolved in a manner that is unfavorable to you.

There are currently no: (a) effective material determinations of the Patent and Trademark Office, the Trademark Trial and Appeal Board, the trademark administrator of this state or any court; (b) pending infringements, oppositions or cancellations; or (c) pending material litigation involving any of the Marks. We do not know of any infringing uses that could materially affect your use of the Marks.

ITEM 14 PATENTS, COPYRIGHTS, AND PROPRIETARY INFORMATION

No patents or pending patent applications are material to the franchise.

Although we have not filed an application for copyright registration for the Manual, our website or our marketing materials, we do claim a copyright to these items.

During the term of your Franchise Agreement, we will allow you to use certain confidential and proprietary information (some of which constitute "trade secrets") relating to the development, marketing and operation of a Baja Smoothies Business. Examples include:

- recipes
- methods and techniques
- standards and specifications
- policies and procedures
- supplier lists and information
- marketing strategies
- merchandising strategies
- financial information
- information comprising the System

We will own all operational and customer data relating to your Baja Smoothies Business and you must treat this data as confidential and proprietary. We license you the right to utilize this data during the term of your Franchise Agreement. We consider all information in the Manual to be confidential.

We provide you with access to our confidential information through our Manual, training programs and other periodic support and guidance. You may use this information solely for purposes of developing, marketing and operating your Baja Smoothies Business in compliance with the terms of the Franchise Agreement and Manual. You may not disclose our confidential information to any person (other than your employees on a need to know basis) without our prior permission.

You must promptly notify us if you discover any unauthorized use of our proprietary information. We are not obligated to act, but will respond to this information as we deem appropriate. You may not control any

proceeding or litigation alleging the unauthorized use of our proprietary information. We have no obligation to indemnify you for any expenses or damages arising from any proceeding or litigation involving our proprietary information. There are no infringements known to us at this time.

All ideas, improvements, inventions, marketing materials, and other concepts you develop relating to the operation of your Business will be owned by us.

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

You must designate an owner who will have overall responsibility for the management and operation of your Baja Smoothies Business (the "Managing Owner"). The Managing Owner must:

- be approved by us
- successfully complete all training programs we require
- at all times hold at least a 25% ownership interest in the franchise (or the entity that is the franchisee under the Franchise Agreement) unless we waive this requirement

The Managing Owner is not required to provide onsite management of your Baja Smoothies Business as long as a trained manager is onsite. Any new Managing Owner you appoint must successfully complete our then-current initial training program before becoming involved with the supervision, management or operation of the Business.

You may hire managers to assist the Managing Owner with the onsite management and supervision of your Baja Smoothies Business. Any person you hire as a manager must:

- successfully complete all training programs we require
- sign the Brand Protection Agreement attached to the Franchise Agreement as ATTACHMENT "D"

At all times during normal business hours, either the Managing Owner or a trained manager must be present at your Baja Smoothies Business to provide onsite management and supervision. The Managing Owner must monitor and supervise the activities of each manager to ensure the Baja Smoothies Business is operated in accordance with the Franchise Agreement and the Manual. You may also hire assistant managers who would report to the Managing Owner or your designated manager. We do not require that the manager own any equity interest in the franchise.

All of your employees, agents and representatives who may have access to our confidential information must sign the Confidentiality Agreement attached to the Franchise Agreement as ATTACHMENT "E".

If you are an entity, each owner (i.e., each person holding an ownership interest in you) and the spouse of each owner must sign the Franchise Owner Agreement attached to the Franchise Agreement as ATTACHMENT "B".

ITEM 16 RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL

We must approve all goods and services you sell. You must offer all goods and services we require. You may not sell any goods or services we have disapproved. At any time, we may change the goods and services you sell and you must comply with the change. We may require you to participate in a gift card or other customer loyalty program in accordance with our policies and procedures.

ITEM 17 RENEWAL, TERMINATION, TRANSFER, AND DISPUTE RESOLUTION

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

THE FRANCHISE RELATIONSHIP

PROVISION	SECTIONS IN AGREEMENT	SUMMARY
a. Length of the franchise term	Section 4.1	Term is equal to 10 years.
b. Renewal or extension of the term	Section 4.1 & 4.2	If you meet our conditions for renewal, you can enter into 2 consecutive successor franchise agreements. Each renewal term will be 5 years, for a total maximum term of 20 years. The parties may mutually agree to further renewals but neither party is obligated to do so (subject to state law).
c. Requirements for you to renew or extend	Section 4.1 & 4.2	You must: not be in default; give us timely notice; sign then-current form of franchise agreement and related documents (e.g., Franchise Owner Agreement, Brand Protection Agreement, etc.); sign general release (subject to state law); pay renewal fee; refurbish/update the Baja Smoothies Carts and trailer, and upgrade equipment to current standards. If you renew, you may be required to sign a contract with materially different terms and conditions than the original contract.
d. Termination by you	Section 19.1	You can terminate only if we fail to cure a material default within the cure period.
e. Termination by us without cause	Section 19.4	We can terminate without cause if you and we mutually agree to terminate.
f. Termination by us with cause	Section 19.2 & 19.3	We can terminate if you default.
g. "Cause" defined - curable defaults	Section 19.2 & 19.3	You have 10 days to cure any monetary default. You have 30 days to cure any other default (other than defaults described below under "non-curable defaults").
h. "Cause" defined - non-curable defaults	Section 19.2	The following defaults cannot be cured: failure to successfully complete training; failure to open in timely manner; insolvency, bankruptcy or seizure of assets; abandonment of franchise; failure to maintain required license or permit; conviction of certain types of crimes or subject of certain administrative actions; failure to comply with material law; commission of act that may adversely affect reputation of System or Marks; health or safety hazards; material misrepresentations; 2nd underreporting of any amount due by at least 3%; unauthorized transfers; unauthorized use of our intellectual property; violation of brand protection covenant; breach of Franchise Owner Agreement by owner or spouse; or termination of any other agreement between you and us or an affiliate due to your default.
i. Your obligations on termination/non-renewal	Section 20.1	Obligations include: remove trade dress and alter premises to eliminate any resemblance to a Baja Smoothies Business; cease use of intellectual property; return Manual and branded materials; assign telephone numbers, listings and domain names; cancel fictitious names; and pay amounts due (also see "r", below).
j. Assignment of contract by us	Section 18.1	No restriction on our right to assign.

THE FRANCHISE RELATIONSHIP

PROVISION	SECTIONS IN AGREEMENT	SUMMARY
k. "Transfer" by you – definition	Section 18.2 & <u>Attachment A</u> (definition of "Transfer")	Includes transfer of contract or assets, or ownership change.
l. Our approval of transfer by you	Section 18.2, 18.3 & <u>Attachment A</u> (definition of "Permitted Transfer")	If certain conditions are met, you may transfer to a newly-formed entity owned by you, or in certain instances, to an existing owner, without our approval. We have the right to approve all other transfers but will not unreasonably withhold approval.
m. Conditions for our approval of transfer	Section 18.2	Transferee must: meet our qualifications; successfully complete training (or commit to do so); obtain required licenses and permits; agree in writing to assume all of your obligations under any agreements relating to the Business; and sign then-current form of franchise agreement for remainder of term (or at our option, take assignment of existing franchise agreement). You must: be in compliance with Franchise Agreement; refurbish/update Baja Smoothies Business and upgrade equipment to current standards (or get a commitment from transferee to do so); pay transfer fee; and sign a general release (subject to state law) and subordination agreement. We must notify you that we do not intend to exercise our right of first refusal.
n. Our right of first refusal to acquire your business	Section 18.5	We can match any bona fide, arms-length offer for your business.
o. Our option to purchase your business	Section 18.5	We have the option to purchase your Business at the expiration or termination of the Franchise Agreement.
p. Your death or disability	Section 18.4	Within 180 days, franchise must be assigned by estate to an assignee in compliance with conditions for other transfers. We may designate manager to operate the Business prior to transfer.
q. Non-competition covenants during the term of the franchise	Section 13.2 & 13.3	No involvement in competing business; comply with non-disclosure covenants.
r. Non-competition covenants after the franchise is terminated or expires	Section 13.2, 13.3 & 13.4	No involvement for 2 years in competing business within 5 miles of any Baja Smoothies Franchise; comply with non-disclosure covenants; cease use of intellectual property.
s. Modification of the agreement	Section 23.3 & 23.8	Requires writing signed by both parties (except for unilateral changes to Manual or unilateral reduction of scope of restrictive covenants by us). Other modifications primarily to comply with various states laws.

THE FRANCHISE RELATIONSHIP		
PROVISION	SECTIONS IN AGREEMENT	SUMMARY
t. Integration/merger clause	Section 23.8	<p>Only the terms of the Franchise Agreement and its attachments are binding (subject to state law). Any representations or promises made outside the Disclosure Document and Franchise Agreement may not be enforceable. Nothing in the Franchise Agreement or any related agreements is intended to disclaim any of the representations we made in this Disclosure Document.</p> <p>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.</p>
u. Dispute resolution by arbitration or mediation	Section 21	Subject to state law, all disputes must be mediated or arbitrated before litigation, except for certain disputes involving our intellectual property or compliance with restrictive covenants.
v. Choice of forum	Section 21	Subject to state law, all mediation, arbitration and litigation must take place in county where we maintain our principal place of business at time dispute arises (currently, Washington County, Minnesota).
w. Choice of law	Section 23.1	Subject to state law, the laws of the state where the Baja Smoothies Business is located govern.

ITEM 18 PUBLIC FIGURES

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

ITEM 19 FINANCIAL PERFORMANCE REPRESENTATIONS

The FTC's Franchise Rule permits a franchisor to provide 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 if 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 possible performance at a particular location or under particular circumstances.

We do not make any representations about a franchisee's future financial performance or the past financial performance of company-owned or franchised outlets. 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 the Federal Trade Commission, the appropriate state regulatory agencies, and our management by contacting the franchisor at 5995 Oren Ave. N, Ste. 209-270, Stillwater, MN 55083 or by phone at 651-661-4445.

ITEM 20 OUTLETS AND FRANCHISEE INFORMATION

TABLE 1 - SYSTEM-WIDE OUTLET SUMMARY FOR YEARS 2021 TO 2023				
Outlet Type	Year	Outlets at the Start of the Year	Outlets at the End of the Year	Net Change
Franchised	2021	0	0	0
	2022	0	0	0
	2023	0	0	0
Company-Owned	2021	2	2	2
	2022	2	2	0
	2023	2	2	0
Total Outlets	2021	2	2	0
	2022	2	2	0
	2023	2	2	0

TABLE 2 - TRANSFERS OF OUTLETS FROM FRANCHISEES TO NEW OWNERS (OTHER THAN THE FRANCHISOR) FOR YEARS 2021 TO 2023		
State	Year	Number of Transfers
Total	2021	0
	2022	0
	2023	0

TABLE 3 - STATUS OF FRANCHISED OUTLETS FOR YEARS 2021 TO 2023								
State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations - Other Reasons	Outlets at End of Year
Totals	2021	0	0	0	0	0	0	0
	2022	0	0	0	0	0	0	0
	2023	0	0	0	0	0	0	0

TABLE 4 - STATUS OF COMPANY-OWNED OUTLETS FOR YEARS 2021 TO 2023							
State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired From Franchisee	Outlets Closed	Outlets Sold to Franchisee	Outlets at End of Year
MN	2021	2	0	0	0	0	2
	2022	2	0	0	0	0	2
	2023	2	0	0	0	0	2
Totals	2021	2	0	0	0	0	2
	2022	2	0	0	0	0	2
	2023	2	0	0	0	0	2

TABLE 5 - PROJECTED OPENINGS AS OF DECEMBER 31, 2023

State	Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlets in the Next Fiscal Year	Projected New Company-Owned Outlets in the Next Fiscal Year
Total	0	0	0

Our fiscal year ends on December 31st. A list of all current franchisees is attached to this Disclosure Document as EXHIBIT "E" (Part A), including their names and the addresses and telephone numbers of their outlets as of December 31, 2023. In addition, EXHIBIT "E" (Part B) lists the name, city and state, and the current business telephone number (or, if unknown, the last known home telephone number) of every franchisee who had an outlet terminated, canceled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under the franchise agreement during our most recently completed fiscal year or who has not communicated with us within 10 weeks of the issuance date of this Disclosure Document. **If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.**

During the last 3 fiscal years, no current or former franchisees have signed confidentiality clauses that restrict them from discussing with you their experience as a franchisee in our franchise system.

There are no: (a) trademark-specific franchisee organizations associated with the franchise system being offered that we have created, sponsored or endorsed; or (b) independent franchisee organizations that have asked to be included in this Disclosure Document.

ITEM 21 FINANCIAL STATEMENTS

Audited financial statements of Baja Smoothies Franchise, LLC for the periods ended December 31, 2023 and December 31, 2022 are attached to this Disclosure Document as EXHIBIT "F". Because we have not been in existence for 3 years, we cannot provide all of the financial statements required by the FTC franchise disclosure guidelines.

ITEM 22 CONTRACTS

Attached to this Disclosure Document (or the Franchise Agreement attached to this Disclosure Document) are copies of the following franchise and other contracts or agreements proposed for use or in use in this state:

Exhibits to Disclosure Document

- EXHIBIT "C" Franchise Agreement
- EXHIBIT "G"-1 State Addenda
- EXHIBIT "G"-2 Franchisee Disclosure Questionnaire (may not be used in franchise registration states)
- EXHIBIT "G"-3 General Release

Attachments to Franchise Agreement

- ATTACHMENT "B" Franchise Owner Agreement
- ATTACHMENT "C" ACH Authorization Form
- ATTACHMENT "D" Brand Protection Agreement
- ATTACHMENT "E" Confidentiality Agreement

ITEM 23 RECEIPT

EXHIBIT "I" to this Disclosure Document are detachable receipts. You are to sign both, keep one copy and return the other copy to us.

EXHIBIT "A"

TO DISCLOSURE DOCUMENT

STATE ADMINISTRATORS AND AGENTS FOR SERVICE OF PROCESS

<p><u>CALIFORNIA</u> Commissioner of Financial Protection & Innovation Department of Financial Protection & Innovation 320 West 4th Street, #750 Los Angeles, CA 90013 (213) 576-7500 1-866-275-2677</p> <p><u>HAWAII</u> Commissioner of Securities of the State of Hawaii 335 Merchant Street, Room 203 Honolulu, Hawaii 96813 (808) 586-2722 <u>Agents for Service of Process:</u> Commissioner of Securities of the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division 335 Merchant Street, Room 203 Honolulu, Hawaii 96813 (808) 586-2722</p> <p><u>ILLINOIS</u> Illinois Attorney General Chief, Franchise Division 500 South Second Street Springfield, IL 62706 (217) 782-4465</p> <p><u>INDIANA</u> Secretary of State Securities Division Room E-018 302 West Washington Street Indianapolis, IN 46204 (317) 232-6681</p> <p><u>MARYLAND</u> Office of the Attorney General Securities Division 200 St. Paul Place</p>	<p>Baltimore, Maryland 21202 (410) 576-6360 <u>Agent for Service of Process:</u> Maryland Securities Commissioner 200 St. Paul Place Baltimore, Maryland 21202-2020</p> <p><u>MICHIGAN</u> Franchise Section Consumer Protection Division 525 W. Ottawa Street, G. Mennen Williams Building, 1st Floor Lansing, MI 48913 (517) 335-7567</p> <p><u>MINNESOTA</u> Commissioner of Commerce Director of Registration 85 Seventh Place East, #280 St. Paul, Minnesota 55101-3165 (651) 539-1500</p> <p><u>NEW YORK</u> NYS Department of Law Investor Protection Bureau 28 Liberty Street, 21st Floor New York, NY 10005 Phone: (212) 416-8222 <u>Agents for Service of Process:</u> New York Department of State One Commerce Plaza 99 Washington Avenue, 6th Floor Albany, NY 12231</p> <p><u>NORTH DAKOTA</u> North Dakota Securities Department State Capitol, 5th Floor, Dept 414 600 East Boulevard Avenue Bismarck, North Dakota 58505 (701) 328-4712</p> <p><u>RHODE ISLAND</u> Department of Franchise Regulation 1511 Pontiac Avenue, John O. Pastore Complex, Bldg 69-1 Cranston, Rhode Island 02920 (401) 462-9527</p>	<p><u>SOUTH DAKOTA</u> Department of Labor and Regulation Division of Insurance Securities Regulation 124 S Euclid, 2nd Floor Pierre, South Dakota 57501 (605) 773-3563</p> <p><u>VIRGINIA</u> State Corporation Commission Division of Securities and Retail Franchising 1300 East Main Street, 9th Floor Richmond, Virginia 23219 (804) 371-9051 <u>Agents for Service of Process:</u> Clerk of the State Corporation Commission 1300 East Main Street, 1st Floor Richmond, Virginia 23219</p> <p><u>WASHINGTON</u> Department of Financial Institutions Securities Division 150 Israel Road SW Tumwater, WA 98501 (360) 902-8760 <u>Mailing Address:</u> Department of Financial Institutions Securities Division P.O. Box 9033 Olympia, WA 98507</p> <p><u>WISCONSIN</u> Department of Financial Institutions Division of Securities 201 W Washington Avenue, Suite 500, Madison, WI 53703 (608) 261-9555</p>
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EXHIBIT "B"

TO DISCLOSURE DOCUMENT

FRANCHISOR'S AGENT FOR SERVICE OF PROCESS

Chad Warzeka
5995 Oren Ave. N, Ste. 209-270
Stillwater, MN 55083 USA

In states listed in EXHIBIT "A", the additional agent
for Service of Process is listed in EXHIBIT "A"

EXHIBIT "C"
TO DISCLOSURE DOCUMENT
FRANCHISE AGREEMENT

[See Attached]



BAJA SMOOTHIES FRANCHISE AGREEMENT

FRANCHISEE: _____
DATE: _____

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ATTACHMENTS

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BAJA SMOOTHIES FRANCHISE AGREEMENT

This Baja Smoothies Franchise Agreement (this “Agreement”) is entered into as of _____, 202__ (the “Effective Date”) between Baja Smoothies Franchise, LLC, a Minnesota Limited Liability Company (“we” or “us”) and _____, a(n) _____ (“you”).

1. **DEFINITIONS.** Capitalized terms used in this Agreement are defined either in the body of this Agreement or in ATTACHMENT "F". For capitalized terms that are defined in the body of this Agreement, ATTACHMENT "F" lists the Sections of this Agreement in which such terms are defined.
2. **GRANT OF FRANCHISE.** We hereby grant you a license to own and operate a Baja Smoothies Business (your “Business” or your “Baja Smoothies Business”) using our Intellectual Property solely within the geographic area identified in Part D of ATTACHMENT "A" (your “Territory”). As a franchisee, you will establish and operate a uniquely branded smoothie company selling fresh-fruit smoothies in a mobile environment. For purposes of this Agreement, a “Baja Smoothies Business” refers to any Baja Smoothies Business operated by us, our affiliates, you or other franchisees. We reserve all rights not expressly granted to you.
3. **TERRITORIAL RIGHTS AND LIMITATIONS.** We will grant you a territory (your “Territory”) that includes a population of up to 150,000. Your Territory will be protected. By protected, we mean that we will not develop or operate, or grant a franchise or license to a third party to develop or operate, a Baja Smoothies Business that operates within your Territory during the Term, except as otherwise provided in this Section with respect to Captive Venues and Acquisitions. You may operate a maximum of four Carts within the Territory. We reserve the right to engage in Acquisitions, even if as a result of an Acquisition one or more competitive businesses of the acquired or acquiring company begin using our Intellectual Property (including our Marks) and begin operating within your Territory. We reserve the right to sell, or grant franchises or licenses to third parties to sell, competitive or identical goods or services (including under the Marks) through Alternative Channels of Distribution, irrespective of whether the sales take place in your Territory. At any time during the Term we reserve the right to develop and operate, and license third parties to develop and operate, Baja Smoothies Businesses in Captive Venues that are located within your Territory. In instances where a Baja Smoothies Business operates within a Captive Venue, the boundaries of the entire Captive Venue will comprise your Protected Territory.
4. **TERM AND RENEWAL.**
 - 4.1. **Generally.** The term of this Agreement begins on the Effective Date and expires ten (10) years thereafter (the “Term”). If this Agreement is the initial franchise agreement for your Business, you may enter into a maximum of two (2) successor franchise agreement(s) (each, a “Successor Agreement”) as long as you meet the conditions for renewal specified below. The Successor Agreement shall be the current form of franchise agreement that we use in granting franchises as of the expiration of the Term or renewal term, as applicable. The terms and conditions of the Successor Agreement may vary materially and substantially from the terms and conditions of this Agreement. Upon renewal, we also reserve the right to modify the boundaries of your Territory in accordance with our then-current territory guidelines and criteria. Each renewal term will be five (5) years, for a maximum total term of twenty (20) years. You will have no further right to operate your Business following the expiration of the final renewal term unless both parties mutually agree to further renewals. If this Agreement is a Successor Agreement, the renewal provisions in your original franchise agreement will dictate the length of the Term of this Agreement as well as your remaining renewal rights, if any.
 - 4.2. **Renewal Requirements.** In order to enter into a Successor Agreement, you and the Owners (as applicable) must:
 - (i) notify us in writing of your desire to enter into a Successor Agreement not less than 90 days nor more than 180 days before the expiration of the Term or renewal term, as applicable;
 - (ii) not be in default under this Agreement or any other agreement with us or any affiliate of ours

- at the time you send the renewal notice or the time you sign the Successor Agreement;
- (iii) sign the Successor Agreement and all ancillary documents we require franchisees to sign;
 - (iv) sign a General Release;
 - (v) pay us a renewal fee equal to \$7,000; and
 - (vi) refurbish/update your Baja Smoothies Carts and trailer and upgrade your equipment to comply with our then-current standards and specifications.

If we elect not to renew or offer you the right to renew, we will send you a written notice of non-renewal at least 60 days prior to the expiration date, which shall set forth the basis for our decision not to renew or offer you the right to renew. Our failure to send you a notice of non-renewal at least 60 days prior to the expiration date shall constitute our offer to renew your franchise in accordance with the renewal terms set forth above. If you have any objections to our notice of non-renewal, including any dispute as to the basis for our decision not to renew, you must send us a written notice of objection that sets forth the basis for your objections. Your notice of objection must be sent to us no later than 30 days after you receive our notice of non-renewal. Your failure to send us a written notice of objection during such 30-day period shall constitute your agreement to the non-renewal of your franchise.

- 4.3. Interim Term.** If you do not sign a Successor Agreement after the expiration of the Term and you continue to accept the benefits of this Agreement, then at our option, this Agreement may be treated either as: (a) expired as of the date of the expiration with you then operating without a franchise to do so and in violation of our rights; or (b) continued on a month-to-month basis (the “Interim Term”) until either party provides the other party with 30 days’ prior written notice of the party’s intention to terminate the Interim Term. In the latter case, all of your obligations will remain in full force and effect during the Interim Term as if this Agreement had not expired, and all obligations and restrictions imposed on you upon the expiration or termination of this Agreement will be deemed to take effect upon the termination of the Interim Term.

