

## FRANCHISE DISCLOSURE DOCUMENT

# LEGENDARY

RESTAURANT BRANDS



**Bennigan's Franchising Company, LLC**

A Delaware Limited Liability Company

1600 S. Ocean Blvd., MPH 03

Lauderdale-by-the-Sea, FL 33062

469-248-4420

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[www.bennigans.com](http://www.bennigans.com)

You will operate an Irish-themed restaurant under the name “BENNIGAN’S” or “BENNIGAN’S ON THE FLY,” or you will operate a traditional steak house-themed restaurant under the name “STEAK AND ALE.” Each restaurant offers a wide variety of menu items featuring moderately-priced meals, including steak, prime rib, seafood, chicken, salads, sandwiches, and other dinner and luncheon entrees, along with a full bar.

The total investment necessary to begin operation of a BENNIGAN’S Standard restaurant franchise ranges from \$1,070,815 to \$3,658,945. This includes \$75,315 to \$100,945 that must be paid to the franchisor or affiliate. The total investment necessary to begin operation of a BENNIGAN’S ON-THE-FLY restaurant franchise, which are typically developed within a host facility like an airport, shopping mall food court, office building, college or university, sports stadium, sports arena, entertainment center, or military base, ranges from \$518,815 to \$1,941,445. This includes \$75,315 to \$100,945 that must be paid to the franchisor or affiliate.

The total investment necessary to begin operation of a STEAK AND ALE franchise ranges from \$1,070,815 to \$3,658,945. This includes \$75,315 to \$100,945 that must be paid to the franchisor or affiliate.

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

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact Paul Mangiamele at 1600 S. Ocean Blvd., MPH 03, Lauderdale-by-the-Sea, FL 33062 and (469) 248-4420.

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

Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as “A Consumer’s Guide to Buying a Franchise,” which can help you understand how to use this disclosure document, is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. You can also visit the FTC’s home page at [www.ftc.gov](http://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
<b>How much can I earn?</b>	Item 19 may give you information about an 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 <u>Exhibit F</u> .
<b>How much will I need to invest?</b>	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.
<b>Does the franchisor have the financial ability to provide support to my business?</b>	Item 21 or <u>Exhibit C</u> includes financial statements. Review these statements carefully.
<b>Is the franchise system stable, growing, or shrinking?</b>	Item 20 summarizes the recent history of the number of company-owned and franchised outlets.
<b>Will my business be the only BENNIGAN’S or STEAK AND ALE business in my area?</b>	Item 12 and the “territory” provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.
<b>Does the franchisor have a troubled legal history?</b>	Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.
<b>What’s it like to be a BENNIGAN’S or STEAK AND ALE franchisee?</b>	Item 20 or <u>Exhibit F</u> list current and former franchisees. You can contact them to ask about their experiences.
<b>What else should I know?</b>	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 the state of our principal headquarters, currently Florida. 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 Florida than in your own state.
2. **Supplier Control.** You must purchase all or nearly all of the inventory or supplies that are necessary to operate your business from the franchisor, its affiliates, or suppliers that the franchisor designates, at prices the franchisor or they set. These prices may be higher than prices you could obtain elsewhere for the same or similar goods. This may reduce the anticipated profit of your franchise business.
3. **Spousal Liability:** Your spouse must sign a document that makes your spouse liable for all financial obligations under the franchise agreement even though your spouse has no ownership interest in the franchise. This guarantee will place both your and your spouse's marital and personal assets, perhaps including your house, at risk if your franchise fails.

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**

### **THE FRANCHISOR AND ANY PARENTS, PREDECESSORS, AND AFFILIATES**

To simplify the language in this disclosure document, the term “we” means Bennigan’s Franchising Company, LLC, the franchisor. In this disclosure document, the term “you” means the person buying the franchise, the franchisee. The franchisee may be an individual or a business entity, such as a corporation, a limited liability company, a general partnership, or a limited partnership.

In this disclosure document, the term “you” includes the franchisee and individuals who are personally responsible for the franchisee’s obligations, such as the owner of a sole proprietorship and the general partners of a partnership franchisee. These individuals are personally bound to the franchise agreement by virtue of their position with the franchisee. The term “Owners” refers to anyone with a beneficial ownership in the franchisee, but who is not personally responsible for the franchisee’s obligations. “Owners” include shareholders of a corporation, members of a limited liability company, and limited partners of a limited partnership. As described in Item 15, the franchisee’s “Owners” must sign a personal guaranty and agree to be personally bound to the franchise agreement.

#### The Franchisor and any Parents, Predecessors and Affiliates

We are a Delaware limited liability company, formed on March 30, 2009, and we do business only under our corporate name. Our principal business address is 1600 S. Ocean Blvd., MPH 03, Lauderdale-by-the-Sea, FL 33062. Our agents for service of process are identified in Exhibit B to this disclosure document.

We are owned by Legendary Restaurant Brands, LLC (“LRB”), which we consider our parent company. LRB’s principal business address is 1600 S. Ocean Blvd., MPH 03, Lauderdale-by-the-Sea, FL 33062. We have been offering franchises for BENNIGAN’S restaurants since 2009, and for STEAK AND ALE restaurants since 2018, and have never offered franchises in any other line of business. We have never operated a business of the type described in this disclosure document, but our affiliates have operated BENNIGAN’S Restaurants since 2010.

Our affiliate, Bennigan’s IP, LLC (“Bennigan’s IP”) owns and licenses to us the trademarks and other intellectual property used in the operation of BENNIGAN’S and STEAK AND ALE restaurants. Bennigan’s IP shares our principal business address at 1600 S. Ocean Blvd., MPH 03, Lauderdale-by-the-Sea, FL 33062.

We have never operated a business of the type you will operate, but our affiliate, Bennigan’s Panama City, LLC, previously operated a Bennigan’s restaurant in Panama City, Florida.

#### The Franchise Offered

We grant franchises for the following types of restaurants (each referred to as a “Restaurant”):

- The BENNIGAN’S Standard Restaurant, which is an Irish-themed full-service restaurant featuring a wide variety of moderately-priced menu items, and a full bar.
- The BENNIGAN’S ON-THE-FLY Restaurant, which is typically developed in nontraditional locations, such as airports, shopping mall food courts, office buildings, colleges or universities, sports stadiums, sports arenas, entertainment centers, military bases, and similar locations. In some locations, such as military bases, BENNIGAN’S ON-THE-FLY Restaurants may offer the same menu and beverage items as Standard Restaurants. In other locations, like a stadium, they may offer limited menu and beverage items.
- The STEAK AND ALE Restaurant, which is a full-service steak house-themed restaurant featuring a wide variety of moderately-priced menu items, and full bar.

You will operate the restaurant under our trademarks, service marks, trade dress, and other indicia of origin that we designate for use in connection with the franchise (our “Marks”) and our business format and operating system (our “System”).

Our System includes our operating methods, standards, and specifications.

### Market and Competition

The market for full-service restaurants is mature and well-developed and highly competitive. You will compete with other businesses that offer the same type of products and services you offer, including other restaurants. These businesses may be connected with national or regional chains, or they may be local businesses. BENNIGAN’S and STEAK AND ALE Restaurants feature a full bar, and you will compete with restaurants, clubs, and other businesses that offer alcoholic beverages. You will also compete with outlets that offer food, beverages, products, and services different from those you will offer.

### Industry Specific Laws and Regulations

The restaurant industry is heavily regulated. Many of the federal, state, and local laws, rules, and regulations that apply to business generally, such as the federal and state anti-discrimination laws, federal wage and hour laws, National Labor Relations Act, ADA Amendments Act of 2008, and the Occupational Safety and Health Act, also apply to restaurants. However, other federal, state, and local laws, rules, and regulations have particular applicability to restaurants.

The U.S. Food and Drug Administration, the U.S. Department of Agriculture, and state and local health departments administer and enforce laws and regulations that govern food preparation and service, and restaurant sanitation conditions. State and local agencies inspect restaurants to ensure that they comply with these laws and regulations.

In addition, the Menu Labeling Provisions of the Patient Protection and Affordable Health Care Act require certain restaurants and retail food establishments to post caloric information on menus and menu boards and to make available additional written nutrition information to consumers upon request. State and local governments also may have their own regulations. For example, New York City requires restaurants with at least 15 establishments to identify menu items with more than 2,300 mg of salt with a salt shaker symbol.

The Federal Clean Air Act and various implementing state laws require certain state and local areas to meet national air quality standards limiting emissions of ozone, carbon monoxide, and particulate matters, including caps on omissions from commercial food preparation. Some areas have also adopted or are considering proposals that would regulate indoor air quality.

BENNIGAN’S and STEAK AND ALE Restaurants also feature a full bar, so you will need to obtain the appropriate licenses to serve alcoholic beverages. State and local laws, regulations, and ordinances vary significantly in the procedures, difficulty and cost associated with obtaining a license to sell liquor, the restrictions placed on the manner in which liquor may be sold, and the potential liability imposed by dram shop laws involving injuries, directly and indirectly, related to the sale of liquor and its consumption. You will need to understand and comply with those laws in operating the Restaurant.

You should consider these laws and regulations when evaluating your purchase of a franchise.

## **ITEM 2 BUSINESS EXPERIENCE**

### Chairman and Chief Executive Officer: Paul M. Mangiamele

Mr. Mangiamele has served as our Chairman and CEO since February, 2015.

### Managing Director: Gwendolyn R. Mangiamele

Ms. Mangiamele has served as our Managing Director since February, 2015.

Senior Vice President of Operations: Shawn Finn

Mr. Finn has served as our Vice President, Operations since October 2011.

Vice President of Franchise Operations: Lucas Dudley

Mr. Dudley serves our Senior Director of Franchise Operations. Mr. Dudley joined us in July 2013, and has held various positions in the company, including Franchise Operations Manager and Director of Franchise Operations.

Director of Training and Development: Yedid Dudley

Mrs. Dudley has served as our Senior Manager of Training and Development since January, 2017.

**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**

Franchise Agreement

You will pay us an initial franchise fee when you sign the franchise agreement. Our standard initial franchise fee is \$50,000, but may be reduced as follows if you qualify for one of our incentive programs.

We currently participate in the International Franchise Association's Veterans Transition Franchise Initiative, or "VetFran." If the majority of the voting equity in the franchisee entity is owned by a veteran honorably discharged from active duty, we will reduce the amount of the initial franchise fee for a Standard Restaurant to \$45,000 per Restaurant. We also currently participate in the International Franchise Association's Educational Foundation Diversity Institute, or "MinorityFran." If the majority of the voting equity in the franchisee entity is owned by a member of a racial or ethnic minority group, we will reduce the amount of the initial franchise fee for a Standard Restaurant to \$45,000 per Restaurant.

You will also pay us an initial training fee before you begin training, the amount of which may range from \$25,000 to \$50,000, depending on the size and location of your Restaurant, your experience as a restaurant operator, the number of other Restaurants you operate, the number of your personnel to be trained, the experience of your personnel to be trained, food and lodging expenses in the area where your Restaurant is located, travel expenses, and other factors. During our last fiscal year, the actual initial training fee we charged was \$4,809.22.

You must open the Restaurant for business within a year after the franchise agreement is signed, but you may request up to three 60-day extensions of time. There is no fee for the first extension. The fee is \$2,500 for the second extension and \$5,000 for the third extension. The extension fee is payable when you request the extension.

You must purchase a supply of gift cards before you open your Restaurant. A 500-count box of Gift Cards with presentation materials is \$315. You must pay for the gift cards in a lump sum when you order them.

Except for the discounts described above, these fees are uniform for all new franchisees and are nonrefundable when paid.

### Option Agreement

If you are acquiring option rights for additional Restaurants, you will sign an Option Addendum and pay us an option deposit of \$10,000 for each option. Each time you exercise an option, you will pay us a lump sum of \$50,000 for that location, less the \$10,000 option deposit, for a net payment of \$40,000. The option fee is uniform for all new franchisees and is nonrefundable when paid.

### **ITEM 6 OTHER FEES**

<b>Type of Fee</b> <small>(Note 1)</small>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Royalty	5% of Gross Sales	Within 10 days after the end of each Accounting Period (the "Payment Due Date")	An "Accounting Period" is a four-week, monthly, or other accounting period that we may specify. <i>See</i> Note 2 for definition of "Gross Sales."
Brand Development Fee	Not to exceed 2% of Gross Sales; currently, 1% of Gross Sales;	By the Payment Due Date	<i>See</i> Note 2 for definition of "Gross Sales."
Grand Opening Advertising Requirement	\$15,000	Must be spent during period 30 days before your Opening Date to 60 days after your Opening Date	You will pay the amount needed to fulfill the Grand Opening Advertising Requirement to local advertisers, not to us.
Local Advertising Requirement	1% to 2% of Gross Sales	Must be spent each calendar quarter	You will pay the amount needed to fulfill the Local Advertising Requirement to local advertisers, not to us.
Reimbursement of Franchise Taxes and Similar Taxes	\$0 to \$2,500 or more per year per jurisdiction	Within 10 days after request	<i>See</i> Note 3.
Reimbursement of Relocation Costs	\$1,500 to \$10,000 or more	Within 10 days after request	Payable only if you relocate your Restaurant.
Extension Fee	No charge for the first extension, \$2,500 for the second extension, and \$5,000 for the third extension	When you request extension of your Opening Date	We may grant you up to three 60-day extensions of your Opening Date. Payable only if you request extension.
Inventory; Proprietary Products	Varies under circumstances	As incurred	<i>See</i> Note 4.
Approval of Suppliers	Reasonable fee, not to exceed the greater of \$500 or actual costs	Within 10 days after request	Payable only if you request that we approve a supplier or the items a supplier offers.
Principal Training	Currently \$2,500 per person	Within 10 days after request	<i>See</i> Note 5. Payable only if you request that we train more than three Principals.

<b>Type of Fee</b> <sup>(Note 1)</sup>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Manager Training	Currently \$2,500 per person	Within 10 days after request	See Note 5. Payable only if you request that we train more than three Managers.
Supervisor Training	Currently \$2,500 per person	Within 10 days after request	See Note 5. Payable only if you request that we train more than three Supervisors.
Additional Training	Reasonable fee, currently \$50 to \$120 per hour	Within 10 days after request	See Note 6.
Conference	Reasonable fee; historically, no fee has been charged	Within 10 days after request	See Note 6.
Interest	Lesser of 18% per annum, or maximum lawful rate	As invoiced	Payable only if you fail to make timely payments.
Collection Charge	\$100 per delinquent payment (subject to annual 10% increase)	Upon demand	Payable only if you fail to make timely payments.
Audit	Unpaid amount; plus, if the deficiency is 4% or more, the cost of the inspection and audit	Within 10 days after request	
Indemnification	Varies under circumstances	Within 10 days after request	You must reimburse us for losses from claims, damage, or lawsuits related to the Franchise Agreement or your operation of the Franchised Business.
Transfer of Franchise	50% of our then-current initial franchise fee	On transfer	See Note 7.
Renewal	\$15,000	At time of renewal	
Management Fee (Death or Disability)	Reasonable management fee, currently 20% of net income earned during the period that we manage the Franchised Business	As incurred	If you die or are disabled and your successor is unable to operate the Franchised Business, we may manage it until you find a suitable successor.
Management Fee (Abandonment, Breach, or Purchase)	5% of your Gross Sales or \$500 per Restaurant per day during the period that we manage the Franchised Business	As incurred	If you abandon the Franchised Business or breach the Franchise Agreement, or if we terminate the Franchise Agreement or the Franchise Agreement expires and we may want to acquire the Approved Location, we may manage the Franchised Business.

<b>Type of Fee</b> <sup>(Note 1)</sup>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Liquidated Damages (For Loss of Benefit of the Bargain We Are Entitled to Receive)	Present value of average Royalties and Brand Development Fees multiplied by number of Accounting Periods left in the term	Upon demand	See Note 8. Payable only if we terminate the franchise agreement for cause, or if you cease operations or terminate the franchise agreement without cause
Administrative Fee	\$250 per enforcement effort (i.e., notification and follow up), and \$250 per week for each week that the issue remains unresolved	Upon demand	Payable only if you fail to comply with your franchise obligations.
Costs and Attorneys' Fees	Varies under circumstances	Upon demand	Payable only for breach of your obligations or if we prevail in litigation.

**Notes:**

**Note 1.** All fees are imposed and collected by, and payable to us, and are nonrefundable, unless otherwise stated. All fees are uniformly imposed.

**Note 2.** “Gross Sales” includes all revenue related to the sale of products and performance of services in, at, about, from, or through the Restaurant, whether for cash or credit, and regardless of collection in the case of credit, and income of every kind and nature related to the Restaurant, including insurance proceeds and condemnation awards for loss of sales, profits, business, or otherwise; and including amounts from games, ATM fees, gift cards, catering, catering vehicles, and otherwise. However, “Gross Sales” does not include (i) revenues from sales taxes or other add-on taxes that you collect from guests and transmit to the appropriate taxing authority; (ii) tips guests give that are charged to their credit or debit cards; and (iii) the retail value of complimentary services, discounts, trade-outs, cash refunds to guests, coupons used by guests, and credit card fees (collectively, the “Comps”), up to a maximum of 3% of Gross Sales in the aggregate. All exchanges in kind or barter transactions under which you furnish goods, services, or intangible benefits in exchange for or in anticipation of goods, services, or intangible benefits to be provided, whether by a vendor, supplier, guest, or otherwise, will, for the purpose of determining Gross Sales, be valued at the greater of the full retail value of the goods, services, and intangible benefits provided by you or to you.

**Note 3.** If a governmental authority imposes a tax or charge any payment made to us (other than a tax imposed on our net income), you must reimburse us for the amount of the tax.

**Note 4.** Costs depend on a number of factors, like the item you purchase, the quantity you purchase, and other factors.

**Note 5.** You may send up to three attendees each to our Principal Training, Manager Training, and Supervisor Training at no additional charge. We may charge you a fee to train any additional attendees, which will not exceed \$500 per day.

**Note 6.** We may develop and require you and your management personnel to attend additional training programs or classes, and may impose a reasonable tuition charge. We also may conduct and require you and your key personnel to attend an annual, biannual, or other periodic conference or convention, and may impose a reasonable attendance fee.

Note 7. If you sign the franchise agreement as an individual or general partnership, there is no fee for transferring your rights to a newly formed business entity, but you must reimburse us our actual fees and costs related to the transfer.

Note 8. If you close the Restaurant or permanently cease operations before the end of the franchise term, you must pay us, as liquidated damages, a lump-sum payment equal to average Royalties and Brand Development Fees you were obligated to pay during the 24 Accounting Periods immediately before the termination, multiplied by the number of Accounting Periods that remain in the term.

**ITEM 7**  
**ESTIMATED INITIAL INVESTMENT**  
**YOUR ESTIMATED INITIAL INVESTMENT**  
**BENNIGAN’S STANDARD RESTAURANT**

Type of Expenditure <sup>(Note 1)</sup>	Amount		Method of Payment	When Due	To Whom Payment is to Be Made
	Low	High			
Initial Franchise Fee	\$50,000	\$50,000	Lump-Sum	On Signing Franchise Agreement	Us
Real Estate Lease Payments <sup>(Note 2)</sup>	\$12,500	\$97,500	As Arranged	As Arranged	Landlord
Architectural and Engineering Fees	\$7,500	\$48,000	As Arranged	As Arranged	Architects, Engineers
Liquor License <sup>(Note 3)</sup>	\$5,500	\$600,000	Lump-Sum or As Billed	On Application or Transfer	Governmental Authority or Prior License Holder
Construction, Remodeling, and Site Improvements <sup>(Note 4)</sup>	\$350,000	\$1,500,000	As Arranged	As Arranged	Development Company
Furniture, Fixtures, Equipment, Décor, and Signage <sup>(Note 5)</sup>	\$425,000	\$825,000	As Arranged	As Arranged	Suppliers
Training: Initial Training Fee	\$25,000	\$50,000	Lump-Sum	Before Training	Us
Training Expenses: Wages, Benefit Costs, Transportation, Food, Lodging <sup>(Note 6)</sup>	\$15,000	\$30,000	As Incurred	During Training	Your Employees; Suppliers
Grand Opening Advertising <sup>(Note 7)</sup>	\$15,000	\$20,000	As Incurred	As Arranged	Suppliers
Insurance (for One Year) <sup>(Note 8)</sup>	\$15,000	\$120,000	As Arranged	Before Opening	Third-Party Insurers
Professional Fees <sup>(Note 9)</sup>	\$5,000	\$55,000	As Incurred	Before Opening	Your Attorneys, Accountants
Security Deposits, Utility Deposits, Business Licenses, and Other Prepaid Expenses <sup>(Note 10)</sup>	\$2,500	\$8,000	As Arranged	Before Opening	Landlord, Suppliers, Utilities
Gift Cards <sup>(Note 11)</sup>	\$315	\$945	Lump-Sum	Before Opening	Us/Third Parties
Initial Funding of ACH Account for Gift Cards <sup>(Note 12)</sup>	\$500	\$500	Lump-Sum	Before Opening	Your Local Bank
Opening Inventory	\$30,000	\$70,000	As Incurred	As Arranged	Suppliers
Project Financing Costs <sup>(Note 13)</sup>	\$12,000	\$24,000	As Arranged	As Incurred	Lenders, Brokers, Attorneys

Type of Expenditure <sup>(Note 1)</sup>	Amount		Method of Payment	When Due	To Whom Payment is to Be Made
	Low	High			
Additional Funds – 3 Months <sup>(Note 14)</sup>	\$100,000	\$160,000	As Incurred	As Incurred	Landlord, Suppliers, Employees, Tradesmen
<b>Total</b> <sup>(Note 15)</sup>	<b>\$1,070,815</b>	<b>\$3,658,945</b>			

**BENNIGAN’S ON-THE-FLY RESTAURANT**

Type of Expenditure <sup>(Note 1)</sup>	Amount		Method of Payment	When Due	To Whom Payment is to Be Made
	Low	High			
Initial Franchise Fee	\$50,000	\$50,000	Lump-Sum	On Signing Franchise Agreement	Us
Real Estate Lease Payments <sup>(Note 2)</sup>	\$22,500	\$98,000	As Arranged	As Arranged	Landlord
Architectural and Engineering Fees	\$7,500	\$48,000	As Arranged	As Arranged	Architects, Engineers
Liquor License <sup>(Note 3)</sup>	\$5,500	\$600,000	Lump-Sum or As Billed	On Application or Transfer	Governmental Authority or Prior License Holder
Construction, Remodeling, and Site Improvements <sup>(Note 4)</sup>	\$125,000	\$350,000	As Arranged	As Arranged	Development Company
Furniture, Fixtures, Equipment, Décor, and Signage <sup>(Note 5)</sup>	\$125,000	\$325,000	As Arranged	As Arranged	Suppliers
Training: Initial Training Fee	\$25,000	\$50,000	Lump-Sum	Before Training	Us
Training Expenses: Wages, Benefit Costs, Transportation, Food, Lodging <sup>(Note 6)</sup>	\$15,000	\$30,000	As Incurred	During Training	Your Employees; Suppliers of Benefits, Transportation, Food, Lodging
Grand Opening Advertising <sup>(Note 7)</sup>	\$0	\$5,000	As Incurred	As Arranged	Suppliers
Insurance (for One Year) <sup>(Note 8)</sup>	\$15,000	\$120,000	As Arranged	Before Opening	Third-Party Insurers
Professional Fees <sup>(Note 9)</sup>	\$5,000	\$55,000	As Incurred	Before Opening	Your Attorneys, Accountants
Security Deposits, Utility Deposits, Business Licenses, and Other Prepaid Expenses <sup>(Note 10)</sup>	\$2,500	\$8,000	As Arranged	Before Opening	Landlord, Suppliers, Utilities
Gift Cards <sup>(Note 11)</sup>	\$315	\$945	Lump-Sum	Before Opening	Us/Third Parties
Initial Funding of ACH Account for Gift Cards <sup>(Note 12)</sup>	\$500	\$500	Lump-Sum	Before Opening	Your Local Bank
Opening Inventory	\$20,000	\$40,000	As Incurred	As Arranged	Suppliers
Project Financing Costs <sup>(Note 13)</sup>	\$10,000	\$21,000	As Arranged	As Incurred	Lenders, Brokers, Attorneys
Additional Funds – 3 Months <sup>(Note 14)</sup>	\$90,000	\$140,000	As Incurred	As Incurred	Landlord, Suppliers, Employees, Tradesmen

Type of Expenditure <sup>(Note 1)</sup>	Amount		Method of Payment	When Due	To Whom Payment is to Be Made
	Low	High			
<b>Total</b> <sup>(Note 15)</sup>	<b>\$518,815</b>	<b>\$1,941,445</b>			

**STEAK AND ALE STANDARD RESTAURANT**

Type of Expenditure <sup>(Note 1)</sup>	Amount		Method of Payment	When Due	To Whom Payment is to Be Made
	Low	High			
Initial Franchise Fee	\$50,000	\$50,000	Lump-Sum	On Signing Franchise Agreement	Us
Real Estate Lease Payments <sup>(Note 2)</sup>	\$12,500	\$97,500	As Arranged	As Arranged	Landlord
Architectural and Engineering Fees	\$7,500	\$48,000	As Arranged	As Arranged	Architects, Engineers
Liquor License <sup>(Note 3)</sup>	\$5,500	\$600,000	Lump-Sum or As Billed	On Application or Transfer	Governmental Authority or Prior License Holder
Construction, Remodeling, and Site Improvements <sup>(Note 4)</sup>	\$350,000	\$1,500,000	As Arranged	As Arranged	Development Company
Furniture, Fixtures, Equipment, Décor, and Signage <sup>(Note 5)</sup>	\$425,000	\$825,000	As Arranged	As Arranged	Suppliers
Training: Initial Training Fee	\$25,000	\$50,000	Lump-Sum	Before Training	Us
Training Expenses: Wages, Benefit Costs, Transportation, Food, Lodging <sup>(Note 6)</sup>	\$15,000	\$30,000	As Incurred	During Training	Your Employees; Suppliers
Grand Opening Advertising <sup>(Note 7)</sup>	\$15,000	\$20,000	As Incurred	As Arranged	Suppliers
Insurance (for One Year) <sup>(Note 8)</sup>	\$15,000	\$120,000	As Arranged	Before Opening	Third-Party Insurers
Professional Fees <sup>(Note 9)</sup>	\$5,000	\$55,000	As Incurred	Before Opening	Your Attorneys, Accountants
Security Deposits, Utility Deposits, Business Licenses, and Other Prepaid Expenses <sup>(Note 10)</sup>	\$2,500	\$8,000	As Arranged	Before Opening	Landlord, Suppliers, Utilities
Gift Cards <sup>(Note 11)</sup>	\$315	\$945	Lump-Sum	Before Opening	Us/Third Parties
Initial Funding of ACH Account for Gift Cards <sup>(Note 12)</sup>	\$500	\$500	Lump-Sum	Before Opening	Your Local Bank
Opening Inventory	\$30,000	\$70,000	As Incurred	As Arranged	Suppliers
Project Financing Costs <sup>(Note 13)</sup>	\$12,000	\$24,000	As Arranged	As Incurred	Lenders, Brokers, Attorneys
Additional Funds – 3 Months <sup>(Note 14)</sup>	\$100,000	\$160,000	As Incurred	As Incurred	Landlord, Suppliers, Employees, Tradesmen
<b>Total</b> <sup>(Note 15)</sup>	<b>\$1,070,815</b>	<b>\$3,658,945</b>			

**Notes:**

Note 1. If you enter into the Option Addendum, your estimated initial investment for each Restaurant developed under the Option Addendum would be substantially the same as the amounts shown in the table,

except that, in lieu of the initial franchise fee, you would pay an option deposit of \$10,000 when you sign the Option Addendum and an option fee of \$40,000 when you exercise the Option.

Initial franchise fee and any option deposits are nonrefundable. Security deposits you pay may be refundable, depending on the supplier's policies. Amounts you pay for your supplies and inventory may be refundable, provided the supplies and inventory are in resalable condition, depending on the supplier's policies. Neither we nor any affiliate of ours will finance any part of your initial investment.

Note 2. BENNIGAN'S Standard Restaurants and STEAK AND ALE Restaurants are generally located in freestanding buildings or shopping centers. They require approximately 4,200 to 8,000 square feet of floor space. You may purchase or lease the land and building. The estimates shown are for leasing a shell space in a shopping center at the cost of \$30-\$40/sq. ft./year. Rent is generally deferred until 3-6 months after the opening of the Restaurant and these numbers reflect 3 months' rent from the time the deferral ends. This estimate also includes the cost of the deposit. If you purchase or construct a freestanding building for your Restaurant, your costs will be substantially higher.

BENNIGAN'S ON-THE-FLY Restaurants generally are located in Nontraditional Locations. They will require approximately 1,000 to 3,000 square feet of floor space. The estimates shown are for leasing a shell space in a shopping center at the cost of \$30-\$40/sq. ft./year. Rent is generally deferred until 3-6 months after the opening of the Restaurant and these numbers reflect 3 months' rent from the time the deferral ends. This estimate also includes the cost of the deposit. The actual space required will depend on the type and configuration of the Nontraditional Location. The low range shown is for the lease of space in a shopping mall food court. The high range shown is for the lease of space in an airport terminal.

The cost to lease real estate varies widely from region to region. The cost will depend on factors that include the size and condition of facility in which the space is located, the volume of business at the facility, the age of the facility, the location of the space within the facility, your ability to negotiate with the landlord, prevailing rental rates in the area where the space is located, and other factors. As a result, the amount you pay may be higher or lower than the amount shown in the table. The figures shown are for three months' rental and include a security deposit. Many landlords will provide a tenant improvement allowance or one to three months of free or reduced rent. The figures shown do not reflect the value of any tenant improvement allowance or free rent.

Note 3. The type of liquor license you will need, and the cost of obtaining the license, will vary widely among governmental units and will depend on the local governing authority involved. You should determine the type of liquor license you will need and the cost of the license before you sign the Franchise Agreement.

Note 4. The costs to construct your Restaurant will vary widely depending on size, configuration, age, and condition of the site; pre-construction costs (such as costs to demolish walls and remove existing improvements), local building and zoning laws, permitting fees and costs, construction and labor costs in your area, local materials costs, and special charges related to building and fire inspections. The low range shown in the table assumes that you obtain space that is already configured for a restaurant, and that needs minimal construction. The high range shown assumes that you must construct the interior of your Restaurant from empty shell space. The figures in the chart do not include any tenant improvement allowance that your landlord may provide.

Note 5. You must purchase or lease all furniture, fixtures, equipment, décor, and signage you will need to operate the Restaurant. These items include ranges, fryers, ovens, microwave ovens, and other cooking equipment; freezers and refrigeration equipment; tables, sinks, shelving, and racks; utensils and smallwares; a sound system; dining room furniture; a computer system and electronic cash register system; and office supplies. The costs of your furniture, fixtures, equipment, décor, and signage will vary widely depending on the size and configuration of your Restaurant, the availability of used items, general economic

conditions, and other factors. The low range shown in the table assumes that you lease your equipment and purchase your signage. The high range assumes that you purchase your equipment and signage.

Note 6. This amount includes the wage and benefit costs of the personnel who attend our training, and their transportation, food, and lodging costs. We will provide an Opening Training Team. You must staff the Restaurant with your employees to train with, and to assist, the Opening Training Team. If you do not staff the Restaurant with the employees we require, we may staff the Restaurant with our employees and independent contractors. You must reimburse us for the travel, food, lodging, wage, benefit, and other costs and expenses we incur because you did not provide the employees we require. The Initial Training Fee and the figures shown in the table assume that you properly staffed the Restaurant with your employees during training.

Note 7. If you are opening a BENNIGAN'S Standard Restaurant or a STEAK AND ALE Restaurant, you must spend at least \$15,000 on a program of grand opening advertising. The low range shown in the table assumes you spend the minimum we require you to spend. The high range assumes you spend more than the minimum. If you are opening a BENNIGAN'S ON-THE-FLY Restaurant, we do not require you to conduct grand opening advertising. The low range shown in the table assumes you do not conduct a grand opening; the high range assumes you spend \$5,000 on grand opening advertising.

Note 8. The amounts shown in the table are your estimated annual insurance premium for one full year after you purchase the policy.

Note 9. These figures reflect the estimated cost of engaging legal counsel to review your lease, the Franchise Agreement, and this disclosure document, to form a business entity to serve as the franchisee, and to assist with the permitting process. It also includes costs and expenses to obtain an accountant to set up your accounting systems, and to have a third party process your payroll and serve your bookkeeping needs.

Note 10. These costs include deposits for utilities, prepaid expenses, and other miscellaneous deposits and prepaid costs you may incur. They do not include any security deposit your landlord may charge. The security deposit your landlord may charge is included in the line item for "Real Estate Lease Payments," in the "High" column.

Note 11. The range in the chart reflects the purchase price for one to three boxes of gift cards, including transaction costs associated with selling and redeeming gift cards.

Note 12. You must designate a bank account in which gift card funds may be electronically credited and debited each day ("ACH Account"), and you must initially fund your ACH account with \$500. Your bank may also charge a one-time set-up fee.

Note 13. Your project financing costs will include legal fees, loan fees, interest, and other costs, on any debt you incur to finance the development, opening, and initial operation of your Restaurant. These costs may vary widely depending on the application fees and other initial amounts your lender charges, the amount borrowed and applicable interest rate, the length of time between the time you receive disbursements of your loan proceeds and the time you open your Restaurant for business, and other factors.

Note 14. These are estimates of the funds you will need for the typical Restaurant's first three months of operation. The figures include the cost of anticipated post opening rent based on the calculation of (\$30-\$40/sq. ft/year), the cost of the deposit, costs of performing background checks, hiring employees, payroll costs, health insurance costs, and purchasing miscellaneous goods and services. They do not include financing costs or any draw or salary by your owners unless they are acting in the position of a Restaurant Manager. These amounts may vary widely depending on the number of employees you have, salaries and wage rates, and other variables. In compiling the figures, we relied on the experience of our officers in the development, opening, and operation of BENNIGAN'S Restaurants and other restaurants.

Note 15. The amounts shown in the table are for your startup and first three months of operation only. Most costs and expenses listed in this Item 7 are not within our control. They are affected more by national, Bennigan's Franchising Company, LLC

regional, and local economic conditions than by our actions. You should review these estimates carefully with your attorney, accountant, and other business advisors before you make any decision to purchase a franchise. You should also prepare a set of estimates of your own. Your estimates should accurately account for your particular circumstances.

## **ITEM 8 RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES**

### Required Purchases

You must purchase all food and beverage (both alcoholic if applicable and non-alcoholic beverages), paper products, furniture, fixtures, decorations, uniforms, equipment, items and products containing the Proprietary Marks and other specified items in accordance with our standards and specifications that will be disclosed to you in the Operations Manual or other written directives. You must purchase these items from suppliers that we designate. We reserve the right to designate ourselves or our affiliates as the only approved supplier for the items noted above.

Those items for which we have neither designated nor approved suppliers must be purchased in accordance with our standards and specifications as described in the Operations Manual or other written directives. We have the right to modify specifications, standards, suppliers and approval criteria by providing you written notice. There is no limit on our right to do so.

If we designate one or more exclusive suppliers for a particular good or service, you may purchase the goods and services only from the designated supplier. If you desire to purchase the goods or services from a different supplier, you may request supplier approval. We have no obligation to consider your request, but if we choose to evaluate a supplier at your request, we may take into consideration: (i) consistency of products and/or name brands, (ii) economies of scale achieved by larger volumes, (iii) delivery frequency and reliability for all franchisees (even if some franchisee may be able to purchase certain items from a different supplier for a lower price), and (iv) other benefits that a particular supplier may offer, such as new product development capability. We have no obligation to approve any supplier. We do not provide our standards and specifications or criteria for supplier approval to System franchisees. You must reimburse us for our reasonable costs of evaluating and/or testing the proposed supplier or item, regardless of whether we approve the product or item. The cost of testing will be \$25 to \$500 plus any expenses incurred by us for the testing of the products or items. We may withdraw our approval of a supplier at any time.

### Revenue or Other Material Consideration from Required Purchases or Leases by Franchisees

We may require you to purchase or lease goods and services from us or our affiliates. We and our affiliates may include a reasonable markup in the price, and may derive revenue from, the supply of products and services to franchisees. We also may receive revenue or other material benefit as a result of consideration you or any of our other franchisees pay us or our affiliates.

We may require you to purchase or lease goods and services from third parties. We and our affiliates may enter into arrangements with these third parties under which we and our affiliates receive revenue or other material benefit, like rebates, discounts, and allowances, as a result of consideration you or any of our other franchisees pay to the third parties.

Currently, neither we nor our affiliates are approved suppliers for any products or services. None of our officers owns an interest in any of our privately-held suppliers, or a material interest in any of our publicly-held suppliers. Occasionally, our officers may own non-material interests in publicly-held companies that may supply our franchise system.

Under an arrangement with our designated soft drink supplier, franchisees receive a rebate per gallon of fountain syrup purchased, as well as rebates for certain coffee and tea products, and we receive a rebate of 30 cents per gallon based on the gallons of fountain syrups our franchisees actually purchase.

During our fiscal year ending December 25, 2023, we derived \$37,251 in revenue from franchisee required purchases or leases, which represented approximately 2.98% of our total revenues of \$1,248,718 for that year.

Your required purchases and leases, which include purchases and leases of goods and services from us or any affiliate or designated supplier of ours, and purchases and leases of goods and services in accordance with our specifications, will represent approximately 65% to 80% of your total purchases and leases of goods and services to establish your Franchised Business and approximately 65% to 80% of your total purchases and leases of goods and services to operate your Franchised Business.

**Computer**

You must purchase our specified computerized point of sale system or an alternative system we approve. We reserve the right to designate our self or our affiliate as the sole supplier of the point-of-sale system. We also require you to have a general-purpose computer and a printer, scanner, fax machine and copier. The computer system must be compatible with accepting reservations through Open Table or any other online reservation system/website that we specify.

**Insurance Requirements**

You must obtain and keep in force at a minimum the insurance we require in the Operations Manual or otherwise. The mandatory insurance currently includes:

Type of Coverage	Amount
Commercial General Liability, including Liquor Liability	\$1 million per occurrence and \$2 million in the aggregate
Automobile Liability, for Owned, Non-Owned, and Hired Vehicles	\$1 million per claim, including bodily injury and property damage
Workers' Compensation and Employer's Liability	\$500,000 per accident \$500,000 disease per employee with a policy limit of \$500,000 in the aggregate
Excess Liability Umbrella	\$2 million per occurrence and in the aggregate
Employment Practices Liability	\$50,000 per claim and \$50,000 in the aggregate, for defense of claims
Business Interruption	Actual loss sustained for 18 months
Unemployment Compensation, Disability, Social Security, and other insurance required by law	As prescribed by law

If the lease for the Restaurant premises requires you to purchase insurance with higher limits than those we require, the lease insurance requirements will take precedence. All insurance policies must contain a separate endorsement naming us as an additional insured and must be written by an insurance carrier accepted by us in writing. No insurance policy may be subject to cancellation, termination, non-renewal or material modification, except upon at least 30 days' prior written notice from the insurance carrier to us. Upon request, you must provide us with a currently issued certificate of insurance evidencing coverage in conformity with our requirements. We may increase or otherwise modify the minimum insurance requirements upon 30 days' prior written notice to you, and you must comply with any modification.

**Description of Purchasing Cooperatives; Purchasing Agreements**

Currently, we have no purchasing or distribution cooperatives for the System. We negotiate purchase arrangements with the suppliers shown above, including price terms, for the benefit of franchisees. We do not provide you with material benefits (for example, additional rights, or the right to acquire additional franchises) based on your purchase of particular products or services, or your use of particular suppliers.

**ITEM 9**  
**FRANCHISEE'S OBLIGATIONS**

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

<b>Obligation</b>	<b>Section in Agreement</b>	<b>Disclosure Document Item</b>
a. Site selection and acquisition/lease	Article 6	Items 11 and 12
b. Pre-opening purchases/leases	Articles 6, 10, and Section 14.7	Items 5, 7 and 8
c. Site development and other pre-opening requirements	Articles 7, 8, and Sections 13.1, 13.2	Item 11
d. Initial and ongoing training	Article 13	Items 6, 7, and 11
e. Opening	Article 8	Item 11
f. Fees	Article 4 and Sections 3.2, 8.2, 9.1, 9.2, 9.3, 13.1, 13.4, 13.5, 13.8, 16.4, 17.1, 18.3, 21.4	Items 5, 6, and 7
g. Compliance with standards and policies/operating manual	Sections 10.4, 12.1, 12.3, 14.6, 18.3, 21.2	Items 8, 11, and 16
h. Trademarks and proprietary information	Article 11 and Sections 14.1, 21.2, 22.1	Items 13 and 14
i. Restrictions on products/services offered	Article 10 and Section 14.6	Items 8 and 16
j. Warranty and customer service requirements	Section 14.6	Item 11
k. Territorial development and sales quotas	Article 5	Item 12
l. Ongoing product/service purchases	Article 10	Items 8 and 16
m. Maintenance, appearance, and remodeling requirements	Article 7	Item 12
n. Insurance	Article 17	Items 6, 7 and 8
o. Advertising	Article 9	Items 6, 7, and 11
p. Indemnification	Sections 11.4, 17.1	Item 6
q. Owner's participation/management/staffing	Article 14 and Sections 13.2, 13.4, 13.7	Item 15
r. Records and reports	Article 16	Item 6
s. Inspections and audits	Article 16 and Section 20.3	Item 6
t. Transfer	Article 18	Items 6 and 17
u. Renewal	Article 3	Items 6 and 17
v. Post-termination obligations	Article 21 and Section 20.8	Item 17
w. Non-competition covenants	Article 15	Items 15 and 17
x. Dispute resolution	Sections 22.6, 22.7	Item 17
y. Other: Guaranty and Personal Undertaking	Guaranty (Schedule D to Franchise Agreement)	Item 15

## **ITEM 10 FINANCING**

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

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

**Except as listed below, Bennigan's Franchising Company, LLC, is not required to provide you with any assistance.**

Before you open your Restaurant, we will:

1. Review the proposed site for the Restaurant. (Franchise Agreement, Section 6.1).
2. Provide you, on loan, with one copy of our Operations Manual. (Franchise Agreement, Article 12). A copy of the Table of Contents of the Operations Manual is attached as Exhibit E to this disclosure document. Our Operations Manual consists of 900 pages.
3. Provide you with our Principal Training, Manager Training, and Supervisor Training. (Franchise Agreement, Section 13.2.)
4. If the Franchise Agreement governs the development of your first Restaurant, we will furnish a representative to the Restaurant (the "Opening Coordinator") for a period of at least seven days, to provide opening advice and assistance. (Franchise Agreement, Section 13.3)
5. If the Franchise Agreement governs the development of your first Restaurant, we will furnish an opening training team to work at the Restaurant for a period of at least nine days. (Franchise Agreement, Section 13.3).

During the operation of your franchise:

1. We will list your Restaurant on any website we maintain that lists franchised or Restaurants operating under the System to the same extent as we list other Restaurants generally. (Franchise Agreement, Section 9.6)
2. We will grant you access to advertising and promotional programs and material we or our designated advertising agency may develop for the System. (Franchise Agreement, Section 9.4).
3. We will provide your additional or replacement Principals with Principal Training, your additional or replacement Managers with Manager Training, and your additional or replacement Supervisors with Supervisor Training. (Franchise Agreement, Section 13.2).
4. We will provide you, at no additional charge, with such additional assistance we deem necessary and appropriate, in our discretion. Such assistance may include consultation regarding development of products and services, improving Restaurant operations, and establishing and using administrative, accounting, and inventory control procedures. (Franchise Agreement, Section 13.8)

### Site Selection

You are solely responsible for locating the site for the Restaurant and for negotiating the purchase or lease of the site. We refer to your proposed site as the "Proposed Site." We must approve the location where you propose to develop the Restaurant. We refer to the location we approve as the "Approved Location."

The Approved Location will be identified on Schedule A of the Franchise Agreement. If we have not approved a location of your Restaurant before we sign the Franchise Agreement, we will designate a general area where you will develop the Restaurant (the "Development Area"), which will be identified on Schedule A. The size and boundaries of the Development Area are negotiated before you sign the Franchise Agreement. There is no territorial protection within the Development Area – we and our affiliates may

develop, open, and operate, and may authorize others to develop, open, and operate in the Development Area, restaurants identified by the BENNIGAN'S and STEAK AND ALE Marks and other trademarks, and other businesses, without paying you any compensation.

You must identify a proposed site for the Restaurant within 90 days of signing the Franchise Agreement, and must provide us such information about the site as we may request. We will have 30 days after the date we receive your notice and all requested information to approve or reject the proposed site. Once the Approved Location is determined, we will amend Schedule A to identify the Approved Location.

You must open your Restaurant for regular business operations by the date we specify (the "Opening Date"), which will be one year after the effective date of the Franchise Agreement. If you fail to open the Restaurant by the Opening Date, we will have the right to terminate the Franchise Agreement after providing you 10 days' written notice with an opportunity to cure. You may, however, request up to three 60-day extensions. To request an extension, you must submit a written request and sign an extension agreement containing a general release of all claims against us. There is no fee for the first extension. The fee is \$2,500 for the second extension and \$5,000 for the third extension. We will not be required to grant your request for an extension of the Opening Date: (i) if you are, at the time you make the request, in breach of the Franchise Agreement; (ii) if you have not been in substantial compliance with the Franchise Agreement and the Operations Manual during the portion of the Term that has expired; or (iii) if we determine that you would be unable to open the Restaurant by the third extension of the scheduled Opening Date, if we were to grant the extension.

The typical length of time between signing a Franchise Agreement and opening the Restaurant for business ranges from 10 to 12 months after a franchise agreement is signed. Factors that may affect this time period include the time required to select a site for the Restaurant, obtain the required building permits, obtain the Restaurant's liquor license, and build out the Restaurant and obtain required permits.

#### Advertising Programs

If you are developing a BENNIGAN'S Standard Restaurant or a STEAK AND ALE Restaurant, you must spend at least \$15,000 on a grand opening promotion that conforms to our Standards.

If you are developing a BENNIGAN'S Standard Restaurant or a STEAK AND ALE Restaurant, you must spend, each calendar quarter, at least 1% of the Gross Sales of the Restaurant for the immediately-preceding calendar quarter on a local advertising program that conforms to our standards and specifications in the Territory or in areas adjoining it. You must provide us, within 30 days after the end of each calendar quarter, or more frequently if we require you to do so, with a report, on forms we may prescribe, detailing your expenses and compliance with your local advertising requirement. We do not impose a local advertising requirement for a BENNIGAN'S ON-THE-FLY Restaurant, but the host location may require you to contribute to an advertising fund.

We may determine that all BENNIGAN'S Standard Restaurants and/or all STEAK AND ALE Restaurants in a given market area should participate in a market-wide cooperative advertising arrangement. We refer to this arrangement as a "Regional Advertising Cooperative." We will define the area covered by a Regional Advertising Cooperative by one or more whole or partial cities, counties, Nielsen Designated Market Areas, or other means. If a Regional Advertising Cooperative is formed for the area where the Restaurant is located, we will notify you, and you must contribute the amount we require, not to exceed 1% of your Gross Sales (the "Regional Advertising Fee"). Any amount paid as a Regional Advertising Cooperative, will be credited toward satisfaction of your Local Advertising Requirement. Company-owned Restaurants in the Regional Advertising Cooperative will contribute at the same rate as franchised Restaurants are required to contribute. We will have sole discretion over the administration of the Regional Advertising Cooperative, including your percentage contribution, the application and disbursement of sums the Regional Advertising Cooperative collects, and other details. We may modify all of these details periodically.

If we grant voting power to Restaurants in the Regional Advertising Cooperative, Company-owned Restaurants will have the same voting rights as franchisee-owned Restaurants. Company-owned Restaurants will not have controlling voting power over fees that the Regional Advertising Cooperative imposes unless they are a majority of Restaurants in the Regional Advertising Cooperative. We will prepare an annual accounting of the books of the Regional Advertising Cooperative. We will provide you with a copy of this accounting on your written request.

We reserve the right to form or dissolve the Regional Advertising Cooperative at any time. No dissolution will be effective until all monies in the Regional Advertising Cooperative have been spent for advertising or promotional purposes or returned to their contributors in proportion to their contributions. We also reserve the right to change the area covered by the Regional Advertising Cooperative, or to merge the Regional Advertising Cooperative with other cooperatives.

If you operate a BENNIGAN'S Standard Restaurant and we require you to participate in a Regional Advertising Cooperative, we will not require BENNIGAN'S ON-THE-FLY Restaurants to participate, even if they are within the area covered by a Regional Advertising Cooperative.

#### Brand Development Fund

In the fiscal year ending December 25, 2023 the BENNIGAN'S Brand Development Fund spent the collected funds as follows: 9% on production, 12% on media placement, 79% on administrative, and 0% on other expenses.

#### Loyalty Programs

You must participate in all customer loyalty and reward programs that we develop, and all contests, sweepstakes and other prize promotions that we conduct.

#### Internet Advertising

We will list your Restaurant on any website we maintain that lists franchised or Company-owned Restaurants operating under the System to the same extent as we list these other Restaurants generally.

You may create a website for the Restaurant. Your website must hyperlink off one or more websites that we designate. You must use and publish all templates and forms we direct you to use and publish in connection with the website. You must submit to us all text, graphics, photographs, and other material you propose to use on your website, including all material modifications to the content, before you use it. We have the right to: (i) approve, disapprove, and modify the content; (ii) format, upload, or hyperlink your website to any other website related to the System that we designate; and (iii) modify, use, print, publish, display, store, and transmit the content, and to authorize third parties to modify, use, print, publish, display, store, and transmit the content.

#### Social Media Advertising

You may establish sites on FACEBOOK and other social media and social network services (your "Social Media Sites"), We have the right to: (i) disapprove or to require you to modify the text, graphics, photographs, and other material on any Social Media Site; (ii) hyperlink your Social Media Sites to any other website related to the System that we designate; and (iii) modify, use, print, publish, display, store, and transmit any of the content, and to authorize third parties to modify, use, print, publish, display, store, and transmit any of the content, subject to the requirements of the social network service that hosts the applicable Social Media Site. You must keep us advised at all times of your Social Media Sites' addresses and domain names.

We own all content published on your Social Media Sites, subject to the requirements of the social network service that hosts the applicable Social Media Site. We also own all domain names related to the Social Media Sites, subject to the requirements of the social network service that hosts the applicable Social Media Site. All material that you publish on a Social Media Site must meet the standards of propriety that we

prescribe, and must comply with our rules, guidelines, standards, specifications, plans, programs, and procedures. You must monitor the content on each Social Media Site, and remove any inappropriate content upon our demand, or within 12 hours after the inappropriate content is published on the Social Media Site, whichever is earlier.

### Access to Advertising

We will grant you access to advertising and promotional programs and material we or our designated advertising agency may develop for the System. You will receive, at no additional charge, all advertising and promotional programs and materials produced for the System for radio, television, or print media. These items include ad slicks, circulars, direct mail pieces, broad sheets, newsletters, and brochures. You must pay the hard costs associated with these items, like the cost of purchasing media, film, plates, paper, and other hard costs, and any shipping and handling charges for delivering the items to you. You must also pay all costs of customizing the programs or materials, and of having them published in the media.

### Control Over Advertising

You may use only advertising and promotional materials that we have provided to you or your own advertising and promotional materials that we have approved. If you want to use advertising and promotional materials that we have provided to you, you must provide us a description of the media in which you propose to use them for our approval before you use them. We will have 21 days in which to approve or disapprove the proposed use of the materials. If we have not communicated to our written approval within this 21-day period, they will be deemed not approved. If you want to use your own advertising and promotional materials, you must provide us a copy of the advertising and promotional materials, together with a description of the proposed media, for our approval before you use them. We will have 21 days in which to approve or disapprove the materials and their proposed use. If we have not communicated to you our written approval within this 21-day period, they will be deemed not approved.

You may not: (i) issue any press release or similar promotion related to the Restaurant, the Franchised Business, or the System unless we expressly approve the release or promotion in writing in advance; (ii) conduct any advertising or promotional activities that fall outside our guidelines; or (iii) advertise the Restaurant with any business that is not operated under the Franchise Agreement, without our prior written consent.

### POS System

You must buy and use the electronic cash register system and computer system that meets our requirements. You will use your electronic cash register system to record your sales transactions, to track product mix and sales performance, to assist in purchasing and inventory control, for accounting and bookkeeping, and for other functions we may specify. You will use your computer system for interactive training, for purchasing and inventory control, for accounting and bookkeeping, for scheduling, for Internet communication and email, and for other functions we may specify.

You must acquire and use a point-of-sale system (a “POS”) and a back-office system (a “BOS”) and must upgrade to equipment that meets our specifications as we direct. The current purchase price of POS and BOS systems that meet our specifications ranges from \$25,000 and \$40,000. Neither we nor any affiliate of ours has any obligation to provide ongoing maintenance, repairs, upgrades, updates to your hardware or software, but we do require you to enter into a maintenance contract for the POS System. You must upgrade and update your POS system on notice from us. The cost to comply with these obligations could be as low as \$500, or may be as high as \$25,000. We do not intend to require you to upgrade and update your systems more often than one time every five years; however, there is no contractual limitation on the frequency or cost of these obligations.

You must connect your POS system to our headquarters computer. We may monitor and poll your POS system as we deem appropriate. We have the independent rights and ability to access all data and

information that is generated by, or that is stored in, your POS system. There is no contractual limit on our right to obtain this data and information.

Training

We will provide you with our Principal Training, Manager Training, and Supervisor Training. Our Principal Training, Manager Training, and Supervisor Training programs as of the date of this disclosure document are as follows:

**TRAINING PROGRAM**

**Principal Training**

<b>Subject</b>	<b>Hours of Classroom Training</b>	<b>Hours of On-the-Job Training</b>	<b>Location</b> <sup>(Note 1)</sup>
Concept Overview	8	0	Certified Training Restaurant
Operations Review - Unit One	4	4	Certified Training Restaurant
Operations Review - Unit Two	4	4	Certified Training Restaurant
Market Tour	0	8	TBD

**Manager Training** <sup>(Note 2)</sup>

<b>Subject</b>	<b>Hours of Classroom Training</b>	<b>Hours of On-the-Job Training</b>	<b>Location</b> <sup>(Note 1)</sup>
Orientation/Shadow Shifts	8	0	Certified Training Restaurant
BOH Station Training	0	100	Certified Training Restaurant
FOH Station Training	0	70	Certified Training Restaurant
Kitchen Management Training	0	50	Certified Training Restaurant
Service Management Training	0	50	Certified Training Restaurant
Shift Management Training	0	120	Certified Training Restaurant

**Supervisor Training** <sup>(Note 3)</sup>

<b>Subject</b>	<b>Hours of Classroom Training</b>	<b>Hours of On-the-Job Training</b>	<b>Location</b> <sup>(Note 1)</sup>
Orientation - Introduction	4	0	Certified Training Restaurant
Kitchen Training	8	40	Certified Training Restaurant
Service Training	4	16	Certified Training Restaurant
Shift Management	16	0	Certified Training Restaurant
Market Tour	8	8	TBD

Notes:

1. The actual days and hours of classroom training and on-the-job training will vary depending on a number of factors, like the size of the training class, the experience of attendees in the class, and the experience, strengths, and needs of the attendees.
2. Your “Managers” are your general managers, assistant general managers, and other individuals who manage the overall operation of the Restaurant.
3. Your “Supervisors” are your front-of-house managers, back-of-house managers, bar managers, and other individuals who manage aspects of the Restaurant.

Training will be conducted at a “Certified Training Restaurant,” which is a Restaurant that complies with the requirements of the System, that has particularly skilled management, and that has personnel who are skilled at teaching others. We will conduct training classes on an as-needed basis. Our instructional materials consist of our Operations Manual, hands-on training and coaching, and discussions. Training will be conducted by, or under the supervision of our training team, consisting of Shawn Finn, Lucas Dudley, and Yedid Dudley. Shawn Finn has 35 years of industry experience and experience with us. Lucas Dudley has 20 years of industry experience and experience with us. Yedid Dudley has 18 years of industry experience and experience with us.

You must pay the Initial Training Fee. You may send a reasonable number of Principals to Principal Training, Managers to Manager Training, and Supervisors to Supervisor Training at no additional charge. If we determine that you are sending an unreasonable number of attendees, we may charge you a reasonable fee to train the additional attendees. We will list our current prices for Principal Training, Manager Training, and Supervisor Training in the Operations Manual. Our current price for these additional attendees is \$2,500, whether the training is Principal Training, Manager Training, or Supervisor Training. In determining whether the number of attendees you are sending is reasonable, we may consider: (i) whether you already have the number of Managers and Supervisors that we require; (ii) the volume of business of your Restaurant; (iii) the reliability of your existing Managers and Supervisors; (iv) the skills of your existing Managers and Supervisors; (v) your Manager and Supervisor turnover; and (vi) other factors. (No specific reference in Franchise Agreement).

If the Restaurant is your first Restaurant under the System, at least one of your Principals must attend and complete Principal Training to our satisfaction, and at least one of your Managers must attend and complete Manager Training to our satisfaction: (i) within 120 days after the Effective Date of the Franchise Agreement; or (ii) before you open the Restaurant, whichever is sooner. At least one of your Supervisors in each of the front-of-house, back-of-house, and bar areas of the Restaurant must attend and complete the Supervisor Training to our satisfaction before you open the Restaurant.

If you operate other restaurants under the System, your personnel required to attend the initial Manager Training and initial Supervisor Training must attend and complete the training to our satisfaction before you open the Restaurant.

If we extend your Opening Date, we may require any Managers who previously received Manager Training and any Supervisors who previously received Supervisor Training to attend and complete to our satisfaction additional training or refresher training to help ensure that their skills remain current.

Your additional and replacement Principals, Managers, and Supervisors must attend our next regularly-scheduled Principal Training, Manager Training, or Supervisor Training, as we may require, and complete the training to our satisfaction. The fee to train a reasonable number of additional and replacement Principals, Managers, and Supervisors is included in the Initial Training Fee.

You must have a Manager who has completed our Manager Training to our satisfaction physically present at your Restaurant at all times the Restaurant is open for business.

We may certify your Restaurant as a Certified Training Restaurant. Once certified, your Certified Training Restaurant may train your Managers and Supervisors, thus reducing your costs and expenses related to training new management personnel. We may revoke the status of the Restaurant as a Certified Training Restaurant if we determine that the Restaurant’s operations are inconsistent with the requirements of a Certified Training Restaurant.

After at least one Principal has successfully completed Principal Training and one Manager has successfully completed Manager Training, we will furnish a representative to your Restaurant for a period of at least seven days to provide opening assistance. Opening assistance may include assisting you with: (i) implementing internal controls; (ii) hiring employees; (iii) training employees; (iv) purchasing products,

equipment, services, supplies, and merchandise; (v) following accounting procedures; (vi) implementing the System; (vii) evaluating your initial business operations and marketing plans; and (viii) other matters. Our fee for the Opening Coordinator, including the Opening Coordinator's travel, food, lodging, and other costs and expenses, is included in the Initial Training Fee.

If the Restaurant is your first Restaurant under the System, we will furnish you with an "Opening Training Team" to work at your initial Restaurant immediately before and after the opening of the Restaurant, for a period of at least nine days. If the Restaurant is your second or subsequent Restaurant under the System, we may provide you with limited training team assistance, and your other Restaurants will supply a portion of the training assistance. We will determine the actual size of the Opening Training Team, based on the size and location of your Restaurant, your experience as a restaurant operator, the number of other Restaurants you operate under the System or other brands, and other factors. We will be responsible for making all travel, food, and lodging arrangements of the Opening Training Team members. Our fee for the Opening Training Team, including the Opening Training Team's travel, food, lodging, wage, benefit, and other costs and expenses, is included in the Initial Training Fee.

You must staff the Restaurant with your employees to train with, and to assist, the Opening Training Team. If you do not staff the Restaurant with the employees we require, we may staff the Restaurant with our employees and independent contractors. The travel, food, lodging, wage, benefit, and other costs and expenses we incur because you did not provide the employees we require are not included in the Initial Training Fee, and will be in addition to the amount of the Initial Training Fee. You must reimburse us for these costs and expenses so that we actually receive the reimbursement within 10 days after we request it.

We may develop additional training that we believe would benefit the System, which additional training may be mandatory or optional. If we designate additional training as mandatory, you and those of your Principals, Managers, Supervisors, and other personnel we specify must attend and complete the training to our satisfaction, at the times we specify. We reserve the right to charge a reasonable fee for additional training. Our current rate for additional training is \$50 to \$120 per hour.

We may conduct an annual, biannual, or other periodic conference or convention (a "Conference"). We may charge a reasonable fee for staging the Conference. If we conduct a Conference, you and your Principals, Managers, Supervisors, and other personnel we specify must attend.

At your request, we may permit additional individuals to attend training. Each individual who attends training must enter into our Confidentiality Agreement and Covenant Not to Compete Agreement.

You must pay all expenses you and your designated attendees incur related to attending any training we conduct, and our Conference. These expenses may include, but will not be limited to, your attendees' travel, food, lodging, wage, benefit, and other costs and expenses.

If we determine that any Principal whom we require to attend and complete our Principal Training or any other mandatory training is unable to complete the training to our satisfaction after two attempts, you must designate another Principal to attend our next regularly-scheduled training. If there is no other Principal, or if the replacement Principal is unable to complete the training to our satisfaction after two attempts, we will have the right to terminate the Franchise Agreement. Each Manager and Supervisor must successfully complete our initial training program before assuming management or supervisory responsibility.

## **ITEM 12 TERRITORY**

### Franchise Agreement

You will develop the Restaurant at a location that you select and that we approve. You may relocate the Restaurant only with our prior written consent, must close your old Restaurant and open your relocated

Restaurant substantially simultaneously so that there is no break in operations, and must enter into our then-current form of relocation agreement.

Except as described below, 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.

#### BENNIGAN'S AND BENNIGAN'S ON-THE-FLY

When you sign the franchise agreement, we will identify an area of protection surrounding your Restaurant, which we refer to as your "Territory."

For a BENNIGAN'S Standard Restaurant, the minimum Territory generally is a five-mile radius surrounding the Restaurant, but may be smaller in highly populated areas or larger in less populated areas. If you develop a BENNIGAN'S ON-THE-FLY Restaurant, your Territory will depend on the nature of the host facility that houses your Restaurant. If the Restaurant is located in an airport, for example, your Territory may consist of the terminal in which the Restaurant is located. If the Restaurant is located in a shopping mall food court, office building, college, university, or other school, sports stadium or arena, or entertainment center, your Territory may consist of the building in which the Restaurant is located. If the Restaurant is located on a military base, your Territory may consist of the military base.

If you operate a BENNIGAN'S Standard Restaurant or BENNIGAN'S ON-THE-FLY Restaurant, we will neither develop nor operate, nor grant anyone but you the right to develop or operate, a BENNIGAN'S Restaurant within your Territory. We have the right to develop and operate, and grant others the right to develop and operate, BENNIGAN'S and BENNIGAN'S ON-THE-FLY Restaurants in Nontraditional Locations (i.e., airports, shopping mall food courts, office buildings, colleges or universities, sports stadiums, sports arenas, entertainment centers, military bases, and similar places) within the boundaries of your Territory, but you will have a right of first refusal to develop in these areas as described below.

We reserve for ourselves all rights not expressly granted to you. This includes the right to develop and operate, and grant others the right to develop and operate, other restaurant brands (including STEAK AND ALE) in your Territory. We and our affiliates also may offer, sell and deliver products and services identified by the BENNIGAN'S trademarks through "Alternative Distribution Channels," both within and outside of your Territory. Alternative Distribution Channels include online, catalog, and telephone sales; distribution through grocery stores or specialty stores; through telemarketing, other direct-marketing techniques, and radio and television advertisements and sales; and through any other distribution channels. We may also provide, and may grant others the right to provide, catering and delivering services associated with the BENNIGAN'S Marks in your Territory. We are not required to pay you any compensation for soliciting or accepting orders in your Territory. Except for this restriction, there is no limit on our right to solicit and accept orders inside your Territory, and we are not required to compensate you for soliciting or accepting orders in your Territory.

If we propose to develop a restaurant in a Nontraditional Location in your Territory, and if the host will permit you to operate the business, and if you meet all other criteria for operation (which include compliance with your franchise obligations), we will grant you a right of first refusal to operate the business according to the terms of our then-current form of franchise agreement or such other terms that we deem appropriate. You will have 30 days after we deliver the notice to you to notify us of your intent to develop and operate the business. If we have not received your notice within the 30-day period, we and our affiliates may develop and operate the business.

There are no circumstances that permit us to modify your territorial rights under the franchise agreement. The continuation of your territorial rights does not depend on your achievement of any certain sales volume, market penetration, or other contingency.

## STEAK AND ALE

When you sign the franchise agreement, we will identify an area of protection surrounding your restaurant, which we refer to as your “Territory.”

For a STEAK AND ALE Restaurant, the minimum Territory generally is a five-mile radius surrounding the Restaurant, but may be smaller in highly populated areas or larger in less populated areas. Your Territory will not include any Nontraditional Locations, but you will have a right of first refusal in these areas as described below.

If you operate a STEAK AND ALE Restaurant, we will neither develop nor operate, nor grant anyone but you the right to develop or operate, a STEAK AND ALE Restaurant within your Territory. We have the right to develop and operate, and grant others the right to develop and operate, STEAK AND ALE Restaurants in Nontraditional Locations within the boundaries of your Territory, but you will have a right of first refusal to develop in these areas as described below.

We reserve for ourselves all rights not expressly granted to you. This includes the right to develop and operate, and grant others the right to develop and operate, other restaurant brands (including BENNIGAN’S and BENNIGAN’S ON-THE-FLY) in your Territory. We and our affiliates also may offer, sell, and deliver products and services identified by the STEAK AND ALE trademarks through Alternative Distribution Channels, both within and outside of your Territory. We may also provide, and may grant others the right to provide, catering and delivering services associated with the STEAK AND ALE Marks in your Territory. We are not required to pay you any compensation for soliciting or accepting orders in your Territory. Except for this restriction, there is no limit on our right to solicit and accept orders inside your Territory, and we are not required to compensate you for soliciting or accepting orders in your Territory.

If we propose to develop a restaurant in a Nontraditional Location within the Territory, and if the host will permit you to operate the business, and if you meet all other criteria for operation (which include compliance with your franchise obligations), we will grant you a right of first refusal to operate the business according to the terms of our then-current form of franchise agreement or such other terms that we deem appropriate. You will have 30 days after we deliver the notice to you to notify us of your intent to develop and operate the business. If we have not received your notice within the 30-day period, we and our affiliates may develop and operate the business.

There are no circumstances that permit us to modify your territorial rights under the Franchise Agreement. The continuation of your territorial rights does not depend on your achievement of any certain sales volume, market penetration, or other contingency.

### Option Agreement

You may reserve your right to develop one or more Restaurants by signing our Option Addendum (see Franchise Agreement, Schedule C). Under the Option Addendum, you will have the right to develop additional Restaurants within a specified period of time and geographic area (the “Option Territory”) shown in the Option Addendum. We would agree on the size and location of the Option Territory before you sign the Option Addendum. The size and location will depend on: (i) the number of additional Restaurants we agree that you may develop; (ii) your skill and experience as a business operator; (iii) your financial resources; (iv) your proximity to the Option Territory; (v) the presence of other BENNIGAN’S or STEAK AND ALE Restaurants in the area; (vi) the presence of other competitors in the area; (vii) the demographics of the area; and (viii) other factors.

The continuation of your rights to the Option Territory does not depend on your achievement of any certain sales volume, market penetration, or other contingency. However, if you do not exercise an Option by the date shown in the Option Addendum, or if you do not open the Restaurant related to that Option by the date shown in the Option Addendum, your right to develop additional Restaurants under the Option Addendum expires. There are no circumstances that permit us to modify your Option Territory.

Relationship between BENNIGAN’S and STEAK AND ALE Brands

We intend to grow both the BENNIGAN’S and STEAK AND ALE brands throughout the United States and outside the United States through the development of franchised and company-owned restaurants. Currently, training, marketing, and operational support for both brands share the same principal business address and training facilities, and there are no current plans to maintain separate facilities. BENNIGAN’S Restaurants and STEAK AND ALE Restaurants may compete with each other in the same markets. There are no formal procedures in place for resolving conflicts between the two brands, although we are not anticipating that any conflicts will arise.

**ITEM 13  
TRADEMARKS**

BENNIGAN’S BRAND

Our affiliate, Bennigan’s IP, owns and has registered the following Marks on the Principal Register of the United States Patent and Trademark Office (the “USPTO”), and all required affidavits have been filed.

Mark	Registration Number	Registration Date
BENNIGAN’S	1088917	April 4, 1978
	3991006	July 5, 2011
	3991057	July 5, 2011
	4206437	September 11, 2012
BLARNEY BLAST	1957817	February 20, 1996
DEATH BY CHOCOLATE MARTINI	2746714	August 5, 2003
	1394245	May 20, 1986
EMERALD ISLE MARGARITA	2049016	April 1, 1997
TIME CRUNCH LUNCH	1920425	September 19, 1995
OH, BABY BACK RIBS	3940720	April 5, 2011

Mark	Registration Number	Registration Date
PUB BITES	3940502	April 5, 2011
BENNIGAN'S AMERICAN FARE, IRISH HOSPITALITY	3941741	April 5, 2011
	5417043	March 6, 2018

### STEAK AND ALE BRAND

Our affiliate, Bennigan's IP, owns and has registered the following Marks on the Principal Register of the United States Patent and Trademark Office (the "USPTO"), and all required affidavits have been filed.

Mark	Registration Number	Registration Date
STEAK AND ALE	5621401	December 4, 2018

### PENDING TRADEMARKS

Mark	Registration Number	Application Date
WORLD FAMOUS MONTE CRISTO	98303981	December 7, 2023

### GENERAL

You will only use the Marks as we authorize. In using the Marks, you must strictly follow our rules which may be modified by us in our discretion. All goodwill associated with the Marks remains our exclusive property.

You cannot use the Marks (or any variation of the Marks) as part of a corporate name or with modifying words, designs or symbols except for those which we license to you. You may not use our registered name in connection with the sale of an unauthorized product or service or in a manner not authorized in writing by us. You may not apply for any trademark or service mark.

There are no currently-effective material determinations of the USPTO, the Trademark Trial and Appeal Board, or any state trademark administrator or court that limit your right to use any Mark. There is no pending infringement, opposition, or cancellation proceeding involving any Mark. There is no pending material federal or state court litigation regarding Bennigan's IP's or our use or ownership rights in any Mark. We are not aware of any superior prior rights or infringing uses that could materially affect your use of our principal Marks in any state.

Bennigan's IP owns the Marks and has granted us a license to use and to sublicense use of the Marks to our franchisees pursuant to the terms of a Trademark and System License Agreement dated March 30, 2009. This agreement has a 20-year initial term, and will automatically renew for successive terms of 20 years each. Bennigan's IP may terminate the Trademark License Agreement if we are in material breach and the breach is not cured within 30 days. If the license agreement terminates or expires without renewal, you may continue to use the Marks during the term of your Franchise Agreement. There are currently no other

agreements in effect that significantly limit our rights to use or to license the use of the Marks in any manner material to the franchise.

You must notify us of any apparent infringement of, or challenge to, your use of any of the Marks. We will take such action as we deem appropriate, in our sole discretion. If we or Bennigan's IP undertakes the defense or prosecution of any litigation or administrative actions concerning the Mark, you must cooperate in the defense or prosecution. The Franchise Agreement does not require us to take affirmative action when notified of infringing uses or claim, nor to participate in your defense or indemnify you for expenses or damages if you are a party to an administrative or judicial proceeding involving any of the Marks, or if the proceeding is resolved unfavorably to you.

We have the right to control any administrative proceeding or litigation involving any of the Marks. We have sole discretion over the protection and defense of any Mark and the settlement of any administrative proceeding or litigation related to any Mark. You may not take any action with regard to this protection or defense, and you may not initiate any suit or proceeding related to the System, without our prior express written consent.

We have the right to make additions to, deletions from, and changes to the Marks in our absolute discretion. You must adopt and use any and all of these additions, deletions, and changes as we direct, at your sole cost and expense.

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

There are no patents or registered copyrights that are material to the franchise. There are no pending patent applications that are material to the franchise. We claim copyright protection, however, in many elements of the System, including the contents of our Operations Manual, the content of our web site and advertising materials, and the design elements of our Marks.

You and your owners and employees must maintain the confidentiality of our confidential information and trade secrets. All information, knowledge, know-how, techniques and data which we designate as confidential will be deemed confidential for purposes of your Franchise Agreement ("Confidential Information"). Examples of Confidential Information include: (i) site selection, construction plans and design specifications; (ii) methods, formats, specifications, standards, systems, procedures, sales and marketing techniques; (iii) recipes, ingredients and food preparation techniques; (iv) knowledge of specifications for and suppliers of, and methods of ordering, certain products, ingredients, materials, equipment and supplies; (v) knowledge of the operating results and financial performance of other System restaurants; (vi) the Confidential Operations Manual; (vii) training materials and programs; (viii) customer data; and (ix) all password-protected portions of our website, intranets and extranets and the information they contain (including the email addresses of our franchisees).

All customer data belongs exclusively to us and/or our affiliates. You must install and maintain security measures and devices necessary to protect the customer data from unauthorized access or disclosure, and you may not sell or disclose to anyone else any personal or aggregated information concerning any customers. You have the right to use the customer data only in connection with the operation of the Restaurant, while the Franchise Agreement is in effect.

Your owners and key personnel must sign our Confidentiality Agreement and Covenant Not to Compete Agreement, in the form attached to the Franchise Agreement.

There are no current material determinations of the USPTO, the United States Copyright Office, or any court regarding any of our copyrights. There are no material proceedings pending in the USPTO or any court. There are no agreements that limit our right to use or license you to use any of our copyrighted material in any manner material to your Franchised Business. We do not know of any patent or copyright infringement that could materially affect the franchise.

All new products, items, services and other developments, whether they be of our original design or variations of existing services or techniques, or your original design or variations of existing services or techniques, will be deemed a work made for hire and we will own all rights in them. If they do not qualify as works made for hire, you will assign ownership to us under the Franchise Agreement. You will not receive any payment, adjustment or other compensation in connection with any new products, items, services or developments.

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

We refer to your general managers, assistant general managers, and other individuals who manage the overall operation of the Restaurant as your “Managers.” We refer to your front-of-house managers, back-of-house managers, bar managers, and other individuals who manage aspects of the Restaurant as your “Supervisors.”

If the franchisee is an individual or business entity, we require that an individual with an equity interest participate personally in the direct operation of the Franchised Business and you must exercise on-premises supervision of your Restaurant, through your Managers and Supervisors. We recommend, but do not require, that an individual with an equity interest in the franchise provide on-premises supervision.

Your Managers and Supervisors need not have an equity interest in the franchisee, but they must sign a Confidentiality Agreement in a form satisfactory to us, giving us the right to enforce the agreement as a third-party beneficiary. You must conduct any background investigations, aptitude screenings, and other screenings as we may prescribe, on each prospective Manager. The prospective Manager must pass these investigations and screenings. Each of your Managers must successfully complete our Manager Training before assuming managerial responsibilities, and thereafter, must successfully complete any other mandatory training we may require. You must have a Manager who has successfully completed our Manager Training physically present at your Restaurant at all times the Restaurant is open for business.

You must appoint a designated person to serve as Brand Ambassador for your Restaurant. The Brand Ambassador will be responsible for neighborhood/community marketing and trade area marketing activities, and coordinating catering and delivery initiatives.

If you are a business entity, your Principals must sign the form of Personal Guaranty of Franchisee’s Principals attached to the Franchise Agreement as Schedule D.

**ITEM 16**  
**RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL**

You must sell all products and services that we require, and may sell only products and services that we have approved. In offering products for sale, you may only use products, materials, ingredients, supplies, recipes, paper goods, uniforms, fixtures, furnishings, signs and equipment approved by us and must follow exact methods of product storage and preparation that meet our requirements. You may not deviate from our standards or specifications without our prior written consent. We may add to, delete from, and modify the list of products and services as we deem appropriate. There is no limitation on our right to do so.

You may not offer or sell products or services through alternative distribution channels, such as through carts, kiosks, or via the Internet.

You may not solicit business outside your Territory, except that you may fulfill your Local Advertising Requirement by advertising jointly with other franchisees under the System in your Territory and the territories of the other franchisees, list your Restaurant on your website and Social Media Sites, and advertise via radio, television, and similar media that broadcast into areas outside your Territory, provided the radio stations, television stations, and similar media also broadcast inside your Territory.

You must participate in all customer loyalty and reward programs that we develop, and all contests, sweepstakes and other prize promotions that we conduct. We have the right to establish maximum, minimum, or other retail pricing requirements to the extent permitted by law.

**ITEM 17**  
**RENEWAL, TERMINATION, TRANSFER, AND DISPUTE RESOLUTION**  
**THE FRANCHISE RELATIONSHIP**

**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.**

Provision	Section in Franchise or Other Agreement	Summary
a. Length of the franchise term	Franchise Summary and Section 3.1	15 years.
b. Renewal or extension of the term	Section 3.2	You may renew Franchise for up to two additional 15-year terms.
c. Requirements for franchisee to renew or extend	Section 3.2	You must: (i) notify us of your intent to renew; (ii) be in compliance with the Operations Manual and all agreements; (iii) have been in substantial compliance with the Operations Manual and all agreements during the Term; (iv) Renovate your Restaurant; (v) enter into our then-current form of franchise agreement, the terms of which may be materially different than the terms of the current Franchise Agreement; (vi) execute a Release and Indemnification; and (vii) pay a Renewal Fee.
d. Termination by franchisee	Section 20.1	You may terminate for cause, if we commit a material breach of any material provision of the Franchise Agreement and do not cure after notice and opportunity to cure.
e. Termination by franchisor without cause	None	Not applicable.
f. Termination by franchisor with cause	Sections 20.3 and 20.4	We may terminate the Franchise Agreement for cause.
g. "Cause" defined – curable defaults	Section 20.4	10 days to cure if: (i) you have not opened your Restaurant by the Scheduled Restaurant Opening Date, after any extensions; (ii) if you fail to execute, or if you fail to cause all persons required to sign them to execute, the Personal Guaranty of Franchisee's Principals, Confidentiality Agreement, or Covenant Not to Compete Agreement; (iii) if you fail to submit any report, document, or data we require; (iv) if you fail to pay us or our affiliates any amounts you owe; (v) if you or any of your Principals fail to complete the training we prescribe, after

Provision	Section in Franchise or Other Agreement	Summary
		we have afforded you re-training opportunities; (vi) if your alcoholic beverage license is suspended or revoked; or (vii) if you commit any breach of the Franchise Agreement not specifically enumerated in Sections 20.3 or 20.4 of the Franchise Agreement.
h. “Cause” defined –non-curable defaults	Section 20.3	No opportunity to cure if you: (i) become insolvent; (ii) disclose our Confidential Information, or engage in a Competing Activity; (iii) misrepresented any material fact in your franchise application; (iv) knowingly maintain false books or records, conceal revenues, or submit false reports; (v) understate your Gross Sales by 4% or more; (vi) deny us access to your financial or accounting records, or fail to assist in any inspection or audit; (vii) deny us access to Franchised Business premises, to evaluate your performance; (viii) receive three or more failing scores on any health or safety inspection within any 12-month period; (ix) misuse or misappropriate any Mark; (x) fail to comply with all applicable laws; (xi) abandon the Franchise or cease operating the Restaurant; (xii) commit fraud related to the Franchised Business; (xiii) are convicted of or plead no contest to a felony, fraud, or other serious crime; (xiv) have your existence as a business entity revoked; (xv) intentionally, willfully, or through gross negligence, breach any covenant, warranty, representation, agreement, or obligation in the Franchise Agreement or Operations Manual; or (xvi) commit three or more breaches within any 12 consecutive month period.
i. Franchisee’s obligations on termination/nonrenewal	Article 21	You must: (i) pay us all money you owe; (ii) cease all use of the System; (iii) cease to use any advertising materials; (iv) cease to hold yourself out as our franchisee; (v) return the Operations Manual; (vi) cancel all assumed name registrations; (vii) fulfill your obligations under the Telephone Listing Agreement and Internet Sites and Listings Agreement; (viii) comply fully with, and cause your personnel to comply with, personal guaranty, confidentiality, and noncompete obligations; (ix) on our request, assign your lease to us (if you lease the Approved Location), or enter into

Provision	Section in Franchise or Other Agreement	Summary
		a lease with us (if you own the Approved Location); (x) if we do not elect to take possession of the Approved Location, de-identify the Approved Location; (xi) allow us to purchase the assets of the Franchised Business; (xii) on our request, transfer your liquor licenses to us; and (xiii) pay us damages.
j. Assignment of contract by franchisor	Section 18.1	We may assign any or all of our rights and may delegate any or all of our obligations. We may also may transfer equity interests in us, and may engage in a public offering of debt or equity.
k. “Transfer” by franchisee – defined	Section 18.2	“Transfer” means and includes the transfer of any Principal’s interest in the franchisee entity or in the Franchise Agreement, the transfer or assignment of any rights, or the delegation of any obligations under, the Franchise Agreement, and/or the sale or transfer of all or substantially all of the assets of the Franchised Business
l. Franchisor approval of transfer by franchisee	Section 18.3	You may not effect a Transfer without our prior written consent. We will not unreasonably withhold our consent.
m. Conditions for franchisor approval of transfer	Section 18.3	(i) The transferee and its equity holders must meet our Principal Qualifications; (ii) you must satisfy all monetary and other obligations; (iii) at all times during the Term, you must have been in substantial compliance with all agreements and the Operations Manual; (iv) at the time of Transfer, you must be in compliance with all agreements; (v) you, Principals, and transferee must sign our then-current form of transfer agreement; (vi) if the Transfer is a Transfer of the franchisee, or substantially all of the Restaurant’s assets, the transferee must enter into our then-current form of franchise agreement, which may contain provisions that differ materially from the provisions of your Franchise Agreement; (vii) the transferee must agree to Renovate the Restaurant; (viii) the transferee and, if applicable, the transferee’s Managers, must complete any training programs then in effect for new franchisees; (ix) the transferor or transferee must pay us a Transfer Fee of 50% of our then-current initial franchise fee; and (x) the transferee must, if the Approved Location is subject to a lease, agree to a sublease or a transfer of the lease, and must

Provision	Section in Franchise or Other Agreement	Summary
		obtain the landlord's approval.
n. Franchisor's right of first refusal to acquire franchisee's business	Section 18.5	We have the right to match any offer for the purchase of your business.
o. Franchisor's option to purchase franchisee's business	Sections 21.3 and 21.5	If you lease the Restaurant, we may, at our option, assume the lease upon termination or expiration of the Franchise Agreement. We may, at our option, purchase your assets by delivering our written notice within 30 days after termination or expiration of the Franchise Agreement.
p. Death or disability of franchisee	Section 18.4	We do not charge a transfer fee. The person acquiring your interest must: (i) be capable of conducting the Franchised Business; (ii) sign the Personal Guaranty of Franchisee's Principals; (iii) sign the Confidentiality Agreement; and (iv) sign the Covenant Not to Compete Agreement.
q. Non-competition covenants during the term of the franchise	Section 15.1	You and your Covenanting Personnel may not, directly or indirectly: (i) own or operate any business that sells products or services that are similar to the Products and Services; (ii) act as a principal in any of these businesses; or (iii) divert any business from the Restaurant, the Franchised Business, the System, or other systems we or our affiliates may operate; and (iv) engage in any activity similar to any of the activities described above.
r. Non-competition covenants after the franchise is terminated or expires	Section 15.2	For two years after the termination or expiration of the Franchise Agreement, you and your Covenanting Personnel may not, at or from the Restaurant premises, within your former Territory, or within a 10-mile radius of any other restaurant operating under the System and Marks: (i) own or operate any business that sells products or services that are similar to the Products and Services; (ii) act as a principal in any of these businesses; or (iii) divert any business from the successor to your former Restaurant, any successor to your former Franchised Business, the System, or other systems we or our affiliates may operate; and (iv) engage in any activity similar to any of the activities described above.
s. Modification of the agreement	Section 24.5	No modification without your and our written agreement, but we may unilaterally change the Operations Manual and modify the System.