Except as otherwise permitted by this Section 4, you have no right to continue to operate your Business following the expiration of the Term.

5. TRAINING AND CONFERENCES

- 5.1. Initial Training Program.** The Managing Owner and all of your employees that we specify must attend and successfully complete our initial training program before you open your Business.
- 5.2. Initial Training For New Owners/Managers.** If you hire a new manager or appoint a new Managing Owner after we conduct our pre-opening initial training program, the new manager or Managing Owner, as applicable, must attend and successfully complete our then-current initial training program.
- 5.3. Periodic Training.** We may offer periodic refresher or additional training courses for your Owners and employees. Attendance at these training programs is mandatory.
- 5.4. Additional Training Upon Request.** Upon your written request, we may provide additional assistance or training to you at a mutually convenient time.
- 5.5. Remedial Training.** If we determine you are not operating your Baja Smoothies Business in full compliance with this Agreement and/or the Manual, we may, at our option, require that your Managing Owner and management personnel attend remedial training relevant to your operational deficiencies.
- 5.6. Conferences.** We may hold periodic national or regional conferences to discuss various business issues and operational and general business concerns affecting Baja Smoothies Businesses. Attendance at these conferences is mandatory. We will not require attendance at more than one (1)

conference during any calendar year.

- 5.7. **Training Fees and Expenses.** We will provide our pre-opening initial training program at no additional charge for your Managing Owner and up to two additional individuals. You must pay us a training fee of up to \$200 per person per day for:
- (i) each person that attends our initial training program after you open your Business (such as new Managing Owners or managers);
 - (ii) any person who retakes training after failing a prior attempt;
 - (iii) any remedial training we require based on your operational deficiencies;
 - (iv) each person to whom we provide additional training that you request; and
 - (v) each person who attends any system-wide or additional training we conduct.

If we hold a conference, we may charge you our then-current conference registration fee. If we agree to provide onsite training or assistance, you must also reimburse us for all costs incurred by our representative for meals, travel and lodging. You are responsible for all expenses and costs your trainees incur for training or attending conferences, including wages, travel and living expenses. If you transfer your franchise, we may charge the new franchisee the \$200 training fee (per person per day). All training fees and expense reimbursements are due 10 days after invoicing.

6. OTHER FRANCHISOR ASSISTANCE.

- 6.1. **Manual.** During the Term, we will provide you with access to our confidential Franchise Operations Manual (the “Manual”) in text or electronic form. The Manual will help you establish and operate your Business. The information in the Manual is confidential and proprietary and may not be disclosed to third parties without our prior approval.
- 6.2. **General Guidance.** Based upon periodic inspections of your Baja Smoothies Business or reports you submit to us, we will provide our guidance and recommendations on ways to improve the marketing and/or operation of your Business. We will be available to render advice, discuss problems and offer general guidance to you during normal business hours by telephone, e-mail or similar methods of communication.
- 6.3. **Field Visits.** We have the right, but not the obligation, to conduct periodic field visits for purposes of providing onsite consultation, assistance and guidance pertaining to the operation and management of your Baja Smoothies Business. We may prepare and provide you with a report detailing any problems or concerns observed during the field visit together with required or suggested changes or improvements to address or resolve such problems or concerns. You must implement all required changes or improvements in the time and manner we specify.
- 6.4. **Marketing Assistance.** As further described in Section 10.1 and Section 10.2, we will administer the brand and system development fund during the Term.
- 6.5. **Website.** We will maintain a corporate website for our brand that will include the information about your Business that we deem appropriate. We may modify the content of and/or discontinue the website at any time in our sole discretion.
- 6.6. **Email Addresses.** At no additional charge, we will provide you with one Baja Smoothies email addresses for use with your Business. If you request that we provide you with additional email addresses, we may charge you our then-current fee for each additional email address that you request (this fee would be added to the technology fee described in Section 11.8). You must exclusively use the email address or addresses we provide for all communications with us, customers, suppliers and other persons relating to your Business. You may not use any email address we provide for any purpose unrelated to your Business. We will own the email addresses and accounts but allow you to use them during the Term.

- 6.7. **Purchase Agreements.** We may, but need not, negotiate purchase agreements with suppliers to obtain discounted prices for us and our franchisees. If we succeed in negotiating a purchase agreement, we will arrange for you to be able to purchase the goods directly from the supplier at the discounted prices that we negotiate (subject to any rebates the supplier pays to us). We may also purchase certain items from suppliers in bulk and resell them to you at our cost plus shipping fees and a reasonable markup.
- 6.8. **Product Development.** We may, but need not, create new menu items, merchandise or other products or services for sale at your Baja Smoothies Business. If we develop any of these products, you agree to maintain a reasonable inventory of these items at your Baja Smoothies Business at all times.

7. ESTABLISHING YOUR BUSINESS

- 7.1. **Franchise Premises.** Baja Smoothies Franchises are typically operated out of the franchisee's home but may be operated from office buildings, business parks, and other commercial real estate locations. If you decide to operate your Baja Smoothies Franchise out of an office, you will be solely liable for its compliance with all applicable business ordinances and building codes, and for obtaining all necessary health, building, sign, and other permits, licenses, and bonds, as may be required for the operation of the office.
- 7.2. **Baja Smoothies Carts.** You must purchase the mobile food service carts ("Carts") and trailer from which you may prepare and sell smoothies from us or our affiliate. You will pay the current cost of the Carts in effect at the time of delivery, which may be more than the price at the time of the signing of this Franchise Agreement. The current cost of the Carts is listed in ATTACHMENT "A". You will pay a non-refundable installment when you sign this Franchise Agreement and pay the entire remaining balance in full when you take delivery of your Carts.

You may not utilize any other carts, trailer or vehicle, other than the Carts, in the operation of your Baja Smoothies Franchise and the Carts must only be used for the operation of your Baja Smoothies Franchise and not for any other purpose. You must operate either two or four Carts in the Protected Territory. We may not allow you to purchase any additional Carts if you are in default of this Franchise Agreement or if you have any unpaid amounts due to us or any of our affiliates.

Although all Carts will follow a consistent theme, the details of their design may differ, often based upon local requirements. If modifications to the Carts are necessary to comply with applicable local laws and/or ordinances, or if you request any optional customization or additional features, you may be required to pay a fee to us or our affiliate for the costs and expenses in making the necessary modifications to the Carts. You will also be required to purchase an initial inventory of Baja Smoothies equipment, uniforms, and supplies from us or our affiliates when you purchase the Carts. These payments are non-refundable.

Because you do not have to locate a site from which to operate your Baja Smoothies Business, we do not provide you with assistance in doing so. You may open an office, but it is not required and does not need to be approved by us. You must find a location to store the equipment, which may be at your residence, if permitted. You must use our approved supplier for any wrapping and upfitting of your equipment. Any person who drives in connection with the Baja Smoothies Business must be 18 years of age or older and have a valid driver's license, and your equipment must be properly licensed, registered, and insured. Should your Carts or trailer be subject to a manufacturer's vehicle safety recall, you must immediately notify us in writing and perform the required repairs, maintenance, and/or inspections at your sole cost and expense before using your Carts or trailer in the operation of your Baja Smoothies Business. You acknowledge and agree that we are not responsible for any obligations or costs associated with the operation of the Carts or trailer, including any safety recall of the Carts or trailer.

- 7.3. **Opening.** You must open your Business to the public within 6 months after the Effective Date. We

may grant you an extension of up to 90 days beyond the 6-month deadline. You may not open your Business prior to receipt of a written authorization to open issued by us. We will not issue an authorization to open before:

- (i) the Managing Owner successfully completes our initial training program;
- (ii) you purchase all required insurance and furnish us with evidence of coverage;
- (iii) you obtain all required licenses, permits and other governmental approvals;
- (iv) you obtain the equipment necessary to begin operations.

You must send us a written notice identifying your proposed opening date at least 10 days before opening. BY VIRTUE OF OPENING YOUR BUSINESS, YOU ACKNOWLEDGE THAT WE HAVE FULFILLED ALL OF OUR PRE-OPENING OBLIGATIONS TO YOU.

- 7.4. **Relocation.** You may relocate your Territory with our prior written approval, which we will not unreasonably withhold. If we allow you to relocate, you must: (a) comply with Sections 7.1 through Section 7.3 of this Agreement with respect to your new Baja Smoothies Business (excluding the 6-month opening period); and (b) open your new Baja Smoothies Business and resume operations within 30 days after ceasing operations of your prior Baja Smoothies Business.

8. MANAGEMENT AND STAFFING.

- 8.1. **Owner Participation.** You must designate an Owner who will have overall responsibility for the management and operation of your Baja Smoothies Business (the “Managing Owner”). The Managing Owner must: (a) be approved by us; (b) successfully complete all training programs we require; (c) dedicate commercially reasonable efforts to the Business; (d) provide onsite management and supervision during normal business hours unless you delegate onsite management functions to a designated manager; and (e) at all times hold at least a 25% ownership interest in the franchise (or the entity that is the franchisee under this Agreement) unless we waive this requirement. Any new Managing Owner you appoint must successfully complete our then-current initial training program before becoming involved with the supervision, management or operation of the Business. By signing the Agreement, each Owner agrees to be personally bound by all of its terms, even if the franchisee is an entity.
- 8.2. **Managers.** You may hire a designated manager to assist the Managing Owner with the onsite management and supervision of your Baja Smoothies Business. Any person you hire as a designated manager must: (a) successfully complete all training programs we require; (b) dedicate full-time efforts to the onsite management and supervision of your Baja Smoothies Business; and (c) sign a Brand Protection Agreement. At all times during normal business hours, either the Managing Owner or the designated manager must be present at your Baja Smoothies Business to provide onsite management and supervision. You may also hire assistant managers who would report to the Managing Owner or your designated manager. The Managing Owner must monitor and supervise the activities of the designated manager to ensure the Baja Smoothies Business is operated in accordance with this Agreement and the Manual.
- 8.3. **Employees.** You must determine appropriate staffing levels for your Business to ensure full compliance with this Agreement and our system standards. You may hire, train and supervise employees to assist you with the proper operation of the Business. You must pay all wages, commissions, fringe benefits, worker’s compensation premiums and payroll taxes (and other withholdings required by law) due for your employees. These employees will be employees of yours and not of ours. We do not control the day to day activities of your employees or the manner in which they perform their assigned tasks. You must inform your employees that you exclusively supervise their activities and dictate the manner in which they perform their assigned tasks. In this regard, you must use your legal business entity name (not our Marks or a fictitious name) on all employee applications, paystubs, pay checks, employment agreements, time cards, and similar

items. We also do not control the hiring or firing of your employees. You have sole responsibility and authority for all employment related decisions, including employee selection and promotion, hours worked, rates of pay and other benefits, work assignments, training and working conditions. We will not provide you any advice or guidance on these matters. You must require that your employees review and sign the acknowledgment form we prescribe that explains the nature of the franchise relationship and notifies the employee that you are his or her sole employer. You must also post a conspicuous notice for employees in the back-of-the-house area explaining your franchise relationship with us and that you (and not we) are the employee's sole employer. We may prescribe the form and content of this notice.

8.4. Interim Manager. We have the right, but not the obligation, to designate an individual of our choosing (an "Interim Manager") to manage your Business if either: (a) your Managing Owner ceases to perform the responsibilities of a Managing Owner (whether due to retirement, death, disability, or for any other reason) and you fail to appoint an approved replacement Managing Owner, who has successfully completed all training we require, within 30 days; or (b) you are in material breach. The Interim Manager will cease to manage your Business at such time that you appoint an approved replacement Managing Owner who has completed training or you cure the material breach, as applicable. If we appoint an Interim Manager, you agree to pay us a management fee equal to \$500 per day generated during the period of time that the Interim Manager manages your Business. You must also reimburse us for all travel and living expenses incurred by the Interim Manager. The Interim Manager will have no liability to you except for gross negligence or willful misconduct. We will have no liability to you for the activities of an Interim Manager unless we are grossly negligent in appointing the Interim Manager.

9. FRANCHISEE AS ENTITY. You represent that Part A of ATTACHMENT "A" includes a complete and accurate list of your Owners. Upon our request, you must provide us with a resolution of the Entity authorizing the execution of this Agreement, a copy of the Entity's organizational documents and a current Certificate of Good Standing (or the functional equivalent thereof). You represent that the Entity is duly formed and validly existing under the laws of the state of its formation. All Owners of the Entity (whether direct or indirect) and their spouses must sign a Franchise Owner Agreement, the current form of which is attached as ATTACHMENT "B".

10. ADVERTISING & MARKETING.

10.1. Brand and System Development Fund.

- (a) Administration. We will establish and maintain a brand and system development fund to promote public awareness of our brand and improve our System. We may use the fund to pay for any of the following in our sole discretion:
- (i) developing, maintaining, administering, directing, preparing, or reviewing advertising and marketing materials, promotions and programs;
 - (ii) conducting and administering promotions, contests or giveaways;
 - (iii) improving public awareness of the Marks;
 - (iv) public and consumer relations and publicity;
 - (v) brand development;
 - (vi) sponsorships;
 - (vii) charitable and non-profit donations and events;
 - (viii) research and development of technology, products and services;
 - (ix) website development and search engine optimization;

- (x) development of an ecommerce platform;
- (xi) development and implementation of quality control programs, including the use of mystery shoppers or customer satisfaction surveys;
- (xii) conducting market research;
- (xiii) changes and improvements to the System;
- (xiv) the fees and expenses of any advertising agency we engage to assist in producing or conducting advertising or marketing efforts;
- (xv) collecting and accounting for contributions to the fund;
- (xvi) preparing and distributing financial accountings of the fund;
- (xvii) any other programs or activities we deem appropriate to promote or improve the System; and
- (xviii) direct or indirect labor, administrative, overhead and other expenses incurred by us and/or our affiliates in relation to any of these activities, including salary, benefits and other compensation of any of our (and any of our affiliate's) officers, directors, employees or independent contractors based upon time spent working on any brand fund matters described above.

We have sole discretion in determining the content, concepts, materials, media, endorsements, frequency, placement, location and all other matters pertaining to any of the foregoing marketing or advertising activities. Any surplus of monies in the fund may be invested and we may lend money to the fund if there is a deficit. The fund is not a trust and we have no fiduciary obligations to you with respect to our administration of the fund. A financial accounting of the operations of the fund, including deposits into and disbursements from the fund, will be prepared annually and made available to you upon request. In terms of marketing activities paid for by the fund, we do not ensure that these expenditures in or affecting any geographic area are proportionate or equivalent to the fund contributions by franchisees operating in that geographic area or that any franchisee benefits directly or in proportion to their fund contributions. Once established, we reserve the right to discontinue the fund at any time in our sole discretion upon at least 30 days' prior notice.

- (b) Contributions. On June 1 each year, you must pay us a brand and system development fund fee equal to \$750. We will deposit into the fund: (i) all fund contributions paid by you and other franchisees; and (ii) certain fines paid by you and other franchisees.

10.2. Marketing Assistance From Us. We may create and make available to you advertising and other marketing materials. We may use the brand and system development fund to pay for the creation and distribution of these materials, in which case there will be no additional charge. We may make these materials available over the Internet, in which case you must arrange for printing the materials and paying all printing costs. Alternatively, we may enter into relationships with third-party suppliers who will create the advertising or marketing materials for your purchase. We will provide reasonable marketing consulting, guidance and support throughout the Term on an as-needed basis.

10.3. Your Marketing Activities.

- (a) Generally. In addition to your required contribution to the brand and system development fund, we recommend you spend, on an annual basis, at least \$500 on local advertising to promote your Business after your grand opening period. You must participate at your own expense in all advertising, promotional and marketing programs we require.

- (b) Standards for Advertising. All advertisements and promotions you create or use must be completely factual, conform to the highest standards of ethical advertising and comply with all federal, state and local laws. You must ensure your advertisements and promotional materials do not infringe upon the intellectual property rights of others. You must comply with any minimum advertised pricing policy we establish from time to time. You may not engage in marketing or advertising outside of the territory.
- (c) Social Media. You may advertise and market your Baja Smoothies Business using social media, provided that:
 - (i) you only utilize social media platforms we approve;
 - (ii) you strictly comply with our social media policy (as revised from time to time);
 - (iii) you immediately remove any post we disapprove (even if it complies with our social media policy);
 - (iv) you use any supplier we designate for social media marketing;
 - (v) you provide us with full administrative rights to your social media account; and
 - (vi) we retain ownership of all social media accounts relating to your Baja Smoothies Business.
- (d) Internet and Websites. Without our prior approval, which we may withhold in our sole discretion, you may not:
 - (i) develop, host, create or otherwise maintain a website or other online or digital presence in connection with your Business, including any website bearing our Marks;
 - (ii) conduct digital or online advertising or marketing;
 - (iii) engage in ecommerce; or
 - (iv) utilize social media to conduct advertising or marketing.

11. OPERATING STANDARDS.

11.1. Generally. You agree to operate your Business: (a) in a manner that will promote the goodwill of the Marks; and (b) in full compliance with our standards and all other terms of this Agreement and the Manual.

11.2. Franchise Operations Manual. You agree to establish and operate your Business in accordance with the Manual. The Manual may contain, among other things:

- (i) a description of the authorized goods and services you may provide and sell;
- (ii) specifications, operating procedures and quality standards;
- (iii) reporting and insurance requirements;
- (iv) policies and procedures pertaining to marketing and advertising;
- (v) policies and procedures pertaining to gift card and loyalty programs;
- (vi) policies relating to data ownership, protection, sharing and use; and
- (vii) a list of (a) the goods and services (or specifications for goods and services) you must purchase to develop and operate your Business and (b) any designated or approved suppliers for these goods or services.

The Manual is designed to establish and protect our brand standards and the uniformity and quality

of the goods and services offered by our franchisees. We can modify the Manual at any time. The modifications will become binding at the time we notify you of the modification (subject to any “grace period” we provide to implement the change). All mandatory provisions contained in the Manual (whether they are included now or in the future) are binding on you.

- 11.3. Authorized Goods and Services.** You agree to offer all goods and services we require from time to time in our commercially reasonable discretion. You may not offer any other goods or services without our prior written permission. You may not use your Baja Smoothies Business or permit your Baja Smoothies Business to be used for any purpose other than offering the goods and services we authorize. We may, without obligation to do so, add, modify or delete authorized goods and services, and you must do the same upon notice from us. Our addition, modification or deletion of one or more goods or services shall not constitute a termination of this Agreement.
- 11.4. Pricing.** We will provide you with our suggested retail pricing. You may deviate from our suggested retail pricing in your discretion. To the extent permitted by applicable law, we may set maximum or minimum prices on the goods and services you offer.
- 11.5. Customer Payments.** You must, at your expense, lease or purchase the necessary equipment and/or software and have arrangements in place with Visa, MasterCard, American Express and all other credit card issuers we designate, in order for you to be able to accept such methods of payment from customers. You must accept debit cards, credit cards, stored value cards, and other non-cash systems (including, for example, APPLE PAY and/or GOOGLE WALLET) that we specify. You must acquire and install all necessary hardware and/or software used in connection with these non-cash systems.
- 11.6. Suppliers and Purchasing.** You must purchase or lease all products, supplies, equipment, services and other items specified in the Manual from time to time. If required by the Manual, you must purchase certain goods and services only from suppliers we designate or approve (which may include, or be limited exclusively to, us or our affiliate). Our right to specify the suppliers you may use is necessary so we can control the uniformity and quality of goods and services used, sold or distributed in connection with the development and ongoing operation of Baja Smoothies Businesses, protect our trade secrets, obtain discounted prices for our franchisees if we choose to do so, and protect the reputation and goodwill associated with the System and the Marks. If we receive rebates or other financial consideration from these suppliers based on your purchases, we have no obligation to pass them through to you or use them for any particular purpose. If you want us to approve a supplier you propose, you must send us a written notice specifying the supplier’s name and qualifications and provide any additional information we request. We will approve or reject your request within 30 days after we receive your notice and all additional information (and samples) we require. We shall be deemed to have rejected your request if we fail to issue our approval within the 30-day period. You must reimburse us for all costs and expenses we incur in reviewing a proposed supplier within 10 days after invoicing.
- 11.7. Equipment Maintenance and Changes.** You must maintain your equipment in good condition and promptly replace or repair any equipment that is damaged, worn-out or obsolete. We may require that you change your equipment, which may require you to make additional investments. Our ability to require franchisees to make significant changes to their equipment is critical to our ability to administer and change the System and you agree to comply with any such required change within the time period we reasonably specify.
- 11.8. Technology Systems.**
- (a) Generally. You must acquire and utilize all information and communication technology systems we specify from time to time, including, without limitation, computer systems, point-of-sale system, webcam systems, telecommunications systems, security systems, music systems and similar systems, together with the associated hardware, software (including cloud-based software) and related equipment, software applications, mobile apps,

and third-party services relating to the establishment, use, maintenance, monitoring, security or improvement of these systems (collectively, the “Technology Systems”). The Technology Systems may relate to matters such as purchasing, pricing, accounting, order entry, inventory control, security, information storage, retrieval and transmission, customer information, customer loyalty, marketing, communications, copying, printing and scanning, or any other business purpose we deem appropriate. We may require that you, at your expense, acquire new or substitute Technology Systems, and/or replace, upgrade or update existing Technology Systems, upon reasonable prior notice.

- (b) Use and Access. You must utilize your Technology Systems in accordance with the Manual. You may not load or permit any unauthorized programs or games on your Technology Systems. You must ensure your employees are adequately trained in the use of the Technology Systems. You agree to take all steps necessary to provide us with independent and unlimited access to data collected through your Technology Systems, including your Gross Sales information for purposes of calculating fees owed. Upon request, you must provide us with the user IDs and passwords for your Technology Systems, including upon termination or expiration of this Agreement.
- (c) Disruptions. You are solely responsible for protecting against computer viruses, bugs, power disruptions, communication line disruptions, internet access failures, internet content failures, date-related problems, and attacks by hackers and other unauthorized intruders. Upon our request, you must obtain and maintain cyber insurance and business interruption insurance for technology disruptions.
- (d) Fees and Costs. You are responsible for all fees, costs and expenses associated with acquiring, licensing, utilizing, updating and upgrading the Technology Systems. Certain components of the Technology Systems must be purchased or licensed from third-party suppliers. We and/or our affiliate may develop proprietary software, technology or other components of the Technology Systems that will become part of our System. If this occurs you agree to: (i) pay us (or our affiliate) commercially reasonable licensing, support and maintenance fees; and (ii) upon request, enter into a license agreement with us (or our affiliate) in a form we prescribe governing your use of the proprietary software, technology or other component of the Technology Systems. We may also enter into master agreements with third-party suppliers relating to any components of the Technology Systems and charge you for all amounts we pay to these suppliers based on your use of their software, technology, equipment, or services. The “technology fee” includes all amounts you pay us and/or our affiliates relating to the Technology Systems, including amounts paid for proprietary items and amounts we collect from you and remit to third-party suppliers based on your use of their systems, software, technology or services. The amount of the technology fee may change based on changes to the Technology Systems or prices charged by third-party suppliers with whom we enter into master agreements. The technology fee does not include any amounts you pay directly to third-party suppliers for any component of the Technology Systems. The technology fee is due 10 days after invoicing or as otherwise specified by us from time to time.