<b>Provision</b>	<b>Section in Franchise or Other Agreement</b>	<b>Summary</b>
t. Integration/merger clause	Section 24.4	Only the terms of the Franchise Agreement, schedules, exhibits, and Franchise Disclosure Document are binding (subject to state law). Any representations or promises made outside the Disclosure Document and Franchise Agreement are not enforceable.
u. Dispute resolution by arbitration or mediation	Article 22	All disputes must be resolved exclusively by litigation.
v. Choice of forum	Section 22.7	Federal or state court having jurisdiction over the subject matter in the place where our principal business office is located, subject to state law. Our principal business office is currently in Dallas, Texas. (subject to applicable state law)
w. Choice of law	Section 22.6	Texas law applies. (subject to applicable state law)

**ITEM 18  
PUBLIC FIGURES**

We do not currently use any public figure to promote the 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 franchisor’s management by contacting Paul M. Mangiamele, 1600 S. Ocean Blvd., MPH 03, Lauderdale-by-the-Sea, FL 33062, telephone 469-248-4420, the Federal Trade Commission, and the appropriate state regulatory agencies.

**ITEM 20  
OUTLETS AND FRANCHISEE INFORMATION**

**TABLE NO. 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	10	11	+1
	2022	11	12	+1
	2023	12	10	-2
Company-Owned	2021	0	0	0
	2022	0	0	0
	2023	0	0	0
Total Outlets	2021	10	11	+1
	2022	11	12	+1
	2023	12	10	-2

Note: The numbers in this table show the number of BENNIGAN'S Restaurants open and operated by franchisees in the United States as of the end of our fiscal years. There were no STEAK AND ALE Restaurants in operation during our last three fiscal years.

**TABLE NO. 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	1
	2022	0
	2023	0

**TABLE NO. 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 the Year
Florida	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	1	0	0	0	0
Illinois	2021	1	0	0	0	0	0	1

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations-Other Reasons	Outlets at End of the Year
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Iowa	2021	2	2	0	0	0	0	4
	2022	4	0	0	0	0	0	4
	2023	4	0	0	0	0	0	4
Michigan	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
New Jersey	2021	1	0	0	0	0	1	0
	2022	0	0	0	0	0	0	0
	2023	0	0	0	0	0	0	0
North Dakota	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Ohio	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	1	0	0	0	0
Texas	2021	2	0	0	0	0	0	2
	2022	2	1	0	0	0	0	3
	2023	3	0	0	0	0	0	3
<b>Totals</b>	2021	10	2	0	0	0	1	11
	2022	11	1	0	0	0	0	12
	2023	12	0	2	0	0	0	10

Note: The numbers in this table show the number of BENNIGAN’S Restaurants open and operated by franchisees in the United States as of the end of our fiscal years. There were no STEAK AND ALE Restaurants in operation during our last three fiscal years.

**TABLE NO. 4**  
**Status of Company-Owned Outlets**  
**For Years 2021 to 2023**

State	Year	Outlets at Start of the Year	Outlets Opened	Outlets Reacquired from Franchisee	Outlets Closed	Outlets Sold to Franchisee	Outlets at End of the Year
Totals	2021	0	0	0	0	0	0

	2022	0	0	0	0	0	0
	2023	0	0	0	0	0	0

Note: The numbers in this table show the number of BENNIGAN’S company-owned or affiliate-owned Restaurants in the United States as of the end of our fiscal years. There were no STEAK AND ALE Restaurants in operation during our last three fiscal years.

**TABLE NO. 5**  
**Projected BENNIGAN’S Openings As Of December 25, 2023**

State	Franchise Agreements Signed But Outlet Not Open <sup>(Note 1)</sup>	Projected New Franchised Outlets in the Next Fiscal Year	Projected New Company-Owned Outlets in the Next Fiscal Year
Missouri	0	1	0
New Jersey	0	1	0
Idaho	0	1	0
Kansas	0	1	0
Minnesota	0	1	0
Nevada	0	1	0
Texas	0	1	0
<b>Total</b>	0	7	0

**Projected STEAK AND ALE Openings As Of December 25, 2023**

State	Franchise Agreements Signed But Outlet Not Open <sup>(Note 1)</sup>	Projected New Franchised Outlets in the Next Fiscal Year	Projected New Company-Owned Outlets in the Next Fiscal Year
Minnesota	1	1	0
Texas	0	1	0
<b>Total</b>	1	2	0

Note: The numbers in this table show the number of projected new BENNIGAN’S Restaurants and STEAK AND ALE Restaurants as of December 25, 2023.

Attached to this disclosure document as Exhibit D are the names of all current U.S. BENNIGAN’S and U.S. STEAK AND ALE franchisees and the addresses and telephone numbers of each of their Restaurants as of December 25, 2023. Also attached as Exhibit D are the names of all BENNIGAN’S and STEAK AND ALE franchisees with signed franchise agreements but that did not yet have an outlet open as of the end of our most recently completed fiscal year, December 25, 2023.

Also attached as Exhibit D are the names, cities and states, and current business telephone or, if unknown, the last known home telephone number of all U.S. BENNIGAN’S and U.S. STEAK AND ALE franchisees that had an outlet terminated, cancelled, or not renewed, or that otherwise voluntarily or involuntarily ceased to do business under the franchise agreement during our most recently completed fiscal year, December 25, 2023, or that have not communicated with us within 10 weeks of the 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 three fiscal years, we have entered into one agreement containing a confidentiality clause with current or former BENNIGAN'S franchisees that would restrict them from speaking openly with you about their experience with us. There are no trademark-specific franchisee organizations associated with the System.

## **ITEM 21 FINANCIAL STATEMENTS**

Attached to this disclosure document as Exhibit C are the following audited financial statements:

1. Our balance sheets as of December 25, 2023, December 26, 2022, and the related statements of operations, changes in Member's equity, and cash flows for the years ended December 25, 2023, December 26, 2022, and December 27, 2021, and related notes to the financial statements.

## **ITEM 22 CONTRACTS**

The following are all proposed agreements regarding the franchise offering:

- |           |  |
|-----------|--|
| Exhibit A | Franchise Agreement and Schedules                                |
| Exhibit F | Loyalty and Gift Card Participation Agreement; Seller's Addendum |
| Exhibit H | Statement of Prospective Franchisee                              |

## **ITEM 23 RECEIPTS**

The last two pages of this disclosure document are detachable Receipts acknowledging that you received this disclosure document. You must sign and date each Receipt.

## **FOR THE STATE OF MINNESOTA**

1. By Rider to the Bennigan's Franchising, LLC Franchise Agreement for use in Minnesota, Section 21.7 (Liquidated Damages for Termination of Agreement or Closure of Restaurant) is deleted in its entirety. Item 6 of the Franchise Disclosure Document is amended to eliminate all references to liquidated damages payable if we terminate the franchise agreement for cause, or if you cease operations or terminate the franchise agreement without cause. If either of these events were to occur, we would have the right to exercise all rights and remedies available to us under applicable law.
2. Item 13 of the disclosure document is supplemented by the following:

The franchisor will protect the franchisee's rights to use the trademarks, service marks, trade names, logotypes or other commercial symbols ("Marks") or indemnify the franchisee from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the name.

As required by the Minnesota Franchise Act, Minn. Stat. Sec. 80C.12(g), we will reimburse you for any costs incurred that you incur in the defense of your right to use the Marks, so long as you were using the Marks in the manner that we authorized, and so long as we are timely notified of the claim and given the right to manage the defense of the claim including the right to compromise, settle or otherwise resolve the claim, and to determine whether to appeal a final determination of the claim.

3. Item 17 of the disclosure document is supplemented by the following:

With respect to franchises governed by Minnesota law, we will comply with Minn. Stat. Sec. 80C.14, Subds. 3, 4 and 5 which require, except in certain specified cases, that (1) a franchisee be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for non-renewal of the Agreement and (2) that consent to the transfer of the franchise will not be unreasonably withheld.

To the extent that any condition, stipulation, or provision contained in the Franchise Agreement (including any choice of law provision) purports to require any person who, at the time of acquiring a franchise is a resident of Minnesota, or, in the case of a partnership or corporation, organized or incorporated under the laws of Minnesota, or purporting to bind a person acquiring any franchise to be operated in Minnesota, to waive compliance with the Minnesota Franchises Law, such condition, stipulation, or provision may be void and unenforceable under the non-waiver provision of the Minnesota Franchises Law.

Minnesota Statutes, Section 80C.21 and Minnesota Rule 2860.4400(J) prohibit the franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring the franchisee 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 franchisee's rights as provided for in Minnesota Statutes, Chapter 80C, or franchisee's rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

Minnesota Rule 2860.4400(D) prohibits a franchisor from requiring a franchisee to assent to a general release.

The Limitations of Claims section must comply with Minnesota Statutes, Section 80C.17, Subd. 5.

4. NSF checks and related interest and attorneys' fees are governed by Minnesota Statute § 604.113, which puts a cap of \$30 on initial service charges and requires notice and opportunity to cure prior to assessing interest and attorneys' fees.
5. The franchisee cannot be required to consent to the franchisor obtaining injunctive relief. The franchisor may seek injunctive relief. See Minn. Rules 2860.4400(J). Also, a court will determine if a bond is required.

6. No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including, fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with this franchise.

**EXHIBIT A**  
**FRANCHISE DISCLOSURE DOCUMENT**  
**FRANCHISE AGREEMENT**

## Franchise Summary

**Brand:** \_\_\_\_\_

**Franchisee:** \_\_\_\_\_

**Business Entity:** Form of business entity: \_\_\_\_\_

Formed under the laws of: \_\_\_\_\_

<b>DATES</b>			
Effective Date of Franchise Agreement	Initial Term	Scheduled Restaurant Opening Date	Actual Restaurant Opening Date
_____, 20____	15 Years from Effective Date of Franchise Agreement	One Year from Effective Date of Franchise Agreement	_____, 20____

<b>FEEES</b>	
<b>Initial Franchise Fee</b>	\$50,000 as set forth in Section 4.1 of Franchise Agreement.
<b>Initial Training Fee</b>	Between \$25,000 and \$50,000 as set forth in Section 13.1 of Franchise Agreement.
<b>Royalty</b>	5% of Gross Sales as set forth in Section 4.2 of Franchise Agreement.
<b>Advertising Fees</b>	Grand Opening Advertising Requirement \$15,000.
	Local Advertising Requirement 1% of Gross Sales.
	Brand Development Fee Initially 1% of Gross Sales as set forth in Section 9.3 of Franchise Agreement. Franchisor may increase percentage not to exceed 2% of Gross Sales.
<b>If Franchisee Enters into Option Addendum</b>	Option Deposit \$10,000 per Option as set forth in Option Addendum.
	Option Fee \$40,000 per Option as set forth in Option Addendum.

**Franchisee’s Principal Business Address and Contact Information:**

\_\_\_\_\_  
STREET ADDRESS

\_\_\_\_\_  
TELEPHONE NUMBER                      FACSIMILE NUMBER

\_\_\_\_\_  
STREET ADDRESS

\_\_\_\_\_  
CONTACT PERSON

\_\_\_\_\_  
CITY, STATE, ZIP CODE

\_\_\_\_\_  
EMAIL

Initials

\_\_\_\_\_  
Franchisor

\_\_\_\_\_  
Franchisee

**Bennigan’s Principal Business Address and Contact Information:**

1600 S. Ocean Blvd.  
STREET ADDRESS

(469) 248-4420  
TELEPHONE NUMBER

(469) 248-4433  
FACSIMILE NUMBER

MPH 03  
STREET ADDRESS

Paul Mangiamele  
CONTACT PERSON

Lauderdale-by-the-Sea, FL 33062  
CITY, STATE, ZIP CODE

pmangiamele@lrblc.com  
EMAIL

Initials

\_\_\_\_\_  
Franchisor

\_\_\_\_\_  
Franchisee

# FRANCHISE AGREEMENT

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**SCHEDULES:**

- A Key Terms
- B State Law Addendum
- C Option Addendum
- D Personal Guaranty of Franchisee’s Principals
- E Confidentiality Agreement
- F Covenant Not to Compete Agreement
- G Telephone Numbers and Listings Agreement
- H Internet Sites and Listings Agreement
- I Automatic Debit Agreement Form
- J Lease Rider
- K Bennigan’s On-The-Fly Rider

## FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (the “**Agreement**”) is made and entered into the Effective Date identified on the Franchise Summary (the “**Effective Date**”), by and between BENNIGAN’S FRANCHISING COMPANY, LLC, a Delaware limited liability company (“**Franchisor**”), and the Franchisee identified on the Franchise Summary (“**Franchisee**”).

### RECITALS

A. Franchisor has the right to use, and to license others the right to use, the System and Marks in connection with the development, operation and promotion of the Brand of restaurant identified on the Franchise Summary.

B. Franchisee has applied to Franchisor for a franchise to use the System, and Franchisor desires to grant Franchisee a franchise to use the System, all as set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and commitments set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of all of which the parties hereby acknowledge, the parties hereby agree as follows:

### 1. DEFINITIONS

“**Accounting Period**” means a four-week, monthly, or other accounting period that Franchisor may specify from time to time.

“**Affiliate**” means any entity Controlled by, Controlling, or under common Control with, another entity.

“**Approved Location**” means the location Franchisor approves for the development, opening, and operation of Franchisee’s Restaurant, which shall be identified on Schedule A.

“**Bennigan’s-on-the-Fly**” means a Restaurant that is located within another primary facility, operated in conjunction with another primary facility, or included in a multi-branded facility where other restaurants share common space. The term “Bennigan’s-on-the-Fly Restaurant” will include, without limitation, a Restaurant located in a Nontraditional Location.

“**Company-Owned**” means, in the context of a Restaurant, a Restaurant owned and operated by Franchisor or an Affiliate of Franchisor.

“**Competing Activity**” means owning, operating, engaging in, having any interest in, participating as a governing person in, holding office in, by being employed by, or being engaged as an independent contractor by, any business that offers for sale, sells, or delivers products or services that are the same as or similar to the Products and Services, as modified from time to time, or any product or service similar thereto, other than the Franchised Business or another business that Franchisee operates pursuant to a valid franchise agreement with Franchisor or an Affiliate of Franchisor.

“**Confidential Information**” means Franchisor’s Trade Secrets and any other information of a confidential nature that Franchisor discloses to Franchisee and that Franchisor designates as confidential, whether or not such disclosure occurred before or after the Effective Date of this Agreement. Whether or not designated as such, “**Confidential Information**” includes, without limitation: (i) site selection, construction plans and design specifications; (ii) methods, formats, specifications, standards, systems, procedures, sales and marketing techniques; (iii) recipes, ingredients and food preparation techniques; (iv) knowledge of specifications for and suppliers of, and methods of ordering, certain products, ingredients, materials, equipment and supplies; (v) knowledge of the operating results and financial performance of other System restaurants; (vi) the Confidential Operations Manual; (vii) training materials and programs; (viii) customer data; and (ix) all password-protected portions of our website, intranets and extranets and the information they contain (including the email addresses of our franchisees). “**Confidential Information**”

does not include: (a) information generally known to the trade or the public at the time Franchisor discloses it to Franchisee; (b) information that becomes known to the trade or the public after Franchisor discloses it to Franchisee, unless it becomes known due to Franchisee's or other person's breach of a confidentiality obligation; and (c) information Franchisee can prove was known to Franchisee at the time Franchisor disclosed it to Franchisee.

**“Confidentiality Agreement”** means the agreement attached as Schedule E.

**“Control”** means the possession by a company, person, or a group of persons acting in concert, directly or indirectly, with the power to substantially direct or cause the direction of the management and policies of another person, whether through the board of directors or ownership of voting rights of such other person, by contract or otherwise. A company, person, or a group of persons acting in concert is deemed to be in control of a body corporate if such company, person, or group of persons owns more than 50% of the shares of such body corporate or is in a position to appoint or appoints the majority of the directors of such body corporate.

**“Copyrighted Works”** means works authorship which are owned by Franchisor and fixed in a tangible medium of expression including, without limitation, the content of the Manual, the design elements of the Marks, Franchisor's menus, bulletins, correspondence and communications with our franchisees, training, advertising and promotional materials, and the content and design of Franchisor's Web site.

**“Covenanting Personnel”** means, collectively Franchisee's Principals, Franchisee's directors and officers, and other personnel Franchisor specifies.

**“Covenant Not to Compete Agreement”** means the agreement attached as Schedule F.

**“Franchise Summary”** means the Franchise Summary attached as the first pages of this Agreement.

**“Gross Sales”** means all revenue related to the sale of products and performance of services in, at, about, from, or through the Restaurant and/or in conjunction with the Marks, including revenue derived from the sale of Products and Services (whether or not authorized for sale by Franchisor) and revenue derived from off-premises sales and catering and delivery services (whether or not authorized by Franchisor), whether for cash or credit, and regardless of collection in the case of credit, and income of every kind and nature related to the Restaurant. **“Gross Sales”** does not include revenues from sales taxes or other add-on taxes that Franchisee collects from guests and duly transmits to the appropriate taxing authority, gratuities given by guests, or the retail value of complimentary services, discounts, trade-outs, cash refunds to guests, coupons used by guests, and credit card fees (collectively, the **“Comps”**), up to a maximum of 3% of Gross Sales in the aggregate. In no event may Franchisee exclude more than 3% of the Restaurant's Gross Sales for Comps. In order for Comps based on complimentary services, discounts, trade-outs, and cash refunds to guests to be excluded from Gross Sales, Franchisee must provide Franchisor with the name of the guest receiving each such Comp and the reason for such Comp. Franchisor reserves the right to disapprove any Comp that Franchisor deems to be unreasonable; as, for example, when one guest receives a disproportionately large number of Comps. All exchanges in kind or barter transactions pursuant to which Franchisee furnishes goods, services, or intangible benefits in exchange for or in anticipation of goods, services, or intangible benefits to be provided, whether by a vendor, supplier, guest, or otherwise, will, for the purpose of determining Gross Sales, be valued at the greater of the full retail value of the goods, services, and intangible benefits provided by Franchisee or to Franchisee.

**“Laws”** means, collectively, all applicable federal, state, and local constitutions, statutes, regulations, rules, ordinances, case law, and similar enactments, promulgations, or rulings of a governmental authority with competent jurisdiction over the Restaurant, the Franchised Business, or the party against which enforcement is sought.

**“Managers”** means, collectively, the Restaurant's general manager, assistant general managers,

and other individuals who manage the overall operation of the Restaurant.

“**Marks**” means the trademarks, service marks, logos, and other indicia of origin that serve to identify the Brand identified on the Franchise Summary.

“**Nontraditional Location**” shall mean an airport terminal, train station or terminal, bus station or terminal, shopping center food court, office building, hospital, college, university, sports stadium or arena, entertainment center, government building, military facility, or similar environment.

“**Obligors**” means and includes Franchisee’s Principals, officers and other governing persons, Managers, Supervisors, other management personnel, all personnel who have received or will receive Principal Training, Manager Training, Supervisor Training, or similar training, any other personnel, agents, or representatives having access to any of Franchisor’s Confidential Information or Trade Secrets, and any other personnel Franchisor specifies.

“**Payment Due Date**” means 10 days after the end of each Accounting Period, or such other date as Franchisor may specify.

“**Principal**” of Franchisee means: (i) a natural person who owns or holds any equity of Franchisee; (ii) a business entity that owns or holds any equity of Franchisee; (iii) any natural person who owns or holds any equity of any business entity that owns or holds any equity of Franchisee; and (iv) such other natural persons and business entities as Franchisor may designate. An equity holder shall be deemed to “own” equity whether such ownership is direct, indirect, or beneficial. All of Franchisee’s Principals as of the Effective Date of this Agreement, and the percentage of equity each such Principal owns or holds, are set forth on Schedule A to this Agreement.

“**Products and Services**” means the menu items, merchandise, and services that Franchisor designates for the Brand of restaurant identified on the Franchise Summary.

“**Renovation**” means the periodic large-scale refurbishment and remodeling of Franchisee’s Restaurant, and replacement of worn, obsolete, or non-functioning furniture, fixtures, equipment, décor, and signage.

“**Standards**” means Franchisor’s standards, specifications, policies, procedures, and programs for developing operating and promoting businesses that operate under the System and Marks.

“**Supervisors**” means, collectively, Franchisee’s front-of-house managers, back-of-house managers, bar managers, and other individuals who manage aspects of the Restaurant.

“**System**” means the business format and operating system related to the Brand of restaurant identified on the Franchise Summary, and includes the offer and sale of the Products and Services and the Standards.

“**Territory**” means the Territory identified on Schedule A, which excludes Nontraditional Locations. If this Agreement governs a restaurant operating at a Nontraditional Location, the parties shall enter into Franchisor’s Nontraditional Rider to the Franchise Agreement, amending this definition to identify the “Territory” as the shell of the building in which the Nontraditional Location is located.

“**Trade Secret**” means information that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who may obtain economic value from its disclosure or use, whether Franchisee obtained such information before or after the Effective Date of this Agreement. Without limiting the definition of “**Trade Secret**,” all of the following shall conclusively be deemed to be “**Trade Secrets**” whether or not Franchisor designates them as such: all guest lists, contact information for all guests, Franchisor’s food and beverage recipes, lists of ingredients, preparation instructions, and serving instructions, Franchisor’s advertising, marketing, and public relations strategies, Franchisor’s marketing analyses, products and services that Franchisor proposes to introduce, but that it has not yet introduced, and Franchisor’s expansion plans.

## 2. GRANT OF FRANCHISE

2.1 Grant of Franchise. Franchisor hereby grants to Franchisee, and Franchisee hereby accepts from Franchisor, a franchise (the “**Franchise**”) to develop, open, and operate one restaurant identified by the Marks at the Approved Location (the “**Restaurant**”), using the System, in compliance with this Agreement (referred to collectively in this Agreement as the “**Franchised Business**”). Franchisor reserves to itself all rights not granted to Franchisee hereunder including, without limitation, the rights described below.

2.2 Service and Solicitation of Guests. Franchisee may solicit business within the Territory. Franchisee may not solicit business outside the Territory, except that Franchisee may fulfill Franchisee’s Local Advertising Requirement by advertising jointly with other franchisees under the System in the Territory and the territories of such other franchisees, list Franchisee’s Restaurant on Franchisee’s website and Social Media Sites, and advertise via radio, television, and like media that broadcast into areas outside Franchisee’s Territory, provided such radio stations, television stations, and like media also broadcast into Franchisee’s Territory.

2.3 Franchisee’s Right to Develop Additional Restaurants. Franchisor may offer Franchisee the opportunity to enter into an addendum to this Agreement (the “**Option Addendum**”). Under such Option Addendum, Franchisee would have the right to develop, open, and operate additional Restaurants under this Agreement. If Franchisor and Franchisee agree to enter into the Option Addendum, Franchisee will execute and deliver to Franchisor the Option Addendum in substantially the form attached to this Agreement as Schedule C, together with the Option Deposit specified in such Option Addendum, together with this Agreement.

## 3. INITIAL TERM OF FRANCHISE; RENEWAL

3.1 Initial Term of Franchise. This Agreement will commence on the Effective Date and will continue in effect for the initial term set forth in the Franchise Summary (the “**Initial Term**”).

3.2 Renewal of Franchise. Franchisee may renew the Franchise granted under this Agreement for two additional 15-year terms (each a “**Renewal Term**,” and the Initial Term, together with the Renewal Terms, being referred to collectively in this Agreement as the “**Term**”), provided that:

(i) Franchisee notifies Franchisor in writing of its intention to renew the franchise no more than 12 months, but more than six months before expiration of then current term.

(ii) At the time notification is delivered: (a) Franchisee is in compliance with this Agreement and the Standards and has been in substantial compliance with this Agreement and the Standards throughout the current term, and (b) Franchisee and its Affiliates are in compliance with all other agreements to which Franchisee or such Affiliates on the one hand, and Franchisor or Franchisor affiliates on the other hand, are parties.

(iii) Franchisee Renovates the Restaurant during the period beginning with the date Franchisee delivers Franchisor written notification of its intent to renew the franchise, and ending three months before expiration date of the current term.

(iv) Franchisee enters into Franchisor’s then-current form of franchise agreement, and Franchisee’s Principals execute and deliver to Franchisor all guaranties and personal undertakings Franchisor then requires, all of which may contain terms that vary materially from the terms of this Agreement.

(v) Franchisee and its Principals execute and deliver to Franchisor a general and full release of all claims in a form prescribed by Franchisor.

(vi) Franchisee pays Franchisor a renewal fee in the amount of \$15,000 (the “**Renewal Fee**”).

3.3 Non-Renewal by Franchisee. If any of the foregoing conditions have not been met by the applicable expiration date, Franchisee shall be deemed to have declined its renewal option and this Agreement will naturally expire.

3.4 Operation After Termination or Expiration. If Franchisor allows Franchisee to continue to operate the Restaurant after expiration, such operation shall be on a month-to-month basis and Franchisee will cease such operation at the end of the then-current calendar month on notice from Franchisor to cease such operation.

#### 4. INITIAL FRANCHISE FEE; ROYALTY

4.1 Initial Franchise Fee. Upon execution of this Agreement, Franchisee will pay Franchisor an initial franchise fee in the amount set forth in the Franchise Summary (the “**Initial Franchise Fee**”). Such payment is deemed fully earned and nonrefundable upon payment.

4.2 Royalty. For each Accounting Period during the Initial Term, Franchisee will pay Franchisor a continuing royalty (the “**Royalty**”) equal to the percentage of Franchisee’s Gross Sales set forth in the Franchise Summary. Franchisee will pay Royalties so that Franchisor actually receives each such payment by the Payment Due Date for the immediately-preceding Accounting Period.

4.3 Method of Payment; Timing. Franchisee will pay all amounts Franchisee is obligated to pay Franchisor by automatic debit (“**ACH**”) or in such other manner as Franchisor may direct so that Franchisor actually receives such payment by the Payment Due Date. Upon execution of this Agreement and periodically, upon Franchisor’s request, Franchisee will sign and deliver such documents as are necessary to facilitate payment by ACH or other payment method specified by Franchisor.

4.4 No Deduction or Setoff. Franchisee will pay all amounts due and owing under this Agreement without deduction, setoff, or abatement. Franchisee will not, on the grounds of any alleged breach by Franchisor of this Agreement or for any other reason, withhold payment of any such amount.

4.5 Interest; Nonsufficient Funds Charge. Any payments not received by Franchisor by the Payment Due Date will accrue interest at the rate of 18% per annum or the highest lawful interest rate permitted by the jurisdiction in which the Restaurant operates, whichever is less. If any check, draft, electronic or otherwise, is returned for insufficient funds, you shall pay to Franchisor a nonsufficient funds charge in the amount of \$100 (which may be increased each year by an amount not to exceed 10% of the then-current amount) and reimburse Franchisor for all expenses that it incurs on account of such nonsufficient funds.

4.6 Collection Charge. Any payments not received by Franchisor by the Payment Due Date shall be subject to a late charge of \$100 (which may be increased each year by an amount not to exceed 10% of the then-current charge) to cover Franchisor’s administrative expenses plus interest, calculated according to Section 4.5, above (the “**Collection Charge**”).

4.7 Late or Deficient Payment. Franchisor’s acceptance, deposit, or other manifestation of satisfaction with a payment that is late or that is less than the full amount owed by Franchisee shall not be construed as a satisfaction of such amount and shall not affect Franchisor’s right to collect the full amount owed.

4.8 Taxes. If any tax is imposed on payment owed to Franchisor (other than a tax imposed on Franchisor’s net income), then Franchisee shall be responsible and shall pay the tax in addition to your payment obligation, the intent being that Franchisor shall receive all payments in full, as if no such tax had been imposed.

## 5. TERRITORY

5.1 Territorial Protection. During the Term herein, provided Franchisee is in compliance with the terms of this Agreement, Franchisor shall not develop or operate in the Territory, and shall not grant anyone else the right to develop or operate in the Territory, another restaurant of the same Brand contemplated under this Agreement, except as permitted by Section 5.3., below.

### 5.2 Reservation of Rights.

(i) Franchisor and its Affiliates may develop and operate in and outside the Territory, and may grant others the right to develop and operate in and outside the Territory, different brands of restaurants and businesses that operate under different Marks.

(ii) Franchisor may provide, and may grant others the right to provide, catering and delivering services associated with the Marks and the Brand in the Territory.

(iii) Franchisor and its Affiliates may offer for sale, sell, and deliver Products and Services, including Franchisor's private-label food, beverages, merchandise, miscellaneous items, and otherwise (collectively, the "**Private-Label Products**"), by means of the Internet; through catalog sales; through toll-free telephone lines or any similar forms of electronic commerce; in grocery stores or specialty stores; through telemarketing, other direct-marketing techniques, and radio and television advertisements and sales; and through any other distribution channels (collectively, the "**Alternative Distribution Channels**"), inside or outside Franchisee's Territory, all without payment of any compensation to Franchisee.

5.3 Nontraditional Locations. Franchisor and its Affiliates may develop and operate within and outside the Territory, and may grant others the right to develop and operate in outside the Territory, another restaurant of the same Brand contemplated under this Agreement, subject to Franchisee's Right of First Refusal, described below.

(i) If Franchisor or any of its Affiliates desires to develop one or more restaurants under the Marks in a Nontraditional Location within the boundaries of the Territory, and (ii) if Franchisor has the authority and legal right to offer such opportunity to Franchisee, and (iii) if Franchisee is in compliance with the terms of this Agreement and has substantially complied with the terms hereof, and (iv) if Franchisee's Affiliates are in compliance with the terms all agreements to which such Affiliate and Franchisor are a party, then Franchisee will have the right of first refusal to develop such restaurants on Franchisor's or Franchisor's Affiliates' then-current terms or such other terms that Franchisor deems appropriate. Franchisor will deliver notice to Franchisee of Franchisor's intent to develop such restaurants, and the then-current terms for such development.

(ii) Franchisee will have 30 days after Franchisor delivers such notice to Franchisee to notify Franchisor of Franchisee's intent to purchase such rights. If Franchisor has not received Franchisee's notice that Franchisee intends to purchase such rights within such 30-day period, Franchisor and its Affiliates may develop such restaurants.

## 6. SITE SELECTION AND ACQUISITION

6.1 Approved Location. Franchisee will develop the Restaurant at the Approved Location. It is solely Franchisee's responsibility for selecting a site for the Restaurant that meets Franchisor's then-current site selection criteria. If, as of the Effective Date of this Agreement, Franchisee has identified a location for the Restaurant that Franchisor has approved, then the Approved Location will be identified on Schedule A to this Agreement. If, as of the Effective Date of this Agreement, the Approved Location has not yet been identified, Franchisee will identify a suitable site for the Restaurant within the "**Development Area**" identified in Schedule A to this Agreement, and once identified, Schedule A will be amended to reflect the Approved Location. There is no territorial protection within the Development Area. Franchisor

has the right to develop and operate, and may grant others the right to develop and operate, restaurants operating under the System and Marks or under a different name or trademark in the Development Area.

6.2 Acquiring Real Estate. Franchisee shall identify a site for the Restaurant within 90 days after the Effective Date, and thereafter shall secure the site, all in accordance with the following:

(i) After identifying a proposed site, Franchisee shall submit to Franchisor a site selection request, along with all requested information, which may include, without limitation, demographic information (including population density, income levels, traffic counts, and traffic patterns), potential competition, matters related to the convenience of Franchisee's guests (including ingress and egress, parking, street visibility, etc.), cost and expense information (including loan documents, notes, mortgages, security agreements, and similar instruments and agreements), a description of the construction, remodeling, and renovations required to conform the site to Franchisor's requirements, and other information Franchisor deems appropriate. Franchisor shall communicate its permission, or reasons for denying permission, within 30 days after receiving the requested and all required information.

(ii) Subject to availability of personnel, Franchisor will perform one on-site evaluation, at Franchisor's expense. If additional on-site evaluations are performed, Franchisee shall reimburse Franchisor for all related costs, including travel and lodging expenses, and salaries and wages for personnel performing the services.

(iii) If Franchisee elects to lease the real estate for the Franchised Business, Franchisee shall not sign the lease until Franchisor has approved its terms. Before signing a lease, Franchisee shall deliver to Franchisor a copy of the unexecuted lease. Each lease shall include the terms set forth in the Lease Rider. Franchisee shall not enter into a lease until delivery of written permission by Franchisor. Franchisee shall deliver to Franchisor a fully executed copy of the lease and Lease Rider within 10 days after their execution. **Franchisor's approval of the lease does not mean that the economic terms of the lease are favorable; it means only that the lease contains the lease terms that Franchisor requires.**

(iv) If Franchisee elects to purchase the real estate for the Franchised Business, Franchisee shall deliver such information about the proposed site as Franchisor may reasonably request, including a copy of the executed purchase documents. Franchisee shall not acquire the real estate until delivery of written permission by Franchisor, which will not be unreasonably withheld.

(v) Upon approval of a site by Franchisor, Schedule A will be amended to identify the address of the Approved Location. Franchisor's permission to operate a Restaurant at a proposed location means only that the site meets Franchisor's minimum site selection criteria; it should not be construed as a representation or promise that a Restaurant operated at the site will be successful. Franchisee acknowledges and agrees that selecting a site for the Restaurant is solely the responsibility of Franchisee, and that Franchisor shall have no liability concerning site selection.

6.3 Relocation of Restaurant. Franchisee shall not relocate the Restaurant without Franchisor's prior written consent, which will not unreasonably be withheld, conditioned, or delayed. Such relocation shall be at Franchisee's sole cost and expense. Franchisee shall reimburse Franchisor for any costs or expenses Franchisor may incur related to such relocation.

## 7. **SITE IMPROVEMENTS; PLANS; RENOVATION; CONSTRUCTION**

7.1 Responsibility for Site Improvements. Franchisee shall improve the site and install the furniture, fixtures, equipment, décor, and signage at the Restaurant that Franchisor requires to comply with Franchisor's Standards. Franchisor will consult with Franchisee regarding the design, construction, remodeling, equipment installation, and decorating of the Restaurant. Franchisee is solely responsible, at

Franchisee's expense, for causing all site improvements to be effected in accordance with the Standards and applicable Laws.

7.2 Sample Plans; Proposed Final Plans; Approved Final Plans. Franchisor will provide Franchisee with a sample layout for the interior of a standard Restaurant and with a set of standard preliminary plans and specifications (the "**Sample Plans**") for furniture, fixtures, equipment, décor, and signage. Franchisee will employ architects, designers, engineers, and such others as may be necessary to complete, adapt, or modify the Sample Plans. Franchisee will submit to Franchisor a complete set of final plans and specifications Franchisee proposes to use (the "**Proposed Final Plans**") before Franchisee commences any construction of the Restaurant. Franchisor will review the Proposed Final Plans promptly, and will provide approval and/or comments within 30 days after receipt. Franchisee may not commence construction of the Restaurant until Franchisor has approved the Proposed Final Plans in writing (the "**Approved Final Plans**"). All preparation, adaptation, modification, or replacement of the Proposed Final Plans; and all preparation of the Approved Final Plans, will be at Franchisee's sole cost and expense.

7.3 Furniture, Fixture, Equipment, and Signage. Franchisee will acquire, install, use, and maintain, at Franchisee's sole cost and expense, all furniture, fixtures, equipment, décor, and signage related to the Restaurant.

7.4 Renovation of Restaurant. From time to time, at Franchisor's request, Franchisee shall Renovate the Restaurant, at Franchisee's sole cost and expense, to conform to Franchisor's then-current Standards and Brand image requirements. The parties agree that the Renovations are intended to be periodic large-scale refurbishment and remodeling of the Restaurant, and replacement of worn, obsolete, or non-functioning furniture, fixtures, equipment, décor, and signage, and that nothing set forth in this Section 7.4 will affect Franchisor's right to require Franchisee to maintain Franchisee's Restaurant in compliance with this Agreement. Franchisor will not require Franchisee to Renovate the Restaurant more often than one time every five years. Before commencing Renovations, Franchisee will submit to Franchisor a complete set of proposed plans, specifications, and equipment lists (the "**Proposed Renovation Plans**"). Franchisor will review the Proposed Renovation Plans promptly, and provide approval and/or comments within 30 days after receipt. Franchisee may not commence Renovations until Franchisor has approved the Proposed Renovation Plans in writing (the "**Approved Renovation Plans**"). All Renovations must be completed within six months after Franchisor delivers notice to Franchisee of the Renovation requirement.

7.5 Construction, Inspection, and Opening. Franchisee will use a licensed general contractor to perform initial site improvements and all Renovations. At Franchisor's request, Franchisee will immediately furnish to Franchisor the names and addresses of any or all subcontractors and vendors, copies of all permits, licenses, contractors' liability insurance certificates, and other required items, and copies of all construction contracts, documents, and lien waivers. Franchisee will effect all construction, remodeling, refurbishment, and Renovation of the Restaurant in compliance with all Laws, ordinances and building codes. Franchisor will not be responsible for any delays in the design, construction, Renovation, or equipment installation at the Restaurant, or for any loss resulting therefrom. Franchisor must approve in writing all material changes to the Approved Final Plans and Approved Renovation Plans before Franchisee effects any such changes. Franchisee will grant Franchisor access to the Approved Location while work is in progress and will cooperate with Franchisor in any inspections Franchisor may desire to conduct. Franchisee will promptly effect such alterations to or modifications of the construction or Renovation of the Restaurant as Franchisor may deem necessary. Franchisee shall permit Franchisor, upon request, to conduct a final inspection of the completed or Renovated Restaurant, and shall effect such corrections, alterations, and modifications as Franchisor may deem necessary. Franchisee shall not open the Restaurant unless and until Franchisor has approved such opening or re-opening, as applicable.

7.6 Signage and Trade Dress. Franchisee will install and will prominently display at the Restaurant the signage and trade dress Franchisor specifies. All signage and trade dress related to the Restaurant must conform to such standards and specifications as Franchisor may prescribe as to type, color,

size, design, location, manner of display, and otherwise. Franchisee will obtain Franchisor's prior written approval before Franchisee installs, displays, adds to, deletes from, or modifies any such signage or trade dress. Franchisee will not display any signage or trade dress that Franchisor has not authorized Franchisee to display, or that Franchisor has directed Franchisee not to display.

## 8. OPENING DATE; EXTENSION OF OPENING DATE

8.1 Opening Date of Restaurant. Franchisee shall open the Restaurant for business on or before the "**Scheduled Restaurant Opening Date**" date set forth in the Franchise Summary. Franchisee may not open and commence regular business operations until Franchisor has given Franchisee written approval to do so.

8.2 Extension of Opening Date. Franchisor will grant Franchisee up to three 60-day extensions of the Scheduled Restaurant Opening Date, provided: Franchisee has requested such extension and paid the appropriate "**Extension Fee**" at least 10 days prior the Scheduled Restaurant Opening Date, Franchisee is otherwise in compliance with this Agreement, Franchisee has entered into Franchisor's form of Agreement Extending Opening Date, and Franchisee has signed and delivered to Franchisor a general and full release of all claims. The Extension Fee is calculated as follows: \$0 for the first extension request, \$2,500 for the second extension request, and \$5,000 for the third extension request.

8.3 Obtaining Approvals. Franchisee is solely responsible for promptly seeking and obtaining all governmental and other approvals, consents, permits, and licenses required to develop, open, and operate the Restaurant and to offer for sale and sell the Products and Services. Franchisee will use its best efforts to obtain all such required approvals, consents, permits, and licenses. Franchisee specifically agrees that Franchisor shall not bear any responsibility related to such approvals, consents, permits, and licenses, and shall have no liability related to any of them.

## 9. ADVERTISING FEES; ADVERTISING AND PROMOTION

9.1 Grand Opening Advertising Requirement. During the period beginning 30 days before the Opening Date and ending 60 days after such Opening Date, Franchisee must spend at least the amount set forth in the Franchise Summary on a program of local advertising and promotion promoting the grand opening of the Restaurant (the "**Grand Opening Advertising Requirement**"), as Franchisor prescribes. Such Grand Opening Advertising Requirement is in addition to the Local Advertising Requirement, and Brand Development Fee set forth in this Article 9.

9.2 Local Advertising Requirement. Franchisee will spend, each calendar quarter, the percentage of Franchisee's Gross Sales of the Restaurant set forth in the Franchise Summary, for the immediately-preceding calendar quarter, on a program of local advertising and promotion using the Marks in the Territory or in areas adjoining it (the "**Local Advertising Requirement**"). Such Local Advertising Requirement shall be prorated, on a straight-line basis, for each period at the beginning and end of the Term that is not a part of a whole calendar quarter. Expenditures on civic and charitable programs will be considered "local advertising and promotion" for the purpose of this Section 9.2, provided such programs display the Marks prominently or make material reference to Franchisee's Restaurant. Franchisee may deduct good-faith rebates Franchisee receives from advertising or promotional activities from the amount of the Local Advertising Requirement. The value of complimentary or discounted Products and Services, promotional discounts, and coupons shall not count toward fulfillment of the Local Advertising Requirement.

9.3 Brand Development Fee. Franchisee will pay to Franchisor the Brand Development Fee in the same manner, at the same times, and for the same periods, as Franchisee is required to pay the Royalty. Franchisor will grant Franchisee access to advertising and promotional programs and material Franchisor or its designated advertising agency may develop for the System. Franchisee will receive access to all advertising and promotional programs and materials produced for the System for radio, television, or print

media, including ad slicks, circulars, direct mail pieces, broad sheets, newsletters, and brochures. Franchisee will pay the hard costs associated with such programs and materials, such as the cost of purchasing media, film, plates, paper, and other hard costs; any shipping and handling charges for delivering such items to Franchisee; and all costs of having such materials published in the media. Franchisee will pay all costs of customizing such programs and materials.

#### 9.4 Control of Advertising.

(i) Franchisee will use only advertising and promotional materials that Franchisor has provided to Franchisee or that Franchisor has approved in writing in advance. If Franchisee desires to use advertising and promotional materials that Franchisor has provided to Franchisee, Franchisee must submit to Franchisor a description of the media in which Franchisee proposes to use them for Franchisor's approval prior to such use. Franchisor will have 21 days in which to approve or disapprove the proposed use. Proposed uses not approved during this 21-day period will be deemed not approved. If Franchisee desires to use advertising and promotional materials that Franchisor has not provided to Franchisee, Franchisee must submit such advertising and promotional materials, together with a description of the media in which Franchisee proposes to use them, to Franchisor for Franchisor's approval prior to such use. Franchisor will have 21 days in which to approve or disapprove such materials and their proposed use. Materials not approved during this 21-day period will be deemed not approved. Franchisee acknowledges and agrees that all advertising materials Franchisor prepares or provides are protected by copyright and are Franchisor's sole and exclusive property.

(ii) Franchisee will not: (a) issue any press release or similar promotion related to the Restaurant, the Franchised Business, or the System unless Franchisor expressly approves such press release or promotion in writing in advance; (b) conduct any advertising or promotional activities that fall outside Franchisor's guidelines; or (c) advertise the Restaurant with any other business, without Franchisor's prior written consent.

9.5 Customer Loyalty Programs and Promotions. Franchisee shall participate in all customer loyalty and reward programs developed and implemented by Franchisor, and all contests, sweepstakes, and other prize promotions that Franchisor may conduct from time to time. Franchisor will communicate to Franchisee writing the details of each such program or promotion, as applicable, and Franchisee shall purchase and display all point-of-sale advertising and promotion-related information at such places within the Restaurant as Franchisor may designate. Franchisee shall comply with all Laws applicable to each program or promotion, including the Fair Credit Reporting Act, and Laws governing privacy, consumer information, escheatment, and unclaimed property.

#### 9.6 Internet Advertising; Social Media.

(i) Internet Advertising. Franchisor will list Franchisee's Restaurant on any website Franchisor maintains that lists franchised and Company-Owned Brand restaurants operating under the System to the same extent as Franchisor lists such other restaurants generally.

(ii) Franchisee's Internet Advertising. Franchisee may create, at Franchisee's sole cost and expense, a website for the Restaurant. Such website must hyperlink off one or more websites that Franchisor designates. Franchisee shall use and publish all templates and forms Franchisor directs Franchisee to use and publish in connection with the website. Franchisee shall submit to Franchisor all text, graphics, photographs, and other material Franchisee proposes to use in connection with, or to publish on, the website, including all material modifications thereto, prior to such use or publication. Franchisee acknowledges and agrees that: (a) Franchisor has the right to approve, disapprove, and modify Franchisee's website content; (b) Franchisor may format, upload, or hyperlink Franchisee's website to any other website related to the System that Franchisor designates; and (c) Franchisor may modify, use, print, publish, display, store, and transmit the

website content, and may authorize third parties to modify, use, print, publish, display, store, and transmit the website content, all as Franchisor deems appropriate, without payment of any compensation to Franchisee. Franchisee acknowledges that as between Franchisee and Franchisor, Franchisor has the sole and exclusive ownership, right, title, and interest in and to all websites, domain names, and Internet content related to the System.

(iii) Franchisee’s Social Media Advertising. Franchisee may establish, at Franchisee’s sole cost and expense, sites (collectively, the “**Social Media Sites**”) on Facebook and other social media and social network services. Franchisor has the right to disapprove or to require Franchisee to modify the text, graphics, photographs, and other material (collectively, the “**Social Media Content**”) on any Social Media Site. All of Franchisee’s Social Media Sites and Social Media Content must comply with Franchisor’s rules, guidelines, standards, specifications, plans, programs, and procedures. Franchisor may hyperlink Franchisee’s Social Media Sites to any other website related to the System that Franchisor designates, and Franchisor may modify, use, print, publish, display, store, and transmit any of the Social Media Content, and may authorize third parties to modify, use, print, publish, display, store, and transmit any of the Social Media Content, all as Franchisor deems appropriate, subject to the requirements of the social network service that hosts the applicable Social Media Site, without payment of any compensation to Franchisee. Franchisee will keep Franchisor advised at all times of Franchisee’s Social Media Sites’ addresses and domain names. Franchisee acknowledges that Franchisor is the exclusive owner (subject to the requirements of any social network service) the Social Media Content of all Social Media Sites and all domain names related to the Social Media Sites. The Social Media Content on each Social Media Site must meet the standards of propriety that Franchisor prescribes. Franchisee will monitor the Social Media Content on each Social Media Site. Franchisee will remove any Social Media Content that Franchisor or a reasonable person would deem inappropriate, so that such removal is fully effected immediately on Franchisor’s demand, or within 12 hours after such Social Media Content is posted on the applicable Social Media Site, whichever is earlier. Notwithstanding other provisions of this Agreement governing the delivery of notice, Franchisor’s demand for such removal may be delivered verbally or in writing, and by telephone, email, text message, facsimile transmission, in-person, or otherwise.

## 10. **PRODUCTS, EQUIPMENT, SERVICES, SUPPLIES, AND MERCHANDISE**

10.1 Proprietary Products. Franchisor specifies certain products, equipment, services, supplies, and merchandise that are developed by, proprietary to, or kept secret by Franchisor (collectively the “**Proprietary Products**”). Franchisee must purchase, license, or otherwise obtain such Proprietary Products only from Franchisor, from suppliers Franchisor designates, from suppliers Franchisee selects and Franchisor approves, or in accordance with Franchisor’s written specifications. Franchisor may modify its specifications for Proprietary Products from time to time. Proprietary Products may include, without limitation, the furniture, fixtures, equipment, décor, and signage Franchisee uses in the Restaurant; the ingredients, components, and finished products Franchisee uses in connection with the Products and Services; Franchisor’s menus, point of purchase materials, promotional displays and items, marketing materials, and similar items; Franchisor’s private-label office supplies; Franchisor’s uniforms; and Franchisor’s Private-Label Products.

10.2 Non-Proprietary Products. Franchisor specifies certain products, equipment, services, supplies, and merchandise that are required for the operation of the Franchised Business (collectively the “**Non-Proprietary Products**”). Franchisee must purchase, license, or otherwise obtain such Non-Proprietary Products only from Franchisor or its affiliates; from suppliers Franchisor designates; from suppliers Franchisee selects and Franchisor approves; or in accordance with Franchisor’s written specifications. Franchisor may modify its specifications for Non-Proprietary Products from time to time. Non-Proprietary Products may include, but will not be limited to, Franchisee’s computer hardware and

software; and the cleaning supplies, consumables, and other materials Franchisee uses to maintain the Restaurant.

10.3 Disclaimer of Warranties. FRANCHISOR EXPRESSLY EXCLUDES AND DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AS TO ALL PRODUCTS, EQUIPMENT, SERVICES, SUPPLIES, AND MERCHANDISE FRANCHISOR OFFERS FOR SALE, SELLS, LICENSES, OR DELIVERS. FRANCHISEE'S SOLE AND EXCLUSIVE REMEDY AND FRANCHISOR'S SOLE AND EXCLUSIVE LIABILITY FOR ANY AND ALL CLAIMS AS TO ANY SUCH ITEM IS LIMITED TO THE PURCHASE PRICE OF THE ITEM AS TO WHICH THE CLAIM IS MADE, PLUS SHIPPING COSTS, IF ANY, FRANCHISEE PAID; OR AT FRANCHISOR'S OPTION, THE REPLACEMENT OF SUCH ITEM.

10.4 Approval of Alternative Suppliers. At Franchisee's request, Franchisor may elect (but is not obligated) to evaluate alternative suppliers and their products, equipment, services, supplies, or merchandise. Franchisor may impose a reasonable fee as compensation for its consideration, not to exceed the greater of actual costs or \$500. To request an evaluation, Franchisee shall submit a written request to Franchisor for approval, together with such samples, specifications, photographs, delivery terms, and other information as Franchisor may request. To be eligible for approval, the proposed supplier must demonstrate, to Franchisor's reasonable satisfaction, that it is able to supply such products, equipment, services, supplies, and merchandise to Franchisee in compliance with Franchisor's specifications and that it is in good standing in the business community with respect to its financial soundness and integrity, and with respect to the reliability of service and its products. Franchisor may test, analyze, inspect, and sample, at Franchisee's cost and expense, the products, equipment, services, supplies, and merchandise of any supplier Franchisee proposes to use, regardless of whether Franchisor approves or rejects such supplier as a source of supply. Franchisor will give Franchisee notice of Franchisor's approval or disapproval within 30 days after Franchisor receives the last information Franchisor requests in order to perform such evaluation. If approval is not delivered within this 30-day period, the supplier will be deemed not approved. Franchisor may revoke its approval of any supplier, product, equipment, service, supply, or merchandise. If Franchisor revokes such approval, Franchisor will give Franchisee written notice of such revocation. If Franchisor gives Franchisee written notice of such revocation, Franchisee must cease all use of such supplier, product, equipment, service, supply, or merchandise within the time Franchisor specifies, which may be immediately.

10.5 Shipment: Release. If Franchisor or any Franchisor Affiliate arranges shipment of products, equipment, services, supplies, or merchandise to Franchisee, such arrangement is a gratuitous accommodation for Franchisee's convenience, and Franchisor and its Affiliates will have no duty, responsibility, or liability related to the selection, acts, or omissions of any carrier.

## 11. PROPRIETARY MARKS

11.1 Goodwill in Marks; Ownership of Marks. Franchisee acknowledges and agrees that: (i) there is substantial and valuable goodwill in the Marks; (ii) as between Franchisee and Franchisor, Franchisor owns all right, title, and interest in and to the Marks and all goodwill related to the Marks; and (iii) Franchisee has no right, title, or interest of any nature or kind in or to the System, including the Marks and the goodwill associated with the Marks, except the limited, revocable, non-exclusive license to use the System as set forth in this Agreement. Franchisee acknowledges and agrees that: (i) Franchisee's use of the Marks, and all goodwill related to such use, will inure solely to the benefit of Franchisor; (ii) Franchisee's use of the Marks will not inure to the benefit of any person or other entity except Franchisor; (iii) the goodwill related to Franchisee's use of the Marks will not inure to the benefit of any person or other entity except Franchisor; and (iv) neither Franchisee nor any of Franchisee's Principals or affiliates will contest the validity of the Marks, Franchisor's ownership of the Marks, or Franchisor's ownership of the goodwill related to the Marks, at any time during or after the Term of the Franchise.

11.2 Franchisee's Use of Marks. Franchisee shall use and display the Marks only in relation to the operation of the Restaurant and only in the form, manner, and locations that Franchisor specifically approves or directs. Franchisor shall apply the “®” symbol to all registered Marks, the appropriate “TM” or “SM” symbol to all non-registered Marks, and the “©” symbol to all copyrighted material.

11.3 Restrictions on Franchisee's Use of Marks. Unless Franchisor expressly authorizes Franchisee to do so in writing, Franchisee shall not: (i) use or display the Marks in relation to any business or activity other than the operation of the Restaurant; (ii) use any trademark, trade name, service mark, logotype, other commercial symbol, or trade dress, other than the Marks, as a primary identifier of the Restaurant; (iii) offer for sale or sell the Products and Services, or any other products, equipment, services, supplies, or merchandise, under the Marks, except as set forth in this Agreement; (iv) use or display the Marks except in the form, manner, and locations that Franchisor specifically approves or directs; (v) use or register any Mark, any part of any Mark, or anything similar, as part of Franchisee's name or the name of any entity related to Franchisee's activities, except for the fictitious name registration required under Section 14.1 of this Agreement; (vi) use or register any Mark, any part of any Mark, or anything similar, as a part of any Internet domain name, social media site name, user name, or like name; (vii) use any Mark in any manner that may injure or disparage Franchisor or its reputation; or (viii) take any action that may harm or jeopardize any Mark, or Franchisor's ownership of such Mark, in any way.

11.4 Defense of Marks; Indemnification. Franchisee shall notify Franchisor of any apparent infringement of the Marks, or challenge to Franchisee's use of the Marks. Franchisor will take such action as it deems appropriate, in its sole discretion. If Franchisor undertakes the defense or prosecution of any claim, Franchisee, at its expense, shall cooperate fully with Franchisor in the defense or prosecution of the claim. Franchisor or its Affiliate will have the sole right to control all administrative and court proceedings involving the Marks, and settlement of any claim related to any Mark. Franchisee will take no action with regard to such protection or defense, and will not commence any suit or proceeding related to the System, without Franchisor's prior express written consent.

11.5 Modifications to Marks. Franchisor may at any time, on notice to Franchisee, make additions to, deletions from, and modifications to the Marks, at Franchisor's absolute discretion, and Franchisee must adopt and use any and all such additions, deletions, and modifications pursuant to Franchisor direction, at Franchisee's sole cost and expense.

11.6 No Liability for Modifications to Marks. Franchisor shall not be liable to Franchisee or any other party for any loss, expense, liability, or damages, however characterized, resulting from Franchisor's modification or substitution of any of the Marks, including modification or substitution of the principal Marks as a result of any claim or settlement.

## 12. OPERATIONS MANUAL AND CONFIDENTIAL INFORMATION

12.1 Operations Manual. Franchisor will provide Franchisee, on loan, with one copy of Franchisor's Operations Manual. Franchisor may deliver the Operations Manual, including the Supplements to the Manual, in any medium Franchisor deems appropriate, including: (i) online; (ii) in CD-ROM or similar electronic medium; (iii) by paper copy; or (iv) otherwise. Franchisor may change such medium as Franchisor deems appropriate. Franchisor may add to, delete from, and modify the Operations Manual (such additions, deletions, and modifications being referred to collectively in this Agreement as the “**Supplements to the Manual**”). Franchisee acknowledges and agrees that: (a) all such Supplements to the Manual will be deemed, for all purposes, to be a part of the Operations Manual; (b) all such Supplements to the Manual will become binding on Franchisee on delivery to Franchisee or at such later date as Franchisor may designate in order to give Franchisee the advance notice Franchisor deems necessary to implement the change; and (c) Franchisee will comply with, by such date as Franchisor may specify, which may be immediately, all rules, guidelines, standards, specifications, plans, programs, and procedures Franchisor prescribes in the Supplements to the Manual. Franchisee shall ensure at all times that

Franchisee's copy of the Operations Manual is current and up-to-date. If there is any dispute as to Franchisee's compliance with the provisions of the Operations Manual, the master copy of the Operations Manual that Franchisor maintains will control.

12.2 Confidential Information. During and after the Term, Franchisee shall maintain the confidentiality of all Confidential Information, and shall use the Confidential Information for the purposes authorized under this Agreement and for no other purpose. Franchisee shall disclose the Confidential Information only to Obligors and employees on a need-to-know basis. Franchisee acknowledges and agrees that the Confidential Information is not generally known in the trade, that for Franchisee to develop such Confidential Information and Trade Secrets on its own would be expensive, time-consuming, and difficult, and that, if disclosed to a third party or used by Franchisee in breach of this Agreement, such disclosure would provide a competitive advantage and constitutes an unfair trade practice.

(i) All data that Franchisee collect from customers of the Franchised Business or through marketing is deemed to be owned exclusively by Franchisor and/or Franchisor's Affiliates. Franchisee must install and maintain security measures and devices necessary to protect the customer data from unauthorized access or disclosure, and Franchisee may not sell or disclose to anyone else any personal or aggregated information concerning any customers. Franchisee has the right to use the customer data only in connection with the operation of the Franchised Business while the Franchise Agreement is in effect. If Franchisee transfers the Franchised Business to a new owner, who will continue to operate the Brand Restaurant under an agreement with Franchisor, Franchisee may transfer the customer data to the new owner as part of the going concern value of the business.

(ii) Franchisee will at all times use its best efforts to prevent unauthorized use and disclosure of Confidential Information, to prevent unauthorized copying of materials containing Confidential Information. On termination or expiration of the Franchise Agreement, or earlier as Franchisor may request, Franchisee will return to Franchisor at Franchisee's expense, or will destroy, as Franchisor may direct, any or all materials containing Confidential Information, all copies thereof, and all other tangible things containing information from or otherwise derived from such Confidential Information then in Franchisee's possession.

12.3 Works Made for Hire. If Franchisee prepares derivative works from the Confidential Information or Trade Secrets, or if Franchisee causes such derivative works (for example, architectural and construction plans) to be prepared, such works shall be prepared as works made for hire. If such works are prepared by an independent contractor, they shall be prepared under a written agreement stipulating that they are prepared as works made for hire. Franchisee shall, without Franchisor's request, and without payment of any consideration therefor except the Franchise Agreement, assign the rights in and to any and all such works to Franchisor.

12.4 Execution of Confidentiality Agreement by Obligors. Franchisee shall, without Franchisor's request, cause each Obligor to execute the Confidentiality Agreement, to provide the date and such party's address as required by such Confidentiality Agreement, and to deliver a fully-executed, dated original of such Confidentiality Agreement to Franchisor, prior to and as a condition precedent to granting such person access to the Confidential Information or Trade Secrets. Franchisee will cause each Obligor to comply with such Obligor's Confidentiality Agreement. Franchisee will immediately notify Franchisor in writing of any breach of any Confidentiality Agreement by any Obligor required to execute such Confidentiality Agreement. Franchisee will, on Franchisor's demand, commence such legal proceedings as Franchisor may require to compel the compliance of any Obligor with the Confidentiality Agreement, and will prosecute such legal proceedings to their conclusion. As between Franchisor and Franchisee, all such legal proceedings will be prosecuted at Franchisee's sole cost and expense. Franchisee will, on Franchisor's demand, tender such legal proceedings to Franchisor, and Franchisor may prosecute such legal proceedings at Franchisee's risk. If Franchisor's demands such tender, any and all costs related to such tender, and any

and all costs of such legal proceedings, including Franchisor's attorneys' fees and costs, and further including Franchisor's attorneys' fees and costs related to counterclaims, cross-claims, appeals, and collection of amounts owed, shall be within the scope of the Indemnification Obligations set forth in Section 17.1 of this Agreement.

12.5 Conclusive Presumptions on Breach. The parties hereby direct any third party construing this Agreement, including any court, mediator, master, or other party acting as trier of fact or law, to conclusively presume that, any breach of this Article 12 or any breach of any Confidentiality Agreement was accompanied by the misappropriation of Franchisor's Confidential Information and Trade Secrets, was accompanied by the inevitable disclosure of Franchisor's Confidential Information and Trade Secrets, and shall constitute a deceptive and unfair trade practice and unfair competition.

12.6 Injunctive Relief. Franchisee agrees that any failure to comply with this Article 12 or any Confidentiality Agreement, will cause Franchisor irreparable harm for which Franchisor has no adequate remedy at law. Therefore, Franchisee, for itself and all Obligors, agrees that Franchisor will have the right to injunctive relief, including a decree for specific performance, to compel Franchisee's compliance with this Article 12 and the Confidentiality Agreement, and to compel the compliance of all Obligors with this Article 12 and the Confidentiality Agreement, without the necessity of showing actual or threatened damage and without being required to furnish a bond or other security.

### 13. TRAINING AND ASSISTANCE

13.1 Initial Training Fee. Franchisee will pay Franchisor an initial training fee in an amount determined by Franchisor, but within the range set forth in the Franchise Summary. The amount of the Initial Training Fee will depend on the size of Franchisee's Restaurant, the location of Franchisee's Restaurant, Franchisee's experience as a restaurant operator, the number of other restaurants Franchisee operates under the System, the number of restaurants Franchisee operates under other systems Franchisor or Franchisor's affiliates may develop, the number of Franchisee's personnel to be trained, the experience of Franchisee's personnel to be trained, food and lodging expenses in the area where Franchisee's Restaurant is located, travel expenses, and other factors. Franchisee will pay Franchisor the Initial Training Fee before Franchisee commences training. The Initial Training Fee, once paid, shall be deemed fully-earned and nonrefundable, in consideration of the administrative and other expenses Franchisor incurs in connection with scheduling and coordinating Franchisee's training, Franchisor's lost or deferred opportunity to train others, and other factors.

13.2 Principal Training, Manager Training, and Supervisor Training. Franchisor will provide Franchisee with Franchisor's training for its Principals (the "**Principal Training**"), Managers (the "**Manager Training**"), and Supervisors (the "**Supervisor Training**"). Franchisor will admit up to three individuals to Principal Training, up to three individuals to Manager Training, and up to three individuals to Supervisor Training without additional charge. Franchisee or at least one of Franchisee's Principals (if Franchisee is a business entity), and such other individuals in employment or other capacities as Franchisor may specify, must attend and complete the Principal Training to Franchisor's satisfaction.

(i) Franchisee will appoint one or more proposed Managers, and one or more proposed Supervisors. At least one of Franchisee's Managers, and such other individuals in employment or other capacities as Franchisor may specify, must attend and complete Manager Training to Franchisor's satisfaction. Franchisee's Supervisors, and such other individuals in employment capacities as Franchisor may specify, must attend and complete Supervisor Training to Franchisor's satisfaction. Principal Training, Manager Training, and Supervisor Training will include such training as Franchisor deems necessary or beneficial to Franchisee's operation of the Restaurant.

(ii) Franchisee may send up to three Principals to Principal Training during the Term of this Agreement at no additional charge. Franchisee may send up to three Managers to Manager

Training during the Term of this Agreement at no additional charge. Franchisee may send up to three Supervisors to Supervisor Training during the Term of this Agreement at no additional charge. Franchisor may impose a reasonable fee to train more than three Principals, Managers, and/or Supervisors.

(iii) If this Agreement governs the operation of the first Restaurant developed by Franchisee or its Affiliates under the Brand and System, then at least one of Franchisee's Principals must attend and complete the Principal Training to Franchisor's satisfaction no later than 120 days after the Effective Date or before the Restaurant opens for business (whichever is sooner), at least one of Franchisee's Managers must attend and complete the Manager Training to Franchisor's satisfaction no later than 120 days after the Effective Date or before the Restaurant opens for business (whichever is sooner), and at least one of Franchisee's Supervisors in each of the front-of-the-house, back-of-the-house, and bar area of the Restaurant must attend and complete Supervisor Training before the Restaurant opens for business.

(iv) If, as of the effective date, Franchisee or Franchisee's Affiliates operate one or more Restaurants of the same Brand contemplated under this Agreement, Franchisee's personnel required to attend the initial Manager Training and initial Supervisor Training must attend and complete such training to Franchisor's satisfaction before the Restaurant opens for business.

(v) If Franchisor extends the Scheduled Restaurant Opening Date, Franchisor may require that Managers who previously received Manager Training and Supervisors who previously received Supervisor Training attend and complete to Franchisor's satisfaction such additional training or refresher training as Franchisor may prescribe.

(vi) Any of Franchisee's personnel required to attend Principal Training, Manager Training, or Supervisor Training as a result of any new hires, terminations, or turn over must attend Franchisor's next regularly-scheduled Principal Training, Manager Training, or Supervisor Training, as Franchisor may require, and complete such training to Franchisor's satisfaction.

(vii) Franchisor may certify Franchisee's Restaurant as a training restaurant (a "**Certified Training Restaurant**"). To become a Certified Training Restaurant, Franchisee's Restaurant must meet the same criteria as Company-Owned training restaurants. Once certified, such Certified Training Restaurant may train Franchisee's Managers and Supervisors, thus reducing Franchisee's costs and expenses related to training new management personnel. Franchisor may revoke the status of the Restaurant as Certified Training Restaurant if Franchisor determines that the Restaurant's operations are inconsistent with the requirements of a Certified Training Restaurant.

### 13.3 Opening Assistance.

(i) Opening Coordinator: Franchisee's Initial Restaurant. If this Agreement governs the first Restaurant developed by Franchisee or its Affiliates under the Brand and System, after at least one Principal has successfully completed Principal Training and one Manager has successfully completed Manager Training, Franchisor will furnish a representative (the "**Opening Coordinator**") to Franchisee's Restaurant for a period of at least seven days. Such Opening Coordinator will provide Franchisee with advice, including advice related to: (a) implementing internal controls; (b) hiring employees; (c) training employees; (d) purchasing products, equipment, services, supplies, and merchandise; (e) following accounting procedures; (f) implementing the System; (g) evaluating Franchisee's initial business operations and marketing plans; and (h) other matters. Franchisor's fee for such Opening Coordinator, including such Opening Coordinator's travel, food, lodging, and other costs and expenses, is included in the Initial Training Fee.

(ii) **Opening Training Team.** If this Agreement governs the first Restaurant developed by Franchisee or its Affiliates under the Brand and System, Franchisor will furnish Franchisee with an opening training team (the “**Opening Training Team**”). The Opening Training Team will work at Franchisee’s initial Restaurant immediately before and after the opening of the Restaurant, for a period of at least nine days. Franchisor will determine the size of the Opening Training Team, based on the size and location of Franchisee’s Restaurant, Franchisee’s experience as a restaurant operator, and other factors. Franchisor will be responsible for making all travel, food, and lodging arrangements of the Opening Training Team members. Franchisor’s fee for the Opening Training Team, including such Opening Training Team’s travel, food, lodging, wage, benefit, and other costs and expenses, is included in the Initial Training Fee. Franchisee will staff the Restaurant with adequate personnel to train with, and to assist, the Opening Training Team. If Franchisee does not staff the Restaurant with adequate personnel, Franchisor may, as Franchisor deems appropriate, provide such additional personnel at Franchisee’s sole cost and expense. Franchisee shall reimburse Franchisor for all related expenses, including travel, food, lodging, wage, benefit, and other costs and expenses within 10 days after demand for payment. If the Restaurant is the second or subsequent Restaurant Franchisee develops, opens, or operates under the System, Franchisor may provide Franchisee with limited training team assistance, and Franchisee’s other restaurants will supply the majority of the training assistance.

13.4 **Additional Training.** Franchisor may develop additional training, from time to time, which Franchisor may deem optional or mandatory. If mandatory, Franchisee and such of Franchisee’s Principals, Managers, Supervisors, and other personnel Franchisor specifies must attend and complete such additional training to Franchisor’s satisfaction, at the times Franchisor specifies. Franchisor reserves the right to charge a reasonable fee for such additional training.

13.5 **Conferences.** Franchisor may, at its option, conduct an annual, biennial, or other periodic conference or convention (a “**Conference**”). If Franchisor conducts such Conference, Franchisee and such of Franchisee’s Principals, Managers, Supervisors, and other personnel Franchisor specifies must attend and participate in such Conference to Franchisor’s satisfaction. Franchisor may combine the Conference for the System with conventions of other systems Franchisor or its affiliates may develop. Franchisor reserves the right to charge a reasonable fee for conducting such Conference.

13.6 **Training and Conferences: Miscellaneous.** Franchisee will pay all expenses Franchisee and its designated attendees incur related to attending the Principal Training, Manager Training, Supervisor Training, Opening Training, any Additional Training, and any Conference, including travel, food, lodging, wage, benefit, and other costs and expenses. Franchisor will determine the location, duration, and program of any training Franchisor conducts, and the Conference. Franchisor will not pay any compensation for any services Franchisee or Franchisee’s attendees perform in the course of any training. Franchisor may train any number of attendees from any number of restaurants at any training Franchisor conducts, at the same time as Franchisor trains Franchisee’s attendees. Franchisor may train attendees from other systems Franchisor or its affiliates may develop, at the same time as Franchisor trains Franchisee’s attendees.

13.7 **Inability of Franchisee’s Personnel to Complete Training.** If Franchisor determines that any Principal whom Franchisor requires to attend Principal Training or any other mandatory training Franchisor designates is unable to complete such training to Franchisor’s satisfaction after two attempts, Franchisee will designate another Principal to attend Franchisor’s next regularly-scheduled training. If there is no other Principal, or if such replacement Principal is unable to complete such training to Franchisor’s satisfaction after two attempts, Franchisor will have the right to terminate this Agreement. If Franchisor determines that any person, other than a Principal, whom Franchisor requires to attend Manager Training, Supervisor Training, or mandatory Additional Training, is unable to complete such training to Franchisor’s satisfaction, such individual shall not qualify as a “Manager” or “Supervisor” for purposes of Franchisee’s compliance with this Agreement, unless and until training is successfully completed to Franchisor’s satisfaction.

13.8 Continuing Assistance. Franchisor will provide to Franchisee such additional assistance as Franchisor deems necessary and appropriate, in its sole discretion. Such assistance may include consultation regarding development of products and services; improving Restaurant operations; establishing and using administrative, accounting, and inventory control procedures. Such assistance may be provided in person, via telephone, electronic communication, or otherwise, as Franchisor deems appropriate.

13.9 Test Marketing. Franchisor may from time-to-time conduct market research and testing to determine consumer trends and the marketability of new products, equipment, services, supplies, and merchandise. Franchisee will assist Franchisor with such market research and testing by participating in any such programs as Franchisor may require, at Franchisee's sole cost and expense. Such assistance may include, without limitation: (i) test-marketing the products through the Restaurant as Franchisor may direct; (ii) providing Franchisor with timely reports and other relevant information Franchisor may request regarding such test-marketing; and (iii) effectively promoting and making reasonable efforts to sell such test products.

13.10 Pricing. To the fullest extent permitted by applicable Law, Franchisor reserves the right to establish maximum, minimum, or other pricing requirements with respect to the prices Franchisee may charge for products or services.

#### 14. **FRANCHISEE'S RESPONSIBILITIES**

14.1 Franchisee's Legal and Fictitious Name. Franchisee shall neither use the Marks (or any part thereof) in its legal or proper name, nor use them to incur any obligation or indebtedness on Franchisor's behalf. Franchisee shall comply with Franchisor's instructions in filing and maintaining the requisite trade name or fictitious name registrations.

14.2 Maintenance. Franchisee shall, maintain the Restaurant and all furniture, fixtures, equipment, décor, and signage related to the Franchised Business in the highest state of cleanliness, maintenance, condition, and repair.

14.3 Compliance with Laws. Franchisee shall develop, open, and operate the Franchised Business in compliance with all Laws. In connection therewith, Franchisee will duly file all required tax returns, duly pay all taxes due and owing, and obtain and maintain in good standing all necessary licenses, permits, and other required forms of governmental approval.

14.4 Compliance with System and Standards. Franchisee shall operate the Franchised Business in accordance with the System and Standards. Franchisee acknowledges and agrees that Franchisor may modify all or any part of the System, including the Products and Services and the Marks, to adapt to changes in the marketplace, economic conditions, business conditions, the hospitality profession, the Law, the demands of consumers, Franchisor's business needs, the needs of the System, and otherwise. Franchisee shall comply with all such modifications as if they were part of the System and Standards when this Agreement was executed.

#### 14.5 Managers; Franchisee's Participation in Operation of Franchised Business.

(i) Franchisee will cause each individual whom Franchisee desires to employ as Manager to undergo such background investigations, aptitude screenings, drug tests, and other screenings and tests as Franchisor may prescribe, at Franchisee's sole cost and expense. Franchisee will not employ any individual as Manager who has not passed such investigations, screenings, and tests, or who does not satisfy such other criteria as Franchisor may prescribe. Franchisee acknowledges and agrees that: (a) any investigations, screenings, and tests Franchisor may prescribe are intended solely to ensure that Franchisor's interests are adequately protected; (b) Franchisor is not requiring such investigations, screenings, and tests for Franchisee's benefit; (c) such investigations, screenings, and tests will not replace Franchisee's due diligence investigations as to any individual Franchisee desires to employ; and (d) Franchisor will have no

responsibility or liability to Franchisee, to the proposed Manager, or to any other person or entity, arising out of or related to such investigations, screenings, and tests.

(ii) Each Manager will devote his or her best efforts to the management and growth of the Franchised Business. Each Manager must successfully complete Manager Training and such other training as Franchisor requires. Franchisee will inform Franchisor in writing as to the identity of all Managers. Franchisee shall cause the Restaurant at all times to be under the on-premises supervision of a Manager who has successfully completed Manager Training.

#### 14.6 Operating Requirements.

(i) Franchisee shall cause the Franchised Business to be conducted in compliance with the Standards and other System requirements, as if the Standards and System requirements were a part of this Agreement.

(ii) Franchisee shall confine its activities solely to the development and operation of the Franchised Business governed by this Agreement.

(iii) Franchisee shall not use the Brand name, any of the Marks, or any association with any or all of them, for the benefit of any business other than the Franchised Business.

(iv) Franchisee shall offer for sale and sell all Products and Services that Franchisor directs Franchisee to offer for sale and sell. Franchisee will not offer for sale or sell any products, equipment, services, supplies, or merchandise that Franchisor has not authorized for sale.

(v) Franchisee shall cause the Restaurant to be open and in normal operation during the days and hours Franchisor specifies, subject to applicable Laws. Franchisor may increase, decrease, and modify such days and hours from time to time on notice to Franchisee, and Franchisee shall comply with such modifications.

(vi) Franchisee will deal fairly and honestly with Franchisor, Franchisor's Affiliates, guests, and suppliers and vendors. Franchisee shall cause Restaurant personnel to render prompt, courteous, and willing service. Franchisor shall cause the Franchised Business to meet the minimum standards of business ethics adopted by the local chapter of the Better Business Bureau, or a similar organization acceptable to Franchisor, operating in Franchisee's Territory, shall notify Franchisor promptly of any complaint filed with the Better Business Bureau or such other organization, and shall use Franchisee's best efforts to resolve the complaint promptly to Franchisor's reasonable satisfaction. Franchisee shall conduct itself and operate the Franchised Business in a manner that will promote a good public image and, consistent with the foregoing, shall properly respond to all complaints and take such other steps as may be necessary or beneficial to promote positive public relations.

(vii) Franchisee will pay promptly when due all amounts Franchisee owes Franchisor, Franchisor's Affiliates, suppliers and vendors.

(viii) Franchisee will pay promptly when due all taxes and other amounts Franchisee owes in relation to the Franchised Business, including all federal, state, and local taxes, and all accounts payable of any nature.

(ix) Franchisee will timely submit to Franchisor such reports, evaluations, and operational information as Franchisor may request, which reports, evaluations, and operational information may include, without limitation, evaluations of the Products and Services and such other matters as Franchisor may designate.

(x) Franchisee will appoint a designated person to serve as Brand Ambassador for the Franchised Business. The Brand Ambassador will be responsible for neighborhood/community marketing and trade area marketing activities, and coordinating catering and delivery initiatives.

(xi) Franchisee shall maintain a competent, conscientious, and trained staff, and shall take such steps as are necessary to ensure that Franchisee's employees render competent, prompt, courteous, and knowledgeable service in accordance with the Standards. Franchisee shall cause all employees, while working at the Restaurant, to present a neat and clean appearance and to wear uniforms of such color, design, and other specifications as Franchisor may designate from time to time; and shall prohibit the wearing of such uniforms except during and within the scope of an employee's employment. The parties acknowledge and agree that these requirements are necessary to preserve the goodwill identified by the Marks. The parties further acknowledge and agree that Franchisor neither dictates nor controls labor or employment matters for Franchisee's or Franchisee's employees. Franchisee is exclusively responsible for hiring personnel, for determining the number of jobs offered or job vacancies to be filled, for determining and changing employee wages and benefits and work hours, and for disciplining and discharging Franchisee's employees. Franchisee is exclusively responsible for labor relations with Franchisee's employees.

(xii) Franchisee will stock the Restaurant with, and will maintain in the inventory of the Restaurant, such products, equipment, services, supplies, and merchandise as Franchisor may require.

14.7 Computer and Electronic Cash Register Systems. Franchisee will obtain and install, at Franchisee's sole cost and expense, all computer and electronic cash register hardware and software Franchisor requires, and all peripherals, power lines, dedicated telephone lines, and communications links that meet Franchisor's specifications. Franchisee will use such computer system and software for interactive training, for accounting and bookkeeping, for scheduling, for Internet communication and email, for extranet programs, and as Franchisor may otherwise specify. Franchisee will use such electronic cash register system and software to record Franchisee's sales transactions, for accounting and bookkeeping, and as Franchisor may otherwise specify.

(i) Franchisee will, at Franchisee's sole cost and expense, enter into and comply with all software license agreements required to be executed by the publishers or vendors of any software programs Franchisor requires Franchisee to use, and enter into and comply with all hardware and software maintenance and upgrading agreements as Franchisor may require.

(ii) If Franchisor elects to substitute one or more software programs for any software Franchisor specifies, Franchisee will, within 30 days after notice from Franchisor, at Franchisee's sole cost and expense: (a) cease all use of the software being replaced; (b) preserve all data from the software being replaced; (c) obtain and install such substitute software on Franchisee's computer and electronic cash registers as Franchisor directs; (d) import, to the substitute software, relevant data from the software being replaced; and (e) commence the use of such substitute software.

(iii) Franchisee will keep Franchisee's computer and electronic cash register systems in good maintenance and repair. Franchisor may require Franchisee: (i) to add additional capacity, accessories, and peripheral equipment to the computer and electronic cash register systems Franchisee is using; and (ii) to upgrade or replace any or all such computer and electronic cash register systems, at Franchisee's sole cost and expense.

(iv) Franchisee will enter into and maintain in Franchisee's computer and electronic cash register systems such data and information as Franchisor may prescribe, using any and all forms and naming conventions Franchisor may prescribe. Franchisor will have the free, independent, and unfettered right to retrieve such data and information from Franchisee's computer and electronic cash register systems remotely or in-person; and Franchisee will, immediately on Franchisor's request, provide Franchisor with all assistance Franchisor may request to obtain such access. Franchisee will promptly provide Franchisor with such assistance as Franchisor may request to bring Franchisee's computer and electronic cash register systems online with Franchisor's

headquarters computer. The computer and electronic cash register hardware and software Franchisee obtains and installs must permit Franchisor to obtain sales and other information from Franchisee's computer and electronic cash register systems as Franchisor may require, automatically on Franchisor's request.

14.8 Personal Guaranty of Franchisee's Principals. Franchisee shall cause each of its existing and future Principals to execute and deliver the form of Personal Guaranty of Franchisee's Principals, on the Effective Date of this Agreement or at such later time as the Principal becomes a Principal, as applicable. Franchisee shall cause each existing and future spouse of each individual Principal, existing and future, to execute and deliver the Spousal Consent to the Personal Guaranty of Franchisee's Principals on the Effective Date of this Agreement or at such later time as the Principal becomes a Principal or the individual becomes a spouse of a Principal, as applicable.

14.9 Telephone Numbers and Listings Agreement. When Franchisee signs this Agreement, Franchisee will execute and deliver to Franchisor the Telephone Numbers and Listings Agreement. Franchisee will comply with such Telephone Numbers and Listings Agreement. The Telephone Numbers and Listings Agreement is hereby incorporated into this Agreement as if fully set forth herein.

14.10 Internet Sites and Listings Agreement. When Franchisee signs this Agreement, Franchisee will execute and deliver to Franchisor the Internet Sites and Listings Agreement. Franchisee will comply with such Internet Sites and Listings Agreement. The Internet Sites and Listings Agreement is hereby incorporated into this Agreement as if fully set forth herein.

14.11 Gift Certificates and Stored Value Cards. Franchisee shall fully participate in all gift certificate and stored value card programs, which may include acquiring and using all equipment and software necessary for processing payments, and may also include entering into one or more service agreements relating to the issuance, management, and regulation of gift certificates and stored value cards. All proceeds from the sale of gift certificates and stored value cards belongs exclusively to Franchisor, and such proceeds shall be remitted to Franchisor according to the procedures prescribed periodically by Franchisor. Franchisor shall reimburse or credit to Franchisee (at Franchisor's option) the redemption value of gift certificates or stored value cards redeemed at Franchisee's Restaurant. Franchisee shall purchase gift certificates and stored value cards from Franchisor's designated vendor, and shall pay all fees related to the issuance, management, and regulation of such gift cards and stored value cards.

## 15. COVENANTS NOT TO COMPETE

15.1 In-Term Covenants Not to Compete. Franchisee hereby covenants and agrees that during the term of this Agreement, Franchisee shall not, individually or jointly with others, directly or indirectly, by, through, on behalf of, or in conjunction with, any other person or entity:

- (i) Divert or attempt to divert any present or prospective guest of the Restaurant to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Marks or System; or
- (ii) Engage in a Competing Activity.

15.2 Post-Term Covenant Not to Compete. For a continuous two-year period commencing upon a transfer permitted under this Agreement, expiration of this Agreement (without renewal), or termination of this Agreement (regardless of the cause for termination), Franchisee shall not individually or jointly with others, directly or indirectly, by, through, on behalf of, or in conjunction with, any other person or entity:

- (i) Divert or attempt to divert any present or prospective guest of the Restaurant to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or

indirectly, any other act injurious or prejudicial to the goodwill associated with the Marks or System.

(ii) Engage in a Competing Activity at the Approved Location, within the former Territory, or within a 10-mile radius of any other Restaurant operating under the System and Marks.

(iii) The two-year period described in this Section 15.2 shall be tolled during any period of noncompliance.

15.3 Additional Provisions. The parties acknowledge and agree that Franchisor has the right, in its sole discretion, to reduce the scope of any covenant set forth in Sections 15.1. and 15.2., or any portion thereof, without Franchisee's consent or the consent of any Principal, effective immediately upon delivery of written notice to the affected party; and Franchisee and each Principal agree that such person shall comply forthwith with any covenant as so modified. Franchisee expressly agree that the existence of any claims Franchisee may have against Franchisor, whether or not arising from this Agreement, shall not constitute a defense to Franchisor's enforcement of the covenants in this Article 15. Franchisee agrees to pay all costs and expenses (including reasonable attorneys' fees) incurred by Franchisor in connection with the enforcement of this Article 15. In the event of any dispute arising out of or related to this Covenant, Franchisee hereby directs any third party construing this Article 15 (including any court, arbitrator, or other party acting as trier of fact or law) to conclusively presume (i) that the restrictions set forth herein are reasonable and necessary in order to protect Franchisor's legitimate interests, including, the confidentiality of Franchisor's Confidential Information, the secrecy of Franchisor's Trade Secrets, the integrity of the System, Franchisor's investment in the System, and the goodwill associated with the System, (ii) that this agreement was made freely and voluntarily by Franchisee, as an independent business operator to which Franchisor delivered good and valuable consideration, in an arms-length commercial transaction between skilled and experienced business professionals, and (iii) that the restrictions set forth in this agreement will not unduly burden Franchisee's ability to earn a livelihood.