11.9. Refurbishing and Maintenance. You must refurbish and make all improvements to your Baja Smoothies Carts and trailer that we reasonably require from time to time to reflect our then-current standards and specifications. We do not require that you spend any specific amount on refurbishing your Baja Smoothies Carts and trailer. However, there is no limitation on the cost of any remodeling that we may require as a condition to you renewing or transferring your franchise. You agree to maintain your Baja Smoothies Business in good order and condition, reasonable wear and tear excepted, and make all necessary repairs, including replacements, renewals and alterations, at your sole expense, to comply with our standards and specifications. You agree to comply with any maintenance, cleaning or facility upkeep schedule we prescribe from time to time.

11.10. Gift Card and Loyalty Programs. We may require that you participate in a gift card or other customer loyalty program in accordance with our policies and procedures. In order to participate, you may be required to purchase and utilize additional equipment, software and/or apps and pay additional fees for use of such equipment, software and/or Apps. If we establish a gift card or loyalty program, we have the right to determine how the proceeds from gift card sales and/or membership fees will be divided or otherwise accounted for, and we may retain the amount of any unredeemed gift cards. You must comply with all policies and procedures we specify regarding customers that purchase a gift card at one Baja Smoothies Business and redeem the card at another Baja Smoothies Business. We may implement new software and/or Apps to monitor sales and allocate payments to the Baja Smoothies Business where goods or services are redeemed (either in whole or on a percentage basis), in which case we may require that the proceeds from gift card sales be deposited into a trust account we control. You must comply with all policies and procedures we specify and we may change these policies and procedures at any time.

11.11. Customer Complaints. If you receive a customer complaint, you must follow the complaint resolution process that we specify to protect the goodwill associated with the Marks.

11.12. Quality Assurance Programs. For quality control purposes, we may (a) periodically inspect your Baja Smoothies Business in accordance with Section 6.3 or Section 15.1; and/or (b) engage the services of a “mystery shopper” or quality assurance firm to inspect your Baja Smoothies Business. Baja Smoothies Business inspections may address a variety of issues, including customer service, food safety, sanitation, inventory rotation, etc. You must fully cooperate with all inspections. If we engage a mystery shopper or quality assurance firm, we may require that you directly pay the mystery shopper or firm for the cost of the inspection. Alternatively, we may be invoiced by the mystery shopper or firm and require you to reimburse us for your proportionate share of the total fee based on the number of open Baja Smoothies Businesses owned by you as compared to the total number of all open Baja Smoothies Businesses at the time of the program (including those owned by us or our affiliate). You agree to pay us this fee within 10 days after invoicing. We may implement a scoring system pursuant to which each Baja Smoothies Business receives a “grade” or “score” based on the results of the inspection. Your failure to achieve a passing grade or score constitutes a default under this Agreement. You must take all actions we specify within the period of time we prescribe in order to rectify any non-compliance issues revealed during an inspection.]]]

11.13. Failure to Comply with Standards. You acknowledge the importance of every one of our standards and operating procedures to the reputation and integrity of the System and the goodwill associated with the Marks. If we notify you of a failure to comply with our standards or operating procedures (including, without limitation, failure to provide required reports in a timely manner) and you fail to correct the non-compliance within the period of time we require, then, in addition to any other remedies available to us under this Agreement, we may impose a fine of up to \$1,000 per occurrence. We may impose an additional fine for every 48 hours the same non-compliance issue remains uncured following our imposition of the initial fine. In addition, if you infringe on another Baja Smoothies franchisee’s Protected Territory, we may impose a fine of up to \$1,000 per violation, which is payable to the brand and system development fund.

12. FEES

12.1. Initial Franchise Fee. You agree to pay us a \$29,900 initial franchise fee in one lump sum at the time you sign this Agreement. The initial franchise fee is fully earned by us and non-refundable once this Agreement has been signed.

12.2. Annual Fee. On June 1 of each year, you agree to pay us an annual fee equal to \$2,995 for a 2-Cart Franchise or \$3,995 for a 4-Cart Franchise. The annual fee is payable beginning the first calendar year in which you take delivery of the Carts, regardless the date.

12.3. Other Fees and Payments. You agree to pay all other fees, expense reimbursements and other amounts specified in this Agreement in a timely manner as if fully set forth in this Section 12. You

also agree to promptly pay us an amount equal to all taxes levied or assessed against us based upon goods or services you sell or goods or services we furnish to you (other than income taxes we pay based on amounts you pay us under this Agreement).

12.4. Late Fee. If any sums due under this Agreement have not been received by us when due (or there are insufficient funds in your Account to cover any sums owed to us when due) then, in addition to those sums, you must pay us a late fee of \$100 plus default interest on the amounts past due at the rate equal to the lesser of 18% per annum (pro-rated on a daily basis), or the highest rate permitted by applicable law. If no due date has been specified by us, interest begins to run 10 days after we bill you. We will not impose a late fee for any amounts paid pursuant to Section 12.5 if, but only to the extent, sufficient funds were available in your Account to be applied towards the payments at the time the payments became due. However, we may impose a late fee for any amounts we are unable to reasonably determine due to your failure to furnish us with a report required by Section 14.3 within the required period of time or record sales in a timely manner, in which case we may assess a late fee on the entire amount that was due. This Section 12.4 shall not constitute our agreement to accept payments after their due date or to extend credit to you.

12.5. Method of Payment. Before opening you must send us a completed and fully executed ACH Agreement. We will electronically debit the banking account you designate (the "Account") for all amounts owed to us and our affiliates (other than the initial franchise fee) on the applicable due date. You must sign any other documents required by us or your bank to enable us to debit your Account for amounts owed. You must ensure sufficient funds are available for withdrawal before each payment due date. If there are insufficient funds in your Account, any excess amounts you owe will be payable upon demand, together with any late charge imposed pursuant to Section 12.4. We may also impose a \$50 NSF fee for each instance where either (a) there are insufficient funds in your Account to cover amounts owed or (b) a check you issue to us is returned due to insufficient funds.

13. BRAND PROTECTION COVENANTS.

13.1. Reason for Covenants. You acknowledge the Intellectual Property and the training and assistance we provide would not be acquired except through implementation of this Agreement. You also acknowledge that competition by you, the Owners or persons associated with you or the Owners (including family members) could seriously jeopardize the entire franchise system because you and the Owners have received an advantage through knowledge of our day-to-day operations and Know-how related to the System. Accordingly, you and the Owners agree to comply with the covenants described in this Section to protect the Intellectual Property and our franchise system.

13.2. Our Know-how. You and the Owners agree to:

- (i) refrain from using the Know-how in any business or capacity other than the operation of your Baja Smoothies Business pursuant to this Agreement;
- (ii) maintain the confidentiality of the Know-how at all times;
- (iii) take all reasonable steps we require to prevent unauthorized use or disclosure of Know-how;
- (iv) refrain from making unauthorized copies of documents containing any Know-how; and
- (v) stop using the Know-how immediately upon the expiration, termination or Transfer of this Agreement (and any Owner who ceases to be an Owner before the expiration, termination or Transfer of this Agreement must stop using the Know-how immediately at the time he or she ceases to be an Owner).

13.3. Unfair Competition During Term. You and your Owners agree not to unfairly compete with us during the Term by engaging in any of the following activities ("Prohibited Activities"): (a) owning, operating or having any other interest (as an owner, partner, director, officer, employee, manager, consultant, shareholder, creditor, representative, agent or in any similar capacity) in any

Competitive Business, other than owning an interest of five percent (5%) or less in a publicly traded company that is a Competitive Business; (b) diverting or attempting to divert any business from us (or one of our affiliates or franchisees); or (c) inducing any customer of ours (or of one of our affiliates or franchisees) to transfer their business to a competitor.

- 13.4. Unfair Competition After Term.** You and your Owners agree not to engage in any Prohibited Activities during the Post-Term Restricted Period, other than having an interest in a Competitive Business that is not located within, and does not provide competitive goods or services to customers who are located within, the Restricted Territory. If you or an Owner engages in a Prohibited Activity during the Post-Term Restricted Period (other than having an interest in a Competitive Business permitted by this Section), then the Post-Term Restricted Period applicable to you or the non-compliant Owner, as applicable, shall be extended by the period of time during which you or the non-compliant Owner, as applicable, engaged in the Prohibited Activity.
- 13.5. Family Members.** The Owners acknowledge they could circumvent the purpose of Section 13 by disclosing Know-how to an immediate family member (i.e., spouse, parent, sibling, child, or grandchild). The Owners also acknowledge it would be difficult for us to prove whether they disclosed the Know-how to family members. Therefore, each Owner agrees that he or she will be presumed to have violated the terms of Section 13 if any member of his or her immediate family engages in any Prohibited Activities during the Term or Post-Term Restricted Period or uses or discloses the Know-how. However, the Owner may rebut this presumption by furnishing evidence conclusively showing the Owner did not disclose Know-how to the family member.
- 13.6. Employees and Others Associated with You.** You must ensure all of your employees, officers, directors, partners, members, independent contractors and other persons associated with you or your Business who may have access to our Know-how, and who are not required to sign a Brand Protection Agreement, sign and send us a Confidentiality Agreement before having access to our Know-how. You must use your best efforts to ensure these individuals comply with the terms of the Brand Protection Agreements and Confidentiality Agreements, as applicable, and you must immediately notify us of any breach that comes to your attention. You agree to reimburse us for all reasonable expenses we incur in enforcing a Brand Protection Agreement or Confidentiality Agreement, as applicable, including reasonable attorneys' fees and court costs.
- 13.7. Covenants Reasonable.** You and the Owners acknowledge and agree that: (a) the terms of this Agreement are reasonable both in time and in scope of geographic area; (b) our use and enforcement of covenants similar to those described above with respect to other franchisees benefits you and the Owners in that it prevents others from unfairly competing with your Baja Smoothies Business; and (c) you and the Owners have sufficient resources, business experience and opportunities to earn an adequate living while complying with the terms of this Agreement. **YOU AND THE OWNERS HEREBY WAIVE ANY RIGHT TO CHALLENGE THE TERMS OF THIS SECTION 13 AS BEING OVERLY BROAD, UNREASONABLE OR OTHERWISE UNENFORCEABLE.**
- 13.8. Breach of Covenants.** You and the Owners agree that failure to comply with the terms of this Section 13 is likely to cause substantial and irreparable damage to us and/or other franchisees for which there is no adequate remedy at law. Therefore, you and the Owners agree that any violation of Section 13 will entitle us to injunctive relief. We may apply for such injunctive relief, without bond, but upon due notice, in addition to any other relief available at equity or law, and your sole remedy in the event of the entry of such injunction will be the dissolution of such injunction, if warranted, upon hearing duly held (all claims for damages by reason of the wrongful issuance of any such injunction being expressly waived hereby). If a court requires the filing of a bond notwithstanding the preceding sentence, the parties agree the amount of the bond shall not exceed \$1,000. None of the remedies available to us under this Agreement are exclusive of any other, but may be combined with others under this Agreement, or at law or in equity, including injunctive relief, specific performance and recovery of monetary damages. Any claim, defense or cause of action you or an Owner may have against us, regardless of cause or origin, cannot be used as a defense against our enforcement of this Section 13.

14. YOUR OTHER RESPONSIBILITIES

14.1. **Insurance.** For your protection and ours, you agree to maintain the following insurance policies:

- (i) “all risk” property insurance coverage on all assets, including inventory, furniture, fixtures, equipment, supplies and other property used in the operation of your Business, which must include coverage for fire, vandalism and malicious mischief and have coverage limits of at least full replacement cost;
- (ii) comprehensive general liability insurance against claims for bodily and personal injury, death and property damage caused by or occurring in conjunction with the operation of your Business, containing minimum liability protection of \$1,000,000 combined single limit per occurrence, and \$2,000,000 in the aggregate;
- (iii) theft and dishonesty insurance containing minimum liability protection of \$1,000,000 combined single limit per occurrence and \$2,000,000 in the aggregate;
- (iv) umbrella insurance containing minimum liability protection of \$1,000,000 combined single limit per occurrence and \$2,000,000 in the aggregate;
- (v) business interruption insurance providing coverage for 100% of all expenses and financial obligations for a minimum period of 6 months;
- (vi) automobile liability and property damage insurance covering all loss, liability, claim or expense of any kind whatsoever resulting from the use, operation, or maintenance of any automobiles or motor vehicles, owned, leased, or used by you, or your officers, directors, employees, partners or agents, in the operation of your Business, containing minimum liability protection of \$1,000,000 combined single limit per occurrence, and \$2,000,000 in the aggregate;
- (vii) employer’s liability insurance, containing minimum liability protection of \$500,000 per occurrence and \$1,000,000 in the aggregate;
- (viii) worker’s compensation insurance and employer’s liability insurance as required by law;
- (ix) any insurance required under your lease or by law; and
- (x) any other insurance we specify in the Manual from time to time.

You agree to provide us with proof of coverage prior to opening, within 10 days of any renewal of a policy, and at any other time on demand. You agree to obtain these insurance policies from insurance carriers that are rated A or better by Alfred M. Best & Company, Inc. and that are licensed and admitted in the state in which you operate your Business. All insurance policies must endorsed to: (a) name us (and our members, officers, directors, and employees) as additional insureds; (b) contain a waiver by the insurance carrier of all subrogation rights against us; and (c) provide that we receive 10 days prior written notice of the termination, expiration, cancellation or modification of the policy. If any of your policies fail to meet this criteria, we may disapprove the policy and you must immediately find additional coverage with an alternative carrier satisfactory to us. Upon 10 days’ notice to you, we may increase the minimum liability coverage amount of any policy and/or require different or additional types of insurance, including excess liability (umbrella) insurance, to reflect inflation, identification of special risks, changes in law or standards or liability, higher damage awards or other relevant changes in circumstances. If you fail to maintain any required insurance coverage, we have the right to obtain the coverage on your behalf (which right shall be at our option and in addition to our other rights and remedies in this Agreement), and you must promptly sign all applications and other forms and instruments required to obtain the insurance and pay to us, within 10 days after invoicing, all costs and premiums we incur.

14.2. **Books and Records.** You must prepare complete and accurate books, records, accounts and tax returns pertaining to your Business and keep copies for at least five (5) years after their preparation.

You must send us copies of your books and records within seven (7) days of our request.

- 14.3. Reports.** No later than June 1, you must prepare and send us annual statements of your Gross Sales for the prior year. You also agree to prepare all other reports we require in the form and manner we specify. You agree to send us a copy of any report required by this Section upon request. If you miscalculate Gross Sales, you must notify us of the error no later than the end of the next Gross Sales reporting period. If we require that you purchase a computer and/or automated cash management system that allows us to electronically retrieve information concerning your sales transactions, we will have the right to electronically poll your computer and/or automated cash management system to retrieve and compile information regarding the operation of your Business.
- 14.4. Financial Statements.** Within 90 days after the end of each calendar year, you must prepare a balance sheet for your Business (as of the end of the calendar year) and an annual statement of profit and loss and source and application of funds. All financial statements must be: (a) verified and signed by you certifying to us that the information is true, complete, and accurate; (b) prepared on an accrual basis in compliance with Generally Accepted Accounting Principles; and (c) submitted in any format we reasonably require. We may require that your financial statements be reviewed or audited by a certified public accountant, although we will not impose this requirement unless you submit materially inaccurate financial statements to us on a prior occasion. You must send us a copy of any financial statement required by this Section upon request. You authorize us to disclose your financial and operating data to prospective franchisees, regulatory agencies and others at our discretion, provided the disclosure is not prohibited by applicable law.
- 14.5. Legal Compliance.** You must secure and maintain in force all required licenses, permits and regulatory approvals for the operation of your Baja Smoothies Business and operate your Baja Smoothies Business in full compliance with all applicable laws, ordinances, rules and regulations. You must notify us in writing within two (2) business days of the beginning of any action, suit, investigation or proceeding, or of the issuance of any order, writ, injunction, disciplinary action, award or decree of any court, agency or other governmental instrumentality, which may adversely affect the operation of your Baja Smoothies Business or your financial condition. You must immediately send us a copy of any inspection report, warning, certificate or rating from a governmental agency alleging a violation of any health or safety law, rule or regulation.
- 14.6. Ownership and Protection of Data.** We will exclusively own all data pertaining to your customers and business operations, whether collected by you, us or a third-party engaged by you or us. We hereby grant you a license to utilize such data solely for purposes of operating your Business in compliance with this Agreement. You must protect all customer data with a level of control proportionate to the sensitivity of data. You must adhere to applicable privacy laws with respect to data, which if compromised, could have a negative impact on our image or consumer confidence. You agree: (a) to comply with all applicable data protection laws as well as our data processing and data privacy policies as set forth in the Manual from time to time; and (b) upon our request, to sign any data processing and/or data privacy agreement required by any applicable data protection law or otherwise required by us (including, but not limited to, any Joint Controllers Data Processing Agreement). You further agree to:
- (i) obtain, maintain and adhere to all applicable compliance standards established by PCI-DSS;
 - (ii) establish appropriate administrative, technical and physical controls consistent with law and PCI-DSS to preserve the security and confidentiality of any credit card information, in any form whatsoever, that it stores, processes, transmits, or comes in contact with;
 - (iii) promptly notify us if you suspect that there is, or has been, a security breach or potential compromise of any such credit card information;
 - (iv) provide us with updates regarding the status of PCI-DSS, which update may be through a completed PCI AOC (Attestation of Compliance), PCI-DSS SAQ (Self-Assessment Questionnaire) or other method mutually agreed; and

- (v) promptly notify us of any noncompliance PCI-DSS requirements to discuss your remediation efforts and timeline.

15. INSPECTION AND AUDIT

15.1. Inspections. For quality control purposes and to ensure compliance with this Agreement, we (or our representative) may evaluate your operations and inspect or examine your books, records, accounts and tax returns. We will determine the scope of the inspection, which may include, among other things:

- (i) examining and copying your books, records, accounts and tax returns;
- (ii) accessing your computer system and retrieving data (you hereby agree to provide us with access upon request);
- (iii) inspecting and testing your equipment;
- (iv) monitoring and speaking with your staff;
- (v) sampling and testing your menu items;
- (vi) removing samples of your menu items and other inventory items for testing purposes;
- (vii) evaluating the physical condition of your Baja Smoothies Business for cleanliness, sanitation and state of repair; and
- (viii) contacting your customers.

We may conduct the inspection at any time and without prior notice. During the inspection, we (or our representative) will use reasonable efforts to minimize any interference with the operation of your Baja Smoothies Business. You and your employees must cooperate and not interfere with the inspection. You consent to us accessing your computer system and retrieving any data we deem appropriate in connection with the inspection. We will bear the cost of any inspection other than an inspection conducted by us in order to determine whether you have remedied: (a) any health or safety issue identified by a government agency; or (b) any breach of our system standards that we bring to your attention. You must reimburse us for all costs we incur in conducting an inspection to determine if you have remedied a health or safety issue identified by a government agency or a breach of our system standards that we bring to your attention.

15.2. Audit. We may audit your books and financial records at any time. You must fully cooperate with us and any third parties we hire to conduct the audit. If an audit reveals an understatement of any amount owed to us, you must immediately pay us all additional fees you owe together with any late fee imposed pursuant to Section 12.4. Each audit will be performed at our cost unless the audit is required due to your failure to provide information we request, preserve records or file reports as required by this Agreement, in which case you must reimburse us for the cost of the audit, including all reasonable accounting and attorneys' fees and travel and lodging expenses that we or our representatives incur. The audit cost reimbursements will be due 10 days after invoicing. We shall not be deemed to have waived our right to terminate this Agreement by accepting reimbursements of our audit costs.

16. INTELLECTUAL PROPERTY

16.1. Ownership and Use of Intellectual Property. You acknowledge that: (a) we (or our affiliate) is the sole and exclusive owner of the Intellectual Property and the goodwill associated with the Marks; (b) your right to use the Intellectual Property is derived solely from this Agreement; and (c) your right to use the Intellectual Property is limited to a license granted by us to operate your Baja Smoothies Business during the Term pursuant to, and only in compliance with, this Agreement, the Manual, and all applicable standards, specifications and operating procedures we prescribe from time to time. You may not use the Intellectual Property in connection with the sale

of any unauthorized product or service or in any other manner not expressly authorized by us. Any unauthorized use of the Intellectual Property constitutes an infringement of our rights. You agree to comply with all provisions of the Manual governing your use of the Intellectual Property. This Agreement does not confer to you any goodwill, title or interest in any of the Intellectual Property.

- 16.2. Changes to Intellectual Property.** We have the right to modify the Intellectual Property at any time in our sole discretion, including by changing the Marks, the System, the Copyrighted Materials or the Know-how. If we modify or discontinue use of any Intellectual Property, you must comply with any such instructions from us within 30 days. If we require you to change the Marks, our sole obligation will be to reimburse you for your reasonable documented expenses of compliance, including changing signage, brochures, stationary, etc. You waive all other claims arising from or relating to any change, modification, substitution or discontinuation of the Intellectual Property. Except for the reimbursement obligation listed in this Section, we will not be liable to you for any expenses, losses or damages you incur (including the loss of any goodwill associated with a Mark) because of any addition, modification, substitution or discontinuation of the Intellectual Property.
- 16.3. Use of Marks.** You agree to use the Marks as the sole identification of your Baja Smoothies Business; provided, however that you must identify yourself as the independent owner of your Business in the manner we prescribe. You may not use the Marks in any modified form or as part of a corporate or trade name or with any prefix, suffix, or other modifying words, designs or symbols (other than logos licensed to you by this Agreement). You agree to: (a) prominently display the Marks in the manner we prescribe on or in connection with any advertising, promotional materials, posters, displays, receipts, stationery and forms we designate to give notice of trade and service mark registrations and copyrights; and (b) obtain any fictitious or assumed name registrations required by applicable law. You may not use the Marks in signing any contract, lease, check, negotiable instrument or other agreement or in any manner likely to confuse or result in liability to us for any indebtedness or obligation of yours.
- 16.4. Use of Know-how.** We will disclose the Know-how to you in the initial training program, the Manual, and in other guidance furnished to you during the Term. You will not acquire any interest in the Know-how other than the right to utilize it in strict accordance with the terms of this Agreement. You acknowledge the Know-how is proprietary and is disclosed to you solely for use in the development and operation of your Business during the Term.
- 16.5. Improvements.** If you conceive of or develop any improvements or additions to the method of operation, techniques, procedures, advertising, marketing, products or services offered or utilized by a Baja Smoothies Business (collectively, "Improvements"), you agree to promptly and fully disclose the Improvements to us without disclosure to others. You must obtain our approval prior to using any such Improvements. Any Improvement we approve may be used by us and any third parties we authorize to operate a Baja Smoothies Business, without any obligation to pay you royalties or other fees. You must assign to us or our designee, without charge, all rights to any such Improvement, including the right to grant sublicenses. In return, we will authorize you to use any Improvements we or other franchisees develop that we authorize for general use in connection with the operation of a Baja Smoothies Business.
- 16.6. Notification of Infringements and Claims.** You must immediately notify us of any: (a) apparent infringement of the Intellectual Property; (b) challenge to your use of the Intellectual Property; or (c) claim by any person of any rights in the Intellectual Property. You may not communicate with any person other than us and our counsel in connection with any such infringement, challenge or claim. We will have sole discretion to take such action as we deem appropriate. We have the right to exclusively control any litigation, Patent and Trademark Office proceeding, or other proceeding arising out of any such infringement, challenge or claim. You agree to execute all documents, render all assistance, and perform all acts that may, in the opinion of our counsel, be necessary or advisable to protect or maintain our interest in any such litigation or proceeding and/or protect our rights to the Intellectual Property.