15.4 Execution of Covenant Not to Compete Agreement. Upon execution of this Agreement, and from time to time as appropriate, Franchisee shall, without Franchisor's request, cause each of the Covenanting Personnel to execute the Covenant Not to Compete Agreement, to provide the date and such party's address as required thereby, and to deliver a fully-executed, dated original of such agreement to Franchisor, prior to and as a condition precedent to such person coming within the scope of persons defined as "Covenanting Personnel." Franchisee will cause each of the Covenanting Personnel to comply with such Covenant Not to Compete Agreement.

15.5 Injunctive Relief. Franchisee agrees that any failure to comply with this Article 15 will cause Franchisor irreparable harm for which Franchisor has no adequate remedy at law. Therefore, Franchisee agrees that Franchisor will have the right to injunctive relief (including a decree for specific performance) to compel Franchisee's compliance with this Article 15 without the necessity of showing actual or threatened damage and without being required to furnish a bond or other security.

## 16. FINANCIAL STATEMENTS AND REPORTS; AUDIT; INSPECTION

### 16.1 Financial Statements and Reports.

(i) Gross Sales Report. Franchisee will prepare a report setting forth Franchisee's Gross Sales and such other information as Franchisor may specify for the preceding Accounting Period or such other period as Franchisor may specify (the "**Gross Sales Report**"). Franchisee will deliver each Gross Sales Report to Franchisor so that Franchisor actually receives it by each Payment Due Date or such other date as Franchisor may specify.

(ii) Annual Report. Franchisee will prepare, each year, an annual report (the "**Annual Report**") reflecting Franchisee's total Gross Sales, by categories of food, beverages, merchandise, miscellaneous items, and other categories Franchisor may specify, for Franchisor's immediately-

preceding fiscal year or such other period as Franchisor may specify, the total Royalties Franchisee was obligated to pay Franchisor for such fiscal year, and such other information as Franchisor may specify. Franchisee will deliver each Annual Report to Franchisor so that Franchisor actually receives it on or before February 1 of each year or such other date as Franchisor may specify.

(iii) Annual Financial Statements. Franchisee will deliver to Franchisor, within 90 days after the end of each of Franchisee's fiscal years, for such fiscal year and Franchisee's preceding two fiscal years (or such shorter period as Franchisee has actually been in existence), in comparison form: a balance sheet, income and expense statement, and statement of cash flows (collectively, the "**Annual Financial Statements**"), prepared in accordance with generally accepted accounting principles, consistently applied. Franchisor may require Franchisee's Annual Financial Statements, books, and records to be audited by an independent certified public accountant satisfactory to Franchisor, at Franchisee's sole cost and expense; provided, however, Franchisor will not do so unless: (a) Franchisee has failed to timely pay any sums Franchisee owed during the preceding 12 consecutive month period; (b) Franchisor has reasonable grounds to doubt the accuracy of any Gross Sales Report, Annual Report, Annual Financial Statement, or Local Advertising Report; (c) Franchisor has reasonable grounds to doubt Franchisee's solvency or ability to continue as a going concern; (d) an inspection Franchisor conducts discloses an understatement in any payment owed to Franchisor of 4% or more; or (e) Franchisor imposes a requirement of audited financial statements on substantially all franchised businesses in the System.

(iv) Local Advertising Report. Franchisee will deliver to Franchisor, within 30 days after the end of each calendar quarter, or more frequently if Franchisor requires Franchisee to do so, a report (the "**Local Advertising Report**"), on forms Franchisor prescribes, detailing the amount Franchisee was obligated to spend to fulfill the Local Advertising Requirement and demonstrating that Franchisee in fact fulfilled the Local Advertising Requirement.

(v) Additional Reports, Documents, and Data. Franchisor may request such additional reports and financial information related to the Franchised Business as it deems necessary and appropriate, and Franchisee shall deliver the items requested so that Franchisor actually receives such items within 10 days after Franchisor's request therefor.

16.2 Tax Returns. Franchisee will provide Franchisor with copies of all federal, state, local, and other tax returns related to the Franchised Business, so that Franchisor actually receives such copies within 10 days after Franchisee is required by Law to file such returns.

16.3 Authorization to Use and Publish Information. Franchisee hereby authorizes Franchisor to incorporate: (i) in Franchisor's franchise disclosure documents; (ii) in bulletins, reports, and other memoranda, including reports of the gross sales of each franchisee in the System, all of which may be distributed to Franchisor personnel, to Franchisor other franchisees, and to Franchisor other franchisees' personnel; and (iii) in any advertising and promotional materials related to the System, information Franchisor derives from Franchisee's Gross Sales Report, Annual Report, Annual Financial Statements, Local Advertising Report, and other reports, documents, and data Franchisee is required to provide to Franchisor.

#### 16.4 Financial Records and Audit.

(i) Franchisee will properly record all revenues the Franchised Business receives or becomes entitled to receive. Franchisee will keep and maintain complete and accurate records of all such revenues, and accurate books, records, and tax returns, including related supporting material (which will include, without limitation, cash receipts and credit and charge records) for the Franchised Business for at least Franchisee's five most recent years of operation. Franchisor may specify the forms that Franchisee must use to record such revenues. Franchisee will keep and preserve, for at least Franchisee's five most recent years of operation, the types and classes of

records Franchisor specifies, including all business, personnel, financial, and operating records related to the Franchised Business.

(ii) Franchisor and any of its authorized representatives may, at any time the Restaurant is required to be or is in fact open for business, without notice, enter onto the premises of the Restaurant or any other premises where Franchisee conducts or maintains any aspect of the Franchised Business, to inspect, audit, and make copies of all Franchisee's records and files related to the Franchised Business. Franchisee will provide Franchisor and its representatives with: (a) immediate access to such premises; (b) immediate access to such records, including records Franchisee keeps on paper; records Franchisee stores on any computer hard drive, computer floppy drive, CD-ROM, flash drive, cloud, pad device, handheld electronic device, or other electronic media; and (c) immediate assistance in all matters Franchisor may request in the course of such inspection, audit, and copying. If such inspection and audit should reveal that Franchisee has underpaid any amount owed to Franchisor, then Franchisee will immediately pay Franchisor, on demand, the amount underpaid, plus the applicable Collection Charge, plus interest. If such inspection should reveal that Franchisee has underpaid any amount owed to Franchisor by 4% or more, Franchisee also shall reimburse Franchisor for Franchisor's costs and expenses related to such inspection and audit, which costs and expenses may include, without limitation, travel, food, lodging, salary, and benefit expenses of all inspecting and auditing personnel; reasonable accounting fees and costs; and reasonable attorneys' fees and costs.

16.5 Inspection and Operational Audit. Franchisor and any of its authorized representatives may, at any time the Restaurant is required to be or is in fact open for business, without notice, enter onto the premises of the Restaurant or any other premises where Franchisee conducts or maintains any aspect of the Franchised Business, to determine Franchisee's compliance with this Agreement. Franchisor and its representatives may examine, inspect, photograph, and videotape all aspects of the Franchised Business, which aspects may include, without limitation: (i) the Restaurant; (ii) the Products and Services and other products, equipment, services, supplies, and merchandise Franchisee offers for sale, sells, or delivers through the Franchised Business; (iii) Franchisee's techniques for offering for sale, selling, and delivering the Products and Services and other products, equipment, services, supplies, and merchandise; (iv) the condition of the Restaurant; and (v) such other matters as Franchisor or its representatives may deem appropriate.

16.6 Certification. Franchisee will certify that the Gross Sales Report, Annual Report, Annual Financial Statements, Local Advertising Report, and other reports, documents, and data Franchisee is required to provide to Franchisor, are true and correct, which certification will be signed by Franchisee if Franchisee is a proprietorship, by Franchisee's chief executive officer if Franchisee is a corporation, by Franchisee's managing partner if Franchisee is a partnership, or by Franchisee's manager or managing member if Franchisee is a limited liability company.

## 17. **INDEMNIFICATION; INSURANCE POLICIES AND COVERAGES**

### 17.1 Indemnification.

(i) Franchisee's Indemnification Obligations. Franchisee will, at Franchisee's sole cost and expense, defend, indemnify, and hold harmless Franchisor and its affiliates, and Franchisor's and such affiliates' directors, officers, shareholders, partners, members, employees, agents, and attorneys, and the predecessors, successors, heirs, and assigns of any and all of them (collectively, the "**Indemnitees**"), from and against any and all obligations, debts, claims, demands, rights, actions, causes of action, loss, losses, damage, damages (actual, consequential, multiplied, enhanced, exemplary, punitive, and otherwise), expenses, costs, liability, and liabilities, of any nature or kind, including attorneys' fees and costs (collectively, the "**Losses**"), arising out of or related to any action, suit, proceeding, claim, demand, or investigation (collectively, the "**Claims**"),

arising out of or related to: (a) this Agreement; (b) the Restaurant; or (c) the Franchised Business (such obligations being referred to, collectively, as Franchisee’s “**Indemnification Obligations**”).

(ii) **Notice of Claims; Defense of Claims.** Franchisee will give Franchisor notice of any Claim immediately on Franchisee’s receiving notice of such Claim. Franchisee will respond to all Claims: (a) within the time required by Law, if Law prescribes such a time; or (b) promptly, if the Law does not prescribe such a time. Franchisor may, at Franchisee’s sole cost, expense, and risk, assume the defense or settlement of any such Claim; provided, however, Franchisor will not be obligated to do so. Franchisee will cooperate with Franchisor in all respects to defend Franchisee and Franchisor against any and all Claims; which cooperation may require Franchisee, among other things, to appear at depositions, hearings, and trial. If Franchisor assumes the defense of any Claim, Franchisor will seek Franchisee’s advice and counsel, and will keep Franchisee informed, with respect to any such defense or settlement. Franchisor’s assumption of any defense, and Franchisor’s entry into any settlement, will not diminish Franchisee’s Indemnification Obligations, all of which Indemnification Obligations shall remain in full force and effect.

(iii) **Payment.** All Losses set forth in this Section 17.1 will be chargeable to and paid by Franchisee pursuant to Franchisee’s Indemnification Obligations, regardless of any actions, activities, or defenses Franchisor may undertake or the subsequent success or failure of such actions, activities, or defenses.

(iv) **No Liability for Acts, Errors, or Omissions of Third Parties.** The Indemnitees shall not be liable or accountable in any manner whatsoever for acts, errors, or omissions of those with whom Franchisor or Franchisee may contract, regardless of the purpose. Franchisee will hold harmless and indemnify the Indemnitees for all losses and expenses arising out of or related to any acts, errors, or omissions of such third parties.

(v) **No Obligation to Seek Recovery; No Mitigation of Losses.** The Indemnitees shall not be obligated to seek recovery from third parties, or to otherwise mitigate their Losses, in order to maintain a claim related to the Indemnification Obligations. Franchisee agrees that the failure to pursue such recovery or mitigate such Losses will in no way reduce the amounts the Indemnitees are entitled to recover.

## 17.2 Insurance Obligations.

(i) Franchisee shall maintain in full force and effect at all times during the term of this Agreement, at Franchisee’s expense, an insurance policy or policies meeting Franchisor’s minimum insurance requirements. Each such policy shall be written by an insurance company with an A.M. Best rating of not less than A-VIII (“excellent” and \$100,000,000 to \$250,000,000 in policy holder surplus) and licensed to sell insurance in the state in which the Restaurant is located, shall be primary and non-contributory to any insurance carried by Franchisor or its Affiliates., and shall contain a waiver of subrogation in favor of Franchisor and its Affiliates.

(ii) Such policies shall include, at the minimum, the following:

- a) Broad-form comprehensive general liability coverage, including coverage for products liability, contractual liability, personal injury, advertising injury, fire damage, other property damage, medical expenses, and alcoholic beverage liability, having a combined single limit of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, which insurance shall not have a deductible or self-insured retention of greater than Ten Thousand Dollars (\$10,000).
- b) For each vehicle operated in connection with the Franchised Business, automobile liability coverage, including coverage of owned, non-owned, and

hired vehicles, and including coverage for bodily injury and property damage, with a combined single limit of the greater of: (1) the amount required by Law; or (2) One Million Dollars (\$1,000,000) per claim.

- c) Workers' compensation and employer's liability insurance with minimum coverage of: (a) Five Hundred Thousand Dollars (\$500,000) per accident; and (b) Five Hundred Thousand Dollars (\$500,000) disease per employee with a policy limit of Five Hundred Thousand Dollars (\$500,000) disease in the aggregate.
  - d) Umbrella liability coverage, providing excess liability coverage for the coverages set forth above, in the total amount of Two Million Dollars (\$2,000,000) per occurrence and in the aggregate.
  - e) Employment practices liability coverage for defense of claims brought by an employee or prospective employee, in the total amount of Fifty Thousand Dollars (\$50,000) per occurrence and in the aggregate, with a maximum deductible of Two Thousand Five Hundred Dollars (\$2,500).
  - f) Business interruption insurance for the actual loss sustained for eighteen (18) months.
  - g) Unemployment compensation insurance, disability insurance, social security, and other insurance required by Law, in such coverages as Law may require.
- (iii) Each liability policy shall name Franchisor as an additional insured.
- (iv) Franchisor has the right to increase or modify required minimum coverages at any time.

(v) Franchisee's obligation to obtain and maintain insurance is not limited in any way by reason of any insurance maintained by Franchisor, and Franchisee's compliance with minimum insurance requirements will not relieve Franchisee of its indemnification obligations under Section 17.1 of this Agreement.

(vi) At least 10 days prior to the time Franchisee is first required to carry insurance, and thereafter at least 30 days prior to the expiration of any policy, Franchisee shall deliver to Franchisor a certificate of insurance and additional insured endorsement for each policy evidencing compliance with this Section. Each certificate of insurance shall expressly provide that no less than 30 days' prior written notice shall be given to Franchisor in the event of material alteration to or cancellation or non-renewal of the coverages evidenced by such certificates. Franchisee will provide Franchisor with the names and contact information of all of Franchisee's insurance agents. Franchisee will arrange for Franchisee's insurance agents to provide Franchisor with such written certifications as Franchisor may require, certifying that Franchisee is in compliance with Franchisee's obligations under this Agreement 17.2.

(vii) If Franchisee fails to procure or maintain these minimum insurance requirements, Franchisor or its designee has the right (but is not required) to procure such insurance on Franchisee's behalf. Such right shall be in addition to and not in lieu of any other rights or remedies available to Franchisor. If this occurs, Franchisee shall reimburse Franchisor the cost of the premium and pay a reasonable administrative fee in an amount determined by Franchisor.

(viii) The insurance policies and coverages Franchisor requires are Franchisor's minimum requirements for insurance. Franchisor does not represent that the insurance policies and coverages Franchisor requires will provide Franchisee with adequate coverage. Franchisee is solely

responsible for determining the policies and coverages Franchisee may need to be properly insured; provided, however, such policies and coverages may not be less than Franchisor requires.

## 18. **TRANSFER; RIGHT OF FIRST REFUSAL**

18.1 Transfer by Franchisor. Franchisor may assign any or all of its rights and may delegate any or all of its obligations under this Agreement. Franchisor will not be required to obtain Franchisee's consent in connection with any such assignment or delegation. Such assignment or delegation shall effect a complete novation of the rights assigned and the duties delegated, unless Franchisor specifies otherwise. Following the effective date of such assignment, Franchisee will deliver performance of all rights so assigned to the assignee, and not to Franchisor, unless Franchisor specifies otherwise. Following the effective date of such delegation, Franchisee will look solely to the delegatee, and not to Franchisor, for the performance of all obligations so delegated, unless Franchisor specifies otherwise. Franchisor's Principals may transfer or assign their interests, Franchisor's ownership structure may otherwise be modified, and Franchisor may engage in a public offering of debt or equity, all without Franchisee's consent.

18.2 Transfer by Franchisee or Principals. Franchisee acknowledges and agrees that Franchisor has entered into this Agreement in reliance on information Franchisee and its Principals provided related to Franchisee's and such Principals' business skills, business acumen, business experience, personal character, education, credit rating, financial resources, and other matters. Therefore, the following types of transfers may be made only with Franchisor's prior written consent: the transfer of any Principal's interest in Franchisee or in this Agreement, the transfer or assignment of any rights, or the delegation of any obligations under, this Agreement, the sale or transfer of all or substantially all of the assets of the Franchised Business. Each of the foregoing will be considered a "**Transfer**" for purposes of this Agreement. Any Transfer in violation of the provisions of this Article 18 will be considered null and void, and will further be considered a material breach of this Agreement.

18.3 Conditions Precedent to Consent to Transfer. Franchisor will not unreasonably withhold its consent to a Transfer, but may condition its consent on satisfaction of any or all of the following:

(i) Transferee (and if the transferee is a business entity, such transferee's equity holders) must meet Franchisor's Principal Qualifications.

(ii) Franchisee must satisfy all monetary obligations and other obligations owed to Franchisor, Franchisor's affiliates, and Franchisee's other creditors.

(iii) At all times during the Term: (i) Franchisee must have been in substantial compliance with this Agreement; (ii) Franchisee must have been in substantial compliance with the Operations Manual; and (iii) Franchisee and its Affiliates must have been in substantial compliance with all other agreements to which Franchisee or such Affiliates on the one hand, and Franchisor or its Affiliates on the other hand, are parties.

(iv) At the time of the Transfer, Franchisee and its affiliates must be in compliance with this Agreement and all other agreements to which Franchisee or such affiliates on the one hand, and Franchisor or its affiliates on the other hand, are parties.

(v) Franchisee, Principals, and transferee must duly execute and deliver to Franchisor its then-current form of transfer agreement, which transfer agreement: (a) will require the transferee to assume and agree to discharge all of the obligations of the transferor; (b) will provide that the transferor shall remain liable for all of the obligations owed to Franchisor and Franchisor's affiliates arising prior to the effective date of the Transfer; and (c) will contain substantially the form of Release.

(vi) If the Transfer is a Transfer of Franchisee, all or substantially all of the assets of Franchisee, any Restaurant, all or substantially all of the assets of any Restaurant, the Franchised

Business, all or substantially all of the assets of the Franchised Business, or the Franchise granted under this Agreement, the transferee must enter into Franchisor then-current form of franchise agreement, the terms of which may differ materially from the terms of this Agreement; provided that no initial franchise fee shall be payable thereunder and the initial term of such agreement shall be the balance of the franchise term remaining hereunder.

(vii) Transferee, at its expense, must renovate the Restaurant as set forth in Section 7.4 of this Agreement, if Franchisor requires such Renovation.

(viii) Transferee and, if applicable, transferee's Managers, must complete any training programs then in effect for new franchisees prior to the effective date of such Transfer, on such terms and conditions as Franchisor may reasonably specify.

(ix) Transferor or transferee must pay Franchisor a Transfer fee in an amount equal to fifty percent (50%) of Franchisor's then-current initial franchise fee (the "**Transfer Fee**").

(x) Transferee must, if the Approved Location is subject to a lease: (a) agree to a sublease, or to a transfer and assumption of the lease, of the Approved Location from the original franchisee; and (b) obtain the landlord's approval prior to any such sublease, transfer, and assumption.

(xi) Any purported Transfer that does not comply with this Section 18.3 shall be void, and shall further constitute a material breach of this Agreement.

18.4 Transfer on Death or Disability. In the event of the death, disability, or permanent incapacity of a shareholder, partner, member, or other owner of Franchisee that results in a change in control or right of control over Franchisee or the Franchised Business, all of the interest of such person may be transferred to a buyer Franchisor approves within six months after the date such person dies or becomes disabled, provided that each person obtaining such interest: (i) is capable of operating the Franchised Business in compliance with this Agreement, as Franchisor may determine; (ii) signs the form of Personal Guaranty of Franchisee's Principals; (iii) signs the form of Confidentiality Agreement; and (iv) signs the form of Covenant Not to Compete Agreement, as conditions precedent to obtaining such ownership interest. If Franchisee's Managers responsible for managing the Franchised Business cannot devote their full time or best efforts to the operation of the Franchised Business or lack the capacity to comply with this Agreement, Franchisor will have the option to operate or manage the Franchised Business for Franchisee's account or the account of the estate of the deceased, disabled, or incapacitated shareholder, partner, or member until the deceased, disabled, or incapacitated party's interest is transferred to a party acceptable to Franchisor in compliance with this Section 18.4. During the period that Franchisor operates or manages the Franchised Business, Franchisor will make a complete accounting to, and will return the net income from such operation to, Franchisee or the estate of such shareholder, partner, member, or other owner, less a reasonable management fee and reimbursement of Franchisor's expenses.

#### 18.5 Franchisor's Right of First Refusal.

(i) Section (ii) of this Agreement shall not apply to Transfers of Interests between or among Franchisee's then-existing permitted Principals.

(ii) If Franchisee or any Principal determines at any time to Transfer any Interest, Franchisee will obtain a bona fide executed written offer to purchase such Interest from a responsible and fully-disclosed purchaser, and will submit an exact copy of such offer to Franchisor. Franchisor may request such information as Franchisor deems appropriate related to such documented offer. Franchisor will, for a period of 30 days from the date Franchisor receives the last item of information Franchisor may request, have the right, but not the obligation, exercisable by written notice to Franchisee, to purchase all of such Interest for the price, minus any sales commission that would have been payable as a result of the proposed sale, and on substantially

the same terms and conditions, contained in such offer; provided, however, Franchisor may substitute cash for any other form of consideration proposed in such offer. Franchisor may deduct from the purchase price any unpaid amounts Franchisee owes Franchisor and may pay out of the purchase price any of Franchisee's unpaid trade creditors. If Franchisor does not exercise such right of first refusal, Franchisee or Principals may complete such Transfer of such Interest to such purchaser on the same terms as offered to Franchisor, subject to the other provisions of this Section 18.5. If such Transfer is not completed within 60 days after delivery of such offer to Franchisor, or if Franchisee or the proposed purchaser makes any material modification to such offer, Franchisor will again have the right of first refusal set forth in this Section 18.5.

## 19. RELATIONSHIP OF THE PARTIES

19.1 Franchisee Is an Independent Contractor. Franchisee acknowledges and agrees that: (i) it is an independent contractor; (ii) it is not Franchisor's legal representative or agent; (iii) it does not have any right, power, or authority to obligate or to bind Franchisor, legally or otherwise; (iv) it does not have any right, power, or authority to control or supervise Franchisor's business; (v) nothing in this Agreement may be construed to create a partnership or a joint venture, or an agency, fiduciary, or employment relationship; (vi) Franchisor will not be liable for any damages to any person or property that directly or indirectly arise out of or relate to the Franchised Business; and (vii) except as otherwise set forth in this Agreement, Franchisor does not have control or any right of control over the Franchised Business.

19.2 Franchisee and Franchisor Are Engaged in Separate and Distinct Businesses. Franchisee acknowledges and agrees that: (i) Franchisor's business is the business of developing the System, granting franchises to independent business operators to use the System, and servicing independent operators of franchised businesses in the System; (ii) Franchisee's business is the business of offering for sale and selling the Products and Services to the consuming public; and (iii) the business Franchisor operates and the business Franchisee operates are separate and distinct businesses engaged in separate and distinct activities.

19.3 Franchisee and Franchisor Do Not Have an Employment Relationship. Franchisee acknowledges and agrees that neither Franchisee nor any employee of Franchisee shall, in any manner, directly or indirectly, expressly or by implication, be construed to be an employee of Franchisor for any purpose; which purposes shall specifically include, but shall not be limited to, any government-mandated insurance coverage, tax, or other program; or any form of unemployment compensation; or contributions or requirements related to withholdings imposed, levied, or fixed by any governmental authority.

19.4 Franchisee Will Identify Itself as an Independent Contractor. Franchisee shall identify itself as an independent franchisee of Franchisor in all public records where such disclosure is permitted, and place on Franchisee's business forms and checks the legend "An Independent Franchisee of Bennigan's Franchising Company, LLC" or such other language as Franchisor may specify from time to time. Franchisee shall post in the Restaurant, in a place easily visible to guests, suppliers, and the public, a sign stating substantially as follows: "This [Brand] Restaurant is independently owned and operated by [Franchisee's full legal name] under a franchise granted by Bennigan's Franchising Company, LLC, [Franchisor's then-current address and telephone number]."

## 20. BREACH AND TERMINATION

### 20.1 Termination by Franchisee.

(i) Bases for Termination; Notice and Opportunity to Cure. Franchisee may terminate this Agreement if Franchisor commits a material breach of any material provision of this Agreement. To terminate this Agreement, Franchisee must give Franchisor written notice of such breach. Such notice must state with particularity: (a) the breach; and (b) the cure required. Franchisee may terminate the Agreement on notice of termination to Franchisor if Franchisor has not cured the breach within 60 days after the date Franchisor actually receives the notice of such

breach; provided, however, if such cure requires a longer time to complete, Franchisee may not terminate this Agreement if Franchisor has commenced to cure such breach within 60 days after the date Franchisor actually receives such notice and Franchisor diligently continues to prosecute such cure until it is reasonably effected.

(ii) Injunctive Relief to Prevent Termination. Notwithstanding anything to the contrary contained in this Agreement, Franchisor shall have the right to commence an action for injunctive relief to prevent the termination of this Agreement, without regard to any waiting period that may be contained in this Agreement, without the necessity of showing actual or threatened damage, and without being required to furnish a bond or other security. If Franchisor commences such action, then Franchisee may not terminate this Agreement unless and until a court of competent jurisdiction has ruled on the merits that: (a) Franchisor breached this Agreement in the manner Franchisee alleged; (b) Franchisee complied with the notice requirements set forth in this Agreement; and (c) Franchisor did not cure such breach, or did not commence such cure, as required by this Agreement. If the requirements set forth in Clause (a), Clause (b), and Clause (c) of this Section 20.1 are satisfied, then Franchisee may terminate only if: (1) Franchisor fails to begin the actions necessary to cure the breach within 30 days after a final judgment has been entered against Franchisor; and (2) all time for Franchisor to appeal has expired.

20.2 Termination by Franchisor: General. Franchisee acknowledges and agrees that: (i) all of Franchisee's obligations contained in this Agreement are material and essential; (ii) any breach by Franchisee of this Agreement will materially damage the System and Franchisor; and (iii) any breach by Franchisee of this Agreement will impose additional and unforeseen costs and expenses on Franchisor. Franchisee agrees that if Franchisee breaches any covenant, warranty, representation, agreement, term, or provision in this Agreement: (i) such breach shall permit Franchisor to terminate this Agreement and any and all rights granted to Franchisee under this Agreement under the provisions set forth in this Article 20; and (ii) Franchisor's performance of its obligations under this Agreement shall be excused for as long as Franchisee is in such breach. If Franchisor permits Franchisee to cure any breach of this Agreement, or if this Agreement provides that Franchisee may effect such cure, Franchisee must: (a) effect such cure within the cure period prescribed by this Agreement or such later cure period as Franchisor may prescribe; (b) effect such cure to Franchisor reasonable satisfaction; and (c) deliver timely confirmation and proof of such cure to Franchisor, without which timely confirmation and proof Franchisor may conclusively presume that Franchisee has not effected such cure.

20.3 Termination by Franchisor: No Opportunity to Cure. Franchisee will be in material breach of this Agreement, and Franchisor will have the right to terminate this Agreement in its entirety, or to terminate this Agreement as to one or more Restaurants operated under this Agreement, without affording Franchisee any opportunity to cure the breach, effective on delivery of notice of termination to Franchisee:

(i) Occurrence of any of the following acts of insolvency: (a) a petition in bankruptcy is filed or a case in bankruptcy: (1) is commenced by Franchisee; or (2) is commenced against Franchisee and is not dismissed within 60 days; (b) Franchisee is adjudicated bankrupt; (c) Franchisee takes or attempts to take the benefit of any law for the relief of debtors; (d) proceedings for a composition of creditors under any Law: (1) are commenced by Franchisee; or (2) are commenced against Franchisee and are not dismissed within 60 days; (e) Franchisee makes a general assignment for the benefit of creditors; (f) a proceeding for the appointment of a receiver, liquidator, manager, administrator, or other custodian (permanent or temporary) of Franchisee, Franchisee's assets, any Restaurant, the assets of any Restaurant, the Franchised Business, or the assets of the Franchised Business, or any part of any of the foregoing: (1) is commenced by Franchisee; or (2) is commenced against Franchisee and is not dismissed within 60 days; (g) a receiver, liquidator, manager, administrator, or other custodian (permanent or temporary) of Franchisee, Franchisee's assets, any Restaurant, the assets of any Restaurant, the Franchised Business, or the assets of the Franchised Business, or any part of the foregoing: (a) is appointed by

Franchisee; or (b) is appointed by a court of competent jurisdiction or by private instrument or otherwise and such appointment is not dismissed within 60 days; (h) execution is levied against any ownership interest in, or any assets of, Franchisee, any Restaurant, or the Franchised Business; (i) any interest in, or any asset of, Franchisee, any Restaurant, or the Franchised Business, is sold after levy on such interest or asset by any sheriff, marshal, bailiff, clerk of court, or other governmental authority; (j) Franchisee is evicted from the premises of the Approved Location or Restaurant; provided, however, if such eviction is the result of governmental exercise of eminent domain, Franchisee may relocate the Restaurant to another location in Franchisee's Territory, subject to: (1) Franchisor's approval of the Proposed Site; and (2) Franchisee's compliance with site selection criteria, Restaurant opening criteria, and related matters set forth in this Agreement and the Operations Manual; (k) Franchisor determines that Franchisee's capital is insufficient to carry on Franchisee's business transactions and all business transactions in which it is required to engage, as evidenced by Franchisee's actual failure to carry on such business transactions; (l) Franchisor determines that Franchisee is unable to pay all of Franchisee's indebtedness as such indebtedness comes due, as evidenced by Franchisee's actual failure to pay such indebtedness as it comes due; (m) an unappealed final judgment against Franchisee remains unsatisfied for 60 days, unless a supersedeas bond is filed; (n) Franchisee is dissolved or wound up; or (o) Franchisee, jointly or severally, fails on three or more occasions during any 12 consecutive month period to pay when due any sum Franchisee is required to pay Franchisor or its affiliates, whether or not Franchisee cures such failure to pay.

(ii) Violation of any of the confidentiality or noncompete provisions of this Agreement.

(iii) Misrepresentation of any material fact in any information furnished to Franchisor related to Franchisor decision to enter into this Agreement.

(iv) If Franchisee knowingly maintains false books or records, conceals revenues from Franchisor, or submits any material, false statement in any Gross Sales Report, Annual Report, Annual Financial Statement, or Local Advertising Report, or in any other report, document, or data Franchisor requires, or in any tax return required by Law.

(v) If Franchisor determines that Franchisee has understated Franchisee's Gross Sales by 4% or more on any Gross Sales Report, Annual Report, Annual Financial Statement, Local Advertising Report, or other report, document, or data Franchisor requires, or on any federal, state, or local tax return Franchisee is required to file.

(vi) If Franchisee denies Franchisor or any of Franchisor's authorized representatives immediate access, on Franchisor's or such representative's demand, during any hours that Franchisee's Restaurant is required to be or is in fact open for business, to any or all of Franchisee's financial or accounting records and files; which records and files will include, but will not be limited to: (i) paper records; (ii) records stored on any computer hard drive, computer floppy drive, CD-ROM, flash drive, cloud, pad device, handheld electronic device, or other electronic media; (iii) cash receipts, charge receipts, Comp records, invoices, bank statements, cancelled checks, and otherwise, related to the information Franchisee is required to provide in the Gross Sales Report, Annual Report, Annual Financial Statement, Local Advertising Report, or other report, document, or data Franchisor requires, or in any tax return Franchisee is required by Law to file, whether such records and files are located at Franchisee's Restaurant or elsewhere; so that Franchisor may inspect, audit, make copies of, and download all such records and files; or if Franchisee fails to provide Franchisor or its representatives with immediate and full assistance in the course of such access, inspection, audit, copying, and downloading.

(vii) If Franchisee denies Franchisor or any of Franchisor's authorized representatives immediate access, on Franchisor's or such representative's demand, during any hours that

Franchisee's Restaurant is required to be or is in fact open for business, to all premises of the Franchised Business, to monitor Franchisee's procedures, evaluate Franchisee's performance, or determine if Franchisee is in compliance with this Agreement and the Operations Manual; or if Franchisee fails to provide Franchisor or its representatives with immediate and full assistance in the course of such monitoring, evaluation, and determination.

(viii) If Franchisee receives three or more failing scores on any health or safety inspection Franchisor or any governmental authority conducts within any 12 consecutive month period.

(ix) If Franchisee, unless Franchisor expressly authorizes Franchisee to do so in writing: (i) uses or displays the Marks in relation to any business or activity other than the operation of the Restaurant; (ii) uses any trademark, trade name, service mark, logotype, other commercial symbol, or trade dress, other than the Marks, as a primary identifier of the Restaurant; (iii) offers for sale, sells, or delivers the Products and Services, or any other products, equipment, services, supplies, or merchandise, under the Marks, except as set forth in this Agreement; (iv) uses or displays the Marks except in the form, manner, and locations that Franchisor specifically approves or directs; (v) uses or registers any Mark, any part of any Mark, or anything similar, as part of Franchisee's name or the name of any entity related to Franchisee's activities, except for the fictitious name registration required under Section 14.1 of this Agreement; (vi) uses or registers any Mark, any part of any Mark, or anything similar, as a part of any Internet domain name, social media site name, user name, or any like name; (vii) uses any Mark in any manner that may injure or disparage Franchisor or Franchisor reputation; or (viii) takes any other action that may harm or jeopardize any Mark, or Franchisor's ownership of such Mark, in any way.

(x) If Franchisee fails to comply with all Laws related to the Franchised Business, unless there is a bona fide dispute as to the violation or legality of such Law, and Franchisee promptly resorts to a court or other appropriate forum having jurisdiction to contest such violation or illegality, and Franchisee vigorously prosecutes such contest to its conclusion.

(xi) If Franchisee fails to operate the Restaurant for a period of five consecutive days or any shorter period or performs any act that indicates an intent to discontinue operation of the Restaurant.

(xii) If Franchisee commits fraud related to the Franchised Business, including fraud on Franchisor, any affiliate of Franchisor, any lessor, any supplier, or any guest; or if Franchisee otherwise engages in conduct that materially impairs the goodwill related to the Franchised Business or the System.

(xiii) If Franchisee or any Principal is convicted of, or pleads nolo contendere to, a felony, fraud, sale of illegal drugs, crime involving moral turpitude, crime that is directly related to the Franchised Business, or any other crime that Franchisor determines will have an adverse effect on the Restaurant, the System, the Marks, the goodwill associated with the Marks, or Franchisor's interest in the Marks.

(xiv) If Franchisee is a business entity, Franchisee's status or existence is suspended, dissolved, or revoked by any court or governmental authority, including the secretary of any state or commonwealth where Franchisee is formed, organized, or doing business.

(xv) If Franchisee or any Principal intentionally, willfully, or through gross negligence, breaches any covenant, warranty, representation, agreement, or obligation set forth in this Agreement.

(xvi) If Franchisor delivers three or more notices of breach to Franchisee within any 12 consecutive month period, regardless of whether Franchisee cured the breaches enumerated in such

notices, and regardless of whether such notices were for the same or different breaches; provided, however, the second such notice must apply to a breach that occurs or that Franchisor discovers at least 10 days after the initial breach, and the third such notice must apply to a breach that occurs or that Franchisor discovers at least 10 days after the second breach.

20.4 Termination by Franchisor: Opportunity to Cure. Franchisee will be in material breach of this Agreement, and Franchisor will have the right to terminate this Agreement in its entirety, or to terminate this Agreement as to one or more Restaurants operated under this Agreement, after 10 days' written notice of such breach to Franchisee and Franchisee's failure to cure such breach within such time, without further notice or opportunity to cure:

(i) If Franchisee has not opened the Restaurant by the Scheduled Restaurant Opening Date, or any extended deadline under an Agreement Extending Opening Date.

(ii) If Franchisee fails to cause any and all persons required, by the terms of this Agreement and such schedules and exhibits, to execute: (i) the form of Personal Guaranty of Franchisee's Principals; (ii) the Confidentiality Agreement; or (iii) the Covenant Not to Compete Agreement: (a) contemporaneously with Franchisee's execution of this Agreement, where such person or entity is, on the Effective Date, within the scope of persons or entities required to execute any or all of such schedules or exhibits; or (b) where such person or entity is not, on Effective Date, within the scope of persons or entities required to execute any or all of such schedules or exhibits, prior to or contemporaneously with such person or entity coming within the scope of persons or entities required to execute any or all of such schedules or exhibits.

(iii) If Franchisee fails to submit to Franchisor any report required by this Agreement

(iv) If Franchisee fails to pay Franchisor or any of Franchisor's Affiliates any monies such party is obligated to pay Franchisor or such Affiliate

(v) If Franchisee or its Principals are unable to or otherwise fail to complete the training Franchisor prescribes, after Franchisor affords the re-training opportunities set forth in Section 13.7 of this Agreement

(vi) If Franchisee breaches or fails to perform any covenant, warranty, representation, agreement, promise, term, provision, or obligation of Franchisee contained in this Agreement, where such breach or failure is not specifically enumerated in Section 20.3 or this Section 20.4 of this Agreement

(vii) If any alcoholic beverage license or permit related to the Restaurant is revoked or suspended for any reason

(viii) If Franchisee breaches or fails to perform any covenant, warranty, representation, agreement, promise, term, provisions, or obligation of Franchisee contained in this Agreement, where such breach or failure is not specifically enumerated in Section 20.3 or this Section 20.4 of this Agreement.

20.5 Conflict of Provisions. In the event of any conflict between Section 20.3 and Section 20.4 of this Agreement, Section 20.3 shall control.

20.6 Cross Default. Any breach by Franchisee or any of Franchisee's Principals or Affiliates of any other agreement to which Franchisee, such Principals, or such affiliates on the one hand, and Franchisor or any of Franchisor's affiliates on the other hand, are parties, will be deemed to be a breach of this Agreement, and any breach of this Agreement by Franchisee will be deemed to be a breach of all other agreements to which Franchisee or any of Franchisee's Principals or Affiliates on the one hand, and Franchisor or any of Franchisor's Affiliates on the other hand, are parties. If such breach would be grounds for termination of this Agreement by Franchisor if the breach had occurred under this Agreement, then

Franchisor will have the right to terminate this Agreement in the same manner provided in this Agreement for termination of this Agreement. If such breach would be grounds for termination of such other agreements, then Franchisor or its affiliates will have the right to terminate such other agreements in the same manner provided in such other agreements for termination of such other agreements.

20.7 Franchisor's Right to Cure. Franchisor may, without prejudice to any other right or remedy contained in this Agreement or provided at law or in equity or otherwise, take action to cure any breach by Franchisee by performing any acts Franchisor deems necessary to cure the breach. All such cures will be at Franchisee's sole cost and expense, and Franchisee will reimburse Franchisor for all costs and expenses Franchisor incurs related to such cures, which costs and expenses will include, without limitation, all travel, food, lodging, salary expenses, and benefit costs of Franchisor personnel, and any other costs or expenses, including Franchisor's reasonable attorneys' fees and costs. Franchisor will have no obligation to cure such breaches.

20.8 Franchisor's Right to Manage Franchised Business. Franchisor may enter onto the Franchised Business premises and assume management of the Franchised Business (i) upon expiration of this Agreement for a period not to exceed 90 days, while Franchisor considers its purchase options, or (ii) if Franchisee materially defaults in its obligations under this Agreement and fails to cure the default within the applicable cure period, if any. If Franchisor assumes management of the Franchised Business, Franchisee will pay Franchisor, in addition to any and all other amounts owed arising out of or related to this Agreement: a management fee equal to 5% of the Gross Sales of the Franchised Business or \$500 per I day, whichever is greater, and shall be responsible for all operational costs of the Restaurant. If Franchisor assumes management of the Franchised Business, Franchisor: (a) will have a duty to use only reasonable commercial efforts in the management of the Franchised Business; and (b) will not be liable to Franchisee or any Principal for any debts, losses, or obligations the Franchised Business incurs, or to any of Franchisee's creditors for any goods or services purchased or leased in connection with the Franchised Business, while Franchisor manages the Franchised Business. If Franchisor assumes the management of the Franchised Business, Franchisee will provide Franchisor and its agents with immediate and full access to the Franchised Business premises and its books and records so that Franchisor and its agents may fully effect such management. Franchisee will assist and cooperate with Franchisor's efforts to perform such management services. Franchisor's exercise of its rights under this Section 20.8 will not affect Franchisor's right to terminate this Agreement on account of Franchisee's default.

20.9 Notice Required By Law. If any Law limits Franchisor's rights of termination under this Agreement, or if any Law requires longer notice or cure periods than those set forth in Section 20.3 or Section 20.4, this Agreement will be deemed amended to conform to the minimum notice, cure periods, or restrictions on termination required by such Laws; provided, however, Franchisor will not be precluded from contesting the validity, enforceability, or application of such Laws.

## 21. **OBLIGATIONS ON TERMINATION OR EXPIRATION**

21.1 General Obligations. On the termination of this Agreement for any reason, or on the expiration of this Agreement without renewal, Franchisee will cease to be an authorized franchisee and shall have no right to use the System or any part of it. The termination of this Agreement for any reason, or the expiration of this Agreement without renewal, will not: (i) relieve Franchisee of any monetary obligation Franchisee owes Franchisor or any of Franchisor's affiliates; (ii) relieve Franchisee of any other obligations Franchisee owes Franchisor or Franchisor's affiliates; (iii) affect Franchisor's right to damages; or (iv) affect those obligations of Franchisee that by their nature survive such termination or expiration.

21.2 Specific Obligations. In addition to the obligations imposed on Franchisee as a result of Franchisee's loss of the right to use the System as set forth above, on the termination of this Agreement, or on the expiration of this Agreement without renewal, Franchisee will, at Franchisee's sole cost and expense, and without payment of any compensation to Franchisee:

(i) Pay Franchisor and its Franchisor's Affiliates all amounts due under this Agreement and any other agreements, so that Franchisor and such Affiliates actually receive such payment within five days after the date of such termination or expiration, without demand therefor.

(ii) Immediately cease all use of the System, including advertising materials, and immediately return to Franchisor the Operations Manual and all other materials containing Confidential Information or the Standards, and all copies thereof.

(iii) Immediately cease to hold itself out in any way as a franchisee of Franchisor, or to suggest or represent that Franchisee was formerly a franchisee of Franchisor and, within 10 days after termination or expiration without renewal, take all actions necessary to cancel any assumed or fictitious name containing any of the Marks.

(iv) Take all such actions as may be required to fulfill Franchisee's obligations under the Telephone Numbers and Listings Agreement and the Internet Sites and Listings Agreement, within the times specified therein.

(v) Comply fully with all obligations under this Agreement which, by their nature, survive termination or expiration of this Agreement without renewal, and cause each person who has signed a Personal Guaranty of Franchisee's Principals, Confidentiality Agreement, and/or Covenant Not to Compete Agreement, to comply with the terms thereof

### 21.3 Franchisor's Option to Acquire the Restaurant Premises and Assets.

(i) If Franchisee leases the Restaurant premises, Franchisee hereby grants Franchisor and option to assume the lease upon termination or expiration (without renewal) of this Agreement. Such option shall be exercised by delivery of written notice to Franchisee within 30 days after termination or expiration of this Agreement without renewal. If the option is exercised, Franchisee shall fully cooperate with Franchisor's efforts to assume the lease, which may include execution of all documents required by the landlord to effect such assignment. If exercised, Franchisor will assume only liabilities accruing on or after the date of assignment. Franchisee shall remain liable, and shall indemnify and hold harmless Franchisor from, any and all liabilities accruing prior to the date of assignment.

(ii) If Franchisee owns the Restaurant premises, Franchisee hereby grants Franchisor an option to lease the premises for a 10-year term. The lease shall reflect the then-current market rate, and shall reflect standard terms and conditions for the type of premises and geographic area in which the premises are located. Such option shall be exercised by delivery of written notice to Franchisee within 30 days after termination or expiration (without renewal) of this Agreement, which notice shall include a form of lease containing terms that Franchisor is willing to accept. Franchisee may either accept the rates by countersigning the lease, or may propose different financial terms, by revising the lease to reflect new proposed terms and delivering to Franchisor the revised lease within seven calendar days after delivery of Franchisor's notice. Franchisor may accept the revised terms by countersigning the lease, or may continue discussions with Franchisee. If the parties have not reached agreement within 15 days after delivery of Franchisor's initial notice, Franchisor shall have the right to appoint a commercial real estate agent or broker, with experience with restaurant leases and the relevant geographic market, to determine the financial terms. Franchisee shall fully cooperate with the evaluation, which may include granting access to the premises, and agrees to be bound by the determination of such real estate agent or broker. Franchisor may accept or reject the results of the evaluation. If accepted, the parties shall enter into a written lease agreement reflecting the applicable terms. If rejected, Franchisor's option shall be deemed to have expired, and Franchisor will have no further option to lease the premises.

(iii) Franchisor will have the right, but not the obligation, to enter upon the Restaurant premises for purposes of managing operations of the Restaurant during the option periods, described above. Each party shall be responsible for its own costs, including attorneys' fees.

21.4 De-Identification of Restaurant. “**De-Identification**” means removing or changing all signage and other trade dress so as to distinguish the Restaurant’s appearance from any other restaurants operating under the Brand and System, removing all items bearing the Marks, covering with paint or otherwise obliterating items bearing the Marks, where such items (e.g., wall paintings, color schemes) cannot reasonably be removed, and otherwise complying with Franchisor’s then-current de-identification requirements. If Franchisor does not exercise its options as set forth in Section 21.3, above, Franchisee will De-Identify its former Restaurant so that such De-Identification is completed within 20 days after the termination or expiration (without renewal) of this Agreement (if Franchisor has communicated to Franchisee its waiver of the lease options described in Section 21.3., above), or within 20 days after expiration of the lease options. If Franchisee fails to complete such De-Identification by the required deadline, Franchisor or its agents may enter onto the Franchised Business premises without prior notice to Franchisee, without liability for trespass, and without the need for court order or any other judicial process, and De-Identify the Franchised Business premises, and remove or destroy, as Franchisor deems appropriate, any and all items reflecting the Marks, including items of trade dress identifying or associated with the Brand. Franchisee shall provide Franchisor and its agents with immediate and full access to the Franchised Business premises and shall assist and cooperate with Franchisor’s De-identification efforts. Franchisee will pay, immediately on Franchisor’s demand for payment, all costs and expenses Franchisor and its agents may incur in connection with such De-Identification including, without limitation, Franchisor’s attorneys’ fees and costs.

21.5 Franchisor’s Right to Purchase Assets. Franchisee hereby grants Franchisor an option to purchase any or all of Franchisee’s physical assets used in the Franchised Business for a purchase price equal to the fair market value of all tangible personal property, without any amount for leasehold improvements or goodwill. Such option shall be exercised by delivery of written notice to Franchisee within 30 days after termination or expiration (without renewal) of this Agreement, which notice shall include a description of, and proposed price for, the assets Franchisor proposes to purchase. Franchisee may accept the proposal by delivery of written notice, or may propose a different price by delivering to Franchisor a counterproposal, within seven days after delivery of Franchisor’s notice. Franchisor may accept the proposed price by delivering to Franchisee written notice of acceptance, or may continue negotiations with Franchisee. If Franchisee and Franchisor cannot agree on the purchase price within 15 days after delivery of Franchisor’s initial notice, the purchase price will be determined by one appraiser selected by mutual agreement of the parties. If the parties cannot mutually agree on an appraiser, each party will select its own appraiser, and the two appraisers shall select an independent appraiser. Such independent appraiser’s decision will be final and binding on the parties. Franchisor may accept or reject the results of the appraisal. If accepted, the parties shall enter into Franchisor’s form of asset purchase agreement reflecting the agreed to financial terms and standard representations and warranties, and closing on the purchase will take place within 60 days after determination of the purchase price (as extended for compliance with any applicable bulk sales law). If rejected, Franchisor’s option shall be deemed to have expired, and Franchisor will have no further option to purchase the assets. Franchisor may set off against the purchase price any amounts Franchisee or any of Franchisee’s Affiliates owes Franchisor or any of Franchisor’s Affiliates, and to pay out of the purchase price any of Franchisee’s unpaid creditors.

21.6 Franchisor’s Right to Obtain Liquor License. Franchisee hereby grants Franchisor or its designee an option to purchase or assume (as applicable) all alcoholic beverage licenses and permits related to the Restaurant (collectively, the “**Liquor License**”) for a purchase price of \$10.00. Such option shall be exercised by delivery of written notice to Franchisee within 30 days after termination or expiration (without renewal) of this Agreement. Franchisee shall fully cooperate with Franchisor, and use commercially reasonable efforts to obtain the necessary approvals from all governmental authorities, for the prompt

transfer of the Liquor License. Franchisee shall be solely responsible for all transfer-related costs and fees. If Law does not permit the transfer or relocation of any Liquor License, Franchisee shall fully cooperate with Franchisor's efforts to obtain a new Liquor License. Franchisee shall immediately fulfill all directives and requirements from all applicable authorities in order to expedite the transfer or relocation of the existing Liquor License or the acquisition of a new Liquor License. Franchisee shall pay, or promptly arrange for the full payment of, all taxes of any nature or kind whatsoever that may affect title or the rights to any Liquor License in any way.

21.7 Liquidated Damages for Termination of Agreement or Closure of Restaurant. In the event that Franchisor terminates this Agreement for cause, Franchisee terminates this Agreement without cause, or Franchisee ceases operation of the Restaurant, Franchisee agrees to pay Franchisor, as liquidated damages and not as a penalty, damages in an amount equal to the average Royalties and Brand Development Fees payable by Franchisee for the 24 Accounting Periods immediately preceding termination of this Agreement or closure of the Restaurant, as applicable, multiplied by the number of Accounting Periods remaining in the Initial Term, discounted to present value, using a discount value of 7%. If this Agreement is terminated or the Restaurant closes or ceases operation and the Restaurant has not been open for business for 24 Accounting Periods, Franchisee shall pay Franchisor liquidated damages in an amount equal to the average Royalties and Production Fees payable by Franchisee for the all of the Accounting Periods immediately preceding termination or closure of the Restaurant multiplied by the number of Accounting Periods remaining in the Initial Term. Franchisee acknowledges and agrees, and Franchisee hereby directs any third party construing this Agreement, including any court, arbitrator, or other party acting as trier of fact or law, to conclusively presume, that the damages set forth in this Section 21.6 are liquidated damages intended to compensate Franchisor for the lost profits Franchisor will sustain as a result of the premature termination of this Agreement or early closure of the Restaurant, and are not a penalty, that they constitute a reasonable estimation of Franchisor's lost profits viewed as of the Effective Date of this Agreement.

21.8 Injunctive Relief. Franchisee acknowledges and agrees that any breach of Franchisee's obligations under this Article 21 will cause Franchisor irreparable harm, and that Franchisor has no adequate remedy at law for such breach in that money damages do not afford Franchisor complete relief. Therefore, Franchisee agrees that Franchisor, in addition to monetary damages, will have the right to injunctive relief, including a decree for specific performance, to compel compliance with Franchisee's obligations under this Article 21 without the necessity of showing actual or threatened damage and without being required to furnish a bond or other security.

21.9 Actual Damages. Notwithstanding anything set forth in Section 21.7 of this Agreement to the contrary, if applicable Law does not permit Franchisor to collect the liquidated damages set forth in Section 21.7 of this Agreement, Franchisee will pay Franchisor actual damages equal to: (i) the loss of the benefit of the bargain Franchisor would have received had Franchisee fully performed its obligations; plus (ii) Franchisor's out-of-pocket costs and expenses, including Franchisor's reasonable attorneys' fees and costs, and further including Franchisor's reasonable attorneys' fees and costs of appeal, and further including Franchisor's reasonable attorneys' fees and costs of collection; plus (iii) such additional damages as Franchisor may demonstrate.

21.10 Payment of Damages. Franchisee will pay all amounts owed under this Article 21 so that Franchisor actually receives each such payment within 10 days after demand for such payment.

21.11 Delivery of Materials. Franchisee will deliver all materials required to be delivered by Franchisee under this Article 21 to Franchisor, expenses prepaid, free and clear of all charges, liens, and encumbrances.

## 22. MISCELLANEOUS PROVISIONS

22.1 Additions or Improvements; Works Made for Hire. If Franchisee develops any addition or improvement to any aspect of the System, including any addition or improvement to the Products or

Services, or any addition or improvement to any recipe, ingredient, design, training, rule, guideline, standard, specification, plan, program, procedure, Mark, or advertising or promotional program or material, or otherwise: (i) such addition or improvement shall be deemed to be a work made for hire, notwithstanding any designation of Franchisee in this Agreement as an independent contractor; and (ii) Franchisee shall immediately convey any such addition or improvement to Franchisor, and such addition or improvement shall become Franchisor's sole and exclusive property, which Franchisor may use, license for use, assign, modify, publish, or sell, all without payment of any compensation to Franchisee.

22.2 Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given: (i) when delivered in person by the other party; (ii) one business day after being sent by reputable commercial courier service for next business day delivery; (iii) five business days after being deposited in the United States mail for certified or registered delivery, return receipt requested, postage prepaid; or (iv) on the intended recipient's failure or refusal to accept delivery of any notice given pursuant to this Section 22.2, which failure or refusal shall be deemed constructive delivery effective on the earlier of the date of such refusal or the dates set forth in Clauses (i) through (iii) of this Section 22.2. Notices to Franchisor shall be addressed to the address set forth in the Franchise Summary. Notices to Franchisee shall be addressed to Franchisee's principal business address set forth on the Franchise Summary. Either party may designate another address or other addressees at any time by delivering written notice to the other as set forth in this Section 22.1.

22.3 Further Assurances. Franchisee hereby covenants, warrants, represents, and agrees that: (i) it will perform such acts, and will execute and deliver such agreements and other documents to Franchisor, as Franchisor may deem necessary or beneficial to effect the intent of this Agreement; (ii) it will not condition the performance of such acts or the execution and delivery of such agreements and other documents; (iii) it will not delay the performance of such acts; and (iv) it will deliver such agreements and other documents, duly notarized if Franchisor requires that such agreements and other documents be notarized, to Franchisor so that Franchisor actually receives such agreements and other documents within 10 days after Franchisor delivers them to Franchisee for execution.

22.4 Force Majeure. In the event of an act of God, terror, war, insurrection, civil commotion, strike, slowdown, lockout, or embargo; or lack of fuel, other materials, or telephone transmissions specified or reasonably necessary in connection with the Franchised Business or the System; or fire, unavoidable casualties, and any other occurrence, event, or condition beyond the reasonable control of Franchisee or Franchisor, whichever is applicable (a "**Force Majeure**"), Franchisee or Franchisor, as applicable, will be relieved of Franchisee's or Franchisor's respective obligations to the extent that Franchisee or Franchisor is necessarily prevented, or materially hindered or delayed, in such performance during the period of such Force Majeure. The party whose performance is affected by a Force Majeure shall give prompt, written notice to the other party of such Force Majeure.

22.5 Waiver or Delay. No waiver or delay by either party in requiring strict compliance with respect to any obligation of this Agreement, or in the exercise of any right or remedy provided in this Agreement, and no custom or practice at variance with the requirements of this Agreement: (i) shall constitute a waiver or modification of any such obligation, right, remedy, or requirement; (ii) shall preclude, affect, or impair the exercise of any such right or remedy; (iii) shall preclude, affect, or impair the right to require strict compliance with any obligation or requirement set forth in this Agreement; or (iv) shall preclude, affect, or impair enforcement of any obligation, right, remedy, or requirement provided in this Agreement. All remedies under this Agreement, at law, in equity, or otherwise, afforded to either party, shall be cumulative and not alternative, and may be exercised simultaneously or sequentially in any order.

22.6 Governing Law. Except as otherwise set forth in this Agreement, the existence, validity, construction, enforcement, and sufficiency of performance of this Agreement shall be determined exclusively in accordance with, and governed exclusively by, the laws of the State of Texas, which laws shall prevail in the event of any conflict of laws. Notwithstanding the foregoing, all litigation hereunder, to

the extent governed by the United States Trademark Act of 1946, shall be governed by such Trademark Act of 1946. This Agreement will become a valid and enforceable contract when Franchisor accepts it and signs it in the State of Texas. Franchisee and Franchisor expressly agree that this Agreement has been made in the State of Texas, and that substantially all performance of the obligations hereunder has been and will be rendered in the State of Texas.

22.7 Forum, Venue, and Jurisdiction. In the event of any litigation arising out of or related to this Agreement, including any litigation arising out of or related to the making of this Agreement, the exclusive forum and venue for such litigation shall be a state or federal court serving the judicial district in which Franchisor's principal place of business is located at the time litigation is initiated. Franchisee hereby irrevocably consents and submits to, generally and unconditionally, for itself and with respect to Franchisee's property, the exclusive jurisdiction of any such court in any such action or proceeding and hereby waives all defenses based on jurisdiction, venue, and forum non conveniens. Such litigation shall be conducted on an individual, not a class-wide, basis. No litigation under this Agreement may be consolidated with any other litigation involving Franchisor and any other person without Franchisor's prior written consent.

22.8 WAIVER OF TRIAL BY JURY. FRANCHISOR AND FRANCHISEE HEREBY WAIVE TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR RELATED TO THIS AGREEMENT AND THE RELATIONSHIP BETWEEN THE PARTIES.

22.9 Contractual Limitations Period. No legal action or proceeding may be brought against Franchisor or its officers, directors, agents, or employees, for any claim or cause of action (whether sounding in contract, tort, or otherwise) unless such action or proceeding is instituted within two years and one day from the date the claim or cause of action accrued. This provision is intended to shorten any applicable statute of limitations to the extent permitted by law.

22.10 Attorneys' Fees. In the event of any dispute arising out of or related to this Agreement, including any dispute arising out of or related to the making of this Agreement, the non-prevailing party shall pay the prevailing party, on demand, such prevailing party's costs, including such prevailing party's reasonable attorneys' fees and costs, and further including such prevailing party's reasonable attorneys' fees and costs of appeal, and further including such prevailing party's reasonable attorneys' fees and costs of collection, all of which shall be taxed as costs, so that the prevailing party actually receives such amounts within 10 days after demand therefor. In the event of any breach of this Agreement, the breaching party shall pay the non-breaching party such non-breaching party's costs related to such breach, including such non-breaching party's reasonable attorneys' fees and costs, and further including such non-breaching party's reasonable attorneys' fees and costs of collection, so that the non-breaching party actually receives such amounts within 10 days after demand therefor.

## 23. **ACKNOWLEDGMENTS AND REPRESENTATIONS**

23.1 Franchisor's Right to Receive Revenue from Purchases. Franchisee acknowledges and agrees that Franchisor and its Affiliates may receive from time to time, and shall have the right to retain, revenue and other material benefits from System suppliers based on Franchisee purchases, such as rebates, discounts, and allowances. Franchisee acknowledges and agrees that Franchisor may require Franchisee to purchase Products and Services, Proprietary Products, Non-Proprietary Products, and other products, equipment, services, supplies, and merchandise, from Franchisor and its Affiliates, and that Franchisor and its Affiliates may derive revenue, profits, and other benefits from purchases Franchisor requires Franchisee to make from Franchisor and such Affiliates. Franchisee acknowledges and agrees that all such revenue and other benefits shall be the sole and exclusive property of Franchisor and its Affiliates.

23.2 Business Risks. Franchisee represents and warrants that Franchisee has conducted an independent investigation of the business contemplated by this Agreement, recognizes that it involves

business risks, and recognizes that making a success of the Franchised Business depends largely on Franchisee's own business abilities.

23.3 Delivery of Franchise Disclosure Document and Agreements. Franchisee, for itself and Principals, acknowledges and agrees that:

(i) Franchisee received Franchisor's Franchise Disclosure Document at least 14 days before Franchisee signed a binding agreement with Franchisor or paid to Franchisor any consideration for the franchise.

(ii) Franchisee received complete copies of this Agreement and all other agreements with all blanks filled in, at least seven days before Franchisee signed them.

(iii) No Franchisor employee, and no other person speaking on Franchisor's behalf, made any representation, commitment, claim, or statement to Franchisee or Principals that was different from, or that was contrary to, any of the representations, commitments, claims, or statements contained in the FDD, this Franchise Agreement, or the other agreements Franchisee and Principals signed in connection with this Agreement.

(iv) No Franchisor employee, and no other person speaking on Franchisor's behalf: (i) made any oral, written, visual, or other representation, commitment, claim, or statement, that stated or suggested any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, or otherwise; or (ii) made any oral, written, visual, or other representation, commitment, claim, or statement from which any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, or otherwise might be ascertained, related to a franchise, that was different from, contrary to, or not contained in, the FDD, this Franchise Agreement, or the other agreements Franchisee and Principals signed in connection with this Agreement

23.4 Accuracy of Agreement. Franchisee represents to Franchisor that it has reviewed the information set forth in the Franchise Summary and all information set forth in such Franchise Summary is true, accurate, and complete. Franchisee further represents to Franchisor that: (i) it has reviewed the information set forth on Schedule A to this Agreement; (ii) its Principals as of the Effective Date of this Agreement are correctly set forth on Schedule A; (iii) the percentage of equity each Principal owns and holds is correctly set forth on Schedule A; and (iv) all other information set forth on Schedule A is true, accurate, and complete.

23.5 Patriot Act Certification. Franchisee hereby represents and warrants to Franchisor that neither Franchisee nor any of Franchisee's affiliates, nor any of Franchisee's or such affiliates' directors, officers, shareholders, partners, members, employees, or agents, nor any other direct or indirect holders of any interest in any of the foregoing: (i) are or have been listed on any Government Lists; (ii) are or have been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001), or any other similar prohibitions contained in the rules and regulations of OFAC or in any enabling legislation or other Presidential Executive Orders in respect thereof; or (iii) have been indicted for or convicted of any offenses under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended (the "USA Patriot Act"). As used in this Section 23.5, the following definitions shall apply: "**Government Lists**" means any of the following lists: (a) the "Specially Designated Nationals and Blocked Persons List" maintained by OFAC; (b) any other list of terrorists, terrorist organizations, or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC; or (c) any similar list maintained by the United States Department of State, the United States Department of Commerce, or any other governmental authority, or pursuant to any Executive Order of the President of the United States of America. "**OFAC**" means the Office of Foreign Assets Control, United States Department of the Treasury, or any successor office or agency.

## 24. CONSTRUCTION

24.1 Reasonable Business Judgment. Franchisor will, and Franchisee acknowledges and agrees that Franchisor may, use Reasonable Business Judgment in the exercise of Franchisor's rights, discharge of Franchisor's obligations, and exercise of Franchisor's discretion under this Agreement, and in all circumstances where Franchisor is required to give its consent, unless this Agreement expressly provides some other standard. "**Reasonable Business Judgment**" shall mean that Franchisor's determinations and choices shall prevail, even if other alternatives are also reasonable or arguably preferable, if Franchisor intends to benefit, or is acting in a way that could benefit, the System (by, for example, enhancing the value of the Marks, increasing franchisee or guest satisfaction, or increasing Franchisor's financial strength); or if Franchisor intends to prevent harm to, or is acting in a way that could prevent harm to, the System (by, for example, minimizing possible confusion as to the Marks or the location of any restaurant, protecting the public, or protecting Franchisee's or its personnel). Franchisee agrees to this concept of Reasonable Business Judgment in acknowledgment of the fact that Franchisor should have at least as much discretion in administering the System as a corporate board of directors has in directing a corporation and because the long-term interests of the System, all franchisees and owners of franchised businesses in the System, and Franchisor and Franchisor's owners, taken together, require that Franchisor have the latitude to exercise Reasonable Business Judgment. Franchisor shall not be required to consider a franchisee's particular economic or other circumstances or to slight Franchisor's own economic or other business interests when Franchisor exercises Reasonable Business Judgment. Franchisee acknowledges and agrees that: (i) Franchisor has a legitimate interest in seeking to maximize the return to Franchisor equity holders; and (ii) the fact that Franchisor benefits economically from an action shall not be relevant to showing that Franchisor did not exercise Reasonable Business Judgment. Neither Franchisee nor any third party (including any court, mediator, master, or other party acting as trier of fact or law) may substitute his, her, or its judgment for Franchisor's Reasonable Business Judgment. In a given situation, Franchisee shall have the burden of establishing, by clear and convincing proof, that Franchisor failed to exercise Reasonable Business Judgment.

24.2 Time is of the Essence. Time is of the essence to the performance of all obligations of the parties to be performed under this Agreement.

24.3 Merger; Entire Agreement. This Agreement, including the schedules, exhibits, addenda, and attachments to this Agreement, is a complete integration that sets forth the entire agreement between Franchisee and Franchisor, fully superseding any and all prior negotiations, agreements, representations, and understandings between Franchisee and Franchisor, whether oral or written, related to the subject matter of this Agreement. Franchisee and Franchisor hereby expressly agree that there are no other oral or written agreements, "side-deals," arrangements, or understandings between Franchisee and Franchisor except as expressly set forth in this Agreement. No course of dealing, whether occurring before or after the Effective Date of this Agreement, shall operate to amend, modify, terminate, or waive any express written provision of this Agreement. Nothing in this Agreement or in any related agreement is intended to disclaim representations made in the franchise disclosure document that Franchisor delivered to Franchisee prior to the Effective Date of this Agreement.

24.4 Amendments to Agreement. Except as otherwise expressly set forth in this Agreement, this Agreement may be amended only by a written agreement signed by each party.

24.5 Successors. Subject to the restrictions on transfer set forth in Article 18 of this Agreement, this Agreement shall be binding on, and shall inure to the benefit of, the successors, assigns, heirs, and personal representatives of the parties.

24.6 No Implied Covenant. Each party has negotiated the provisions of this Agreement and agree that neither party will claim the existence of an implied covenant of good faith and fair dealing to contravene or limit any express written provision of this Agreement.

24.7 Partial Invalidity. If any provision of this Agreement is declared invalid or unenforceable by a court having jurisdiction over the parties and the subject matter, such provision shall be modified to the minimum extent necessary to make it valid and enforceable; and if it cannot be so modified, then severed. The balance of the Agreement shall remain in full force and effect, and the parties agree that they would have signed this Agreement as so modified.

24.8 Interpretation. The Recitals shall be construed as a material and enforceable part of this Agreement for all purposes. Section headings are inserted for convenience only and shall not affect the meaning or construction of this Agreement. Except as otherwise set forth in this Agreement, the language of this Agreement shall be construed according to its fair meaning and not strictly for or against either party. Both parties are skilled and experienced business professionals, and both have contributed to the negotiation and drafting of this Agreement. As a result, in no event may any adverse construction of this Agreement be attributed to either party as the drafting party. Words importing the singular number shall include the plural and vice-versa, and words importing the masculine gender shall include the feminine and neuter genders and vice-versa. The word “including” means including, without limiting the scope of any preceding provisions. References to documents, instruments, or agreements shall be deemed to refer as well to all schedules, exhibits, addenda, attachments, and amendments thereto.

24.9 Survival of Obligations. All obligations that expressly or by their nature require performance after the termination or expiration of this Agreement, or that by their nature would reasonably be expected to continue in effect after termination or expiration of this Agreement shall continue in full force and effect after and notwithstanding this Agreement’s termination or expiration, until they are satisfied in full or by their nature expire.

IN WITNESS WHEREOF, the parties to this Agreement, intending to be legally bound hereby, have duly executed and delivered this Agreement as of the Effective Date.

**FRANCHISOR:**

**FRANCHISEE:**

BENNIGAN’S FRANCHISING COMPANY, LLC

By: \_\_\_\_\_  
Paul M. Mangiamele  
President and Chief Executive Officer

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

**Schedule A**  
**Bennigan's Franchising Company, LLC**  
**Franchise Agreement**

**Key Terms**

1. **Development Area.**

Franchisee's Development Area is that area located within the following borders:

2. **Approved Location of Restaurant.**

The Approved Location is the following address:

STREET ADDRESS	TELEPHONE NUMBER	FACSIMILE NUMBER
STREET ADDRESS		
CITY, STATE, ZIP CODE		

3. **Territory**

The Territory is that area comprised within a \_\_\_\_\_-mile radius of the front door of the Restaurant, excluding any Nontraditional Locations in such area.

4. **Ownership.** Name and address of each of Franchisee's Principals, and percentage of equity each such Principal owns or holds:

Percent of Equity Owned or Held: _____%	Percent of Equity Owned or Held: _____%

**Schedule B**  
**Bennigan's Franchising Company, LLC**  
**Franchise Agreement**

**State Addenda**

**Bennigan’s Franchising Company, LLC**  
**Addendum to Franchise Agreement for the Commonwealth of Virginia**

1. The Virginia State Corporation Commission’s Division of Securities and Retail Franchising requires us to defer payment of the initial franchise fee and other initial payments owed by franchisees to franchisor until the franchisor has completed its pre-opening obligations under the Franchise Agreement.
2. To the extent the terms or conditions of this Addendum are deemed to be inconsistent with any terms or conditions of the Franchise Agreement or the exhibits attached to the Franchise Agreement, the terms and conditions of this Addendum will govern. All other terms and conditions of the Franchise Agreement will remain the same.
3. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of Virginia law applicable to the provisions are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met.

IN WITNESS WHEREOF, the parties to this Addendum, intending to be legally bound hereby, have duly executed and delivered this Addendum as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**FRANCHISOR:**

**FRANCHISEE:**

BENNIGAN’S FRANCHISING COMPANY, LLC

By: \_\_\_\_\_  
Paul M. Mangiamele  
President and Chief Executive Officer

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

**Schedule C**  
**Bennigan’s Franchising Company, LLC**  
**Franchise Agreement**

**Option Addendum**

THIS OPTION ADDENDUM (the “**Option Addendum**”) is made and entered into the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the “**Effective Date**”), by and between BENNIGAN’S FRANCHISING COMPANY, LLC, a Delaware limited liability company (“**Franchisor**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**Franchisee**”).

**Recitals**

A. Franchisor is the franchisor and Franchisee is the franchisee under that certain franchise agreement between Franchisee and Franchisor of even date with this Option Addendum for the operation of a \_\_\_\_\_ brand of restaurant (such franchise agreement, together with all schedules, exhibits, addenda, attachments, and amendments to it, being referred to collectively in this Option Addendum as the “**Franchise Agreement**”).

B. Franchisee and Franchisor mutually desire to enter into this Option Addendum, to grant Franchisee the right to develop, open, and operate the additional restaurants of the same brand (the “**Additional Restaurants**”) set forth in the table contained in Section 4 of this Option Addendum (the “**Development Schedule**”) under the Franchise Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and commitments set forth in this Option Addendum, and in further consideration of the Franchise Agreement and the mutual promises and commitments set forth therein, and for other good and valuable consideration, the receipt and sufficiency of all of which the parties hereby acknowledge, the parties to this Option Addendum hereby agree as follows:

1. **Grant of Option to Develop, Open, and Operate Additional Restaurants.**

1.1 Franchisor hereby grants to Franchisee, and Franchisee hereby accepts from Franchisor, the option to develop, open, and operate the Additional Restaurants set forth in the Development Schedule, within the territory set forth on Exhibit A to this Option Addendum (the “**Option Territory**”), under the Franchise Agreement, as set forth in the Franchise Agreement and this Option Addendum (collectively, the “**Option**”). The Option granted hereunder shall expire upon (i) exercise of the last Option right granted hereunder, or (ii) termination or expiration (without renewal) of the Franchise Agreement, whichever is first to occur.

2. **Option Deposit.** Franchisee will pay Franchisor a deposit (the “**Option Deposit**”) in the amount set forth in the Franchise Summary of the Franchise Agreement for each Additional Restaurant set forth in the Development Schedule, contemporaneously with Franchisee’s delivery of this Option Addendum, executed by Franchisee, to Franchisor. All Option Deposits that Franchisee is obligated to pay Franchisor under this Option Addendum shall be deemed fully earned and nonrefundable on Franchisor’s execution of this Option Addendum, in consideration of Franchisor’s grant of the rights set forth in this Option Addendum, Franchisor’s costs and expenses related to this Option Addendum, and otherwise.

3. **Option Fee.** Franchisee will pay Franchisor a fee (the “**Option Fee**”) in the amount set forth in the Franchise Summary of the Franchise Agreement for each Option that Franchisee exercises pursuant to this Option Addendum, contemporaneously with Franchisee’s exercise of such Option, as set forth in Section 6.1 of this Option Addendum.

4. **Time Periods.** The Option to develop, open, and operate each Additional Restaurant shown in the Development Schedule may be exercised by Franchisee only within the Latest Exercise Date that applies to such Option, which Latest Exercise Date is shown in the Development Schedule as follows:

Development Schedule		
Additional Restaurant No.	Latest Exercise Date (On or Before)	Latest Opening Date (On or Before)
1		
2		
3		
4		
5		

5. **Option Territory.** The site of any Additional Restaurant as to which Franchisee exercises an Option must be within the Option Territory.

6. **Exercise of Option.**

6.1 To exercise an Option, Franchisee must deliver to Franchisor: (i) written notice that Franchisee is exercising the Option, with a description of the proposed site for the Additional Restaurant; and (ii) the Option Fee for such Option. Promptly upon receipt of such notice and payment, Franchisor shall deliver to Franchisee an executable form of franchise agreement for such Additional Restaurant. The franchise agreement shall contain the same terms as the current Franchise Agreement, and the Approved Location and Territory will be determined in accordance with the terms thereof.

6.2. If Franchisee fails to exercise any Option by the Latest Exercise Date that applies to such Option, or if Franchisee fails to open any Additional Restaurant by the Latest Opening Date that applies to such Option, or if Franchisee fails to perform any other act set forth in Article 6 of this Option Addendum by the date required: (i) such failure shall be conclusively deemed to be an election by Franchisee not to exercise any of Franchisee’s remaining Option rights set forth in this Option Addendum; (ii) all of Franchisee’s rights set forth in this Option Addendum shall expire automatically and without further notice; and (iii) Franchisor shall have the right to retain all Option Deposits and Option Fees that Franchisee paid.

7. **Conditions Precedent to Exercise of Option.**

7.1 Franchisee’s right to exercise an Option to develop, open, and operate an Additional Restaurant pursuant to this Option Addendum is expressly subject to Franchisee’s satisfaction of the following conditions precedent: at the time Franchisee desires to exercise any such Option, Franchisee and its Affiliates must be in compliance with all provisions of the Franchise Agreement and all other agreements to which Franchisor or any of its Affiliates on the one hand, and Franchisee or any of Franchisee’s Affiliates on the other hand, are parties, and Franchisee and Franchisee’s Affiliates must have substantially complied with their obligations under such agreements during the terms thereof.

7.2 If the Franchise Agreement is terminated or expires, the grant of rights set forth in Article 1 of this Option Addendum shall automatically terminate or expire simultaneously with such termination or expiration of the Franchise Agreement, and Franchisor shall have the right to retain all Option Deposits and Option Fees that Franchisee paid.

8. **Transfer of Interest.** In the event of a Transfer of the Franchise Agreement or the Franchise in compliance with the Franchise Agreement, this Option Addendum shall also be transferred to the permitted transferee. In the event of any purported Transfer of any Interest that does not comply with the Franchise Agreement, Franchisor shall have the right to terminate this Option Addendum on notice of such termination to Franchisee or the purported transferee, which termination shall be deemed to have occurred

on the date of such purported Transfer, the date of such notice, or such other date as Franchisor may reasonably specify.

9. **Waiver or Delay.** No waiver or delay by Franchisor in requiring strict compliance with any obligation of this Option Addendum, or in the exercise of any right or remedy provided in this Option Addendum, and no custom or practice at variance with the requirements of this Option Addendum: (i) shall constitute a waiver or modification of any such obligation, right, remedy, or requirement; (ii) shall preclude, affect, or impair the exercise of any such right or remedy; (iii) shall preclude, affect, or impair the right to require strict compliance with any obligation or requirement set forth in this Option Addendum; or (iv) shall preclude, affect, or impair enforcement of any obligation, right, remedy, or requirement provided in this Option Addendum with respect to any subsequent breach.

10. **Merger; Entire Agreement.** This Option Addendum, including the schedules, exhibits, addenda, and attachments to this Option Addendum, is a complete integration that sets forth the entire agreement between Franchisee and Franchisor, fully superseding any and all prior negotiations, agreements, representations, and understandings between Franchisee and Franchisor, whether oral or written, related to the subject matter of this Option Addendum. Franchisee and Franchisor hereby expressly agree that there are no other oral or written agreements, “side-deals,” arrangements, or understandings between Franchisee and Franchisor except as expressly set forth in this Option Addendum. No course of dealing, whether occurring before or after the Effective Date of this Option Addendum, shall operate to amend, modify, terminate, or waive any express written provision of this Option Addendum.

11. **Amendment to Option Addendum.** This Option Addendum may not be amended orally, but may be amended only by a written agreement signed by officers of the parties.

12. **Resolution of Disputes.** Any and all disputes arising out of or related to this Option Addendum, including any and all disputes arising out of or related to the making of this Option Addendum, shall be governed exclusively by the dispute resolution provisions contained in the Franchise Agreement, which provisions are hereby incorporated by this reference into this Option Addendum as if fully set forth herein.

13. **Miscellaneous.** Capitalized terms used but not otherwise defined in this Option Addendum shall have the same meanings as are ascribed to them in the Franchise Agreement. Any notice required or permitted to be given hereunder shall be in writing and shall be delivered exclusively in the manner set forth in the notices provisions of the Franchise Agreement, which provisions are hereby incorporated by this reference into this Option Addendum as if fully set forth herein. Time is of the essence to the exercise of all of Franchisee’s rights, and to the performance of all of Franchisee’s obligations, arising out of or related to this Option Addendum.

14. **Submission of Option Addendum.** Submission of this Option Addendum to Franchisee does not constitute an offer to enter into a contract. This Option Addendum shall not be binding on Franchisor until it has been signed by an officer of Franchisor and has been delivered to Franchisee.

IN WITNESS WHEREOF, the parties to this Option Addendum, intending to be legally bound by this Option Addendum, have duly executed and delivered this Option Addendum as of the Effective Date.

**FRANCHISOR:**

**FRANCHISEE:**

BENNIGAN’S FRANCHISING COMPANY, LLC

By: \_\_\_\_\_  
Paul M. Mangiamele  
President and Chief Executive Officer

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

**Exhibit A to Option Addendum**  
**Optioned Franchise Territory**

1. **Option Territory.** Franchisee’s Option Territory shall be all that area within:

as the borders of such Option Territory are configured as of the Effective Date of this Option Addendum, less the exclusive territories of any Brand restaurants in such Option Territory.

2. **No Territorial Protection.** The parties acknowledge and agree that this Option Agreement provides no territorial protection within the Option Territory. Franchisor may develop, open, and operate, and may authorize others to develop, open, and operate, Brand restaurants in any part of the Option Territory that Franchisor deems appropriate, without payment of any compensation to Franchisee.

Accepted and agreed to as of the Effective Date of this Option Addendum.

**FRANCHISOR:**

**FRANCHISEE:**

BENNIGAN’S FRANCHISING COMPANY, LLC

By: \_\_\_\_\_  
Paul M. Mangiamele  
President and Chief Executive Officer

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

**Schedule D**  
**Bennigan’s Franchising Company, LLC**  
**Franchise Agreement**

**Personal Guaranty of Franchisee’s Principals**

THIS GUARANTY (the “**Guaranty**”) is made by the guarantors named on the signature pages of this Guaranty (whether one or more, the “**Guarantor**”) in favor of BENNIGAN’S FRANCHISING COMPANY, LLC, a Delaware limited liability company with its principal business address at 1600 S. Ocean Blvd., MPH 03, Lauderdale-by-the-Sea, FL 33062 (“**Franchisor**”).

**Recitals**

A. Franchisor, as franchisor, and \_\_\_\_\_ (the “**Franchisee**”), as franchisee, are entering into a franchise agreement for the operation of a \_\_\_\_\_ brand of restaurant (such franchise agreement, together with all schedules, exhibits, addenda, attachments, and amendments to it, being referred to collectively in this Guaranty as the “**Franchise Agreement**”) contemporaneously with Guarantor’s execution of this Guaranty and as a material part of the same transaction.

B. As an express condition precedent to Franchisor entering into the Franchise Agreement, Franchisor has required that Guarantor guaranty: (i) the payment and performance of all Monetary Covenants; and (ii) the performance of all Non-Monetary Covenants.

C. Guarantor is a Principal of Franchisee, and as such anticipates substantial material benefit from the transactions contemplated under and evidenced by the Franchise Agreement and any and all other agreements related to the Franchise Agreement or the Franchised Business (the Franchise Agreement and such other agreements being referred to collectively in this Guaranty as the “**Agreements**”), and is therefore willing to execute this Guaranty.

D. Franchisor would not have entered into the Agreements without Guarantor’s guaranties and agreements set forth in this Guaranty, which guaranties and agreements Franchisor has relied on to its detriment.

NOW, THEREFORE, in consideration of the foregoing, and in further consideration of the Franchise Agreement and the mutual promises and commitments set forth therein, and in further consideration of Ten and No/100 Dollars (\$10.00) in-hand paid to Guarantor, and for other good and valuable consideration, the receipt and sufficiency of all of which Guarantor hereby acknowledges, Guarantor hereby agrees as follows:

1. **Definitions.**

1.1 “**Covenants**” means, collectively, the Monetary Covenants and Non-Monetary Covenants.

1.2 “**Monetary Covenants**” means any and all monetary covenants, warranties, representations, agreements, and obligations of Franchisee arising out of or related to the Franchise Agreement or any and all other agreements related to the Franchise Agreement or the Franchised Business, whether such monetary covenants, warranties, representations, agreements, and obligations were made or otherwise arose before or after the date Guarantor made this Guaranty.

1.3 “**Non-Monetary Covenants**” means any and all non-monetary covenants, warranties, representations, agreements, and obligations of Franchisee arising out of or related to the Franchise Agreement or any and all other agreements related to the Franchise Agreement or the Franchised Business, whether such non-monetary covenants, warranties, representations, agreements, and obligations were made or otherwise arose before or after the date Guarantor made this Guaranty.

1.4 Capitalized terms used but not otherwise defined in this Guaranty shall have the same meanings as are ascribed to them in the Franchise Agreement.

## 2. **Guaranty.**

2.1 Guarantor hereby guarantees the due and punctual payment and performance of all Monetary Covenants. On notice from Franchisor that Franchisee has failed to pay or perform any Monetary Covenant, Guarantor shall pay all amounts owed under any Monetary Covenant so that Franchisor actually receives the amounts owed within five days after demand for such payment.

2.2 Guarantor hereby guarantees the due and punctual performance of all Non-Monetary Covenants. Subject to Section 2.1 of this Guaranty, on notice from Franchisor that Franchisee has failed to perform any Non-Monetary Covenant, Guarantor shall immediately commence performing such Non-Monetary Covenant and shall thereafter use Guarantor's best efforts to immediately complete such performance to Franchisor reasonable satisfaction.

2.3 Guarantor agrees that, as to all Monetary Covenants, this Guaranty is a guaranty of payment and not of collection.

2.4 Guarantor agrees that the guaranties Guarantor is giving under this Guaranty: (i) are full, complete, continuing, absolute, unconditional, primary, and unlimited in amount; and (ii) specifically include amounts owed to Franchisor before the date Guarantor made this Guaranty, as well as amounts owed to Franchisor arising after the date Guarantor made this Guaranty.

2.5 Guarantor agrees that Franchisor may at any time, without impairing, releasing, or otherwise affecting in any way the obligations of Guarantor under this Guaranty, and without further notice to Guarantor, and without further consent of Guarantor:

(i) Add to, delete from, and modify in any respect the Franchise Agreement and any of the other Agreements, even if such additions, deletions, and modifications increase Guarantor's liability under this Guaranty;

(ii) Add additional agreements to the Agreements, even if such additional agreements increase Guarantor's liability under this Guaranty;

(iii) Extend or waive any time for Franchisee's or any other persons' and entities' performance of or compliance with any covenant, warranty, representation, agreement, or obligation to be performed or observed under the Agreements; or waive such performance or compliance; or consent to a failure of or departure from such performance or compliance; and

(iv) Release any person or other entity primarily or secondarily liable under the Franchise Agreement or the other Agreements, or under this Guaranty.