17. **INDEMNITY.** You agree to indemnify the Indemnified Parties and hold them harmless for, from and against any and all Losses and Expenses incurred by any of them as a result of or in connection with any of the following:

- (i) the marketing, use or operation of your Business;
- (ii) the breach of this Agreement or any related agreement by you or any of your Owners or affiliates;
- (iii) any Claim relating to taxes or penalties assessed by any governmental entity against us that are directly related to your failure to pay or perform functions required of you under this Agreement;
- (iv) any labor, employment or similar type of Claim pertaining to your employees, including claims alleging we are a joint employer of your employees;
- (v) any actions, investigations, rulings or proceedings conducted by any state or federal agency relating to your employees, including, without limitation, the United States Department of Labor, the Equal Employment Opportunity Commission and the National Labor Relations Board; and
- (vi) any labor, employment or similar type of Claim pertaining to our relationship with you or your Owners, including claims alleging we are an employer of you and/or any of your Owners.

You and your Owners must notify us of any action, suit, proceeding, claim, demand, inquiry or investigation described above. The Indemnified Parties shall have the right, in their sole discretion to: (a) retain counsel of their choosing to represent them with respect to any Claim; and (b) control the response thereto and the defense thereof, including the right to enter into an agreement to settle the Claim. You may participate in such defense at your expense. You must fully cooperate and assist the Indemnified Parties with the defense of any such Claim. You must reimburse the Indemnified Parties for all of their costs and expenses in defending any such Claim, including court costs and reasonable attorneys' fees, within 10 days of receipt of each invoice enumerating such costs, expenses and attorneys' fees.

Provided that you are not in default under this Agreement or any other agreement with us, we will indemnify you and your Owners and hold them harmless for, from and against any and all Losses and Expenses incurred by any of them as a result of or in connection with any Claim asserted against you and/or your Owners based upon the violation of any third party's intellectual property rights caused by your use of our Marks in strict compliance with the terms of this Agreement and the Manual. You must promptly notify us of any such Claim and fully cooperate with us in the defense of such Claim.

18. TRANSFERS

18.1. **By Us.** This Agreement is fully assignable by us (without prior notice to you) and shall inure to the benefit of any assignee(s) or other legal successor(s) to our interest in this Agreement, provided that we shall, subsequent to any such assignment, remain liable for any obligations incurred by us prior to the effective date of the assignment. We may also delegate some or all of our obligations under this Agreement to one or more persons without assigning the Agreement.

18.2. **By You.** The rights and duties created by this Agreement are personal to you and the Owners. We have granted the franchise in reliance upon the individual or collective character, skill, aptitude, attitude, business ability and financial capacity of you and your Owners. Because this Agreement is a personal services contract, neither you nor any Owner may engage in a Transfer (other than a Permitted Transfer) without our prior written approval. Any Transfer (other than a Permitted Transfer) without our approval shall be void and constitute a breach of this Agreement. We will not unreasonably withhold our approval of a Transfer if all of the following conditions are satisfied:

- (i) the proposed transferee is, in our opinion, an individual or group of individuals of good moral character who have sufficient business experience, aptitude and financial resources to own and operate a Baja Smoothies Business and otherwise meet our then-applicable standards for franchisees;
- (ii) you and your Owners are in full compliance with the terms of this Agreement and all other

agreements with us and our affiliates;

- (iii) all of the transferee's owners have successfully completed, or made arrangements to attend, the initial training program (and the transferee has paid us any applicable training fee);
- (iv) the transferee and its owners, to the extent necessary, have obtained all licenses and permits required by applicable law to own and operate the Business;
- (v) the transferee signs an agreement, in a form satisfactory to us, agreeing to discharge and guaranty all of your obligations under this Agreement and any other agreement relating to the Business, including, without limitation, supplier contracts;
- (vi) the transferee and its owners sign our then-current form of franchise agreement (unless we, in our sole discretion, instruct you to assign this Agreement to the transferee), except that: (a) the Term and renewal term(s) shall be the Term and renewal term(s) remaining under this Agreement; and (b) the transferee need not pay a separate initial franchise fee;
- (vii) you refurbish/update your Baja Smoothies Carts and trailer and upgrade your equipment to comply with our then-current standards and specifications (or you obtain a commitment from the transferee to do so within the period of time we approve);
- (viii) you or the transferee pay us a \$7,500 transfer fee to defray expenses we incur in connection with the Transfer (if the transferee is found by a broker we engage, you must also reimburse us for all commissions we pay to the broker, which amount shall be in addition to the transfer fee);
- (ix) you and your Owners sign a General Release of all claims arising before or contemporaneously with the Transfer;
- (x) you enter into an agreement with us to subordinate the transferee's obligations to you to the transferee's financial obligations owed to us pursuant to the franchise agreement;
- (xi) we do not elect to exercise our right of first refusal described in Section 18.5; and
- (xii) you or the transferring Owner, as applicable, and the transferee have satisfied any other conditions we reasonably require as a condition to our approval of the Transfer.

Our consent to a Transfer shall not constitute a waiver of any claims we may have against the transferor, nor shall it be deemed a waiver of our right to demand exact compliance with any of the terms or conditions of the franchise agreement by the transferee.

18.3. Permitted Transfers. You may engage in a Permitted Transfer without our prior approval, but you must: (a) give us at least 10 days' prior written notice; and (b) upon our request, cause any Entity that was originally the franchisee under this Agreement to sign a corporate guarantee in the format we require in order to secure the performance of the new franchisee Entity's financial obligations under this Agreement and all related agreements. You and the Owners (and the transferee) must sign all documents we reasonably require to effectuate and document the Permitted Transfer. You must reimburse our actual costs, including legal fees, for any Permitted Transfer.

18.4. Death or Disability of an Owner. Within 180 days after the death or permanent disability of an Owner, the Owner's ownership interest in you or the franchise, as applicable, must be assigned to another Owner or to a third party we approve. Any assignment to a third party will be subject to all of the terms and conditions of Section 18.2 unless the assignment qualifies as a Permitted Transfer. For purposes of this Section, an Owner is deemed to have a "permanent disability" only if the person has a medical or mental problem preventing the person from substantially complying with his or her obligations under this Agreement or otherwise operating the Business in the manner required by this Agreement and the Manual for a continuous period of at least three (3) months.

18.5. Our Right of First Refusal. If you or an Owner desires to engage in a Transfer, you or the Owner,

as applicable, must obtain a bona fide, signed written offer from the fully disclosed purchaser and submit an exact copy of the offer to us. We will have 30 days after receipt of the offer to decide whether to purchase the interest in your Business or the ownership interest in you for the same price and upon the same terms contained in the offer (however, we may substitute cash for any form of payment proposed in the offer). If we notify you within the 30-day period that we intend to purchase the interest, you or the Owner, as applicable, must sell the interest to us. We will have an additional 30 days to prepare for closing. We will be entitled to receive from you or the Owner, as applicable, all customary representations and warranties given by you (as the seller of the assets) or the Owner (as the seller of the ownership interest) or, at our election, the representations and warranties contained in the offer. If we do not exercise our right of first refusal, you or the Owner, as applicable, may complete the Transfer to the purchaser pursuant to the terms of the offer, subject to the requirements of Section 18.2 (including our approval of the transferee). However, if the sale is not completed within 120 days after delivery of the offer to us, or there is a material change in the terms of the sale, we will again have the right of first refusal specified in this Section. Our right of first refusal shall not apply to a Permitted Transfer.

19. TERMINATION

19.1. By You. You may terminate this Agreement if we materially breach this Agreement and fail to cure the breach within 90 days after you send us a written notice specifying the nature of the breach. If you terminate this Agreement, you must still comply with your post-termination obligations described in Section 20 and all other obligations that survive the expiration or termination of this Agreement.

19.2. Termination By Us Without Cure Period. We may, in our sole discretion, terminate this Agreement upon five (5) days' written notice, without opportunity to cure, for any of the following reasons, all of which constitute material events of default under this Agreement:

- (i) if you become insolvent by reason of your inability to pay your debts as they become due or you file a voluntary petition in bankruptcy or any pleading seeking any reorganization, liquidation, dissolution or composition or other settlement with creditors under any law, or are the subject of an involuntary bankruptcy (which may or may not be enforceable under the Bankruptcy Act of 1978);
- (ii) if your Business, or a substantial portion of the assets associated with your Business, are seized, taken over or foreclosed by a government official in the exercise of his or her duties, or seized, taken over or foreclosed by a creditor, lienholder or lessor; or a final judgment against you remains unsatisfied for 30 days (unless a supersedes or other appeal bond has been filed); or a levy of execution has been made upon the license granted by this Agreement or upon any property used in your Business, and it is not discharged within five (5) days of the levy;
- (iii) if the Managing Owner fails to satisfactorily complete the initial training program in the manner required by Section 5.1;
- (iv) if you fail to open your Business within the time period required by Section 7.3;
- (v) if you abandon or fail to operate your Baja Smoothies Business for three (3) consecutive business days, unless the failure is due to an event of force majeure or another reason we approve;
- (vi) if a regulatory authority suspends or revokes a license or permit held by you or an Owner that is required to operate the Baja Smoothies Business, even if you or the Owner still maintain appeal rights;
- (vii) if you or an Owner (a) is convicted of or pleads no contest to a felony, a crime involving moral turpitude or any other material crime or (b) is subject to any material administrative

disciplinary action or (c) fails to comply with any material federal, state or local law or regulation applicable to your Business;

- (viii) if you or an Owner commits an act that can reasonably be expected to materially and adversely affect the reputation of the System or the goodwill associated with the Marks;
- (ix) if you manage or operate your Baja Smoothies Business in a manner that presents a health or safety hazard to your customers, employees or the public;
- (x) if you or an Owner make any material misrepresentation to us, whether occurring before or after being granted the franchise;
- (xi) if you fail to pay any amount owed to us, our affiliate or any approved or designated supplier within 10 days after demand for payment;
- (xii) if you underreport any amount owed to us, after having already committed a similar breach that had been cured in accordance with Section 19.3;
- (xiii) if you make an unauthorized Transfer;
- (xiv) if you make an unauthorized use of the Intellectual Property;
- (xv) if you breach any of the brand protection covenants described in Section 13;
- (xvi) if any Owner, or the spouse of any Owner, breaches a Franchise Owner Agreement; or
- (xvii) if we terminate any other agreement between you and us or if any affiliate of ours terminates any agreement between you and our affiliate due to your default.

19.3. Additional Conditions of Termination. In addition to our termination rights in Section 19.2, we may, in our sole discretion, terminate this Agreement upon 30 days' written notice if you or an Owner fail to comply with any other provision of this Agreement (including any mandatory provision in the Manual) or any other agreement with us, unless such default is cured, as determined by us in our sole discretion, within such 30-day notice period. If we deliver a notice of default to you pursuant to this Section 19.3, we may suspend performance of any of our obligations under this Agreement until you fully cure the breach.

19.4. Mutual Agreement to Terminate. If you and we mutually agree in writing to terminate this Agreement, you and we will be deemed to have waived any required notice period.

20. POST-TERM OBLIGATIONS.

20.1. Obligations of You and the Owners. After the termination, expiration or Transfer of this Agreement, you and the Owners agree to:

- (i) immediately cease to use the Intellectual Property;
- (ii) pay us all amounts that you owe us;
- (iii) comply with all covenants described in Section 13 that apply after the expiration, termination or Transfer of this Agreement or the disposal of an ownership interest by an Owner;
- (iv) return all copies of the Manual and Copyrighted Materials and all signs, brochures, advertising and promotional materials, forms and other materials bearing the Marks or other identification relating to a Baja Smoothies Business, unless we allow you to transfer such items to an approved transferee;
- (v) cancel all fictitious or assumed name registrations relating to your use of any of the Marks;
- (vi) alter the interior and exterior of the Carts to the extent necessary (or to the extent we require)

to prevent any further resemblance to or connection with a Baja Smoothies Business or our System, including, without limitation, repainting the exterior and interior with new colors, removing trade dress, fixtures and décor items associated with a Baja Smoothies Business, removing all signage and discontinuing use of approved wall décor items and window decals; provided, however, that this subsection shall not apply if you transfer your Baja Smoothies Business to an approved transferee or we exercise our right to purchase your Baja Smoothies Business;

- (vii) notify all telephone companies, listing agencies and domain name registration companies (collectively, the “Agencies”) of the termination or expiration of your right to use: (a) the telephone numbers and/or domain names, if applicable, related to the operation of your Business; and (b) any regular, classified or other telephone directory listings associated with the Marks (you hereby authorize the Agencies to transfer such telephone numbers, domain names and listings to us and you authorize us, and appoint us and any officer we designate as your attorney-in-fact to direct the Agencies to transfer the telephone numbers, domain names and listings to us if you fail or refuse to do so); and
- (viii) provide us with satisfactory evidence of your compliance with the above obligations within 30 days after the effective date of the termination, expiration or Transfer of this Agreement.

21. DISPUTE RESOLUTION.

Except as otherwise provided below, the parties agree to submit all claims, disputes and disagreements, including any matter pertaining to the interpretation of this Agreement or issues relating to the offer and sale of the franchise or the relationship between the parties (a “Dispute”) to mediation before a mutually-agreeable mediator prior to arbitration. If the Dispute is not resolved by mediation within 60 days after either party makes a demand for mediation, the parties will submit the dispute to mandatory and binding arbitration conducted pursuant to the Commercial Arbitration Rules of the American Arbitration Association (the “AAA Rules”). The party filing the arbitration must initially bear the cost of any arbitration fees or costs. The arbitrators will not have authority to award exemplary or punitive damages. Notwithstanding the foregoing, any Dispute involving claims alleging a breach of Section 13 and/or Section 16 (referred to as “Excluded Claims”) will not be subject to mediation or arbitration unless otherwise agreed to by both parties. Either party may immediately file a lawsuit in accordance with this Section with respect to any Excluded Claim. Notwithstanding this Section’s incorporation of the AAA Rules, the parties hereby express their clear and unequivocal intent that a court, rather than an arbitrator, shall have exclusive jurisdiction to decide the threshold issue of whether a Dispute involves an alleged Excluded Claim (i.e., whether there are any claims alleging a breach of Section 13 and/or Section 16). All mediation, arbitration and litigation shall take place in the county in which we maintain our principal place of business at the time the Dispute arises (currently, Washington County, Minnesota) and the parties irrevocably waive any objection to such venue. If we or you must enforce this Agreement in a judicial or arbitration proceeding, the substantially prevailing party will be entitled to reimbursement of its costs and expenses, including reasonable accounting and legal fees. In addition, if you breach any term of this Agreement or any other agreement with us or an affiliate of ours, you agree to reimburse us for all reasonable legal fees and other expenses we incur relating to such breach, regardless of whether the breach is cured prior to the commencement of any dispute resolution proceedings. UNLESS PROHIBITED BY APPLICABLE LAW, ANY DISPUTE (OTHER THAN FOR PAYMENT OF MONIES OWED OR A VIOLATION OF SECTION 13 OR SECTION 16) MUST BE BROUGHT BY FILING A WRITTEN DEMAND FOR ARBITRATION (OR IF PERMITTED, LITIGATION) WITHIN ONE (1) YEAR FOLLOWING THE CONDUCT, ACT OR OTHER EVENT OR OCCURRENCE GIVING RISE TO THE CLAIM, OR THE RIGHT TO ANY REMEDY WILL BE DEEMED FOREVER WAIVED AND BARRED. WE AND YOU IRREVOCABLY WAIVE: (a) TRIAL BY JURY; AND (b) THE RIGHT TO ARBITRATE OR LITIGATE ON A CLASS ACTION BASIS, IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF THE PARTIES.

22. YOUR REPRESENTATIONS. YOU HEREBY REPRESENT THAT:

- (i) YOU RECEIVED: (A) AN EXACT COPY OF THIS AGREEMENT AND ITS ATTACHMENTS, WITH ALL MATERIAL TERMS FILLED IN, AT LEAST SEVEN (7) CALENDAR DAYS BEFORE YOU SIGNED THIS AGREEMENT; AND (B) OUR FRANCHISE DISCLOSURE DOCUMENT AT THE EARLIER OF (i) 14 CALENDAR DAYS BEFORE YOU SIGNED A BINDING AGREEMENT OR PAID ANY MONEY TO US OR OUR AFFILIATES OR (ii) SUCH EARLIER TIME IN THE SALES PROCESS THAT YOU REQUESTED A COPY;
- (ii) YOU ARE AWARE OF THE FACT THAT OTHER PRESENT OR FUTURE FRANCHISEES OF OURS MAY OPERATE UNDER DIFFERENT FORMS OF AGREEMENT AND CONSEQUENTLY THAT OUR OBLIGATIONS AND RIGHTS WITH RESPECT TO OUR VARIOUS FRANCHISEES MAY DIFFER MATERIALLY IN CERTAIN CIRCUMSTANCES; AND
- (iii) WE MAY NEGOTIATE TERMS OR OFFER CONCESSIONS TO OTHER FRANCHISEES AND WE HAVE NO OBLIGATION TO OFFER YOU THE SAME OR SIMILAR NEGOTIATED TERMS OR CONCESSIONS EXCEPT TO THE EXTENT REQUIRED BY APPLICABLE LAW.

23. GENERAL PROVISIONS

- 23.1. Governing Law.** Except as governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. §§ 1051, et seq.), this Agreement and the franchise relationship shall be governed by the laws of the state where the Baja Smoothies Business is located (without reference to its principles of conflicts of law), but any law of the state where the Baja Smoothies Business is located that regulates the offer and sale of franchises or business opportunities or governs the relationship of a franchisor and its franchisee will not apply unless its jurisdictional requirements are met independently without reference to this Section.
- 23.2. Relationship of the Parties.** Nothing in this Agreement creates a fiduciary relationship between you and us or is intended to make either party a general or special agent, legal representative, subsidiary, joint venture, partner, employee or servant of the other for any purpose. During the Term, you must conspicuously identify yourself at your base of operations, and in all dealings with third parties, as a franchisee of ours and the independent owner of your Business. You agree to place any notice of independent ownership we specify on all forms, stationery, advertising, business cards and other materials we require. Neither party is permitted to make any express or implied agreement, warranty or representation, or incur any debt, in the name of or on behalf of the other, or represent that our relationship is other than franchisor and franchisee. In addition, neither party will be obligated by or have any liability under any agreements or representations made by the other that are not expressly authorized by this Agreement.
- 23.3. Severability and Substitution.** Each section, subsection, term and provision of this Agreement, and any portion thereof, shall be considered severable. If any applicable and binding law imposes mandatory, non-waivable terms or conditions that conflict with a provision of this Agreement, the terms or conditions required by such law shall govern to the extent of the inconsistency and supersede the conflicting provision of this Agreement. If a court concludes that any promise or covenant in this Agreement is unreasonable and unenforceable: (a) the court may modify such promise or covenant to the minimum extent necessary to make such promise or covenant enforceable; or (b) we may unilaterally modify such promise or covenant to the minimum extent necessary to make such promise or covenant enforceable.
- 23.4. Waivers.** Each party may waive or reduce any obligation of or restriction upon the other in writing. Any such waiver shall be without prejudice to any other rights the party may have. Neither party shall be deemed to have waived or impaired any right, power or option reserved by this Agreement (including the right to demand exact compliance with every term, condition and covenant in this Agreement or to declare any breach of this Agreement to be a default and to terminate the franchise

before the expiration of its term) by virtue of: (a) any custom or practice of the parties at variance with the terms of this Agreement; (b) any failure, refusal or neglect by either party to exercise any right under this Agreement or to insist upon exact compliance by the other with its obligations under this Agreement, including any mandatory specification, standard, or operating procedure; (c) any waiver, forbearance, delay, failure or omission by us to exercise any right, power or option, whether of the same, similar or different nature, relating to other franchisees; or (d) our acceptance of any payments due from you after breach of this Agreement.

- 23.5. Approvals.** Whenever this Agreement requires our approval, you must make a timely written request for approval, and the approval must be in writing in order to bind us. Except as otherwise expressly provided in this Agreement, if we fail to approve any request for approval within the required period of time, we shall be deemed to have disapproved your request. If we deny approval and you seek legal redress for the denial, the only relief to which you may be entitled is to acquire our approval. You are not entitled to any other relief or damages for our denial of approval.
- 23.6. Force Majeure.** Neither we nor you shall be liable for loss or damage or deemed to be in breach of this Agreement if our or your failure to perform our or your obligations results from any event of force majeure. Any delay resulting from an event of force majeure will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable under the circumstances. Notwithstanding the foregoing, “force majeure” will not: (a) relieve you of any payment obligations under this Agreement; or (b) excuse, or apply with respect to, any breaches resulting from an epidemic or pandemic of a contagious illness or disease or resulting from any economic or financial changes caused by such epidemic or pandemic, except for any government-mandated closures of the Baja Smoothies Business related to such epidemic or pandemic.
- 23.7. Binding Effect.** This Agreement is binding upon the parties to this Agreement and their respective executors, administrators, heirs, assigns and successors in interest. Nothing in this Agreement is intended, nor shall be deemed, to confer any rights or remedies upon any person or legal entity not a party to this Agreement; provided, however, that the additional insureds listed in Section 14.1 and the Indemnified Parties are intended third-party beneficiaries under this Agreement with respect to Section 14.1 and Section 17, respectively.
- 23.8. Integration.** THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES AND MAY NOT, EXCEPT AS PERMITTED BY SECTION 11.2 AND SECTION 23.3, BE CHANGED EXCEPT BY A WRITTEN DOCUMENT SIGNED BY BOTH PARTIES. Any email correspondence or other form of informal electronic communication shall not be deemed to modify this Agreement unless such communication is signed by both parties and specifically states that it is intended to modify this Agreement. The attachment(s) are part of this Agreement, which, together with any Amendments or Addenda executed on or after the Effective Date, constitutes the entire understanding and agreement of the parties, and there are no other oral or written understandings or agreements between us and you about the subject matter of this Agreement. As referenced above, all mandatory provisions of the Manual are part of this Agreement. Any representations not specifically contained in this Agreement made before entering into this Agreement do not survive after the signing of this Agreement. This provision is intended to define the nature and extent of the parties’ mutual contractual intent, there being no mutual intent to enter into contract relations, whether by agreement or by implication, other than as set forth above. The parties acknowledge that these limitations are intended to achieve the highest possible degree of certainty in the definition of the contract being formed, in recognition of the fact that uncertainty creates economic risks for both parties which, if not addressed as provided in this Agreement, would affect the economic terms of this bargain. Nothing in this Agreement is intended to disclaim any of the representations we made in the Franchise Disclosure Document. 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.

23.9. Covenant of Good Faith. If applicable law implies into this Agreement a covenant of good faith and fair dealing, the covenant shall not imply any rights or obligations that are inconsistent with a fair construction of the terms of this Agreement. Additionally, if applicable law implies the covenant, you agree that: (a) this Agreement (and the relationship of the parties inherent in this Agreement) grants us discretion to make decisions, take actions and/or refrain from taking actions not inconsistent with our explicit rights and obligations under this Agreement that may favorably or adversely affect your interests; (b) we will use our judgment in exercising the discretion based on our assessment of our own interests and balancing those interests against the interests of our franchisees (including ourselves and our affiliates if applicable), but without considering your individual interests or the individual interests of any other particular franchisee; (c) we have no liability to you for the exercise of our discretion in this manner so long as the discretion is not exercised in bad faith; and (d) in the absence of bad faith, no trier of fact in any arbitration or litigation may substitute its judgment for our judgment so exercised.

23.10. Rights of Parties are Cumulative. The rights of the parties under this Agreement are cumulative and no exercise or enforcement by either party of any right or remedy under this Agreement will preclude any other right or remedy available under this Agreement or by law.

23.11. Survival. All provisions that expressly or by their nature survive the termination, expiration or Transfer of this Agreement (or the Transfer of an ownership interest in the franchise) shall continue in full force and effect subsequent to and notwithstanding its termination, expiration or Transfer and until they are satisfied in full or by their nature expire, including, without limitation, Section 12, Section 13, Section 15, Section 17, Section 20, Section 21 and Section 23.

23.12. Construction. The headings in this Agreement are for convenience only and do not define, limit or construe the contents of the sections or subsections. All references to Sections refer to the Sections contained in this Agreement unless otherwise specified. All references to days in this Agreement refer to calendar days unless otherwise specified. The term “you” as used in this Agreement is applicable to one or more persons or an Entity, and the singular usage includes the plural and the masculine and neuter usages include the other and the feminine and the possessive.

23.13. Time of Essence. Time is of the essence in this Agreement and every term thereof.

23.14. Counterparts. This Agreement may be signed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same document.

23.15. Notice. All notices given under this Agreement must be in writing, delivered by hand, email (to the last email address provided by the recipient) or first class mail, to the following addresses (which may be changed upon 10 business days’ prior written notice):

YOU: As set forth in Part A of ATTACHMENT "A"
US: Baja Smoothies Franchise, LLC
5995 Oren Ave. N, Ste. 209-270, Stillwater, MN 55083

Notice shall be considered given at the time delivered by hand, or one (1) business day after sending by email or comparable electronic system, or three (3) business days after placed in the mail, postage prepaid, by certified mail with a return receipt requested.

[Signature Page Follows]

The parties to this Agreement have executed this Agreement effective as of the Effective Date first above written.

FRANCHISOR:

Baja Smoothies Franchise, LLC, a Minnesota Limited Liability Company

By: _____
Name: _____
Its: _____

YOU (If you are an entity):

_____,
a(n) _____
By: _____
Name: _____
Its: _____

YOU (If you are not an entity):

Name: _____

Name: _____

Name: _____

ATTACHMENT "A"
TO FRANCHISE AGREEMENT

DEAL TERMS

A. Franchisee Details.

Name of Franchisee: [_____]

Is the franchisee one or more natural persons signing in their individual capacity? **Yes:** ____ **No:** ____

Type of Entity and State of Formation* (if applicable): [_____]

** If the franchisee is a business entity, each natural person holding a direct or indirect ownership interest in the business entity, and spouse of each such person, must sign the Franchise Owner Agreement concurrently with the execution of this Agreement.*

The following table includes the full name of each natural person holding a direct or indirect ownership interest in the franchise (or the franchisee business entity if applicable) along with a description of their ownership interest.

Owner's Name	% Ownership Interest	Direct or Indirect (if indirect, describe nature of interest)

Notice Address: [_____]

B. Franchise Type (select).

___ **2-Cart Franchise (Includes 14-foot trailer): \$109,900 (Initial Installment of \$54,950)**

___ **4-Cart Franchise (Includes 28-foot trailer + club car): \$224,900 (Initial Installment of \$112,450)**

C. Territory.

The Territory referenced in the Franchise Agreement shall consist of the following geographic area (as further depicted on the map attached on the following page):

[_____]

If there are any changes to the zip codes or other boundaries that define your Territory during the term of the Franchise Agreement or any renewal term, then, unless otherwise agreed to by you and us in writing, the boundaries of your Territory shall remain defined by the zip codes or other boundaries in effect as of the Effective Date and depicted on the map on the following page.

[Insert Map Below (if applicable)]

ATTACHMENT "B"
TO FRANCHISE AGREEMENT
FRANCHISE OWNER AGREEMENT

[See Attached]

FRANCHISE OWNER AGREEMENT

This Franchise Owner Agreement (this “Agreement”) is entered into by: (a) each of the undersigned owners of Franchisee (defined below); and (b) the spouse of each such owner, in favor of Baja Smoothies Franchise, LLC, a Minnesota Limited Liability Company, and its successors and assigns (“us”), upon the terms and conditions set forth in this Agreement. Each signatory to this Agreement is referred to as “you”.

1. **Definitions.** For purposes of this Agreement, the following terms have the meanings given to them below:

“*Baja Smoothies Business*” means a uniquely branded smoothie company selling fresh-fruit smoothies in a mobile environment operating under the Marks.

“*Competitive Business*” means a mobile food-service business serving smoothies, ice cream, shaved ice, or other frozen drinks and/or desserts.

“*Copyrighted Materials*” means all artwork and designs, created by us, or created by you as works made for hire and approved by us, and used with the Marks or in association with the Business.

“*Franchise Agreement*” means the Baja Smoothies Franchise Agreement executed by Franchisee with an effective date of _____, 202__.

“*Franchised Business*” means the Baja Smoothies Business operated by Franchisee pursuant to the Franchise Agreement.

“*Franchisee*” means _____.

“*Improvements*” means any additions, modifications or improvements to (a) the goods or services offered at a Baja Smoothies Business, (b) the method of operation of a Baja Smoothies Business or (c) any marketing or promotional ideas relating to a Baja Smoothies Business, whether developed by you, Franchisee or any other person.

“*Intellectual Property*” means, collectively or individually, our Marks, Copyrighted Materials, Know-how, System and Improvements. “*Intellectual Property*” also includes all customer data collected by Franchisee or by us.

“*Know-how*” means our trade secrets and other proprietary information relating to the development, marketing and/or operation of a Baja Smoothies Business, including, but not limited to, methods, techniques, specifications, procedures, policies, marketing strategies and information comprising the System and the Manual.

“*Manual*” means our confidential franchise operations manual for the operation of a Baja Smoothies Business.

“*Marks*” means the logotypes, service marks, and trademarks now or hereafter involved in the operation of a Baja Smoothies Business, including “Baja Smoothies” and the associated logo, and any other trademarks, service marks or trade names that we designate for use by a Baja Smoothies Business. The term “Marks” also includes any distinctive trade dress used to identify a Baja Smoothies Business, whether now in existence or hereafter created.

“*Prohibited Activities*” means any or all of the following: (a) owning, operating or having any other interest (as an owner, partner, director, officer, employee, manager, consultant, shareholder, creditor, representative, agent or in any similar capacity) in a Competitive Business (other than owning an interest of five percent (5%) or less in a publicly traded company that is a Competitive Business); (b) diverting or attempting to divert any business from us (or one of our affiliates or franchisees); and/or (c) inducing any customer of ours (or of one of our affiliates or franchisees) to transfer their business to a competitor.

“*Restricted Period*” means the two (2) year period after the earliest to occur of the following: (a) the termination or expiration of the Franchise Agreement; (b) the date on which Franchisee assigns the

Franchise Agreement to another person with respect to whom neither you nor your spouse holds any direct or indirect ownership interest; or (c) the date on which you cease to be an owner of Franchisee or your spouse ceases to be an owner of Franchisee, as applicable; provided however, that if a court of competent jurisdiction determines that this period of time is too long to be enforceable, then the “Restricted Period” means the one (1) year period after the earliest to occur of the following: (a) the termination or expiration of the Franchise Agreement; (b) the date on which Franchisee assigns the Franchise Agreement to another person with respect to whom neither you nor your spouse holds any direct or indirect ownership interest; or (c) the date on which you cease to be an owner of Franchisee or your spouse ceases to be an owner of Franchisee, as applicable.

“*Restricted Territory*” means the geographic area within: (a) a 15-mile radius from your Protected Territory; and (b) a 15-mile radius from the Protected Territory of all other Baja Smoothies Businesses that are operating or under construction as of the Effective Date and remain in operation or under construction during all or any part of the Post-Term Restricted Period; provided, however, that if a court of competent jurisdiction determines that the foregoing Restricted Territory is too broad to be enforceable, then the “Restricted Territory” means the geographic area within a 5-mile radius from your Protected Territory.

“*System*” means our unique system for the operation of a Baja Smoothies Business, the distinctive characteristics of which include our valuable know-how, information, trade secrets, training methods, standards, designs, methods of trademark usage, copyrights, confidential electronic and other communications, and research and development connected with the operation and promotion of the Baja Smoothies Business.

2. Background. In your capacity as an owner of Franchisee, or the spouse of an owner of Franchisee, you may gain knowledge of our System and Know-how. You understand that protecting the Intellectual Property is vital to our success and that of our franchisees and that you could seriously jeopardize our entire franchise system if you were to unfairly compete with us. In addition, you understand that certain terms of the Franchise Agreement apply to “owners” and not just Franchisee. You agree to comply with the terms of this Agreement in order to: (a) avoid damaging our System by engaging in unfair competition; and (b) bind yourself to the terms of the Franchise Agreement applicable to owners.

3. Brand Protection Covenants.

(a) Intellectual Property. You agree to:

- (i) refrain from using the Intellectual Property in any capacity or for any purpose other than the operation of Franchisee’s Baja Smoothies Business in compliance with the Franchise Agreement and Manual;
- (ii) maintain the confidentiality of the Know-how at all times;
- (iii) take all reasonable steps we require to prevent unauthorized use or disclosure of Know-how;
- (iv) refrain from making unauthorized copies of documents containing any Know-how; and
- (v) immediately stop using the Intellectual Property at such time that you are no longer an owner of Franchisee or your spouse is no longer an owner of Franchisee, as applicable.

You agree to assign to us or our designee, without charge, all rights to any Improvement developed by you, including the right to grant sublicenses. If applicable law precludes you from assigning ownership of any Improvement to us, then such Improvement shall be perpetually licensed by you to us free of charge, with full rights to use, commercialize and sublicense the same.

(b) Unfair Competition During Relationship. You agree not to unfairly compete with us at any time while you are an owner of Franchisee or while your spouse is an owner of Franchisee, as applicable, by engaging in any Prohibited Activities.

(c) Unfair Competition After Relationship. You agree not to unfairly compete with us by engaging in

any Prohibited Activities during the Restricted Period; provided, however, that the Prohibited Activity relating to having an interest in a Competitive Business only applies to a Competitive Business that is located within, or provides competitive goods or services to customers who are located within, the Restricted Territory. If you engage in any Prohibited Activities during the Restricted Period, your Restricted Period will be extended by the period of time during which you were engaging in the Prohibited Activity (any such extension of time will not be construed as a waiver of your breach or otherwise impair any of our rights or remedies relating to your breach).

- (d) Family Members. You acknowledge you could circumvent the purpose of this Agreement by disclosing Know-how to an immediate family member (i.e., parent, sibling, child, or grandchild). You also acknowledge it would be difficult for us to prove whether you disclosed the Know-how to family members. Therefore, you will be presumed to have violated the terms of this Agreement if any member of your immediate family (i) engages in any Prohibited Activities during any period of time during which you are prohibited from engaging in the Prohibited Activities or (ii) uses or discloses the Know-how. However, you may rebut this presumption by furnishing evidence conclusively showing you did not disclose the Know-how to the family member.
- (e) Covenants Reasonable. You acknowledge that: (i) the terms of this Agreement are reasonable both in time and in scope of geographic area; and (ii) you have sufficient resources, business experience and opportunities to earn an adequate living while complying with the terms of this Agreement. **YOU HEREBY WAIVE ANY RIGHT TO CHALLENGE THE TERMS OF THIS AGREEMENT AS BEING OVERLY BROAD, UNREASONABLE OR UNENFORCEABLE.** Although you and we both believe the covenants in this Agreement are reasonable, we may at any time unilaterally modify the terms of the brand protection covenants in Section 3 of this Agreement, upon written notice to you, by limiting the scope of the Prohibited Activities, narrowing the definition of a Competitive Business, shortening the duration of the Restricted Period, reducing the geographic scope of the Restricted Territory and/or reducing the scope of any other covenant imposed upon you under Section 3 of this Agreement to ensure that the terms and covenants are enforceable under applicable law
- (f) Breach. You agree that your failure to comply with the covenants in this Section 3 is likely to cause substantial and irreparable damage to us and/or our other franchisees for which there is no adequate remedy at law. Therefore, you agree that any violation of these covenants will entitle us to injunctive relief. You agree we may apply for such injunctive relief, without bond, but upon due notice, in addition to any other relief available at equity or law, and your sole remedy in the event of the entry of such injunction will be the dissolution of such injunction, if warranted, upon hearing duly held (all claims for damages by reason of the wrongful issuance of any such injunction being expressly waived hereby). If a court requires the filing of a bond notwithstanding the preceding sentence, the parties agree the amount of the bond shall not exceed \$1,000. None of the remedies available to us under this Section are exclusive of any other, but may be combined with others under this Agreement, or at law or in equity, including injunctive relief, specific performance and recovery of monetary damages.

4. Transfer Restrictions. If you are an owner of Franchisee, you acknowledge that we must approve all persons who hold a direct or indirect ownership interest in Franchisee. Accordingly, you agree that you will not, directly or indirectly or by operation of law, sell, assign, mortgage, pledge or in any manner transfer any direct or indirect ownership interest in Franchisee except in accordance with the terms and conditions set forth in Section 18.2 of the Franchise Agreement.

5. Financial Security. In order to secure Franchisee's financial obligations under the Franchise Agreement and all ancillary agreements executed by Franchisee in connection with the Franchise Agreement, including, but not limited to, any agreement for the purchase of goods or services from us or an affiliate of ours and any promissory note related to payments owed to us (collectively, the "Secured Agreements"), you, jointly and severally, personally and unconditionally: (a) guarantee to us and our successor and assigns, that Franchisee shall punctually fulfil all of its payment and other financial obligations under the Secured Agreements; and (b) agree to be personally bound by, and personally liable for, each and every monetary provision in the Secured Agreements. You waive:

- (i) acceptance and notice of acceptance by us of the foregoing undertakings;
- (ii) notice of demand for payment of any indebtedness guaranteed;
- (iii) protest and notice of default to any party with respect to the indebtedness guaranteed;
- (iv) any right you may have to require that an action be brought against Franchisee or any other person as a condition of liability; and
- (v) the defense of the statute of limitations in any action hereunder or for the collection of any indebtedness hereby guaranteed.

You agree that: (a) your direct and immediate liability under this guaranty shall be joint and several with Franchisee and all other signatories to this Agreement; (b) you will render any payment required under the Secured Agreements upon demand if Franchisee fails to promptly do so; (c) your liability shall not be contingent or conditioned upon pursuit by us of any remedies against Franchisee or any other person; and (d) liability shall not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence that we may grant to Franchisee or to any other person, including the acceptance of any partial payment or performance, or the compromise or release of any claims, none of which shall in any way modify or amend this guarantee, which shall be continuing and irrevocable during the term of each of the Secured Agreements and following the termination, expiration or transfer of each of the Secured Agreements to the extent any financial obligations under any such Secured Agreements survive such termination, expiration or transfer. This guaranty will continue unchanged by the occurrence of any bankruptcy of Franchisee or any assignee or successor of Franchisee or by any abandonment of one or more of the Secured Agreements by a trustee of Franchisee. Neither your obligation to make payment in accordance with the terms of this undertaking nor any remedy for enforcement shall be impaired, modified, changed, released or limited in any manner whatsoever by any impairment, modification, change, release or limitation of the liability of Franchisee or its estate in bankruptcy or of any remedy for enforcement, resulting from the operation of any present or future provision of the U.S. Bankruptcy Act or other statute, or from the decision of any court or agency.

6. Dispute Resolution. Any dispute between the parties relating to this Agreement shall be brought in accordance with the dispute resolution procedures in the Franchise Agreement. Notwithstanding the foregoing, if any dispute resolution procedures in the Franchise Agreement conflict with any terms of this Agreement, the terms of this Agreement shall prevail. **You acknowledge and agree that a breach of this Agreement by you shall constitute a material event of default under the Franchise Agreement, permitting us to terminate the Franchise Agreement in accordance with the terms thereof.**

7. Miscellaneous.

- (a) If either party hires an attorney or files suit against the other party relating to or alleging a breach of this Agreement, the losing party agrees to pay the prevailing party's reasonable attorneys' fees and costs incurred in connection with such breach.
- (b) This Agreement will be governed by, construed and enforced under the laws of the state in which you reside and the courts in that state shall have jurisdiction over any legal proceedings arising out of this Agreement.
- (c) Any claim, defense or cause of action you may have against us or against Franchisee, regardless of cause or origin, cannot be used as a defense against our enforcement of this Agreement.
- (d) Each section of this Agreement, including each subsection and portion thereof, is severable. In the event that any section, subsection or portion of this Agreement is unenforceable, it shall not affect the enforceability of any other section, subsection or portion; and each party to this Agreement agrees that the court may impose such limitations on the terms of this Agreement as it deems in its discretion necessary to make such terms reasonable in scope, duration and geographic area.
- (e) You agree that we may deliver to you any notice or other communication contemplated by this Agreement in the same manner and to the same address listed in the notice provisions of the

Franchise Agreement and any such delivery shall be deemed effective for purposes of this Agreement. You may change the address to which notices must be sent by sending us a written notice requesting such change, which notice shall be delivered in the manner and to the address listed in the Franchise Agreement.

[Signature Page Follows]

In witness whereof, each of the undersigned has executed this Agreement as of the date or dates set forth below.

OWNER / SPOUSE

By: _____

Name: _____

Date: _____

OWNER / SPOUSE

By: _____

Name: _____

Date: _____

OWNER / SPOUSE

By: _____

Name: _____

Date: _____

OWNER / SPOUSE

By: _____

Name: _____

Date: _____

ATTACHMENT "C"
TO FRANCHISE AGREEMENT
ACH AUTHORIZATION FORM

[See Attached]

AUTOMATED CLEARING HOUSE PAYMENT AUTHORIZATION FORM

Franchisee Information:

Franchisee Name _____ Business No. _____

Franchisee Mailing Address (street) _____ Franchisee Phone No. _____

Franchisee Mailing Address (city, state, zip) _____

Contact Name, Address and Phone number (if different from above) _____

Franchisee Fax No. _____ Franchisee Email Address _____

Bank Account Information:

Bank Name _____

Bank Mailing Address (street, city, state, zip) _____

Bank Account No. _____ Checking Savings
(check one) _____ Bank Routing No. (9 digits) _____

Bank Mailing Address (city, state, zip) _____ Bank Phone No. _____

Authorization:

Franchisee hereby authorizes Baja Smoothies Franchise, LLC (“Franchisor”) to initiate debit entries to Franchisee’s account with the Bank listed above and Franchisee authorizes the Bank to accept and to debit the amount of such entries to Franchisee’s account. Each debit shall be made from time to time in an amount sufficient to cover any fees payable to Franchisor pursuant to any agreement between Franchisor and Franchisee as well as to cover any purchases of goods or services from Franchisor or any affiliate of Franchisor. Franchisee agrees to be bound by the National Automated Clearing House Association (NACHA) rules in the administration of these debit entries. Debit entries will be initiated only as authorized above. This authorization is to remain in full force and effect until Franchisor has received written notification from Franchisee of its termination in such time and in such manner as to afford Franchisor and the Bank a reasonable opportunity to act on it. Franchisee shall notify Franchisor of any changes to any of the information contained in this authorization form at least 30 days before such change becomes effective.

Signature: _____ Date: _____

Name: _____

Its: _____

Federal Tax ID Number: _____

NOTE: FRANCHISEE MUST ATTACH A VOIDED CHECK RELATING TO THE BANK ACCOUNT.

ATTACHMENT "D"
TO FRANCHISE AGREEMENT
BRAND PROTECTION AGREEMENT

[See Attached]

BRAND PROTECTION AGREEMENT

This Agreement (this “Agreement”) is entered into by the undersigned (“you”) in favor of Baja Smoothies Franchise, LLC, a Minnesota Limited Liability Company, and its successors and assigns (“us”), upon the terms and conditions set forth in this Agreement.

- 1. Definitions.** For purposes of this Agreement, the following terms have the meanings given to them below:

“Baja Smoothies Business” means a uniquely branded smoothie company selling fresh-fruit smoothies in a mobile environment operating under the Marks.

“Competitive Business” means a mobile food-service business serving smoothies, ice cream, shaved ice, or other frozen drinks and/or desserts.

“Copyrighted Materials” means all artwork and designs, created by us, or created by you as works made for hire and approved by us, and used with the Marks or in association with the Business.

“Franchisee” means the Baja Smoothies franchisee for whom you are an owner, partner, member, officer, director, employee or independent contractor.

“Improvements” means any additions, modifications or improvements to: (a) the goods or services offered at a Baja Smoothies Business; (b) the method of operation of a Baja Smoothies Business; or (c) any marketing or promotional ideals relating to a Baja Smoothies Business, whether developed by you, Franchisee or any other person.

“Intellectual Property” means, collectively or individually, our Marks, Copyrighted Materials, Know-how, System and Improvements. *“Intellectual Property”* also includes all customer data collected by Franchisee or by us.

“Know-how” means our trade secrets and other proprietary information relating to the development, marketing and/or operation of a Baja Smoothies Business, including, but not limited to, methods, techniques, specifications, procedures, policies, marketing strategies and information comprising the System and the Manual.

“Manual” means our confidential franchise operations manual for the operation of a Baja Smoothies Business.