2.6 Guarantor hereby subordinates to the Covenants any and all obligations that Franchisee may owe to Guarantor; including those obligations that Franchisee may owe to Guarantor under any covenant, warranty, representation, agreement, contract, note, guaranty, accommodation, claim, action, or right of action, and any and all other obligations of Franchisee to Guarantor, however and whenever created, arising, or evidenced, whether direct or indirect, absolute or contingent or otherwise, and whether now due or to become due.

## 3. **Guaranties are Joint and Several; Guaranty is in Addition to Other Guaranties.**

3.1 If there is more than one guarantor of any or all of the obligations that arise out of or are related to the subject matter of this Guaranty, all of the terms, conditions, and obligations set forth in this Guaranty and such other guaranties shall be joint and several.

3.2 This Guaranty is in addition to any and all other guarantees related to the subject matter of this Guaranty. Such other guarantees are in addition to this Guaranty. In no event shall this Guaranty have

any effect on the scope or effectiveness of such other guaranties. In no event shall such other guaranties have any effect on the scope or effectiveness of this Guaranty.

3.3 If Franchisee fails to pay or perform any Monetary Covenant, or if Franchisee fails to perform any Non-Monetary Covenant, Franchisor may proceed directly against Guarantor without first proceeding against or notifying Franchisee or any other guarantor.

4. **Waivers by Guarantor.** Guarantor hereby waives:

4.1 Notice of breach of the Franchise Agreement or any of the other Agreements;

4.2 Notice of acceptance of this Guaranty, notice of settlement or compromise of differences, and notice of any arrangement or settlement made with Franchisee or with any other guarantor in or out of court; and

4.3 All rights Guarantor now has or in the future may have to compel Franchisor to proceed against any other party before proceeding against, or as a condition of proceeding against, Guarantor.

5. **No Waiver by Franchisor.** No delay or failure by Franchisor in the exercise of any right, power, or remedy related to this Guaranty shall operate as a waiver thereof, and no single or partial exercise by Franchisor of any right, power, or remedy shall preclude any further exercise thereof or the exercise of any other right, power, or remedy.

6. **Notices.**

6.1 All communications required or permitted to be given under this Guaranty shall be in writing and shall be deemed to have been duly given: (i) when delivered in person by the other party; (ii) one (1) business day after being sent by reputable commercial courier service for next business day delivery; (iii) five business days after being deposited in the United States mail for certified or registered delivery, return receipt requested, postage prepaid; or (iv) on the intended recipient's failure or refusal to accept delivery of any communication given pursuant to this Guaranty, which failure or refusal shall be deemed constructive delivery effective on the earlier of the date of such refusal or the dates set forth in Clauses (i) through (iii) of this Article 6. UPS, Federal Express, and any successors thereto shall conclusively be deemed "reputable commercial courier services." For the purposes of this Guaranty:

6.2 The address of Guarantor is set forth below his, her, or its signature at the end of this Guaranty.

6.3 The address of Franchisor is set forth in the caption of this Guaranty. Guarantor shall direct any communication it delivers to Franchisor under this Guaranty to the attention of Franchisor's President. Delivery of the copy as set forth in Section 6.1 of this Guaranty: (i) shall not constitute notice; and (ii) shall be an express condition precedent to the validity of any communication Guarantor delivers to Franchisor.

6.4 Either party may designate another address at any time by delivering written notice to the other in the manner set forth in this Article 6.

7. **Estate, Heirs, Personal Representatives, Successors, and Assigns.** The provisions of this Guaranty shall bind Guarantor and Guarantor's estate, heirs, personal representatives, successors, and assigns, and shall benefit Franchisor and its successors and assigns. Guarantor shall not assign this Guaranty without Franchisor's prior written consent.

8. **Dispute Resolution.**

8.1 **Governing Law.** All matters arising out of or related to this Guaranty, including all matters arising out of or related to the making, existence, construction, enforcement, and sufficiency of performance of this Guaranty, shall be determined exclusively in accordance with, and governed exclusively by, the laws of the State of Texas applicable to agreements made and to be entirely performed within the State of Texas, which laws shall prevail in the event of any conflict of laws.

8.2 Forum, Venue, and Jurisdiction. In the event of any dispute arising out of or related to this Guaranty, including any dispute arising out of or related to the making of this Guaranty, such dispute shall be resolved exclusively through litigation. The exclusive forum and venue for such litigation shall be a state or federal court having jurisdiction over the subject matter in or for the city or county where Franchisor's principal place of business is located. Guarantor hereby irrevocably accepts and submits to, generally and unconditionally, the exclusive jurisdiction of any such state or federal court, and hereby waives all defenses based on jurisdiction, venue, and forum non conveniens.

8.3 WAIVER OF TRIAL BY JURY. GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR RELATED TO THIS GUARANTY.

8.4 Costs and Attorneys' Fees. In the event of any dispute or litigation arising out of or related to this Guaranty, including any dispute or litigation arising out of or related to the making of this Guaranty, Guarantor shall reimburse, on demand, Franchisor's costs, including Franchisor's reasonable attorneys' fees and costs, and further including Franchisor's reasonable attorneys' fees and costs of appeal, and further including Franchisor's reasonable attorneys' fees and costs of collection, so that Franchisor actually receives such amounts within 10 days after demand therefor. In the event of any breach of this Guaranty, Guarantor shall pay Franchisor, on demand, Franchisor's costs arising out of or related to such breach, including Franchisor's reasonable attorneys' fees and costs, and further including Franchisor's reasonable attorneys' fees and costs of collection, so that Franchisor actually receives such amounts within 10 days after demand therefor.

## 9. Miscellaneous.

9.1 Continuity; No Release. This Guaranty and the obligations of Guarantor arising out of or related to this Guaranty shall remain in full force and effect after and notwithstanding: (i) the termination, expiration, or transfer of the Franchise Agreement or any of the other Agreements; (ii) the transfer of Guarantor's equity in Franchisee; (iii) the termination or expiration of Guarantor's relationship with Franchisee; (iv) the dissolution of existence or termination of operation of Franchisee; (v) the death of Guarantor; or (vi) any other event or occurrence.

9.2 Construe In Favor of Enforcement. In the event of any dispute, litigation, or like event or occurrence arising out of or related to this Guaranty, Guarantor hereby directs any third party construing this Guaranty, including any court, mediator, master, or other party acting as trier of fact or law, to construe the provisions of this Guaranty broadly in favor of enforcement.

9.3 Merger; Entire Agreement, Compliance. This Guaranty is a complete integration that sets forth the entire agreement between Franchisor and Guarantor, fully superseding any and all prior negotiations, agreements, representations, or understandings between Franchisor and Guarantor, whether oral or written, related to the subject matter of this Guaranty. Guarantor hereby expressly affirms that there are no oral or written agreements, "side-deals," arrangements, or understandings between Franchisor and Guarantor except as expressly set forth in this Guaranty. No course of dealing, whether occurring before or after the date Guarantor made this Guaranty, shall operate to amend, terminate, or waive any express written provision of this Guaranty.

9.4 Interpretation. The word "including" means "including without limiting the scope or generality" of any word or words related thereto. References to agreements, documents, guaranties, and similar agreements and instruments shall be deemed to refer as well to all schedules, exhibits, addenda, attachments, and amendments thereto.

9.5 Guarantor Is Not Beneficiary. Guarantor acknowledges and agrees that notwithstanding anything set forth in this Guaranty, the Franchise Agreement, or any other Agreement to the contrary: (i) all obligations Franchisor owes under the Franchise Agreement and any of the other Agreements are owed to Franchisee alone, and not to Guarantor; (ii) Guarantor shall not be entitled to rely on, enforce, or obtain

relief for breach of, any of Franchisor's obligations arising out of or related to the Franchise Agreement or any of the other Agreements, whether directly, indirectly, by subrogation, as an intended third-party beneficiary, or otherwise; and (iii) Guarantor will not make or raise any claim, counterclaim, crossclaim, affirmative defense, or demand, that alleges, asserts, or otherwise raises, any matter contrary to Clause (i) or Clause (ii) of this Section 9.5.

9.6 Partial Invalidity. If any provision of this Guaranty is declared invalid or unenforceable by a court having jurisdiction over the parties and the subject matter, such provision shall be modified to the minimum extent necessary to make it valid and enforceable; and if it cannot be so modified, then severed. The balance of this Guaranty shall remain in full force and effect, and Guarantor agrees that he, she, or it would have signed this Guaranty as so modified.

9.7 Effect of Recitals. The Recitals to this Guaranty shall be construed as a material and enforceable part of this Guaranty for all purposes, and shall in no event be considered prefatory language or mere surplusage.

9.8 Further Assurances. Guarantor hereby covenants, warrants, represents, and agrees that: (i) Guarantor will perform such acts and will execute and deliver such agreements and other documents to Franchisor as Franchisor may deem necessary or beneficial to effect the intent of this Guaranty; (ii) Guarantor will not condition the performance of such acts or the execution and delivery of such agreements and other documents; (iii) Guarantor will not delay the performance of such acts; and (iv) Guarantor will deliver such agreements and other documents, duly notarized if Franchisor requires that such agreements and other documents be notarized, to Franchisor so that Franchisor actually receives such agreements and other documents within 10 days after Franchisor delivers them to Guarantor for execution.

9.9 Date. The date shown beneath Guarantor's signature is for reference purposes only. If Guarantor does not date this Guaranty, Guarantor hereby grants Franchisor permission to enter the Effective Date of the Franchise Agreement in the space for such date, and Guarantor agrees that Guarantor shall be deemed to have given Franchisor this Guaranty as of the Effective Date of the Franchise Agreement. Guarantor's omission of the date, and Franchisor's entry of the date described in this Section 9.9, shall not impair, release, or otherwise affect in any way Guarantor's covenants, warranties, representations, agreements, and obligations set forth in, arising out of, or related to this Guaranty.

I, AS GUARANTOR ACKNOWLEDGE AND AGREE THAT I HAVE READ AND FULLY UNDERSTAND ALL OF THE PROVISIONS OF THIS GUARANTY. I HAVE HAD A FULL AND FAIR OPPORTUNITY TO CONSULT WITH AN ATTORNEY OF MY CHOOSING RELATED TO THIS GUARANTY, AND I HAVE EITHER DONE SO OR I HAVE KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY ELECTED NOT TO DO SO. I HAVE NOT RECEIVED, AND I AM NOT RELYING ON, ANY REPRESENTATION OR PROMISE BY FRANCHISOR OR ANY PERSON ACTING ON FRANCHISOR'S BEHALF ARISING OUT OF OR RELATED TO THIS GUARANTY, OTHER THAN THOSE THAT ARE EXPRESSLY SET FORTH IN THIS GUARANTY.

I, AS GUARANTOR, ACKNOWLEDGE, AGREE, AND REITERATE THAT, AS SET FORTH IN SECTION 2.4 OF THIS GUARANTY, THE GUARANTIES I AM GIVING UNDER THIS GUARANTY: (I) ARE FULL, COMPLETE, CONTINUING, ABSOLUTE, UNCONDITIONAL, PRIMARY, AND UNLIMITED IN AMOUNT; AND (II) SPECIFICALLY INCLUDE AMOUNTS OWED TO FRANCHISOR BEFORE THE DATE THAT I, AS GUARANTOR, MADE THIS GUARANTY, AS WELL AS AMOUNTS OWED TO FRANCHISOR ARISING AFTER THE DATE I MADE THIS GUARANTY.

I, AS GUARANTOR, ACKNOWLEDGE AND AGREE THAT I AM SIGNING THIS GUARANTY OF MY OWN FREE WILL AND VOLITION, AND WITHOUT ANY DURESS OR COERCION.

IN WITNESS WHEREOF, intending to be legally bound hereby, Guarantor has executed and

delivered this Guaranty as of the date set forth beneath his, her, or its signature:

\_\_\_\_\_  
Guarantor  
\_\_\_\_\_  
Print Name  
Date: \_\_\_\_\_, 20\_\_\_\_  
Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Guarantor  
\_\_\_\_\_  
Print Name  
Date: \_\_\_\_\_, 20\_\_\_\_  
Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Spousal Consent**

I am the spouse of the Guarantor indicated below. I hereby: (i) acknowledge and consent to the guaranty that my spouse gave in this Guaranty; and (ii) acknowledge and agree that such guaranty shall bind the assets of the marital estate of Guarantor and me to Guarantor’s performance of this Guaranty.

\_\_\_\_\_  
Name of Guarantor

\_\_\_\_\_  
Name of Guarantor

\_\_\_\_\_  
Name of Guarantor’s Spouse

\_\_\_\_\_  
Name of Guarantor’s Spouse

\_\_\_\_\_  
Signature of Guarantor’s Spouse

\_\_\_\_\_  
Signature of Guarantor’s Spouse

\_\_\_\_\_  
Name of Guarantor

\_\_\_\_\_  
Name of Guarantor

\_\_\_\_\_  
Name of Guarantor’s Spouse

\_\_\_\_\_  
Name of Guarantor’s Spouse

\_\_\_\_\_  
Signature of Guarantor’s Spouse

\_\_\_\_\_  
Signature of Guarantor’s Spouse

**Schedule E**  
**Bennigan’s Franchising Company, LLC**  
**Franchise Agreement**

**Confidentiality Agreement**

In accordance with the terms of this Confidentiality Agreement (“**Confidentiality Agreement**”) and in consideration of my being in a trusted position with the Franchisee, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, I hereby acknowledge and agree that:

A. I am an employee, independent contractor, or owner of \_\_\_\_\_ (“**Employer**”). Employer is a franchisee of Bennigan’s Franchising Company, LLC (“**Franchisor**”). The franchise relationship between Employer and Franchisor is shown in a franchise agreement (such franchise agreement, together with all schedules, exhibits, addenda, attachments, and amendments to it, being referred to collectively in this Agreement as the “**Franchise Agreement**”).

B. Franchisor owns a wide variety of Confidential Information and Trade Secrets. Franchisor is granting Employer access to its Confidential Information and Trade Secrets. Employer wants to grant me access to Franchisor Confidential Information and Trade Secrets. Franchisor will allow Employer to grant me access to its Confidential Information and Trade Secrets, subject to this Agreement.

C. Franchisor needs to secure the confidentiality of its Confidential Information and the secrecy of its Trade Secrets, and Franchisor needs to prevent others from competing unfairly against it, so that Franchisor legitimate interests, including: (i) the confidentiality of Franchisor’s Confidential Information; (ii) the secrecy of Franchisor’s Trade Secrets; (iii) the integrity of the System; (iv) Franchisor’s investment in the System; (v) the investment of Franchisor’s franchisees in their businesses; and (vi) the goodwill associated with the System, are protected. Having me sign this Agreement is one way Franchisor is protecting its legitimate interests.

D. I understand that Franchisor would not have entered into the Franchise Agreement with Employer unless Employer agreed to have personnel in positions like mine sign this Agreement, agree to be bound by it, and agree to comply with it.

E. I acknowledge and agree that I will receive good and valuable consideration for my entry into this Agreement, because without this Agreement: (i) Employer would not employ me, place me in my employment position, or allow me to be an owner of Employer; (ii) if I am already employed by Employer in a position that requires me to sign this Agreement and to comply with it, Employer would terminate my employment or remove me from my position; (iii) if am already an owner of Employer, Employer would require me to give up my ownership interests; and (iv) Franchisor would not permit Employer to disclose the Confidential Information and Trade Secrets to me.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of all of which I hereby acknowledge, I hereby covenant, warrant, represent, and agree as follows:

1. **Definitions.** As used in this Agreement:

1.1 **Confidential Information; Trade Secrets.**

(i) “**Confidential Information**” means any information related to Franchisor that Employer or Franchisor discloses to me that either Employer or Franchisor designates as confidential; or that, by its nature, Franchisor would reasonably expect me to hold in confidence or keep secret, whether such disclosure occurred before or after the date I made this Agreement. Without limiting the definition of “Confidential Information,” I agree that all of the following shall conclusively be deemed to be Confidential Information whether or not Employer or Franchisor designates them as such: (a) all information that

Employer or Franchisor has marked or designated as confidential; (b) Franchisor's Operations Manual, together with all similar directives and documentation; (c) Franchisor's training programs and the material contained in them; (d) Franchisor's rules, guidelines, standards, specifications, plans, programs, and procedures; (e) Franchisor's cost information; and (f) all other information that Employer or Franchisor provides to me in confidence, except where such information is a Trade Secret.

(ii) **"Trade Secret"** means information that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who may obtain economic value from its disclosure or use, whether I obtained such information before or after the date I made this Agreement. Without limiting the definition of "Trade Secrets," I agree that all of the following shall conclusively be deemed to be Trade Secrets whether or not Employer or Franchisor designates them as such: (a) all guest lists; (b) the contact information of such guests; (c) Franchisor's food and beverage recipes, lists of ingredients, preparation instructions, and serving instructions; (d) Franchisor's advertising, marketing, and public relations strategies; (e) Franchisor's marketing analyses; (f) products and services that Franchisor proposes to introduce, but that it has not yet introduced; and (g) Franchisor's expansion plans

(iii) The terms "Confidential Information" and "Trade Secrets" shall not include, regardless of the means of disclosure: (a) information generally known to the trade or the public at the time Employer or Franchisor discloses it to me; (b) information that becomes known to the trade or the public after Employer or Franchisor discloses it to me, unless it becomes known due to my breach of this Agreement; and (c) information that I can prove was known to me at the time Employer or Franchisor disclosed it to me. Notwithstanding the foregoing, I acknowledge and agree that although I may already know some of the information contained in the Confidential Information and Trade Secrets, and although some of the information may already be in the public domain, Franchisor has prepared compilations of such information at its considerable effort and expense, and as a result such compilations shall be "Confidential Information" or "Trade Secrets" even though I already knew them, or even though they were already in the public domain.

1.2 **"System"** means businesses and restaurants authorized to operate under Franchisor's trademarks, trade names, service marks, logotypes, other commercial symbols, and trade dress.

## 2. **Ownership; Acknowledgements; Protection; Modifications.**

2.1 **Ownership of Confidential Information and Trade Secrets.** I acknowledge and agree that: (i) Franchisor owns the Confidential Information and Trade Secrets; and (ii) the Confidential Information and Trade Secrets are and shall remain Franchisor's sole and exclusive property.

2.2 **Acknowledgments.** I acknowledge and agree that:

(i) The Confidential Information and Trade Secrets are expressly copyrighted by copyright notice and are hence protected under the U.S. Copyright Act, or they are unmarked works nonetheless protected under the U.S. Copyright Act.

(ii) The Confidential Information and Trade Secrets contain Franchisor's commercially valuable confidential information and trade secrets.

(iii) Franchisor has made and will continue to make substantial investment in the Confidential Information and Trade Secrets, which investment may be recouped only if Franchisor's rights set forth in this Agreement, Franchisor's rights established by law, and Franchisor's other rights arising out of or related to its intellectual property, are honored.

(iv) The Confidential Information and Trade Secrets are not, by definition, generally known in the trade; that they are beyond my present skill and experience; and that for me to develop such Confidential Information and Trade Secrets on my own would be expensive, time-consuming, and difficult.

(v) The Confidential Information and Trade Secrets would, if disclosed to a third party or used by me in breach of this Agreement, provide the third party or me with an unfair competitive advantage, and that they would be economically valuable to the third party or me in the development of a competing business and otherwise.

2.3 Protection of Confidential Information and Trade Secrets. In recognition of, acknowledgment of, and agreement with, the Recitals, Section 1, Section 2.1, and Section 2.2 of this Agreement, and in consideration of the consideration set forth in the Recitals and other provisions of this Agreement, I covenant, warrant, represent, and agree that:

(i) I will comply with this Agreement.

(ii) I will at all times use my best efforts to prevent unauthorized copying or disclosure of any and all Confidential Information and Trade Secrets.

(iii) At such time as I no longer have a legitimate need to know of the Confidential Information and Trade Secrets, or on termination or expiration of the Franchise Agreement, or at such earlier time as Franchisor may request, I will immediately return to Franchisor, or will destroy, as Franchisor may direct, any or all Confidential Information and Trade Secrets, all copies thereof, and all other tangible things containing information from or otherwise derived from such Confidential Information and Trade Secrets, then in my actual or constructive possession.

(iv) I will not, during the term of my employment or placement with Employer, or during the time when I hold any ownership interest in Employer, or at any time thereafter:

(a) Appropriate, use, copy, duplicate, record, or otherwise reproduce all or any part of the Confidential Information or Trade Secrets for any purpose not directly and materially related to the operation of Employer's franchised business and Employer's franchised restaurants.

(b) Use any Confidential Information or Trade Secret at any place except Employer's franchised business and Employer's franchised restaurants.

(c) Disclose any of the Confidential Information or Trade Secrets to any person or other entity, other than to Employer's directors, officers, owners, management employees, and others who have a legitimate business need to know of them in order to further the operation of Employer's franchised business and Employer's franchised restaurants.

(v) I will not, at any time after the termination or expiration of my employment or placement with Employer for any reason, or at any time after I sell, transfer, or otherwise give up my ownership interest in Employer, or at any time after the termination or expiration of the Franchise Agreement: (a) appropriate, use, publish, copy, duplicate, record, or otherwise reproduce all or any part of the Confidential Information or Trade Secrets for any purpose; and (b) disclose any portion of the Confidential Information or Trade Secrets to any person or other entity.

2.4 Modifications to Form of Confidentiality Agreement. Franchisor may from time to time modify the form of confidentiality agreement that Franchisor requires individuals like me to sign. If Franchisor modifies such form, I will, on Employer's or Franchisor's request, duly execute, date, and deliver originals of such modified confidentiality agreement to Franchisor so that Franchisor actually receives such originals within 10 days after Employer or Franchisor delivers them to me for execution.

### 3. **Enforcement.**

3.1 Existence of Claims. I acknowledge and agree that the existence of any claims that I may have against Employer or Franchisor shall not constitute a defense to Franchisor enforcement of this Agreement.

3.2 Reasonable Efforts to Maintain Confidentiality and Secrecy. I acknowledge and agree that, and I hereby direct any third party construing this Agreement, including any court, mediator, master, or other party acting as trier of fact or law, to conclusively presume that, this Agreement is Franchisor's reasonable effort under the circumstances to maintain the confidentiality of its Confidential Information and the secrecy of its Trade Secrets.

#### 4. Remedies.

4.1 Conclusive Presumptions on Breach. I acknowledge and agree that, and I hereby direct any third party construing this Agreement, including any court, mediator, master, or other party acting as trier of fact or law, to conclusively presume that, any breach by me of Section 2.3 of this Agreement: (i) was accompanied by the misappropriation of Franchisor's Confidential Information, Trade Secrets, and other methods and procedures; (ii) was accompanied by the inevitable disclosure of Franchisor's Confidential Information, Trade Secrets, and other methods and procedures; (iii) shall constitute a deceptive and unfair trade practice; and (iv) shall constitute unfair competition.

4.2 Injunctive Relief. I acknowledge and agree that any breach by me of this Agreement will cause Franchisor great and irreparable harm for which Franchisor has no adequate remedy at law. Therefore, I acknowledge and agree that Franchisor will have the right to injunctive relief, including a decree for specific performance, to compel my compliance with this Agreement, without the necessity of showing actual or threatened damage and without being required to furnish a bond or other security.

4.3 Damages. I covenant, warrant, represent, and agree that in the event of any breach by me of this Agreement, I will pay Franchisor actual damages equal to: (i) the damage Franchisor suffered as a result of such breach; plus (ii) the loss of the benefit of the bargain that Franchisor would have received had I fully complied with this Agreement; plus (iii) such consequential, special, multiplied, enhanced, exemplary, and punitive damages as applicable law may permit; plus (iv) Franchisor's out-of-pocket costs and expenses; plus (v) such additional damages as Franchisor may demonstrate, so that Franchisor actually receives each such payment within 10 days after Franchisor's demand therefor.

#### 5. Dispute Resolution.

5.1 Governing Law. All matters arising out of or related to this Agreement, including all matters arising out of or related to the making, existence, construction, enforcement, and sufficiency of performance of this Agreement, shall be determined exclusively in accordance with, and governed exclusively by, the laws of the State of Texas applicable to agreements made and to be entirely performed within the State of Texas, which laws shall prevail in the event of any conflict of laws.

5.2. Forum, Venue, and Jurisdiction. In the event of any dispute arising out of or related to this Agreement, including any dispute arising out of or related to the making of this Agreement, such dispute shall be resolved exclusively through litigation. The exclusive forum and venue for such litigation shall be a state or federal court having jurisdiction over the subject matter in or for the city or county where Franchisor's principal place of business is located. I hereby irrevocably accept and submit to, generally and unconditionally, the exclusive jurisdiction of any such state or federal court, and hereby waive all defenses based on jurisdiction, venue, and forum non conveniens.

5.3 WAIVER OF TRIAL BY JURY. I HEREBY WAIVE TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR RELATED TO THIS AGREEMENT.

5.4 Attorneys' Fees and Costs. In the event of any dispute or litigation arising out of or related to this Agreement, including any dispute or litigation arising out of or related to the making of this Agreement, I will pay to Franchisor, on demand, Franchisor's costs, including its reasonable attorneys' fees and costs, and further including its reasonable attorneys' fees and costs of appeal, and further including its reasonable attorneys' fees and costs of collection, so that Franchisor actually receives such amounts within 10 days after demand therefor. In the event of any breach of this Agreement, I will pay to Franchisor, on

demand, Franchisor's costs arising out of or related to such breach, including its reasonable attorneys' fees and costs, and further including its reasonable attorneys' fees and costs of collection, so that Franchisor actually receives such amounts within 10 days after demand therefor.

6. **Notices.**

6.1. I acknowledge and agree that all communications required or permitted to be given between Franchisor and me under this Agreement shall be in writing and shall be deemed to have been duly given: (i) when received in person by the other party; (ii) one (1) business day after being sent by reputable commercial courier service for next business day delivery; (iii) five business days after being deposited in the United States mail for certified or registered delivery, return receipt requested, postage prepaid; or (iv) on the intended recipient's failure or refusal to accept delivery of any communication given pursuant to this Agreement, which failure or refusal shall be deemed constructive delivery effective on the earlier of the date of such refusal or the dates set forth in Clauses (i) through (iii) of this Article 6. UPS, Federal Express, and any successors thereto shall conclusively be deemed "reputable commercial courier services." For the purposes of this Agreement:

6.2 My address is set forth beneath my signature at the end of this Agreement.

6.3 Franchisor's address is:

Bennigan's Franchising Company, LLC  
1600 S. Ocean Blvd.  
MPH 03  
Lauderdale-by-the-Sea, FL 33062

6.4 I will direct any communication I deliver to Franchisor to the attention of Franchisor's President. Either Franchisor or I may designate another address at any time by delivering written notice to the other in the manner set forth in this Article 6.

7. **Miscellaneous.**

7.1 **Works Made for Hire.** If Employer directs me to create works derived from any Confidential Information or Trade Secrets, such works shall be deemed works made for hire and Franchisor shall own all rights in and to such works.

7.2 **Continuity; No Release.** This Agreement and my obligations set forth in this Agreement shall remain in full force and effect after and notwithstanding: (i) the termination of my employment with Employer; (ii) the transfer of my ownership interest in Employer, whether such transfer is permitted or unpermitted; (iii) the dissolution of existence or termination of operation of Employer; (iv) the termination, expiration, or transfer of the Franchise Agreement; (v) the transfer of Employer's interest in the Franchise Agreement, whether such transfer is permitted or unpermitted; (vi) the termination of Employer's relationship with Franchisor; or (vii) any other event or occurrence.

7.3 **Construe In Favor of Enforcement.** In the event of any dispute, litigation, or like event or occurrence arising out of or related to this Agreement, I hereby direct any third party construing this Agreement, including any court, mediator, master, or other party acting as trier of fact or law, to construe the provisions of this Agreement broadly in favor of enforcement.

7.4 **Merger; Entire Agreement.** This Agreement is a complete integration that sets forth the entire agreement between Franchisor and me, fully superseding any and all prior negotiations, agreements, representations, and understandings between Franchisor and me, whether oral or written, related to the subject matter of this Agreement. I hereby expressly affirm that there are no oral or written agreements, "side-deals," arrangements, or understandings between Franchisor and me except as expressly set forth in this Agreement. No course of dealing, whether occurring before or after the date I made this Agreement, shall operate to amend, terminate, or waive any express written provision of this Agreement.

7.5 Interpretation. The word “including” means “including without limiting the scope or generality” of any word or words related thereto. References to agreements, documents, guaranties, and other agreements and instruments shall be deemed to refer as well to all schedules, exhibits, addenda, attachments, and amendments thereto. The Recitals to this Agreement shall be construed as a material and enforceable part of this Agreement for all purposes, and shall in no event be considered prefatory language or mere surplusage.

7.6 Partial Invalidity. If any provision of this Agreement is declared invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it valid and enforceable; and if it cannot be so modified, then severed. The balance of this Agreement shall remain in full force and effect, and I agree that I would have signed this Agreement as so modified.

7.7 Further Assurances. I hereby covenant, warrant, represent, and agree that: (i) I will perform such acts and will execute and deliver such agreements and other documents to Employer and Franchisor as Franchisor may deem necessary or beneficial to effect the intent of this Agreement; (ii) I will not condition the performance of such acts or the execution and delivery of such agreements and other documents; (iii) I will not delay the performance of such acts; and (iv) I will deliver such agreements and other documents, duly notarized if Franchisor requires that such agreements and other documents be notarized, to Employer or Franchisor so that Employer or Franchisor actually receives such agreements and other documents within 10 days after Employer or Franchisor delivers them to me for execution.

7.8 Successors and Assigns. This Agreement shall be binding on me and on my successors, heirs, and assigns.

7.9 I Am Not a Beneficiary. I acknowledge and agree that notwithstanding anything set forth in this Agreement or any other agreement to the contrary: (i) all obligations Franchisor owes are owed to Employer alone, and not to me; (ii) I shall not be entitled to rely on, enforce, or obtain relief for breach of, any of Franchisor’s obligations arising out of or related to any agreement, whether directly, indirectly, by subrogation, as an intended third-party beneficiary, or otherwise; and (iii) I will not make or raise any claim, counterclaim, crossclaim, affirmative defense, or demand, that alleges, asserts, or otherwise raises any matter contrary to Clause (i) or Clause (ii) of this Section 7.9.

7.10 This is Not a Contract of Employment. I acknowledge and agree that this Agreement is not a contract of employment.

7.11 Date. If I do not date this Agreement in the space provided for the date beneath my signature: (i) such failure by me shall have no effect on the effectiveness of this Agreement; and (ii) Franchisor may, if it desires to do so, enter such date as Franchisor reasonably deems appropriate.

I ACKNOWLEDGE AND AGREE THAT I HAVE READ AND FULLY UNDERSTAND ALL OF THE PROVISIONS OF THIS AGREEMENT. I HAVE HAD A FULL AND FAIR OPPORTUNITY TO CONSULT WITH AN ATTORNEY OF MY CHOOSING RELATED TO THIS AGREEMENT, AND I HAVE EITHER DONE SO OR I HAVE KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY ELECTED NOT TO DO SO. I HAVE NOT RECEIVED, AND I AM NOT RELYING ON, ANY REPRESENTATION OR PROMISE BY FRANCHISOR, OR ANY PERSON ACTING ON FRANCHISOR’S BEHALF, ARISING OUT OF OR RELATED TO THIS AGREEMENT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT.

I ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT SPECIFICALLY APPLIES TO CONFIDENTIAL INFORMATION AND TRADE SECRETS THAT I RECEIVED BEFORE THE DATE THAT I MADE THIS AGREEMENT, AS WELL AS CONFIDENTIAL INFORMATION AND TRADE SECRETS THAT I RECEIVED AFTER THE DATE THAT I MADE THIS AGREEMENT.

I ACKNOWLEDGE AND AGREE THAT I AM SIGNING THIS AGREEMENT OF MY OWN FREE WILL AND VOLITION, AND WITHOUT ANY DURESS OR COERCION.

IN WITNESS WHEREOF, intending to be legally bound by this Agreement, I have duly executed and delivered this Agreement:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Date: \_\_\_\_\_, 20\_\_\_\_

Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Date: \_\_\_\_\_, 20\_\_\_\_

Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Date: \_\_\_\_\_, 20\_\_\_\_

Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Date: \_\_\_\_\_, 20\_\_\_\_

Address:  
\_\_\_\_\_  
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\_\_\_\_\_

**Schedule F**  
**Bennigan’s Franchising Company, LLC**  
**Franchise Agreement**

**Covenant Not to Compete Agreement**

In accordance with the terms of this Covenant Not to Compete Agreement (“**Covenant**”) and in consideration of my being in a trusted position with the Franchisee, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, I hereby acknowledge and agree that:

A. I am a \_\_\_\_\_ of \_\_\_\_\_ (“**Franchisee**”). Franchisee is a franchisee of Bennigan’s Franchising Company, LLC (“**Franchisor**”), operating a restaurant associated with the “\_\_\_\_\_” brand (the “**Brand**”). The franchise relationship between Franchisee and Franchisor is shown in a franchise agreement (such franchise agreement, together with all schedules, exhibits, addenda, attachments, and amendments to it, being referred to collectively in this Covenant as the “**Franchise Agreement**”).

B. Franchisor owns a wide variety of confidential information and trade secrets. Franchisor is granting Franchisee access to its confidential information and trade secrets. Franchisee wants to grant me access to Franchisor confidential information and trade secrets. Franchisor will allow Franchisee to grant me access to its confidential information and trade secrets, subject to this Covenant.

C. Franchisor needs to secure the confidentiality of its confidential information and the secrecy of its trade secrets, and Franchisor needs to prevent others from competing unfairly against it, so that Franchisor legitimate interests, including: (i) the confidentiality of Franchisor’s confidential information; (ii) the secrecy of Franchisor’s trade secrets; (iii) the integrity of the System (as defined in Section 1.3 of this Covenant); (iv) Franchisor’s investment in the System; (v) the investment of Franchisor’s franchisees in their businesses; and (vi) the goodwill associated with the System, are protected. Having me sign this Covenant is one way Franchisor is protecting its legitimate interests.

D. Franchisor would not have entered into the Franchise Agreement with Franchisee unless Franchisee agreed to have individuals in positions like mine sign this Covenant, agree to be bound by it, and agree to comply with it.

E. I acknowledge and agree that I will receive good and valuable consideration for my entry into this Covenant.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of all of which I hereby acknowledge, I hereby covenant, warrant, represent, and agree as follows:

1. **Definitions**. As used in this Covenant:

1.1 **Competing Activity**. “**Competing Activity**” means: (i) owning, maintaining, operating, engaging in, or having any interest in, any business that offers for sale, sells, or delivers products or services that are the same as or similar to the food, beverages, merchandise, and miscellaneous items that Franchisee offers for sale and sells through Franchisee’s restaurant, as such food, beverages, merchandise, and miscellaneous items are modified from time to time, or any product or service similar to the food, beverages, merchandise, and miscellaneous items that Franchisee offers for sale and sells through Franchisee’s restaurant, except where the business is another business that operates under an agreement between Franchisee on the one hand, and Franchisor or an affiliate of Franchisor on the other hand; (ii) acting as a director, officer, shareholder, partner, member, employee, independent contractor, consultant, principal, agent, or proprietor, or participating or assisting in the establishment or operation of, directly or indirectly, any business engaged in an activity set forth in Clause (i) of this Section 1.1; or (iii) diverting or attempting to divert any business from Franchisee’s restaurant, from Franchisor, or from any restaurants operating

under the franchise System or from other systems Franchisor or its affiliates may operate; and (iv) any activity similar to any of the activities described in Clauses (i), (ii), or (iii) of this Section 1.1.

1.2 Notwithstanding anything set forth in Section 1.1. of this Covenant to the contrary, the passive ownership or holding of less than five percent (5%) of the shares of any publicly-traded business that offers for sale, sells, or delivers products or services that are the same as or similar to the food, beverages, merchandise, and miscellaneous items that Franchisee offers for sale or sells through Franchisee's restaurant, as they may be modified from time to time, shall not be deemed to be a "Competing Activity."

1.3 "System" means businesses and restaurants authorized to operate under the brand trademarks, trade names, service marks, logotypes, other commercial symbols, and trade dress.

## 2. **Compliance; Covenants Not to Compete; Modifications to Covenant.**

2.1 Compliance. In recognition of, acknowledgment of, and agreement with, the Recitals and Section 1 of this Covenant, and in consideration of the consideration set forth in the Recitals and other provisions of this Covenant, I covenant, warrant, represent, and agree that I will comply with this Covenant.

### 2.2 Covenants Not to Compete.

(i) Covenant Not to Compete During Term of My Association. I covenant, warrant, represent, and agree that I will not, during the term of my association with Franchisee, or for as long as I own any interest in Franchisee, individually or jointly with others, directly or indirectly, by, through, on behalf of, or in conjunction with, any person or other entity, engage in a Competing Activity.

(ii) Covenant Not to Compete After Term of My Association. I covenant, warrant, represent, and agree that I will not, beginning with the date that I cease my association with Franchisee and continuing for two (2) years thereafter, or beginning with the date that I sell, transfer, or otherwise give up my ownership interest in Franchisee and continuing for two (2) years thereafter, or for two (2) years after the Franchise Agreement is terminated or expires, or for two (2) years after a court of competent jurisdiction enters an order enforcing this Covenant, whichever occurs last, directly or indirectly, by, through, on behalf of, or in conjunction with, any person or entity, engage in a Competing Activity, within a 10-mile radius surrounding the Restaurant or a 10-mile radius of any other restaurant associated with the same Brand.

2.3 Directives. If there is any dispute related to this Covenant, I hereby direct any third party construing this Covenant, including any court, mediator, master, or other party acting as trier of fact or law:

(i) To conclusively presume that the restrictions set forth in this Covenant are reasonable and necessary in order to protect the interests set forth in Recital C of this Covenant.

(ii) To conclusively presume that this Covenant was made freely and voluntarily by me, as a skilled and experienced business professional to whom Franchisor duly delivered good and valuable consideration.

(iii) To conclusively presume that the restrictions set forth in this Covenant will not unduly burden my ability to earn a livelihood.

(iv) To construe this Covenant under laws governing distribution contracts between commercial entities in an arms-length business transaction, and not under laws governing contracts of employment.

2.4 Modifications to Form of Covenant Not to Compete. Franchisor may from time to time modify the form of covenant not to compete that Franchisor requires individuals like me to sign. If Franchisor modifies such form, I will, on Franchisee's or Franchisor's request, duly execute, date, and deliver originals of such modified covenant not to compete to Franchisor so that Franchisor actually receives such originals within 10 days after Franchisee or Franchisor delivers them to me for execution.

### 3. **Enforcement.**

3.1 **Independent Covenants.** I acknowledge and agree that each of the covenants set forth in Section 2.2 of this Covenant shall be construed as independent of any other covenant or provision of this Covenant. If all or any portion of a covenant set forth in Section 2.2 of this Covenant is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision in a proceeding to which Franchisor is a party, I will be bound by any lesser covenant subsumed within the terms of such Covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of Section 2.2.

3.2 **Reduction in Scope of Covenants.** I acknowledge and agree that Franchisor shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in Section 2.2 of this Covenant, or any portion thereof, without my consent, effective immediately on Franchisor's delivery of written notice of such reduction to me, and I will be bound by any covenant as so modified.

3.3 **Existence of Claims.** I acknowledge and agree that the existence of any claims that I may have against Franchisee or Franchisor shall not constitute a defense to enforcement of this Covenant.

### 4. **Remedies.**

4.1 **Conclusive Presumptions on Breach.** I acknowledge and agree that, and I hereby direct any third party construing this Covenant, including any court, mediator, master, or other party acting as trier of fact or law, to conclusively presume that, any breach by me of Section 2.2 of this Covenant: (i) was accompanied by the misappropriation of Franchisor's confidential information, trade secrets, and other methods and procedures; (ii) was accompanied by the inevitable disclosure of Franchisor's confidential information, trade secrets, and other methods and procedures; (iii) shall constitute a deceptive and unfair trade practice; and (iv) shall constitute unfair competition.

4.2 **Injunctive Relief.** I acknowledge and agree that any breach by me of this Covenant will cause Franchisor great and irreparable harm for which Franchisor has no adequate remedy at law. Therefore, I acknowledge and agree that Franchisor will have the right to injunctive relief, including a decree for specific performance, to compel my compliance with this Covenant, without the necessity of showing actual or threatened damage and without being required to furnish a bond or other security.

4.3 **Damages.** I covenant, warrant, represent, and agree that in the event of any breach by me of this Covenant, I will pay Franchisor actual damages equal to: (i) the damage Franchisor suffered as a result of such breach; plus (ii) the loss of the benefit of the bargain that Franchisor would have received had I fully complied with this Covenant; plus (iii) such consequential, special, multiplied, enhanced, exemplary, and punitive damages as applicable law may permit; plus (iv) Franchisor's out-of-pocket costs and expenses; plus (v) such additional damages as Franchisor may demonstrate, so that Franchisor actually receives each such payment within 10 days after Franchisor's demand therefor.

### 5. **Dispute Resolution.**

5.1 **Governing Law.** All matters arising out of or related to this Covenant, including all matters arising out of or related to the making, existence, construction, enforcement, and sufficiency of performance of this Covenant, shall be determined exclusively in accordance with, and governed exclusively by, the laws of the State of Texas applicable to agreements made and to be entirely performed within the State of Texas, which laws shall prevail in the event of any conflict of laws.

5.2 **Forum, Venue, and Jurisdiction.** In the event of any dispute arising out of or related to this Covenant, including any dispute arising out of or related to the making of this Covenant, such dispute shall be resolved exclusively through litigation. The exclusive forum and venue for such litigation shall be a state or federal court having jurisdiction over the subject matter in or for the city or county where Franchisor's principal place of business is located. I hereby irrevocably accept and submit to, generally and

unconditionally, the exclusive jurisdiction of any such state or federal court, and hereby waive all defenses based on jurisdiction, venue, and forum non conveniens.

5.3 **WAIVER OF TRIAL BY JURY.** I HEREBY WAIVE TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR RELATED TO THIS COVENANT.