“Marks” means the logotypes, service marks, and trademarks now or hereafter involved in the operation of a Baja Smoothies Business, including “Baja Smoothies” and the associated logo, and any other trademarks, service marks or trade names that we designate for use by a Baja Smoothies Business. The term “Marks” also includes any distinctive trade dress used to identify a Baja Smoothies Business, whether now in existence or hereafter created.

“Prohibited Activities” means any or all of the following: (a) owning, operating or having any other interest (as an owner, partner, director, officer, employee, manager, consultant, shareholder, creditor, representative, agent or in any similar capacity) in a Competitive Business (other than owning an interest of five percent (5%) or less in a publicly traded company that is a Competitive Business); (b) diverting or attempting to divert any business from us (or one of our affiliates or franchisees); and/or (c) inducing any customer of ours (or of one of our affiliates or franchisees) to transfer their business to you or to any other person that is not then a franchisee of ours.

“Restricted Period” means the two (2) year period after you cease to be an owner, partner, member, officer, director, employee or independent contractor of Franchisee; provided, however, that if a court of competent jurisdiction determines that this period of time is too long to be enforceable, then the “Restricted Period” means the one (1) year period after you cease to be an owner, partner, member, officer, director, employee or independent contractor of Franchisee.

“Restricted Territory” means the geographic area within: (a) a 15-mile radius from the Protected

Territory; and (b) a 15-mile radius from the Protected Territory of all other Baja Smoothies Businesses that are operating or under construction as of the Effective Date and remain in operation or under construction during all or any part of the Post-Term Restricted Period; provided, however, that if a court of competent jurisdiction determines that the foregoing Restricted Territory is too broad to be enforceable, then the "Restricted Territory" means the geographic area within a 5-mile radius from the Protected Territory.

"System" means our unique system for the operation of a Baja Smoothies Business, the distinctive characteristics of which include our valuable know-how, information, trade secrets, training methods, standards, designs, methods of trademark usage, copyrights, confidential electronic and other communications, and research and development connected with the operation and promotion of the Baja Smoothies Business.

2. **Background.** You are an owner, partner, member, officer, director, employee or independent contractor of Franchisee. As a result of this association, you may gain knowledge of our System and Know-how. You understand that protecting the Intellectual Property is vital to our success and that of our franchisees and that you could seriously jeopardize our entire franchise system if you were to unfairly compete with us. In order to avoid such damage, you agree to comply with the terms of this Agreement.
3. **Intellectual Property.** You agree to:
 - (i) refrain from using the Intellectual Property in any capacity or for any purpose other than the operation of Franchisee's Baja Smoothies Business;
 - (ii) maintain the confidentiality of the Know-how at all times;
 - (iii) take all reasonable steps we require to prevent unauthorized use or disclosure of Know-how;
 - (iv) refrain from making unauthorized copies of documents containing any Know-how; and
 - (v) immediately stop using the Intellectual Property at such time that you are no longer an owner, partner, member, officer, director, employee or independent contractor of Franchisee.
4. **Unfair Competition During Relationship.** You agree not to unfairly compete with us at any time while you are an owner, partner, member, officer, director, employee or independent contractor of Franchisee by engaging in any Prohibited Activities.
5. **Unfair Competition After Relationship.** You agree not to unfairly compete with us by engaging in any Prohibited Activities during the Restricted Period; provided, however, that the Prohibited Activity relating to having an interest in a Competitive Business only applies to a Competitive Business that is located within, or provides competitive goods or services to customers who are located within, the Restricted Territory. If you engage in any Prohibited Activities during the Restricted Period, then your Restricted Period will be extended by the period of time during which you were engaging in the Prohibited Activity (any such extension of time will not be construed as a waiver of your breach or otherwise impair any of our rights or remedies relating to your breach).
6. **Family Members.** You acknowledge you could circumvent the purpose of this Agreement by disclosing Know-how to an immediate family member (i.e., spouse, parent, sibling, child, or grandchild). You also acknowledge it would be difficult for us to prove whether you disclosed the Know-how to family members. Therefore, you will be presumed to have violated the terms of this Agreement if any member of your immediate family (a) engages in any Prohibited Activities during any period of time during which you are prohibited from engaging in the Prohibited Activities or (b) uses or discloses the Know-how. However, you may rebut this presumption by furnishing evidence conclusively showing you did not disclose the Know-how to the family member.
7. **Covenants Reasonable.** You acknowledge and agree that: (a) the terms of this Agreement are reasonable both in time and in scope of geographic area; and (b) you have sufficient resources business experience and opportunities to earn an adequate living while complying with the terms of this Agreement. **YOU HEREBY WAIVE ANY RIGHT TO CHALLENGE THE TERMS OF THIS AGREEMENT AS BEING OVERLY**

BROAD, UNREASONABLE OR OTHERWISE UNENFORCEABLE.

8. **Breach.** You agree that your failure to comply with the terms of this Agreement is likely to cause substantial and irreparable damage to us and/or our other franchisees for which there is no adequate remedy at law. Therefore, you agree that any violation of the terms of this Agreement will entitle us to injunctive relief. You agree we may apply for such injunctive relief, without bond, but upon due notice, in addition to any other relief available at equity or law, and your sole remedy in the event of the entry of such injunction, will be the dissolution of such injunction, if warranted, upon hearing duly held (all claims for damages by reason of the wrongful issuance of any such injunction being expressly waived hereby). If a court requires the filing of a bond notwithstanding the preceding sentence, the parties agree the amount of the bond shall not exceed \$1,000. None of the remedies available to us under this Agreement are exclusive of any other, but may be combined with others under this Agreement, or at law or in equity, including injunctive relief, specific performance and recovery of monetary damages. Any claim, defense or cause of action that you may have against us or against Franchisee, regardless of cause or origin, cannot be used as a defense against our enforcement of this Agreement.
9. **Miscellaneous.**
- (a) If we hire an attorney or file suit against you because you have breached this Agreement and prevail against you, you agree to pay our reasonable attorneys' fees and costs in doing so.
 - (b) This Agreement will be governed by, construed and enforced under the laws of the state in which you reside and the courts in that state shall have jurisdiction over any legal proceedings arising out of this Agreement.
 - (c) Each section of this Agreement, including each subsection and portion thereof, is severable. In the event that any section, subsection or portion of this Agreement is unenforceable, it shall not affect the enforceability of any other section, subsection or portion; and each party to this Agreement agrees that the court may impose such limitations on the terms of this Agreement as it deems in its discretion necessary to make such terms reasonable in scope, duration and geographic area.
 - (d) You and we both believe that the covenants in this Agreement are reasonable in terms of scope, duration and geographic area. However, we may at any time unilaterally modify the terms of this Agreement upon written notice to you by limiting the scope of the Prohibited Activities, narrowing the definition of a Competitive Business, shortening the duration of the Restricted Period, reducing the geographic scope of the Restricted Territory and/or reducing the scope of any other covenant imposed upon you under this Agreement to ensure that the terms and covenants in this Agreement are enforceable under applicable law.
 - (e) If you are a resident of Washington, D.C. as of the date you sign this Agreement, then the noncompetition covenant set forth in this Agreement shall not be applicable to you and the definition of "Prohibited Activities" shall be deemed amended by deleting clause (a) from such definition.

This Brand Protection Agreement is executed as of the date or dates set forth below.

By: _____

Name: _____

Date: _____

ATTACHMENT "E"
TO FRANCHISE AGREEMENT
CONFIDENTIALITY AGREEMENT

[See Attached]

CONFIDENTIALITY AGREEMENT

This Agreement (this “Agreement”) is entered into by the undersigned (“you”) in favor of Baja Smoothies Franchise, LLC, a Minnesota Limited Liability Company, and its successors and assigns (“us”), upon the terms and conditions set forth in this Agreement.

1. **Definitions.** For purposes of this Agreement, the following terms have the meanings given to them below:

“Baja Smoothies Business” means a uniquely branded smoothie company selling fresh-fruit smoothies in a mobile environment operating under the Marks.

“Copyrighted Materials” means all artwork and designs, created by us, or created by you as works made for hire and approved by us, and used with the Marks or in association with the Business.

“Franchisee” means the Baja Smoothies franchisee for whom you are an owner, partner, member, officer, director, employee or independent contractor.

“Improvements” means any additions, modifications or improvements to (a) the goods or services offered at a Baja Smoothies Business, (b) the method of operation of a Baja Smoothies Business or (c) any marketing or promotional ideals relating to a Baja Smoothies Business, whether developed by you, Franchisee or any other person.

“Intellectual Property” means, collectively or individually, our Marks, Copyrighted Materials, Know-how, System and Improvements. “Intellectual Property” also includes all customer data collected by Franchisee or by us.

“Know-how” means our trade secrets and other proprietary information relating to the development, marketing and/or operation of a Baja Smoothies Business, including, but not limited to, methods, techniques, specifications, procedures, policies, marketing strategies and information comprising the System and the Manual.

“Manual” means our confidential franchise operations manual for the operation of a Baja Smoothies Business.

“Marks” means the logotypes, service marks, and trademarks now or hereafter involved in the operation of a Baja Smoothies Business, including “Baja Smoothies” and the associated logo, and any other trademarks, service marks or trade names that we designate for use by a Baja Smoothies Business. The term “Marks” also includes any distinctive trade dress used to identify a Baja Smoothies Business, whether now in existence or hereafter created.

“System” means our unique system for the operation of a Baja Smoothies Business, the distinctive characteristics of which include our valuable know-how, information, trade secrets, training methods, standards, designs, methods of trademark usage, copyrights, confidential electronic and other communications, and research and development connected with the operation and promotion of the Baja Smoothies Business.

2. **Background.** You are an owner, partner, member, officer, director, employee or independent contractor] of Franchisee. As a result of this association, you may gain knowledge of our System and Know-how. You understand that protecting the Intellectual Property is vital to our success and that of our franchisees and that you could seriously jeopardize our entire franchise system if you were to unfairly compete with us. In order to avoid such damage, you agree to comply with the terms of this Agreement.

3. **Know-How and Intellectual Property.** You agree to:

- (i) refrain from using the Intellectual Property in any capacity or for any purpose other than the operation of Franchisee’s Baja Smoothies Business;
- (ii) maintain the confidentiality of the Know-how at all times;

- (iii) take all reasonable steps we require to prevent unauthorized use or disclosure of Know-how;
- (iv) refrain from making unauthorized copies of documents containing any Know-how; and
- (v) immediately stop using the Intellectual Property at such time that you are no longer an owner, partner, member, officer, director, employee or independent contractor of Franchisee.

4. **Family Members.** You acknowledge you could circumvent the purpose of this Agreement by disclosing Know-how to an immediate family member (i.e., spouse, parent, sibling, child, or grandchild). You also acknowledge it would be difficult for us to prove whether you disclosed the Know-how to family members. Therefore, you will be presumed to have violated the terms of this Agreement if any member of your immediate family uses or discloses the Know-how. However, you may rebut this presumption by furnishing evidence conclusively showing you did not disclose the Know-how to the family member.

5. **Covenants Reasonable.** You acknowledge and agree that: (a) the terms of this Agreement are reasonable both in time and in scope of geographic area; and (b) you have sufficient resources, business experience and opportunities to earn an adequate living while complying with the terms of this Agreement. **YOU HEREBY WAIVE ANY RIGHT TO CHALLENGE THE TERMS OF THIS AGREEMENT AS BEING OVERLY BROAD, UNREASONABLE OR OTHERWISE UNENFORCEABLE.**

6. **Breach.** You agree that your failure to comply with the terms of this Agreement is likely to cause substantial and irreparable damage to us and/or our other franchisees for which there is no adequate remedy at law. Therefore, you agree that any violation of the terms of this Agreement will entitle us to injunctive relief. You agree we may apply for such injunctive relief, without bond, but upon due notice, in addition to any other relief available at equity or law, and your sole remedy in the event of the entry of such injunction, will be the dissolution of such injunction, if warranted, upon hearing duly held (all claims for damages by reason of the wrongful issuance of any such injunction being expressly waived hereby). If a court requires the filing of a bond notwithstanding the preceding sentence, the parties agree the amount of the bond shall not exceed \$1,000. None of the remedies available to us under this Agreement are exclusive of any other, but may be combined with others under this Agreement, or at law or in equity, including injunctive relief, specific performance and recovery of monetary damages. Any claim, defense or cause of action that you may have against us or against Franchisee, regardless of cause or origin, cannot be used as a defense against our enforcement of this Agreement.

7. **Miscellaneous.**

- (a) If we hire an attorney or file suit against you because you have breached this Agreement and prevail against you, you agree to pay our reasonable attorneys' fees and costs in doing so.
- (b) This Agreement will be governed by, construed and enforced under the laws of the state in which you reside and the courts in that state shall have jurisdiction over any legal proceedings arising out of this Agreement.
- (c) Each section of this Agreement, including each subsection and portion thereof, is severable. In the event that any section, subsection or portion of this Agreement is unenforceable, it shall not affect the enforceability of any other section, subsection or portion; and each party to this Agreement agrees that the court may impose such limitations on the terms of this Agreement as it deems in its discretion necessary to make such terms enforceable.

This Confidentiality Agreement is executed as of the date set forth below.

By: _____

Name: _____

Date: _____

ATTACHMENT "F"
TO FRANCHISE AGREEMENT

DEFINITIONS

“*Account*” is defined in Section 12.5.

“*ACH Agreement*” means our form of ACH Authorization Agreement, the most current form of which is attached to this Agreement as ATTACHMENT "C".

“*Acquisition*” means either (a) a competitive or non-competitive company, franchise system, network or chain directly or indirectly acquiring us, whether in whole or in part, including by asset or stock purchase, change of control, merger, affiliation or otherwise or (b) us directly or indirectly acquiring another competitive or non-competitive company, franchise system, network or chain, whether in whole or in part, including by asset or stock purchase, change of control, merger, affiliation or otherwise.

“*Agencies*” is defined in Section 20.1.

“*Agreement*” is defined in the Introductory Paragraph.

“*Alternative Channels of Distribution*” means all channels of distribution other than mobile sales to retail customers that are conducted within the Territory, including, but not limited to:

- (i) sales through direct marketing, such as over the Internet or through catalogs or telemarketing;
- (ii) sales through retail stores that do not operate under the Marks, such as grocery stores, convenience stores or department stores;
- (iii) sales made at wholesale.

“*Baja Smoothies Business*” means a uniquely branded smoothie company selling fresh-fruit smoothies in a mobile environment operating under the Marks.

“*Brand Protection Agreement*” means our form of Brand Protection Agreement, the most current form of which is attached to this Agreement as ATTACHMENT "D".

“*Business*” is defined in Section 2.

“*Captive Venues*” means a non-traditional outlet for a Baja Smoothies Business that is located within, or is a part of, another establishment or facility that consumers may visit for a purpose unrelated to the Baja Smoothies Business. Examples of Captive Venues include Baja Smoothies Businesses that are located within amusement parks, theme parks, college campuses, universities, airports, train stations, bus stations, cruise terminals, stadiums, sporting arenas, shopping malls, military bases, concert venues, airshows or similar types of establishments.

“*Claim*” or “*Claims*” means any and all claims, actions, demands, assessments, litigation, or other form of regulatory or adjudicatory procedures, claims, demands, assessments, investigations, or formal or informal inquiries.

“*Competitive Business*” means any business competitive with us (or competitive with any of our affiliates or our franchisees) that serves smoothies, ice cream, shaved ice, or other frozen drinks and/or desserts in a mobile environment.

“*Confidentiality Agreement*” means our form of Confidentiality Agreement, the most current form of which is attached to this Agreement as ATTACHMENT "E".

“*Copyrighted Materials*” means all copyrightable materials for which we or our affiliate has secured common law or registered copyright protection and that we allow Baja Smoothies franchisees to use, sell or display in connection with the marketing and/or operation of a Baja Smoothies Business, whether now in existence or created in the future.

“*Dispute*” is defined in Section 21.

“*Effective Date*” is defined in the Introductory Paragraph.

“*Entity*” means a corporation, partnership, limited liability company or other form of association.

“*General Release*” means our current form of general release of all claims against us and our affiliates and subsidiaries, and our and their respective members, officers, directors, agents and employees, in both their corporate and individual capacities.

“*Gross Sales*” means all gross sums collected by you from all goods and services sold in connection with your Business, together with any other revenue or monies derived in connection with your Business, including any advertising revenues, sponsorship fees or business interruption insurance proceeds. “Gross Sales” does not include: (a) revenues derived from the sale of products to customers if you purchased such products from us or an affiliate of ours at wholesale; (b) revenues that you collect from a customer and later refund to that customer; or (c) any sales or use taxes that you pay to a government agency. The Manual may include policies governing the manner in which proceeds from the sale of gift cards are treated for purposes of calculating Gross Sales. The Manual may also provide details on the calculation of Gross Sales relating to qualifying purchases and redemptions by members under any loyalty program we implement.

“*Improvements*” is defined in Section 16.5.

“*Indemnified Party*” or “*Indemnified Parties*” means us and each of our past, present and future owners, members, officers, directors, employees and agents, as well as our parent companies, subsidiaries and affiliates, and each of their past, present and future owners, members, officers, directors, employees and agents.

“*Intellectual Property*” means, collectively or individually, our Marks, Copyrighted Materials, Know-how, System and Improvements. “*Intellectual Property*” also includes all customer data collected by you or us.

“*Interim Manager*” is defined in Section 8.4.

“*Interim Term*” is defined in Section 4.3.

“*Know-how*” means all of our trade secrets and other proprietary information relating to the development, construction, marketing and/or operation of a Baja Smoothies Business, including, but not limited to, methods, techniques, specifications, procedures, policies, marketing strategies and information comprising the System and the Manual.

“*Losses and Expenses*” means all compensatory, exemplary, and punitive damages; fines and penalties; attorneys’ fees; experts’ fees; court costs; costs associated with investigating and defending against Claims; settlement amounts; judgments; compensation for damages to our reputation and goodwill; and all other costs, damages, liabilities and expenses associated with any of the foregoing losses and expenses or incurred by an Indemnified Party as a result of a Claim.

“*Managing Owner*” means the Owner that you designate and we approve who is primarily responsible for the daily on-premises management and supervision of the Business.

“*Manual*” is defined in Section 6.1.

“*Marks*” means the logotypes, service marks, and trademarks now or hereafter involved in the operation of a Baja Smoothies Business, including “Baja Smoothies,” and any other trademarks, service marks or trade names that we designate for use by a Baja Smoothies Business. The term “Marks” also includes any distinctive trade dress used to identify a Baja Smoothies Business, whether now in existence or hereafter created.

“*Owner*” or “*Owners*” means any individual who owns a direct or indirect ownership interest in the franchise or the Entity that is the franchisee under this Agreement. “Owner” includes both passive and active owners.

“*PCI-DSS*” means the payment card industry data security standard, which is a set of security requirements established by the following major credit card brands from time to time: American Express, Discover Financial Services, JCB International, MasterCard Worldwide, and Visa Inc., which standards are set forth at <https://www.pcisecuritystandards.org> as of the Effective Date.

“*Permitted Transfer*” means: (a) a Transfer from one Owner to another Owner who was an approved Owner

prior to such Transfer, other than a Transfer by an Owner who is the Managing Owner that results in the Managing Owner holding less than a 25% ownership interest in the franchise or the Entity that is the franchisee under this Agreement, as applicable; and/or (b) a Transfer to a newly established Entity for which the Owners collectively own and control 100% of the ownership interests and voting power.

“Post-Term Restricted Period” means, with respect to you, a period of two (2) years after the termination, expiration or Transfer of this Agreement; provided, however, that if a court of competent jurisdiction determines that the two-year Post-Term Restricted Period is too long to be enforceable, then the *“Post-Term Restricted Period”* means, with respect to you, a period of one (1) year after the termination, expiration or Transfer of this Agreement. *“Post-Term Restricted Period”* means, with respect to an Owner, a period of two (2) years after the earlier to occur of (a) the termination, expiration or Transfer of this Agreement or (b) the Owner’s Transfer of his or her entire ownership interest in the franchise or the Entity that is the franchisee, as applicable; provided, however, that if a court of competent jurisdiction determines that the two-year Post-Term Restricted Period is too long to be enforceable, then the *“Post-Term Restricted Period”* means, with respect to an Owner, a period of one (1) year after the earlier to occur of (a) the termination, expiration or Transfer of this Agreement or (b) the Owner’s Transfer of his or her entire ownership interest in the franchise or the Entity that is the franchisee, as applicable.

“Prohibited Activities” is defined in Section 13.3.

“Restricted Territory” means the geographic area within: (a) a 15-mile radius from the Protected Territory; and (b) a 15-mile radius from the Protected Territory of all other Baja Smoothies Businesses that are operating or under construction as of the Effective Date and remain in operation or under construction during all or any part of the Post-Term Restricted Period; provided, however, that if a court of competent jurisdiction determines that the foregoing Restricted Territory is too broad to be enforceable, then the *“Restricted Territory”* means the geographic area within a 5-mile radius from the Protected Territory.

“Successor Agreement” is defined in Section 4.1.

“System” means our unique system for the operation of a Baja Smoothies Business, the distinctive characteristics of which include our valuable know-how, information, trade secrets, training methods, standards, designs, methods of trademark usage, copyrights, confidential electronic and other communications, and research and development connected with the operation and promotion of the Baja Smoothies Business.

“Technology Systems” is defined in Section 11.8.

“Term” is defined in Section 4.1.

“Territory” is defined in Section 3.

“Transfer” means any direct or indirect, voluntary or involuntary (including by judicial award, order or decree), assignment, sale, conveyance, subdivision, sublicense or other transfer or disposition of this Agreement, the franchise (or any interest therein), the Business (or any portion thereof) or an ownership interest in an Entity that is the franchisee, including by merger or consolidation, by issuance of additional securities representing an ownership interest in the Entity that is the franchisee, or by operation of law, will or a trust upon the death of an Owner (including the laws of intestate succession).

“We” or “us” is defined in the Introductory Paragraph.

“You” is defined in the Introductory Paragraph.

EXHIBIT "D"
TO DISCLOSURE DOCUMENT
TABLE OF CONTENTS OF FRANCHISE OPERATIONS MANUAL

[See attached]

BAJA SMOOTHIES
FRANCHISE OPERATIONS MANUAL

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EXHIBIT "E"
TO DISCLOSURE DOCUMENT
LIST OF FRANCHISEES

Part A (Current Franchisees)

The following table lists franchisees that were open as of December 31, 2023.

FRANCHISEES OPEN AS OF DECEMBER 31, 2023				
State	City	Territory	Phone	Owner Name(s)

The following table lists franchisees with signed franchise agreements that were not open as of December 31, 2023.

FRANCHISEES NOT OPEN AS OF DECEMBER 31, 2023				
State	City	Territory	Phone	Owner Name(s)

Part B (Former Franchisees Who Left System During Prior Fiscal Year)

State	City	Current Business Phone or Last Known Home Phone	Owner Name(s)

If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

EXHIBIT "F"
TO DISCLOSURE DOCUMENT
FINANCIAL STATEMENTS

[See Attached]

BAJA SMOOTHIES FRANCHISE, LLC.

FINANCIAL STATEMENT

DECEMBER 31, 2023



**To the State of Minnesota
on behalf
of Baja Smoothies Franchise
Woodbury, Minnesota**

We have audited the accompanying financial statements of **Baja Smoothies Franchise** (a Minnesota corporation), which comprise the balance sheets as of **December 31, 2023** and 2022, and the related statements of income, stockholders' equity and cash flows for the years then ended, and the related notes to the financial statements.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of **Baja Smoothies Franchise** as of **December 31, 2023** and 2022, 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 Audit of the Financial Statements section of our report. We are required to be independent of **Baja Smoothies Franchise** 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.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the 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 financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about **Baja Smoothies Franchise's** ability to continue as a going concern within one year after the date that the financial statements are available to be issued.

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Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the 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 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 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 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 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 **Baja Smoothies Franchise's** 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 financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about **Baja Smoothies Franchise's** ability to continue as a going concern

SAINT PAUL
170 7th Place East
St. Paul, MN 55101
phone (651) 224-5721 • fax (651) 225-2008

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Certified Public Accountants
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Members of American Institute of Certified Public Accountants, Minnesota Society of CPAs and CPA USA Association



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.

February 1, 2024

LETHERT, SKWIRA, SCHULTZ & CO. LLP

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BAJA SMOOTHIES FRANCHISE

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BAJA SMOOTHIES FRANCHISE

1

Balance Sheets

December 31, 2023 and 2022

(See Accountant's Compilation Report)

	<u>2023</u>	<u>2022</u>
<u>ASSETS</u>		
<u>Current Assets</u>		
Cash	\$ <u>6,967</u>	\$ <u>6,965</u>
TOTAL ASSETS	\$ <u>6,967</u>	\$ <u>6,965</u>
 <u>LIABILITIES AND STOCKHOLDERS' EQUITY</u>		
<u>Stockholders' Equity</u>		
Contributed capital	6,965	6,965
Retained earnings (deficit)	<u>2</u>	<u>-</u>
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	\$ <u>6,967</u>	\$ <u>6,965</u>

The accompanying notes are an integral part of this financial statement.

BAJA SMOOTHIES FRANCHISE

2

Statements of Income

Years Ended **December 31, 2023** and 2022

(See Accountant's Compilation Report)

	<u>2023</u>	<u>2022</u>
<u>Revenue</u>		
<u>Other Income</u>		
Interest	\$ <u>2</u>	\$ <u>-</u>
Net Income for the Year	\$ <u><u>2</u></u>	\$ <u><u>-</u></u>

The accompanying notes are an integral part of this financial statement.

BAJA SMOOTHIES FRANCHISE

3

Statements of Stockholders' Equity

Years Ended **December 31, 2023** and 2022

(See Accountant's Compilation Report)

	<u>Common Stock</u>	<u>Paid-In Capital</u>	<u>Retained Earnings (Deficit)</u>	<u>Total</u>
Balance, December 31, 2022	\$ -	\$ -	\$ -	\$ -
Contributions from stockholders	<u>-</u>	<u>6,965</u>	<u>-</u>	<u>6,965</u>
Balance, December 31, 2022	-	6,965	-	6,965
Net income for the year	<u>-</u>	<u>-</u>	<u>2</u>	<u>2</u>
Balance, December 31, 2023	<u>\$ -</u>	<u>\$ 6,965</u>	<u>\$ 2</u>	<u>\$ 6,967</u>

The accompanying notes are an integral part of this financial statement.

BAJA SMOOTHIES FRANCHISE

4

Statements of Cash Flows

Years Ended **December 31, 2023** and 2022

(See Accountant's Compilation Report)

	<u>2023</u>	<u>2022</u>
<u>Cash Flows From Operating Activities</u>		
Net income	\$ <u>2</u>	\$ <u>-</u>
Net Cash Provided by Operating Activities	2	-
 Net Increase in Cash	 2	 6,965
 Cash, Beginning of Year	 <u>6,965</u>	 <u>-</u>
 Cash, End of Year	 <u>\$ 6,967</u>	 <u>\$ 6,965</u>

The accompanying notes are an integral part of this financial statement.

BAJA SMOOTHIES FRANCHISE

5

Notes to Financial Statements

December 31, 2023 and 2022

(See Accountant's Compilation Report)

NOTE 1 NATURE OF BUSINESS

The Company owns and operates smoothie trucks under a franchise agreement with Baja Smoothies. The mobility of the smoothie trucks allows the company to attend different events in the area of operation outlined in the franchise agreement. The company is still in start-up process and has yet to start operations.

NOTE 2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES AND USE OF ACCOUNTING ESTIMATES

Basis of Accounting

The Company uses the accrual basis of accounting for financial statements and income tax purposes.

Accounting Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America 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.

Cash and Cash Equivalents

For purposes of the statement of cash flows, the Company considers all highly liquid debt instruments purchased with a maturity of three months or less to be cash equivalents.

NOTE 3 SUBSEQUENT EVENTS

In preparing these financial statements, the Company has evaluated events and transactions for potential recognition or disclosure through February 1, 2024, the date the financial statements were available to be issued.

BAJA SMOOTHIES FRANCHISE, LLC.

FINANCIAL STATEMENT

DECEMBER 31, 2022

**To the Stockholders
of Baja Smoothies Franchise
Woodbury, Minnesota**

We have audited the accompanying financial statements of **Baja Smoothies Franchise** (a Minnesota corporation), which comprise the balance sheet as of **December 31, 2022**, and the related statement of income stockholders' equity and cash flows for the period from inception June 7, 2022 to December 31, 2022, and the related notes to the financial statements.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of **Baja Smoothies Franchise** as of **December 31, 2022**, and the results of its operations and its cash flows for the year then ended 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 Financial Statements section of our report. We are required to be independent of **Baja Smoothies Franchise** 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 Financial Statements

Management is responsible for the preparation and fair presentation of the 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 financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about **Baja Smoothies Franchise's** ability to continue as a going concern within one year after the date that the financial statements are available to be issued.

Auditor's Responsibilities for the Audit of the Financial Statements

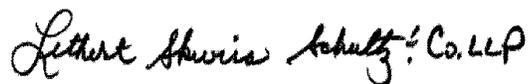
Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance 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 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 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 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 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 **Baja Smoothies Franchise's** 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 financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about **Baja Smoothies Franchise's** 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.

December 31, 2023



LETHERT, SKWIRA, SCHULTZ & CO. LLP

BAJA SMOOTHIES FRANCHISE

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BAJA SMOOTHIES FRANCHISE

1

Balance Sheet

Year Ended **December 31, 2022**

(See Accountant's Compilation Report)

	<u>2022</u>
<u>ASSETS</u>	
<u>Current Assets</u>	
Cash	\$ <u>6,965</u>
TOTAL ASSETS	\$ <u>6,965</u>
 <u>LIABILITIES AND STOCKHOLDERS' EQUITY</u>	
<u>Stockholders' Equity</u>	
Contributed capital	<u>6,965</u>
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	\$ <u>6,965</u>

The accompanying notes are an integral part of this financial statement.

BAJA SMOOTHIES FRANCHISE

2

Statement of Income

Year Ended **December 31, 2022**

(See Accountant's Compilation Report)

	<u>2022</u>
<u>Revenue</u>	
<u>Expenses</u>	
Net Income for the Year	\$ <u><u>-</u></u>

The accompanying notes are an integral part of this financial statement.

BAJA SMOOTHIES FRANCHISE

3

Statement of Stockholders' Equity

Year Ended **December 31, 2022**

(See Accountant's Compilation Report)

	<u>Common Stock</u>	<u>Paid-In Capital</u>	<u>Retained Earnings (Deficit)</u>	<u>Total</u>
Balance, December 31, 2021	-	-	-	-
Contributions from stockholders	<u>-</u>	<u>6,965</u>	<u>-</u>	<u>6,965</u>
Balance, December 31, 2022	<u>\$ -</u>	<u>\$ 6,965</u>	<u>\$ -</u>	<u>\$ 6,965</u>

The accompanying notes are an integral part of this financial statement.

BAJA SMOOTHIES FRANCHISE

4

Statement of Cash Flows

Year Ended **December 31, 2022**

(See Accountant's Compilation Report)

<u>Cash Flows From Investing Activities</u>	
Contributions to partnerships	<u>6,965</u>
Net Increase in Cash	6,965
Cash, Beginning of Year	<u>-</u>
Cash, End of Year	<u>\$ 6,965</u>

The accompanying notes are an integral part of this financial statement.

BAJA SMOOTHIES FRANCHISE

5

Notes to Financial Statements

December 31, 2022 and 2021

(See Accountant's Compilation Report)

NOTE 1 NATURE OF BUSINESS

The Company owns and operates smoothie trucks under a franchise agreement with Baja Smoothies. The mobility of the smoothie trucks allows the company to attend different events in the area of operation outlined in the franchise agreement. Company is still in start-up process and has yet to start operations.

NOTE 2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES AND USE OF ACCOUNTING ESTIMATES

Basis of Accounting

The Company uses the accrual basis of accounting for financial statements and income tax purposes.

Cash and Cash Equivalents

For purposes of the statement of cash flows, the Company considers all highly liquid debt instruments purchased with a maturity of three months or less to be cash equivalents.

NOTE 3 SUBSEQUENT EVENTS

In preparing these financial statements, the Company has evaluated events and transactions for potential recognition or disclosure through **December 31, 2023**, the date the financial statements were available to be issued.

EXHIBIT "G"
TO DISCLOSURE DOCUMENT
OTHER AGREEMENTS

EXHIBIT “G”-1

STATE ADDENDA

[See Attached]

STATE ADDENDA AND AGREEMENT RIDERS
ADDENDUM TO FRANCHISE AGREEMENT, SUPPLEMENTAL AGREEMENTS,
AND FRANCHISE DISCLOSURE DOCUMENT FOR CERTAIN STATES FOR
Baja Smoothies Franchise, LLC

BACKGROUND AND PURPOSE

The following modifications are made to the Baja Smoothies Franchise Disclosure Document (“FDD” or “Disclosure Document”) issued by Baja Smoothies Franchise, LLC (“we” or “us” or “franchisor”) to franchisee (“you” or “franchisee”) and may supersede, to the extent required by applicable state law, certain portions of the Franchise Agreement between you and us dated _____, 202__ (the “Franchise Agreement”). When the term “Supplemental Agreements” is used, it means any area development agreement, area representative agreement, master franchise agreement, or similar agreement entered into between us and you, if applicable.

Certain states have laws governing the franchise relationship and franchise documents. Certain states require modifications to the FDD, Franchise Agreement, Supplemental Agreements and other documents related to the sale of a franchise. This State-Specific Addendum (“State Addendum”) will modify these agreements to comply with the applicable state’s laws. The terms of this State Addendum will only apply if you meet the requirements of the applicable state independently of your signing of this State Addendum. The terms of this State Addendum (but only the State Addendum for the applicable State) will override any inconsistent provision of the FDD, Franchise Agreement or any Supplemental Documents. This State Addendum only applies to the following states: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

If your state requires these modifications, you will sign this State Addendum along with the Franchise Agreement and any Supplemental Agreements. If you sign this State Addendum, only the terms applicable to the state or states whose franchise laws apply to your transaction will govern. If you sign this State Addendum, but none of the state franchise laws listed above applies because their jurisdictional requirements have not been met, then this State Addendum will be void and inapplicable to you.

CALIFORNIA

1. The California Franchise Investment Law requires a copy of all proposed agreements relating to the sale of the Franchise be delivered together with the Disclosure Document.
2. Section 31125 of the California Corporations Code requires us to give you a disclosure document, in a form containing the information that the Commissioner may by rule or order require, before a solicitation of a proposed material modification of an existing franchise.
3. Neither the franchisor nor any person or franchise broker in Item 2 of the FDD is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 78a et seq., suspending or expelling such persons from membership in such association or exchange.
4. The Franchise Agreement and Supplemental Agreements require binding arbitration. The arbitration will occur in Minnesota with the costs being borne by the party filing the arbitration.
5. Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code Section 20040.5, Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of a Franchise Agreement or Supplemental Agreement restricting venue to a forum outside the State of California.
6. The Franchise Agreement and Supplemental Agreements require application of the laws of the state where the Baja Smoothies Business is located. This provision may not be enforceable under California law.
7. The Franchise Agreement and Supplemental Agreements may provide for termination upon bankruptcy. Any such provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. Sec. 101 et seq.).
8. The Franchise Agreement and Supplemental Agreements may contain a covenant not to compete which extends beyond the termination of the franchise. This provision may not be enforceable under California law.
9. Under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable. Any such provisions contained in the Franchise Agreement or Supplemental Agreements may not be enforceable.
10. California Business and Professions Code Sections 20000 through 20043 provide rights to you concerning termination, transfer, or non-renewal of a franchise. If the Franchise Agreement or Supplemental Agreements contain a provision that is inconsistent with the California Franchise Investment Law, the California Franchise Investment Law will control.
11. You must sign a general release of claims if you renew or transfer your Franchise. California Corporations Code Section 31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code Sections 31000 through 31516). Business and Professions Code Section 20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code Sections 20000 through 20043).
12. OUR WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION & INNOVATION. ANY COMPLAINTS CONCERNING THE CONTENT OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION & INNOVATION AT <https://dfpi.ca.gov/>.

HAWAII

1. The following is added to the Cover Page:

THIS FRANCHISE WILL BE/HAS BEEN FILED UNDER THE FRANCHISE INVESTMENT LAW OF THE STATE OF HAWAII. FILING DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS OR A FINDING BY THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS THAT THE INFORMATION PROVIDED IN THIS FRANCHISE DISCLOSURE DOCUMENT IS TRUE, COMPLETE AND NOT MISLEADING.

THE FRANCHISE INVESTMENT LAW MAKES IT UNLAWFUL TO OFFER OR SELL ANY FRANCHISE IN THIS STATE WITHOUT FIRST PROVIDING TO YOU OR SUBFRANCHISOR AT LEAST SEVEN DAYS PRIOR TO THE EXECUTION BY YOU OR SUBFRANCHISOR OF ANY BINDING FRANCHISE OR OTHER AGREEMENT, OR AT LEAST SEVEN DAYS PRIOR TO THE PAYMENT OF ANY CONSIDERATION BY YOU, WHICHEVER OCCURS FIRST, A COPY OF THE FRANCHISE DISCLOSURE DOCUMENT, TOGETHER WITH A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE.

THIS FRANCHISE DISCLOSURE DOCUMENT CONTAINS A SUMMARY ONLY OF CERTAIN MATERIAL PROVISIONS OF THE FRANCHISE AGREEMENT. THE CONTRACT OR AGREEMENT SHOULD BE REFERRED TO FOR A STATEMENT OF ALL RIGHTS, CONDITIONS, RESTRICTIONS AND OBLIGATIONS OF BOTH US AND YOU.

2. Our registered agent in the state authorized to receive service of process:

Commissioner of Securities of the State of Hawaii
Department of Commerce and Consumer Affairs
Business Registration Division
335 Merchant Street, Room 203
Honolulu, Hawaii 96813

3. The states in which this filing is effective are listed on the Exhibit to the FDD titled "State Effective Dates".
4. The states in which this filing is or will be shortly on file include the following:

5. The states, if any, which have refused, by order or otherwise, to register these franchises include the following: _____
6. The states, if any, which have revoked or suspended the right to offer these franchises include the following:

7. The states, if any, in which the filing of these franchises has been withdrawn include the following:

ILLINOIS

In recognition of the requirements of the Illinois Franchise Disclosure Act, 815 ILCS 705, the Disclosure Document and the Franchise Agreement and Supplemental Agreements are amended as follows:

1. Illinois law shall apply to and govern the Franchise Agreement and Supplemental Agreements.
2. In accordance with Section 4 of the Illinois Franchise Disclosure Act, any provision in the Franchise Agreement and Supplemental Agreements that designated jurisdiction and venue in a forum outside of the State of Illinois is void. However, the Franchise Agreement and Supplemental Agreements may provide for arbitration to take place outside of Illinois. Therefore, any arbitration proceeding may be brought in Minnesota in accordance with the dispute resolution provision set forth in the Franchise Agreement and Supplemental Agreements.
3. Your rights upon Termination and Non-Renewal are set forth in sections 19 and 20 of the Illinois Franchise Disclosure Act.
4. In conformance with Section 41 of the Illinois Franchise Disclosure Act, 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.
5. The Franchise Agreement and Supplemental Agreements are amended to state the following:

To the extent that any provision in the Illinois State Addendum is inconsistent with any provision in this Agreement, the provision in the Illinois State Addendum shall control.

INDIANA

In recognition of the requirements of the Indiana Franchise Disclosure Law, IC 23-2-2-2.5, the Franchise Agreement and Supplemental Agreements are amended as follows:

1. The laws of the State of Indiana supersede any provisions of the Disclosure Document, Franchise Agreement and Supplemental Agreements if such provisions are in conflict with Indiana law.
2. The Franchise Agreement and Supplemental Agreements are amended to provide that such agreements will be construed in accordance with the laws of the State of Indiana.
3. Any provision in the Franchise Agreement which designates jurisdiction or venue, or requires the franchisee to agree to jurisdiction or venue, in a forum outside of Indiana, is deleted from any Franchise Agreement and Supplemental Agreement issued in the State of Indiana.
4. The prohibition by Indiana Code § 23-2-2.7-1(7) against unilateral termination of the franchise without good cause or in bad faith, good cause being defined therein as material breach of the Franchise Agreement or Supplemental Agreement (as applicable), shall supersede the provisions of the Franchise Agreement or Supplemental Agreement (as applicable) in the State of Indiana to the extent they may be inconsistent with such prohibition.
5. Liquidated damages and termination penalties are prohibited by law in the State of Indiana and, therefore, the Disclosure Document, the Franchise Agreement and Supplemental Agreements are amended by the deletion of all references to liquidated damages and termination penalties and the addition of the following language to the original language that appears therein:

Notwithstanding any such termination, and in addition to the obligations of the franchisee as otherwise provided, or in the event of termination or cancellation of the Franchise Agreement under any of the other provisions therein, the franchisee nevertheless shall be, continue and remain liable to franchisor for any and all damages which franchisor has sustained or may sustain by reason of such default or defaults and the breach of the Franchise Agreement on the part of the franchisee for the unexpired Term of the Franchise Agreement.

At the time of such termination of the Franchise Agreement, the franchisee covenants to pay to franchisor within 10 days after demand as compensation all damages, losses, costs and expenses (including reasonable attorney's fees) incurred by franchisor, and/or amounts which would otherwise be payable thereunder but for such termination for and during the remainder of the unexpired Term of the Franchise Agreement. This Agreement does not constitute a waiver of the franchisee's right to a trial on any of the above matters.

6. No release language set forth in the Disclosure Document or Franchise Agreement or Supplemental Agreement shall relieve franchisor or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of Indiana. Any provision in the Franchise Agreement or Supplemental Agreement that would require you to prospectively assent to a release, assignment, novation, waiver or estoppel which purports to relieve any person from liability imposed by the Indiana Deceptive Franchise Practices Law is void to the extent that such provision violates such law.

MARYLAND

In recognition of the requirements of the Maryland Franchise Registration and Disclosure Law (the “Maryland Franchise Law”), the Disclosure Document is amended as follows:

1. Item 17 of the Disclosure Document is amended to add the following:
 - (a) The general release required as a condition of renewal, sale and/or assignment/transfer shall not apply any liability under the Maryland Franchise Registration and Disclosure Law.
 - (b) A franchisee may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.
 - (c) Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within 3 years after the grant of the franchise.
 - (d) In the event of a conflict of laws to the extent required by the Maryland Franchise Registration and Disclosure Law, Maryland law shall prevail.
 - (e) The Franchise Agreement and Supplemental Agreements provide for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law (11 U.S.C. Section 101, et seq.).

2. The Franchise Disclosure Questionnaire, which is attached as an Exhibit to the Disclosure Document, is amended as follows:

All representations requiring prospective franchisees to assent to the 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.

In recognition of the requirements of the Maryland Franchise Law, the Franchise Agreement and Supplemental Agreements are amended to add the following:

3. Any claims arising under the Maryland Franchise Law must be brought within three (3) years after the grant of the franchise.
4. Pursuant to COMAR 02.02.08.16L, the general release required as a condition of renewal, sale, and/or assignment/transfer shall not apply to any liability under the Maryland Franchise Law.
5. You may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Law.
6. The Franchise Questionnaire that you completed in connection with your application for the franchise requires you, as a prospective franchisee, to disclaim the occurrence and/or acknowledge the non-occurrence of acts that would constitute a violation of the Maryland Franchise Law as a condition to your purchase of the franchise. Any such representations are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Law.
7. Any acknowledgements or representations by you that disclaim the occurrence and/or acknowledge the non-occurrence of acts that would constitute a violation of the Maryland Law are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Law.
8. Nothing in the Franchise Agreement, Supplemental Agreement or in any related agreement is intended to disclaim the representations made in the Franchise Disclosure Document.

MICHIGAN

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.

Each of the following provisions is void and unenforceable if contained in any document relating to a franchise:

- (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 provision 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 franchise 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 transferee 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.

If the franchisor's most recent financial statements are unaudited and show a net worth of less than \$100,000.00, the franchisee may request the franchisor to arrange for the escrow of initial investment and other funds paid by the franchisee until the obligations, if any, of the franchisor 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 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.

Any questions regarding this notice should be directed to:

State of Michigan
Department of Attorney General
CONSUMER PROTECTION DIVISION
Attention: Franchise Section
G. Mennen Williams Building, 1st Floor
525 West Ottawa Street
Lansing, Michigan 48913
Telephone Number: (517) 373-7117

MINNESOTA

In recognition of the Minnesota Franchise Law, Minn. Stat., Chapter 80C, Sections 80C.01 through 80C.22, and the Rules and Regulations promulgated pursuant thereto by the Minnesota Commission of Securities, Minnesota Rule 2860.4400, et. seq., the Disclosure Document, Franchise Agreement and Supplemental Agreements are amended as follows:

1. Minnesota Rule 2860.4400(D) prohibits us from requiring you to assent to a general release.
2. We will comply with Minnesota Statute Section 80C.14, Subds. 3, 4 and 5 which require, except in certain specified cases, that you be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for non-renewal of the Franchise Agreement or Supplemental Agreement; and that consent to the transfer of the franchise will not be unreasonably withheld.
3. Minnesota Statute Section 80C.21 and Minnesota Rule 2860.4400(J) 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 Franchise Disclosure Document or agreement(s) 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. In addition, we will comply with the provisions of Minnesota Rule 2860.4400(J), which state that you cannot waive any rights, you cannot consent to our obtaining injunctive relief, we may seek injunctive relief, and a court will determine if a bond is required.
4. We will comply with Minnesota Statute Section 80C.12, Subd. 1(g), which requires that we protect your right to use the trademarks, service marks, trade names, logotypes or other commercial symbols or indemnify you from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the name.
5. We will comply with Minnesota Statute Section 80C.17, Subd. 5 regarding limitation of claims.
6. Item 5 and 7 of the Disclosure Document, as well as the initial fee provisions within the Franchise Agreement and Supplemental Agreements, are amended to include the following:

“All fees referenced are subject to deferral pursuant to order of the State of Minnesota. Accordingly, you will pay no fees to us until we have completed all of our material preopening responsibilities to you and you commence operating the franchised business.”

NEW YORK

In recognition of the requirements of the General Business Laws of the State of New York, Article 33, §§680 through 695, the Disclosure Document, Franchise Agreement and Supplemental Agreements are amended as follows:

1. The following information is added to the cover page of the Disclosure Document:

INFORMATION COMPARING FRANCHISORS IS AVAILABLE. CALL THE STATE ADMINISTRATORS LISTED IN EXHIBIT A 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, BUREAU OF INVESTOR PROTECTION, 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 of the Disclosure Document:

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 or pleaded nolo contendere to a misdemeanor charge or has been the subject of a 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.
- 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 to the end of Item 4 of the Disclosure Document:

Neither the franchisor, its affiliate, its predecessor, officers, or general partner during the 10-year period immediately before the date of the offering circular: (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 of 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 1 year after that officer or general partner of the franchisor held this position in the company or partnership.

4. The following is added to the end of Item 5 of the Disclosure Document:

The initial franchise fee constitutes part of our general operating funds and will be used as such in our discretion.

5. The following is added to the end of the “Summary” sections of Item 17(c) of the Disclosure Document, titled “**Requirements for franchisee to renew or extend,**” and Item 17(m) of the Disclosure Document, 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 General Business Law Sections 687.4 and 687.5 be satisfied.

6. The following language replaces the “Summary” section of Item 17(d) of the Disclosure Document, titled “**Termination by franchisee**”:

You may terminate the agreement on any grounds available by law.

7. The following is added to the end of the “Summary” section of Item 17(j) of the Disclosure Document, 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.

8. The following is added to the end of the “Summary” sections of Item 17(v) of the Disclosure Document, titled “Choice of forum”, and Item 17(w) of the Disclosure Document, 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.

9. We will not require that you prospectively assent to a release, assignment, novation, waiver, or estoppel that purports to relieve any person from liability imposed by the New York Franchise Law.

10. We will not place any condition, stipulation, or provision in the Franchise Agreement that requires you to waive compliance with any provision of the New York Franchise Law.

11. Any provision in the Franchise Agreement that limits the time period in which you may assert a legal claim against us under the New York Franchise Law is amended to provide for a three (3) year statute of limitations for purposes of bringing a claim arising under the New York Franchise Law.

12. Notwithstanding the transfer provision in the Franchise Agreement, we will not assign the Franchise Agreement except to an assignee who, in our good faith judgment, is willing and able to assume our obligations under the Franchise Agreement.

NORTH DAKOTA

In recognition of the requirements of the North Dakota Franchise Investment Law (the “North Dakota Franchise Law”), the Disclosure Document, Franchise Agreement and Supplemental Agreements are amended as follows:

1. Covenants not to compete are generally considered unenforceable in the State of North Dakota, pursuant to Section 51-19-09 of the North Dakota Franchise Law. Item 17(r) of the Disclosure Document and certain provisions in the Franchise Agreement and Supplemental Agreements include certain covenants restricting competition to which you must agree. The Commissioner has held that covenants restricting competition contrary to Section 9-08-06 of the North Dakota Century Code, without further disclosing that such covenants may be subject to this statute, are unfair, unjust, or inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Law. The Disclosure Document, Franchise Agreement and Supplemental Agreements are amended accordingly to the extent required by law.
2. Provisions requiring arbitration or mediation to be held at a location that is remote from the site of the franchisee’s business are generally considered unenforceable in the State of North Dakota, pursuant to Section 51-19-09 of the North Dakota Franchise Investment Law. Accordingly, the parties must agree on the site where arbitration or mediation will be held.
3. Provisions requiring jurisdiction in a state other than North Dakota are generally considered unenforceable in the State of North Dakota, pursuant to Section 51-19-09 of the North Dakota Franchise Investment Law.
4. Provisions requiring that agreements be governed by the laws of a state other than North Dakota are generally considered unenforceable in the State of North Dakota, pursuant to Section 51-19-09 of the North Dakota Franchise Investment Law.
5. Provisions requiring your consent to liquidated or termination damages are generally considered unenforceable in the State of North Dakota, pursuant to Section 51-19-09 of the North Dakota Franchise Investment Law.
6. Provisions requiring you to sign a general release upon renewal of the franchise agreement have been determined to be unfair, unjust and inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law.
7. Provisions requiring you to pay all costs and expenses incurred by us in enforcing the franchise agreement have been determined to be unfair, unjust and inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law. Accordingly, any such provision is modified to read that the prevailing party in any enforcement action is entitled to recover all costs and expenses including attorney’s fees.
8. Provisions requiring you to consent to a waiver of trial by jury have been determined to be unfair, unjust and inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law.
9. Provisions requiring you to consent to a limitation of claims within one year have been determined to be unfair, unjust and inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law. Accordingly, any such provision is modified to read that the statute of limitations under North Dakota Law will apply.
10. Provisions requiring you to consent to a waiver of exemplary and punitive damages have been determined to be unfair, unjust and inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law.

RHODE ISLAND

In recognition of the requirements of the Rhode Island Franchise Investment Act (the "Rhode Island Franchise Law"), the Disclosure Document, Franchise Agreement and Supplemental Agreements are amended as follows:

1. We will not require that you prospectively assent to a waiver, condition, stipulation, or provision that purports to relieve any person from liability imposed by the Rhode Island Franchise Law. This provision does not apply to the settlement of disputes, claims, or civil lawsuits brought under the Rhode Island Franchise Law.
2. Section 19-28.1-14 of the Rhode Island Franchise Law 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." If a claim is enforceable under the Rhode Island Franchise Law, we will not restrict jurisdiction or venue to a forum outside the State of Rhode Island or require the application of the laws of another state.
3. We will not prohibit you from joining a trade association or association of franchisees. We will not retaliate against you for engaging in these activities.
4. Any provision in the Franchise Agreement that limits the time period in which you may assert a legal claim against us under the Rhode Island Franchise Law is amended to provide for a four (4) year statute of limitations for purposes of bringing a claim arising under the Rhode Island Franchise Law. Notwithstanding the foregoing, if a rescission offer has been approved by the Rhode Island director of business registration, then the statute of limitations is ninety (90) days after your receipt of the rescission offer.

VIRGINIA

In recognition of the requirements of the Virginia Retail Franchising Act, the Disclosure Document, Franchise Agreement and Supplemental Agreements are amended as follows:

1. Item 17 of the Disclosure Document is amended to add the following:

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 grounds for default or termination stated in the Franchise Agreement or Supplemental 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.

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to use undue influence to induce a franchisee/area developer to surrender any right given to him under the applicable agreement.

2. If any provision of the Franchise Agreement or any Supplemental Agreement involves the use of undue influence by the franchisor to induce a franchisee/area developer to surrender any rights given to him under the applicable agreement, that provision may not be enforceable.
3. We will not require that you prospectively assent to a waiver, condition, stipulation, or provision that purports to relieve any person from liability imposed by the Virginia Retail Franchising Act. This provision does not prohibit you and us from entering into binding arbitration consistent with the Virginia Retail Franchising Act.
4. Any provision in the Franchise Agreement or Supplemental Agreement that limits the time period in which you may assert a legal claim against us under the Virginia Retail Franchising Act is amended to provide for a four (4) year statute of limitations for purposes of bringing a claim arising under the Virginia Retail Franchising Act.
5. Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it shall be unlawful for a franchisor to cancel a franchise without reasonable cause. If any grounds for default or termination stated in the Franchise Agreement or Supplemental 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.

WASHINGTON

In recognition of the requirements of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW, the Disclosure Document, Franchise Agreement and Supplemental Agreements are amended as follows:

1. In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW, will prevail.
2. RCW 19.100.180 may supersede the Franchise Agreement and Supplemental Agreements in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the Franchise Agreement and Supplemental Agreements in your relationship with the franchisor including the areas of termination and renewal of your franchise.
3. In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.
4. A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.
5. Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.
6. Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor's earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.
7. RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (a) soliciting or hiring any employee of a franchisee of the same franchisor or (b) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.

WISCONSIN

The Wisconsin Fair Dealership Law, Chapter 135 of the Wisconsin Statutes supersedes any provision of the Franchise Agreement and Supplement Agreements (if applicable) if such provision is in conflict with that law. The Franchise Disclosure Document, the Franchise Agreement and the Supplemental Agreements are amended accordingly.

(Signatures on following page)

APPLICABLE ADDENDA

If any one of the preceding Addenda for specific states (“**Addenda**”) is checked as an “Applicable Addenda” below, then that Applicable Addenda shall be incorporated into the Franchise Disclosure Document, Franchise Agreement, Supplemental Agreements (if applicable) and any other specified agreement(s) entered into by us and the undersigned franchisee. To the extent any terms of an applicable Addenda conflict with the terms of the Franchise Disclosure Document, Franchise Agreement, Supplemental Agreement (if applicable) and other specified agreement(s), the terms of the Applicable Addenda shall supersede the terms of the Franchise Agreement.

- | | | |
|-------------------------------------|---------------------------------------|---------------------------------------|
| <input type="checkbox"/> California | <input type="checkbox"/> Michigan | <input type="checkbox"/> South Dakota |
| <input type="checkbox"/> Hawaii | <input type="checkbox"/> Minnesota | <input type="checkbox"/> Virginia |
| <input type="checkbox"/> Illinois | <input type="checkbox"/> New York | <input type="checkbox"/> Washington |
| <input type="checkbox"/> Indiana | <input type="checkbox"/> North Dakota | <input type="checkbox"/> Wisconsin |
| <input type="checkbox"/> Maryland | <input type="checkbox"/> Rhode Island | |

Dated: _____, 202____

FRANCHISOR:

Baja Smoothies Franchise, LLC

By: _____

Title: _____

FRANCHISEE:

By: _____

Title: _____

EXHIBIT "G"-2

FRANCHISEE DISCLOSURE QUESTIONNAIRE

[See Attached]

FRANCHISEE DISCLOSURE QUESTIONNAIRE

As you know Baja Smoothies Franchise, LLC (“we” or “us), and you are preparing to enter into a Franchise Agreement for the operation of a Baja Smoothies franchise. We require that you complete this Questionnaire (a) so that we can determine whether our franchise sales team followed proper sales procedures and (b) to provide us with reasonable assurance that, prior to signing the Franchise Agreement, you have had an adequate opportunity to review the Franchise Disclosure Document and its attachments, consult with legal and/or business advisors of your choosing, and ask us questions about any disclosures or terms that you do not understand. **You cannot sign or date this Questionnaire the same day as the Receipt for the Franchise Disclosure Document but you must sign and date it the same day you sign the Franchise Agreement and pay your franchise fee.** Please review each of the following questions carefully and provide honest responses to each question.

- Yes__ No__ 1. Have you received from us and personally reviewed the Franchise Agreement together with all attachments to the Franchise Agreement?
[If you answer “no,” please explain in Explanation Section]
- Yes__ No__ 2. Have you received from us and personally reviewed a Franchise Disclosure Document (“FDD”)?
[If you answer “no,” please explain in Explanation Section]
- Yes__ No__ 3. Did you sign a receipt for the FDD indicating the date you received it?
- Yes__ No__ 4. Do you understand all the information contained in the FDD and Franchise Agreement?
[If you answer “no,” please identify any information you don’t understand in Explanation Section]
- Yes__ No__ 5. Did you receive the FDD at least 14 calendar days before signing any agreement relating to the franchise (other than an NDA) or paying any money?
- Yes__ No__ 6. Did you receive a complete execution copy of the Franchise Agreement at least seven (7) calendar days before you signed it?
- Yes__ No__ 7. Have you reviewed the FDD and Franchise Agreement with a lawyer, accountant or other professional advisor?
- Yes__ No__ 8. Have you discussed the benefits and risks of developing and operating a Baja Smoothies franchise with an existing Baja Smoothies franchisee?
- Yes__ No__ 9. Do you understand the risks of developing and operating a Baja Smoothies franchise?
- Yes__ No__ 10. Do you understand the success or failure of your franchise will depend in large part upon your skills, abilities and efforts and those of the persons you employ as well as many factors beyond your control such as competition, interest rates, the economy, inflation, labor and supply costs and other relevant factors?
- Yes__ No__ 11. Do you understand all disputes or claims you may have arising out of or relating to the Franchise Agreement or ADA (if applicable) must be arbitrated in Minnesota if not resolved informally or by mediation?
- Yes__ No__ 12. Do you understand that the Franchise Agreement and the attachments to the Franchise Agreement contain the entire agreement between us and you concerning the franchise for the Baja Smoothies franchise, meaning any prior oral or written statements not set out in the Franchise Agreement or the attachments will not be binding?
- Yes__ No__ 13. Did any of our employees or representatives, or any person speaking on our behalf, make any statement or promise regarding the costs involved in operating a Baja Smoothies franchise that is not contained in the FDD or that is contrary to, or different from, the information contained in the FDD?
[If you answer “yes,” please describe the statement or promise in Explanation Section]

Yes__ No__ 14. Did any of our employees or representatives, or any person speaking on our behalf, make any statement or promise regarding the training, assistance or support that will be provided to you that is not contained in the FDD or that is contrary to, or different from, the information in the FDD?

[If you answer "yes," please describe the statement or promise in Explanation Section]

Yes__ No__ 15. Did any of our employees or representatives, or any person speaking on our behalf, make any statement or promise regarding the actual, average, projected or hypothetical profits or earnings, the likelihood of success, the amount of money you may earn, or the total amount of revenue a Baja Smoothies business may generate, other than any information included in Item 19 of the FDD?

[If you answer "yes," please describe the statement or promise in Explanation Section]

YOU UNDERSTAND THAT YOUR ANSWERS ARE IMPORTANT TO US AND THAT WE WILL RELY ON THEM. BY SIGNING THIS QUESTIONNAIRE, YOU ARE REPRESENTING THAT YOU HAVE CONSIDERED EACH QUESTION CAREFULLY AND RESPONDED TRUTHFULLY TO THE ABOVE QUESTIONS.

Signature of Franchise Applicant

Signature of Franchise Applicant

Name (please print)

Name (please print)

Dated _____

Dated _____

Signature of Franchise Applicant

Signature of Franchise Applicant

Name (please print)

Name (please print)

Dated _____

Dated _____

EXPLANATION SECTION

Please include any explanations below and refer to the applicable question number.

EXHIBIT “G”-3

GENERAL RELEASE

[See Attached]

WAIVER AND RELEASE OF CLAIMS

This Waiver and Release of Claims (this "Agreement") is made as of _____, 202__ (the "Effective Date") by _____, a(n) _____ ("you") and each individual holding a direct or indirect ownership interest in you (collectively "Owner") in favor of Baja Smoothies Franchise, LLC, a Minnesota Limited Liability Company ("us," and together with you and Owner, the "Parties").

Background

- A. We signed a Franchise Agreement with you, dated _____, 202__ (the "Franchise Agreement") pursuant to which we granted you the right to own and operate a Baja Smoothies Business;
- B. You have notified us of your desire to transfer the Franchise Agreement and all rights related thereto, or an ownership interest in the franchisee entity, to a transferee, [**enter into a successor franchise agreement**] and we have consented to such transfer [**agreed to enter into a successor franchise agreement**]; and
- C. As a condition to our consent to the transfer [**your ability to enter into a successor franchise agreement**], you and Owner have agreed to execute this Agreement upon the terms and conditions stated below.
- D. In consideration of our consent to the transfer [**our entering into a successor franchise agreement**], and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, and intending to be legally bound, you and Owner hereby agree as set forth below.

Agreement

1. Release. Owner, you, and each of your officers, directors, shareholders, members, owners, employees, agents, representatives, affiliates, parents, divisions, successors and assigns, and all persons or firms claiming by, through, under, or on behalf of any or all of them (the "Franchisee Parties"), hereby release, acquit and forever discharge us, any and all of our past and present affiliates, parents, subsidiaries and related companies, divisions and partnerships, consultants, advisors and franchise sellers and its and their respective past and present officers, directors, shareholders, members, owners, employees, agents, representatives, affiliates, parents, divisions, successors and assigns, and the spouses of such individuals (collectively, the "Franchisor Parties"), from any and all claims, liabilities, damages, expenses, actions or causes of action which any of the Franchisee Parties may now have or has ever had, whether known or unknown, past or present, absolute or contingent, suspected or unsuspected, of any nature whatsoever, directly or indirectly arising out of or relating to the execution and performance (or lack thereof) of the Franchise Agreement or the offer, sale or acceptance of the franchise related thereto (including, but not limited to any disclosures and representations made in connection therewith). The foregoing release shall not be construed to apply with respect to any obligations contained within this Agreement.
2. California Law. You and Owner hereby express your intention to release all existing claims, whether known or unknown, against the Franchisor Parties. Accordingly, you and Owner hereby waive Section 1542 of the California Civil Code, which provides the following:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

[Section 2 only applies for California franchisees; otherwise it is omitted]

3. Nondisparagement. Each of the Franchisee Parties expressly covenant and agree not to make any false representation of facts, or to defame, disparage, discredit or deprecate any of the Franchisor Parties or otherwise communicate with any person or entity in a manner intending to damage any of the Franchisor Parties, the business conducted by any of the Franchisor Parties or the reputation of any of the Franchisor Parties. For purposes of clarity, the obligations in this Section apply to all methods of communications, including the making of statements or representations through direct verbal or written communication as well as the making of statements or representations on the Internet, through social media sites or through any other verbal, digital or electronic method of communication. The obligations in this Section also

prohibit the Franchisee Parties from indirectly violating this Section by influencing or encouraging third parties to engage in activities that would constitute a violation of this Section if conducted directly by a Franchisee Party.

4. Representations and Warranties. You and Owner each represent and warrant that: (a) [Insert franchisee entity name] is duly authorized to execute this Agreement and perform its obligations hereunder; (b) neither you nor Owner has assigned, transferred or conveyed, either voluntarily or by operation of law, any of their rights or claims against any of the Franchisor Parties or any of the rights, claims or obligations being terminated or released hereunder; (c) you and Owner have not and shall not (i) institute or cause to be instituted against any of the Franchisor Parties any legal proceeding of any kind, including the filing of any claim or complaint with any state or federal court or regulatory agency, alleging any violation of common law, statute, regulation or public policy premised upon any legal theory or claim whatsoever relating to the matters released in this Agreement or (ii) make any verbal, written or other communication that could reasonably be expected to damage or adversely impact any Franchisor Party's reputation or goodwill; and (d) the individuals identified as Owners on the signature pages hereto together hold 100% of the legal and beneficial ownership interests in [Insert franchisee entity name].

5. Miscellaneous.

- (a) The Parties agree that each has read and fully understands this Agreement and that the opportunity has been afforded to each Party to discuss the terms and contents of said Agreement with legal counsel and/or that such a discussion with legal counsel has occurred.
- (b) This Agreement shall be construed and governed by the laws of the state where the Baja Smoothies Business is located.
- (c) In the event that it shall be necessary for any Party to institute legal action to enforce, or for the breach of, any of the terms and conditions or provisions of this Agreement, the prevailing Party in such action shall be entitled to recover all of its reasonable costs and attorneys' fees.
- (d) All of the provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective current and future directors, officers, partners, attorneys, agents, employees, shareholders and the spouses of such individuals, successors, affiliates, and assigns.
- (e) This Agreement contains the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes and is in lieu of all prior and contemporaneous agreements, understandings, inducements and conditions, expressed or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. This Agreement may not be modified except in a writing signed by each of the Parties.
- (f) If one or more of the provisions of this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect or impair any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.
- (g) The Parties agree to do such further acts and things and to execute and deliver such additional agreements and instruments as any Party may reasonably require to consummate, evidence, or confirm the transactions contemplated hereby.
- (h) This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute but one document.

In witness whereof, the Parties have executed this Agreement as of the date first written above.

FRANCHISEE:

By: _____

Name: _____

Its: _____

FRANCHISE OWNERS:

Name: _____

Name: _____

Name: _____

EXHIBIT "H"
TO DISCLOSURE DOCUMENT

STATE EFFECTIVE DATES

State Effective Dates

The following states have franchise laws that 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 document is effective and may be used in the following states, where the document is filed, registered or exempt from registration, as of the Effective Date stated below:

State	Effective Date
Minnesota	

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 "I"
TO DISCLOSURE DOCUMENT
RECEIPTS

[See Attached]

RECEIPT

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 Baja Smoothies Franchise, LLC offers you a franchise, it must provide this Disclosure Document to you 14 days before you sign a binding agreement or make a payment with the franchisor or an affiliate in connection with the proposed franchise sale.

If Baja Smoothies Franchise, LLC 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, DC 20580, and the appropriate state agency listed in EXHIBIT "A" to this Disclosure Document.

The franchise seller(s) involved with the sale of this franchise is/are:

_____ Chad Warzeka; 5995 Oren Ave. N, Ste. 209-270, Stillwater, MN 55083; 651-661-4445

Issuance Date: February 14, 2024 (amended February 16, 2024)

Baja Smoothies Franchise, LLC's agent to receive service of process is listed in EXHIBIT "A" to this Disclosure Document (for registration states) and EXHIBIT "B" to this Disclosure Document (for all other states).

I received a Franchise Disclosure Document that included the following Exhibits:

- EXHIBIT "A" State Administrators and Agents for Service of Process
- EXHIBIT "B" Agent for Service of Process
- EXHIBIT "C" Franchise Agreement
- EXHIBIT "D" Table of Contents of the confidential Franchise Operations Manual
- EXHIBIT "E" List of Franchisees
- EXHIBIT "F" Financial Statements of Baja Smoothies Franchise, LLC
- EXHIBIT "G" Other Agreements
- EXHIBIT "G"-1 State Addenda
- EXHIBIT "G"-2 Franchisee Disclosure Questionnaire
- EXHIBIT "G"-3 General Release
- EXHIBIT "H" State Effective Dates
- EXHIBIT "I" Receipts

Print Name

Date

(Signature) Prospective Franchise Owner

(This Receipt should be executed in duplicate. One Receipt must be signed and remains in the Franchise Disclosure Document as the prospective franchise owner's copy. The other Receipt must be signed and returned to Baja Smoothies Franchise, LLC.)

RECEIPT

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 Baja Smoothies Franchise, LLC offers you a franchise, it must provide this Disclosure Document to you 14 days before you sign a binding agreement or make a payment with the franchisor or an affiliate in connection with the proposed franchise sale.

If Baja Smoothies Franchise, LLC 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, DC 20580, and the appropriate state agency listed in EXHIBIT "A" to this Disclosure Document.

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