5.4 **Attorneys' Fees and Costs.** In the event of any dispute or litigation arising out of or related to this Covenant, including any dispute or litigation arising out of or related to the making of this Covenant, I will pay to Franchisor, on demand, Franchisor's costs, including its reasonable attorneys' fees and costs, and further including its reasonable attorneys' fees and costs of appeal, and further including its reasonable attorneys' fees and costs of collection, so that Franchisor actually receives such amounts within 10 days after demand therefor. In the event of any breach of this Covenant, I will pay to Franchisor, on demand, Franchisor's costs arising out of or related to such breach, including its reasonable attorneys' fees and costs, and further including its reasonable attorneys' fees and costs of collection, so that Franchisor actually receives such amounts within 10 days after demand therefor.

6. **Notices.**

6.1 I acknowledge and agree that all communications required or permitted to be given between Franchisor and me under this Covenant shall be in writing and shall be deemed to have been duly given: (i) when received in person by the other party; (ii) one (1) business day after being sent by reputable commercial courier service for next business day delivery; (iii) five business days after being deposited in the United States mail for certified or registered delivery, return receipt requested, postage prepaid; or (iv) on the intended recipient's failure or refusal to accept delivery of any communication given pursuant to this Covenant, which failure or refusal shall be deemed constructive delivery effective on the earlier of the date of such refusal or the dates set forth in Clauses (i) through (iii) of this Article 6. For the purposes of this Covenant:

6.2 My address is set forth beneath my signature at the end of this Covenant.

6.3 Franchisor's address is:

Bennigan's Franchising Company, LLC  
1600 S. Ocean Blvd.  
MPH 03  
Lauderdale-by-the-Sea, FL 33062

6.4 I will direct any communication I deliver to Franchisor to the attention of Franchisor's President. Either Franchisor or I may designate another address at any time by delivering written notice to the other in the manner set forth in this Article 6.

7. **Miscellaneous.**

7.1 **Continuity; No Release.** This Covenant and my obligations set forth in this Covenant shall remain in full force and effect after and notwithstanding: (i) the transfer of my ownership interest in Franchisee, whether such transfer is permitted or unpermitted; (ii) the dissolution of existence or termination of operation of Franchisee; (iv) the termination, expiration, or transfer of the Franchise Agreement; (v) the transfer of Franchisee's interest in the Franchise Agreement, whether such transfer is permitted or unpermitted; (vi) the termination of Franchisee's relationship with Franchisor; or (vii) any other event or occurrence.

7.2 **Construe In Favor of Enforcement.** In the event of any dispute, litigation, or like event or occurrence arising out of or related to this Covenant, I hereby direct any third party construing this Covenant, including any court, mediator, master, or other party acting as trier of fact or law, to construe the provisions of this Covenant broadly in favor of enforcement.

7.3 Merger; Entire Covenant. This Covenant is a complete integration that sets forth the entire agreement between Franchisor and me, fully superseding any and all prior negotiations, agreements, representations, and understandings between Franchisor and me, whether oral or written, related to the subject matter of this Covenant. I hereby expressly affirm that there are no oral or written agreements, “side-deals,” arrangements, or understandings between Franchisor and me except as expressly set forth in this Covenant. No course of dealing, whether occurring before or after the date I made this Covenant, shall operate to amend, terminate, or waive any express written provision of this Covenant.

7.4 Interpretation. The word “including” means “including without limiting the scope or generality” of any word or words related thereto. References to agreements, documents, guaranties, and other agreements and instruments shall be deemed to refer as well to all schedules, exhibits, addenda, attachments, and amendments thereto.

7.5 Partial Invalidity. If any provision of this Covenant is declared invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it valid and enforceable; and if it cannot be so modified, then severed. The balance of this Covenant shall remain in full force and effect, and I agree that I would have signed this Covenant as so modified.

7.6 Effect of Recitals. The Recitals to this Covenant shall be construed as a material and enforceable part of this Covenant for all purposes, and shall in no event be considered prefatory language or mere surplusage.

7.7 Further Assurances. I hereby covenant, warrant, represent, and agree that: (i) I will perform such acts and will execute and deliver such agreements and other documents to Franchisor as Franchisor may deem necessary or beneficial to effect the intent of this Covenant; (ii) I will not condition the performance of such acts or the execution and delivery of such agreements and other documents; (iii) I will not delay the performance of such acts; and (iv) I will deliver such agreements and other documents, duly notarized if Franchisor requires that such agreements and other documents be notarized, to Franchisee or Franchisor so that Franchisee or Franchisor actually receives such agreements and other documents within 10 days after Franchisee or Franchisor delivers them to me for execution.

7.8 Successors and Assigns. This Covenant shall be binding on me and on my successors, heirs, and assigns.

7.9 I Am Not a Beneficiary. I acknowledge and agree that notwithstanding anything set forth in this Covenant or any other agreement to the contrary: (i) all obligations Franchisor owes are owed to Franchisee alone, and not to me; (ii) I shall not be entitled to rely on, enforce, or obtain relief for breach of, any of Franchisor’s obligations arising out of or related to any agreement, whether directly, indirectly, by subrogation, as an intended third-party beneficiary, or otherwise; and (iii) I will not make or raise any claim, counterclaim, crossclaim, affirmative defense, or demand, that alleges, asserts, or otherwise raises any matter contrary to Clause (i) or Clause (ii) of this Section 7.9.

7.10 This is Not a Contract of Employment. I acknowledge and agree that this Covenant is not a contract of employment.

7.11 Date. If I do not date this Covenant in the space provided for the date beneath my signature: (i) such failure by me shall have no effect on the effectiveness of this Covenant; and (ii) Franchisor may, if it desires to do so, enter such date as Franchisor deems appropriate.

I ACKNOWLEDGE AND AGREE THAT I HAVE READ AND FULLY UNDERSTAND ALL OF THE PROVISIONS OF THIS COVENANT. I HAVE HAD A FULL AND FAIR OPPORTUNITY TO CONSULT WITH AN ATTORNEY OF MY CHOOSING RELATED TO THIS COVENANT, AND I HAVE EITHER DONE SO OR I HAVE KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY ELECTED NOT TO DO SO. I HAVE NOT RECEIVED, AND I AM NOT RELYING ON, ANY REPRESENTATION OR PROMISE BY FRANCHISOR, OR ANY PERSON ACTING ON

FRANCHISOR'S BEHALF, ARISING OUT OF OR RELATED TO THIS COVENANT, EXCEPT AS EXPRESSLY SET FORTH IN THIS COVENANT.

I FURTHER ACKNOWLEDGE AND AGREE THAT I AM SIGNING THIS COVENANT OF MY OWN FREE WILL AND VOLITION, AND WITHOUT ANY DURESS OR COERCION.

IN WITNESS WHEREOF, intending to be legally bound by this Covenant, I have duly executed and delivered this Covenant.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

Date: \_\_\_\_\_, 20\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Schedule G**  
**Bennigan’s Franchising Company, LLC**  
**Franchise Agreement**

**Telephone Numbers and Listings Agreement**

THIS AGREEMENT (the “**Agreement**”) is made and entered into the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the “**Effective Date**”), by and between BENNIGAN’S FRANCHISING COMPANY, LLC, a Delaware limited liability company (“**Franchisor**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**Franchisee**”).

**Recitals**

A. Franchisor and Franchisee are entering into a franchise agreement (such franchise agreement, together with all schedules, exhibits, addenda, attachments, and amendments to it, being referred to collectively in this Agreement as the “**Franchise Agreement**”) contemporaneously with and as a material part of the same transaction as this Agreement.

B. Franchisor would not enter into such Franchise Agreement without Franchisee’s agreement to enter into, be bound by, and comply with, this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and commitments set forth in this Agreement, and in further consideration of the Franchise Agreement and the mutual promises and commitments set forth therein, and for other good and valuable consideration, the receipt and sufficiency of all of which the parties hereby acknowledge, the parties hereby agree as follows:

1. **Definitions.**

1.1. “**Termination**” of the Franchise Agreement shall include, but shall not be limited to, the voluntary termination, involuntary termination, or natural expiration of the Franchise Agreement.

1.2 Capitalized terms used but not otherwise defined in this Agreement shall have the same meanings as are ascribed to them in the Franchise Agreement.

2. **Interest; Transfer; Appointment.**

2.1 **Interest in Telephone Numbers and Listings.** Franchisee has, or may acquire during the Term of the Franchise Agreement, various rights, titles, and interests in and to telephone numbers and regular, classified, online, and other telephone directory listings (collectively, the “**Telephone Numbers and Listings**”) related to Franchisee’s Franchised Business, the Restaurant, or the Marks (all of which rights, titles, and interests are referred to collectively in this Agreement as Franchisee’s “**Interest**”).

2.2 **Transfer.** On Termination of the Franchise Agreement:

(i) Franchisee shall immediately and without request therefor provide Franchisor with a full and complete written list and description of any and all Telephone Numbers and Listings; and

(ii) If Franchisor directs Franchisee to do so, Franchisee shall immediately direct all telephone companies, telephone directory publishers, telephone directory listing agencies, and online telephone number listing sites (collectively, the “**Telephone Companies**”) with which Franchisee has Telephone Numbers and Listings: (a) to transfer all of Franchisee’s Interest in such Telephone Numbers and Listings to Franchisor; and (b) to execute such documents and take such actions as may be necessary to effect such transfer. If Franchisor does not desire to accept any or all of such Telephone Numbers and Listings, Franchisee shall immediately direct the Telephone Companies to terminate such Telephone Numbers and Listings, or Franchisee shall take such other actions with respect to the Telephone Numbers and Listings as Franchisor may direct.

2.3 Appointment; Power of Attorney. Franchisee hereby constitutes and appoints Franchisor and any officer or agent of Franchisor, for Franchisor benefit under the Franchise Agreement and this Agreement or otherwise, with full power of substitution, as Franchisee's true and lawful attorney-in-fact with full power and authority in Franchisee's place and stead, and in Franchisee's name or the name of any affiliated person or affiliated company of Franchisee, on Termination of the Franchise Agreement, to take any and all appropriate action and to execute and deliver any and all documents that may be necessary or desirable to accomplish the purposes of this Agreement. Franchisee further agrees that this appointment constitutes a power coupled with an interest and is irrevocable until Franchisee has satisfied all Franchisee's obligations under the Franchise Agreement and any and all other agreements to which Franchisee and any of Franchisee's affiliates on the one hand, and Franchisor or any of Franchisor's affiliates on the other, are parties, including this Agreement. Without limiting the generality of the foregoing, Franchisee hereby grants to Franchisor the power and right to do the following:

(i) Direct the Telephone Companies to transfer all or any part of Franchisee's Interest in and to the Telephone Numbers and Listings to Franchisor or any third-party Franchisor designates;

(ii) Direct the Telephone Companies to terminate all or any part of the Telephone Numbers and Listings; and

(iii) Execute the Telephone Companies' standard assignment forms or other documents in order to effect such transfer or termination of Franchisee's Interest.

2.4 Certification of Termination. Franchisee hereby directs the Telephone Companies that they shall accept, as conclusive proof of Termination of the Franchise Agreement, Franchisor's written statement, signed by an officer or agent of Franchisor, that the Franchise Agreement has Terminated.

2.5 Cessation of Obligations. After the Telephone Companies have duly transferred all Franchisee's Interest in such Telephone Numbers and Listings to Franchisor, or after the Telephone Companies have duly terminated Franchisee's Interest in such Telephone Numbers and Listings, as between Franchisee and Franchisor, Franchisee will have no further Interest in, or obligations under, such Telephone Numbers and Listings. Notwithstanding the foregoing, Franchisee shall remain liable to each and all of the Telephone Companies for the sums Franchisee is obligated to pay such Telephone Companies for obligations Franchisee incurred before the date Franchisor duly accepted the transfer of such Interest, or for any other obligations not subject to the Franchise Agreement or this Agreement.

### 3. Miscellaneous.

3.1 Release. Franchisee hereby releases, remises, acquits, and forever discharges each and all of the Telephone Companies and each and all of their parent companies, subsidiaries, affiliates, directors, officers, shareholders, partners, members, employees, agents, and attorneys, and the predecessors, successors, heirs, and assigns of any and all of them, from and against any and all obligations, debts, claims, demands, rights, actions, causes of action, loss, losses, damage, damages, expenses, costs, liability, and liabilities of any nature or kind, contingent or fixed, known or unknown, at law or in equity or otherwise, arising out of, asserted in, assertable in, or in any way related to, this Agreement and the matters set forth in this Agreement.

3.2 Indemnification. Except as otherwise set forth in this Agreement, Franchisee is solely responsible for any and all costs and expenses related to Franchisee's performance, Franchisee's nonperformance, and Franchisor's enforcement of this Agreement, which costs and expenses Franchisee will pay to Franchisor in full, without defense or setoff, on demand. Franchisee agrees that its obligations set forth in this Agreement are within the Indemnification Obligations set forth in Section 17.1 of the Franchise Agreement.

3.3 No Duty. The powers conferred on Franchisor under this Agreement are solely to protect

Franchisor's interests and shall not impose on Franchisor any duty to exercise any such powers. In no event shall Franchisor be obligated to accept the transfer of any or all of Franchisee's Interest in any or all such Telephone Listings.

3.4 Further Assurances. Franchisee hereby covenants, warrants, represents, and agrees that: (i) it will perform such acts and will execute and deliver such agreements and other documents to Franchisor as Franchisor may deem necessary or beneficial to effect the intent of this Agreement; (ii) it will not condition the performance of such acts or the execution and delivery of such agreements and other documents; (iii) it will not delay the performance of such acts; and (iv) it will deliver such agreements and other documents, duly notarized if Franchisor requires that such agreements and other documents be notarized, to Franchisor so that Franchisor actually receives such agreements and other documents within 10 days after Franchisor delivers them to Franchisee.

3.5 Successors, Assigns, and Affiliates. All of Franchisor's rights and powers, and all of Franchisee's obligations, under this Agreement shall be binding on Franchisee's successors, assigns, and affiliated persons or entities as if they had duly executed this Agreement.

3.6 Guaranty. Franchisee's payment and performance obligations under this Agreement shall be within the scope of the Guaranty that Franchisee's Principals executed in connection with the Franchise Agreement.

3.7 Survival. This Agreement shall survive the Termination of the Franchise Agreement.

IN WITNESS WHEREOF, the parties to this Agreement, intending to be legally bound by this Agreement, have duly executed and delivered this Agreement as of the Effective Date.

**FRANCHISOR:**

**FRANCHISEE:**

BENNIGAN'S FRANCHISING COMPANY, LLC

By: \_\_\_\_\_  
Paul M. Mangiamele  
President and Chief Executive Officer

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

**Schedule H**  
**Bennigan’s Franchising Company, LLC**  
**Franchise Agreement**

**Internet Sites and Listings Agreement**

THIS AGREEMENT (the “**Agreement**”) is made and entered into the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the “**Effective Date**”), by and between BENNIGAN’S FRANCHISING COMPANY, LLC, a Delaware limited liability company (“**Franchisor**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**Franchisee**”).

**Recitals**

A. Franchisor and Franchisee are entering into a franchise agreement (such franchise agreement, together with all schedules, exhibits, addenda, attachments, and amendments to it, being referred to collectively in this Agreement as the “Franchise Agreement”) contemporaneously with and as a material part of the same transaction as this Agreement.

B. Franchisor would not enter into such Franchise Agreement without Franchisee’s agreement to enter into, be bound by, and comply with, this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and commitments set forth in this Agreement, and in further consideration of the Franchise Agreement and the mutual promises and commitments set forth therein, and for other good and valuable consideration, the receipt and sufficiency of all of which the parties hereby acknowledge, the parties hereby agree as follows:

1. **Definitions.**

1.1. “**Termination**” of the Franchise Agreement shall include, but shall not be limited to, the voluntary termination, involuntary termination, or natural expiration of the Franchise Agreement.

1.2 Capitalized terms used but not otherwise defined in this Agreement shall have the same meanings as are ascribed to them in the Franchise Agreement.

2. **Interest; Transfer; Appointment.**

2.1 **Interest in Internet Sites and Listings.** Franchisee has, or may acquire during the Term of the Franchise Agreement, various rights, titles, and interests in and to: (i) Internet domain names; (ii) Internet addresses; (iii) Social Media Site names; (iv) Social Media Site addresses; (v) user names; (vi) uniform resource locator (“**URL**”) addresses; (vii) access to corresponding Internet Sites; and (viii) the right to hyperlink to websites and listings via Internet search engines, social networking media, business networking media, and marketing media sites, applications, and platforms; all as modified and expanded from time to time as technology progresses and otherwise (collectively, the “**Internet Sites and Listings**”) related to Franchisee’s Franchised Business, the Restaurant, or the Marks (all of which rights, titles, and interests are referred to collectively in this Agreement as Franchisee’s “**Interest**”).

2.2 **Transfer.** On Termination of the Franchise Agreement:

(i) Franchisee shall immediately and without request therefor provide Franchisor with a full and complete written list and description of any and all Internet Sites and Listings; and

(ii) If Franchisor directs Franchisee to do so, Franchisee shall immediately direct all Internet service providers, domain name registries, Internet search engines, and other listing agencies (collectively, the “**Internet Companies**”) with which Franchisee has Internet Sites and Listings: (i) to transfer all of Franchisee’s Interest in such Internet Sites and Listings to Franchisor; and (ii) to execute such

documents and take such actions as may be necessary to effect such transfer. If Franchisor does not desire to accept any or all of such Internet Sites and Listings, Franchisee shall immediately direct the Internet Companies to terminate such Internet Sites and Listings, or Franchisee shall take such other actions with respect to the Internet Sites and Listings as Franchisor may direct.

2.3 Appointment; Power of Attorney. Franchisee hereby constitutes and appoints Franchisor and any officer or agent of Franchisor, for Franchisor's benefit under the Franchise Agreement and this Agreement or otherwise, with full power of substitution, as Franchisee's true and lawful attorney-in-fact with full power and authority in Franchisee's place and stead, and in Franchisee's name or the name of any affiliated person or affiliated company of Franchisee, on Termination of the Franchise Agreement, to take any and all appropriate action and to execute and deliver any and all documents that may be necessary or desirable to accomplish the purposes of this Agreement. Franchisee further agrees that this appointment constitutes a power coupled with an interest and is irrevocable until Franchisee has satisfied all Franchisee's obligations under the Franchise Agreement and any and all other agreements to which Franchisee and any of Franchisee's affiliates on the one hand, and Franchisor or any of Franchisor's affiliates on the other, are parties, including this Agreement. Without limiting the generality of the foregoing, Franchisee hereby grants to Franchisor the power and right to do the following:

- (i) Direct the Internet Companies to transfer all or any part of Franchisee's Interest in and to the Internet Sites and Listings to Franchisor or any third-party Franchisor designates;
- (ii) Direct the Internet Companies to terminate all or any part of the Internet Sites and Listings; and
- (iii) Execute the Internet Companies' standard assignment forms or other documents in order to effect such transfer or termination of Franchisee's Interest.

2.4 Certification of Termination. Franchisee hereby directs the Internet Companies that they shall accept, as conclusive proof of Termination of the Franchise Agreement, Franchisor's written statement, signed by an officer or agent of Franchisor, that the Franchise Agreement has Terminated.

2.5 Cessation of Obligations. After the Internet Companies have duly transferred all Franchisee's Interest in such Internet Sites and Listings to Franchisor, or after the Internet Companies have duly terminated Franchisee's Interest in such Internet Sites and Listings, as between Franchisee and Franchisor, Franchisee will have no further Interest in, or obligations under, such Internet Sites and Listings. Notwithstanding the foregoing, Franchisee shall remain liable to each and all of the Internet Companies for the sums Franchisee is obligated to pay such Internet Companies for obligations Franchisee incurred before the date of Franchisor's duly accepted the transfer of such Interest, or for any other obligations not subject to the Franchise Agreement or this Agreement.

### 3. Miscellaneous.

3.1 Release. Franchisee hereby releases, remises, acquits, and forever discharges each and all of the Internet Companies and each and all of their parent companies, subsidiaries, affiliates, directors, officers, shareholders, partners, members, employees, agents, and attorneys, and the predecessors, successors, heirs, and assigns of any and all of them, from and against any and all obligations, debts, claims, demands, rights, actions, causes of action, loss, losses, damage, damages, expenses, costs, liability, and liabilities of any nature or kind, contingent or fixed, known or unknown, at law or in equity or otherwise, arising out of, asserted in, assertable in, or in any way related to, this Agreement and the matters set forth in this Agreement.

3.2 Indemnification. Except as otherwise set forth in this Agreement, Franchisee is solely responsible for any and all costs and expenses related to Franchisee's performance, Franchisee's nonperformance, and Franchisor's enforcement of this Agreement, which costs and expenses Franchisee

will pay to Franchisor in full, without defense or setoff, on demand. Franchisee agrees that its obligations set forth in this Agreement are within the Indemnification Obligations set forth in the Franchise Agreement.

3.3 No Duty. The powers conferred on Franchisor under this Agreement are solely to protect Franchisor's interests and shall not impose on Franchisor any duty to exercise any such powers. In no event shall Franchisor be obligated to accept the transfer of any or all of Franchisee's Interest in any or all such Internet Sites and Listings.

3.4 Further Assurances. Franchisee hereby covenants, warrants, represents, and agrees that: (i) it will perform such acts and will execute and deliver such agreements and other documents to Franchisor as Franchisor may deem necessary or beneficial to effect the intent of this Agreement; (ii) it will not condition the performance of such acts or the execution and delivery of such agreements and other documents; (iii) it will not delay the performance of such acts; and (iv) it will deliver such agreements and other documents, duly notarized if Franchisor requires that such agreements and other documents be notarized, to Franchisor so that Franchisor actually receives such agreements and other documents within 10 days after Franchisor delivers them to Franchisee.

3.5 Successors, Assigns, and Affiliates. All of Franchisor's rights and powers, and all of Franchisee's obligations, under this Agreement shall be binding on Franchisee's successors, assigns, and affiliated persons or entities as if they had duly executed this Agreement.

3.6 Guaranty. Franchisee's payment and performance obligations under this Agreement shall be within the scope of the Guaranty that Franchisee's Principals executed in connection with the Franchise Agreement.

3.7 Survival. This Agreement shall survive the Termination of the Franchise Agreement.

IN WITNESS WHEREOF, the parties to this Agreement, intending to be legally bound by this Agreement, have duly executed and delivered this Agreement as of the Effective Date.

**FRANCHISOR:**

**FRANCHISEE:**

BENNIGAN'S FRANCHISING COMPANY, LLC

By: \_\_\_\_\_  
Paul M. Mangiamele  
President and Chief Executive Officer

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

**Schedule I  
Bennigan's Franchising Company, LLC  
Franchise Agreement**

**Automatic Debit Agreement Form**

**Authorization Agreement**

I hereby authorize Bennigan's Franchising Company, LLC ("Franchisor") to initiate automatic debits to my account at the financial institution named below. I also authorize Franchisor to make deposits to this account in the event that a debit entry is made in error.

Further, if I do not have enough money in my account to cover the transfer or if my Financial Institution for any other reason refuses to honor a transfer, I will be electronically debited an additional fee of \$35.00 as a returned item fee in accordance with the terms of my agreement.

**Payment Information**

Invoices will be prepared by Franchisor consistent with current practice and sent periodically to program participants for review. Invoiced amounts will be based upon data extracted by Franchisor from the Mirus Intelligence polling system. Participants not reporting sales via Mirus polling are required to report sales to Franchisor consistent with current practice for invoicing purposes. Participants who do not report sales to Franchisor by the invoice date will be invoiced based upon sales estimated solely at the discretion of Franchisor. Invoiced amounts including any corrected invoice amounts will be debited via ACH on the 10<sup>th</sup> day after the initial invoice is sent.

**Account Information**

Name of Financial Institution: \_\_\_\_\_

Routing Number: \_\_\_\_\_

Account Number: \_\_\_\_\_

Checking

Savings

**Signature**

Authorized Signature (Primary): \_\_\_\_\_ Date: \_\_\_\_\_

Authorized Signature (Joint): \_\_\_\_\_ Date: \_\_\_\_\_

**Please attach a voided check or deposit slip and return this form.**

**Schedule J**  
**Bennigan’s Franchising Company, LLC**  
**Franchise Agreement**

**Lease Rider**

**THIS LEASE RIDER (“Lease Rider”)** is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Bennigan’s Franchising Company, LLC (“**Company**”), \_\_\_\_\_ (“**Franchisee**”), and \_\_\_\_\_ (“**Landlord**”).

WHEREAS, Company and Franchisee are parties to a Franchise Agreement, which is dated \_\_\_\_\_, 20\_\_\_\_ (the “**Franchise Agreement**”), for the operation of a [**BENNIGAN’S or STEAK AND ALE**] Restaurant (the “**Restaurant**”); and

WHEREAS, Franchisee and Landlord propose to enter into the lease to which this Rider is attached (the “**Lease**”), pursuant to which Franchisee will occupy premises located at \_\_\_\_\_ (the “**Premises**”) for the purpose of constructing and operating the Restaurant in accordance with the Franchise Agreement; and

WHEREAS, Company has the right under the Franchise Agreement to require Franchisee to agree to the terms contained in this Lease Rider, and Landlord is willing to agree to the terms contained in this Lease Rider so that Company allows Franchisee to enter into the Lease.

NOW, THEREFORE, in consideration of Company’s willingness to allow Franchisee to enter the Lease with Landlord, and in consideration of the mutual undertakings and commitments set forth in this Rider and in the Franchise Agreement, the receipt and sufficiency of all of which the parties acknowledge, the parties agree as follows:

1. During the term of the Franchise Agreement, Franchisee shall be permitted to use the Premises for the operation of the Restaurant and for no other purpose.
2. Landlord consents to Franchisee’s installation and use of such trademarks, service marks, signs, decor items, color schemes, and related components of the franchise system as Company may from time to time prescribe for the Restaurant.
3. Landlord agrees to furnish Company with copies of all letters and notices it sends to Franchisee pertaining to the Lease and the Premises at the same time it sends such letters and notices to Franchisee. All notices to Company shall be sent to 1600 S. Ocean Blvd., MPH 03, Lauderdale-by-the-Sea, FL 33062, Attention: President, or to such other address of which Company notifies Landlord in writing from time to time. In case of a Notice of Default or a Default notice (pass any cure period), Landlord agrees to also provide Company electronic notice.
4. Company shall have the right, without being guilty of trespass or any other crime or tort, but has no obligation, to enter the Premises at any time and from time to time (i) to make any modification or alteration it considers necessary to protect the franchise system and marks, (ii) to cure any default under the Franchise Agreement or the Lease, or (iii) to remove the distinctive elements of Company’s trade dress upon the Franchise Agreement’s expiration or termination. Neither Company nor Landlord shall be responsible to Franchisee for any damages Franchisee might sustain as a result of any action Company takes in accordance with this provision. Company shall repair or reimburse Landlord for the cost of any damage to the Premises’ walls, floor, or ceiling that result from Company’s removal of trade dress items and other property from the Premises.

5. Landlord and Franchisee hereby agree that, upon Company’s request and at Company’s direction following the expiration or termination of the Franchise Agreement, Franchisee shall assign the Lease to Company or its Designee (the “**Permitted Transferee**”) and Landlord hereby consents to such an assignment and agrees not to impose any assignment fee or similar charge, or to increase or accelerate rent

under the Lease, in connection with such an assignment. The original Franchisee shall continue to guarantee the Lease. Landlord and Franchisee also agree that, following the expiration or termination of the Franchise Agreement but before Company requests an assignment of the Lease as referenced above, Company or its Designee may, upon Company's notice to Landlord and Franchisee, assume possession of the Premises for up to ninety (90) days, the specific amount of time to be determined by Company, during which Company or its Designee may operate the Restaurant to assess whether to request the Lease assignment referenced above. Company or its Designee shall comply with all Lease obligations that arise during its possession of the Premises but shall have no obligation to pay any delinquent rent or to cure any other default under the Lease that occurred or existed prior to the date of the assumption of possession. For purposes of this Lease Assignment, an **"Affiliate of Company"** is any entity controlling, controlled by, or under common control with Company. **"Control"** means the power to direct the management and policies of the entity in question, whether through the ownership of voting securities, by contract, or otherwise and includes any entity that operates a Restaurant under a management agreement with the Company. **"Franchisee of Company"** is any entity operating a restaurant under a valid franchise agreement with Company. **"Designee"** is an Affiliate of Company or another Franchisee of Company.

6. In the event Franchisee assigns the Lease to Company or its Designee in accordance with the preceding Section 5, the assignee must assume all obligations of Franchisee under the Lease from and after the date of assignment and Company or the Permitted Transferee shall comply with all Lease obligations (including the payment of all Rent incurred for the time of possession) that arise during the Review Period but shall have no obligation to pay any delinquent rent or to cure any other default under the Lease that occurred or existed prior to the date of the assumption of possession.

7. Franchisee may not assign the Lease or sublet the Premises (other than in accordance with Section 5) without Company's prior written consent, and Landlord will not consent to an assignment or subletting by Franchisee (other than in accordance with Section 5 and in accordance with the specific terms of the Lease) without first verifying that Company has given its written consent to Franchisee's proposed assignment or subletting.

8. Landlord and Franchisee will not amend or modify the Lease in any manner that could materially affect any of the provisions or requirements of this Lease Rider without Company's prior written consent.

9. Franchisee agrees that any default under the Lease will constitute a default under the Franchise Agreement. Franchisee and Landlord agree that any default under the Franchise Agreement will constitute a default under the Lease.

10. Franchisee agrees that Landlord shall give Company all sales and other information that Company requests regarding Franchisee's operation of the Restaurant (to the extent the Landlord is in actual possession of such items).

11. The provisions of this Lease Rider will supersede and control any conflicting provisions of the Lease.

12. Landlord acknowledges that Company (or its Designee) is not a party to the Lease and shall have no liability or responsibility under the Lease unless and until the Lease is assigned to, and assumed by, Company (or its Designee) as provided in Section 6 or Company (or its Designee) temporarily assumes possession of the Premises as provided in Section 5.

**IN WITNESS WHEREOF**, the parties have executed this Lease Rider as of the date first above written.

**COMPANY:**

**BENNIGAN'S FRANCHISING COMPANY, LLC**

A Delaware limited liability company

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

Name: Paul M. Mangiamele

Title: President and Chief Executive Officer

**LANDLORD:**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**FRANCHISEE:**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Schedule K**  
**Bennigan’s Franchising Company, LLC**

**Bennigan’s On-the-Fly Rider to Franchise Agreement**

THIS RIDER (the “**Rider**”) is made and entered into the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the “**Effective Date**”), by and between BENNIGAN’S FRANCHISING COMPANY, LLC, a Delaware limited liability company with its principal business address at 1600 S. Ocean Blvd., MPH 03, Lauderdale-by-the-Sea, FL 33062 (“**Franchisor**”), and \_\_\_\_\_, a \_\_\_\_\_ with its principal business address at \_\_\_\_\_ (the “**Franchisee**”).

**Recitals**

A. Franchisor and Franchisee are entering into a franchise agreement (such franchise agreement, together with all schedules, exhibits, addenda, and attachments to it, being referred to collectively in this Rider as the “**Franchise Agreement**”) for the development, opening, and operation of a standard BENNIGAN’S Restaurant (a “**Standard Restaurant**”).

B. Franchisor and Franchisee mutually desire for Franchisee to develop, open, and operate a BENNIGAN’S ON-THE-FLY Restaurant (as defined in Section 1.2 of this Rider), rather than a Standard Restaurant.

C. Franchisor and Franchisee mutually desire to amend certain provisions of the Franchise Agreement, to add certain provisions to the Franchise Agreement, and to set forth certain agreements and understandings between them, to conform the Franchise Agreement to the development, opening, and operation of a BENNIGAN’S-ON-THE-FLY Restaurant, all as set forth in this Rider.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and commitments set forth in the Franchise Agreement and this Rider, and for other good and valuable consideration, the receipt and sufficiency of all of which the parties hereby acknowledge, the parties hereby agree as follows:

1. **Definitions.** As used in this Rider:

1.1 “**Host Facility**” means a primary facility or multi-branded facility described in Section 1.2 of this Rider.

1.2 “**BENNIGAN’S-ON-THE-FLY Restaurant**” means a BENNIGAN’S Restaurant that is: (i) located within another primary facility; (ii) operated in conjunction with another primary facility; or (iii) included in a multi-branded facility where other restaurants share common space. The term “BENNIGAN’S-ON-THE-FLY Restaurant” includes, without limitation, a BENNIGAN’S Restaurant located within an airport terminal, train station or terminal, bus station or terminal, food court, office building, department store, mall, hospital, school, sports stadium or arena, entertainment center, government building, military facility, or similar environment.

1.3 Capitalized terms used but not otherwise defined in this Rider shall have the same meanings as are ascribed to them in the Franchise Agreement.

2. **Modifications to System.** Franchisor acknowledges and agrees that it will modify the System to the minimum extent necessary to comply with the requirements of the Host Facility. By way of example, and not by way of limitation: (i) if the Host Facility prescribes hours of operation that vary from Franchisor’s standard hours of operation, Franchisor will allow the BENNIGAN’S ON-THE-FLY Restaurant to operate during the Host Facility’s prescribed hours of operation, and (ii) if the configuration of the structure of the Host Facility requires guests to order at a counter, Franchisor will allow the BENNIGAN’S-ON-THE-FLY Restaurant’s guests to order at such counter.

3. **Advertising Fees.**

3.1 **Grand Opening Advertising Requirement.** Notwithstanding anything to the contrary set forth in the Franchise Agreement, as to the BENNIGAN’S-ON-THE-FLY Restaurant being developed under this Rider, the amount of the Grand Opening Advertising Requirement shall be Zero Dollars (\$0) and the Franchise Summary page shall be modified to provide as follows: Franchisee shall not be required to spend any amounts on Grand Opening Advertising, notwithstanding anything to the contrary set forth in the Franchise Agreement.

3.2 **Local Advertising Requirement.** Notwithstanding anything to the contrary set forth in the Franchise Agreement, as to the BENNIGAN’S-ON-THE-FLY Restaurant being developed under this Rider, the amount of the Local Advertising Requirement shall be the amount the lessor of the Approved Location requires, and the Franchise Summary page shall be modified accordingly.

3.3 **Production Fee.** Notwithstanding anything to the contrary set forth in the Franchise Agreement, as to the BENNIGAN’S-ON-THE-FLY Restaurant being developed under this Rider, the amount of the Production Fee shall be zero percent (0.0%) of Franchisee’s Gross Sales, and the Franchise Summary page shall be modified to provide as follows: Zero percent (0.0%) of Gross Sales, notwithstanding anything set forth in Section 9.3 of Franchise Agreement.

4. **Territory.** The Franchise Agreement is modified to reflect that Franchisee’s Territory will be the area described in Schedule A to this Rider.

5. **Plans and Specifications.** Notwithstanding anything to the contrary set forth in the Franchise Agreement, Franchisee acknowledges that Franchisee may be required to make substantial modifications to the Sample Plans for a Standard BENNIGAN’S Restaurant, to incorporate the BENNIGAN’S-ON-THE-FLY Restaurant into the space configuration within the Host Facility and otherwise. Franchisor acknowledges that Franchisee’s Proposed Final Plans (as defined in the Franchise Agreement) will include modifications required by the Host Facility, required to incorporate the BENNIGAN’S-ON-THE-FLY Restaurant into the space configuration within the Host Facility, and otherwise. Franchisor will give due consideration to such requirements. Franchisor will not unreasonably withhold its approval of such Proposed Final Plans.

6. **Ratification.** Except for the modifications contained herein, all other terms and conditions of the Franchise Agreement are hereby ratified and affirmed.

IN WITNESS WHEREOF, the parties to this Rider, intending to be legally bound, have duly executed and delivered this Rider as of the Effective Date.

**FRANCHISOR:**

**FRANCHISEE:**

BENNIGAN’S FRANCHISING COMPANY, LLC

By: \_\_\_\_\_  
Paul M. Mangiamele  
President and Chief Executive Officer

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

**Schedule A to Bennigan's On-the-Fly Rider to Franchise Agreement**  
**Location-Specific Agreements and Related Matters**

1. Host Facility. The Host Facility shall be as follows:

as such Host Facility is designated, denominated, and configured as of the Effective Date of this Rider.

2. Bennigan's-on-the-Fly Restaurant Location. The Bennigan's-on-the-Fly Restaurant Location within the Host Facility shall be as follows:

3. Exclusive Area. The Exclusive Area shall be as follows:

as such Exclusive Area is configured as of the Effective Date of this Rider.

**RIDER TO THE BENNIGAN’S FRANCHISING, LLC  
FRANCHISE AGREEMENT FOR USE IN MINNESOTA**

**This Rider** (the “**Rider**”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “**Agreement Date**”), between **BENNIGAN’S FRANCHISING, LLC**, a Delaware limited liability company (“**Franchisor**”), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“**Franchisee**”).

1. Background. Franchisor and Franchisee are parties to that certain Franchise Agreement that has been signed concurrently with the signing of this Rider (the “**Franchise Agreement**”). This Rider is annexed to and forms part of the Franchise Agreement.

2. Section 11.4 of the Franchise Agreement is supplemented by the following provision:

Notwithstanding the foregoing, Franchisor will protect the franchisee’s rights to use the trademarks, service marks, trade names, logotypes or other commercial symbols (“**Marks**”) or indemnify the franchisee from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the name.

As required by the Minnesota Franchise Act, Minn. Stat. Sec. 80C.12(g), Franchisor will reimburse Franchisee for any costs that Franchisee incurs in the defense of its right to use the Marks, so long as Franchisee was using the Marks in an authorized manner, and so long as Franchisor was timely notified of the claim and given the right to manage the defense of the claim including the right to compromise, settle or otherwise resolve the claim, and to determine whether to appeal a final determination of the claim.

3. Section 21.7 of the Franchise Agreement (“Liquidated Damages for Termination of Agreement or Closure of Restaurant”) is deleted in its entirety; the intent being that if Franchisor terminates the Franchise Agreement for cause or if Franchisee ceases operations or terminates the Franchise Agreement without cause or justification, Franchisor shall have the right to exercise all rights and remedies available under applicable law.

4. Minnesota Law. The following paragraphs are added to the end of the Franchise Agreement:

With respect to franchises governed by Minnesota law, Franchisor will comply with Minn. Stat. Sec. 80C.14, Subds. 3, 4 and 5 which require, except in certain specified cases, that (1) a franchisee be given 90 days’ notice of termination (with 60 days to cure) and 180 days’ notice for non-renewal of the Agreement and (2) that consent to the transfer of the franchise will not be unreasonably withheld.

To the extent that any condition, stipulation, or provision contained in the Franchise Agreement (including any choice of law provision) purports to require any person who, at the time of acquiring a franchise is a resident of Minnesota, or, in the case of a partnership or corporation, organized or incorporated under the laws of Minnesota, or purporting to bind a person acquiring any franchise to be operated in Minnesota, to waive compliance with the Minnesota Franchises Law, such condition, stipulation, or provision may be void and unenforceable under the non-waiver provision of the Minnesota Franchises Law.

Minnesota Statutes, Section 80C.21 and Minnesota Rule 2860.4400(J) prohibit the franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring the franchisee 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 franchisee’s rights as provided for in Minnesota Statutes, Chapter 80C, or franchisee’s rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

Minnesota Rule 2860.4400(D) prohibits a franchisor from requiring a franchisee to assent to a general release.

Section 22.9 (Contractual Limitations Period) is amended to the extent necessary to comply with Minnesota Statutes, Section 80C.17, Subd. 5.

NSF checks and related interest and attorneys’ fees are governed by Minnesota Statute § 604.113, which puts a cap of \$30 on initial service charges and requires notice and opportunity to cure prior to assessing interest and attorneys’ fees.

The franchisee cannot be required to consent to the franchisor obtaining injunctive relief. The franchisor may seek injunctive relief. See Minn. Rules 2860.4400(J). Also, a court will determine if a bond is required.

IN WITNESS WHEREOF, the parties have executed and delivered this Rider effective on the date stated on the first page above.

**FRANCHISOR:**

**BENNIGAN’S FRANCHISING, LLC,**  
a Delaware limited liability company

**FRANCHISEE**

**(IF CORPORATION, LIMITED LIABILITY  
COMPANY OR PARTNERSHIP):**

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

\_\_\_\_\_  
[Name]

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

**(IF INDIVIDUALS):**

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

**EXHIBIT B**  
**FRANCHISE DISCLOSURE DOCUMENT**

**STATE ADMINISTRATORS AND AGENTS FOR SERVICE OF PROCESS**

**LIST OF STATE ADMINISTRATORS AND STATE AGENTS FOR SERVICE OF PROCESS**

<b>STATE</b>	<b>STATE ADMINISTRATOR</b>	<b>AGENT FOR SERVICE OF PROCESS</b>
<b>CALIFORNIA</b>	Department of Financial Protection and Innovation 320 West 4 <sup>th</sup> Street, Suite 750 Los Angeles, California 90013 (213) 576-7505 (866) 275-2677	
<b>HAWAII</b>	Commissioner of Securities of the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division Securities Compliance Branch 335 Merchant Street, Room 203 Honolulu, Hawaii 96813 (808) 586-2722	
<b>ILLINOIS</b>	Franchise Bureau Office of the Attorney General 500 South Second Street Springfield, Illinois 62701 (217) 782-4465	Illinois Attorney General 500 South Second Street Springfield, Illinois 62701
<b>INDIANA</b>	Securities Commissioner Indiana Securities Division 302 West Washington St., Room E-111 Indianapolis, Indiana 46204 (317) 232-6681	Indiana Secretary of State 302 West Washington Street, Room E-111 Indianapolis, Indiana 46204
<b>MARYLAND</b>	Office of the Attorney General Securities Division 200 St. Paul Place Baltimore, Maryland 21202-2021 (410) 576-6360	
<b>MICHIGAN</b>	Michigan Department of Attorney General Consumer Protection Division Franchise Unit 525 West Ottawa Street G. Mennen Williams Building, 1 <sup>st</sup> Floor Lansing, Michigan 48909 (517) 373-1837	
<b>MINNESOTA</b>	Minnesota Department of Commerce 85 7 <sup>th</sup> Place East, Suite 280 St. Paul, Minnesota 55101-2198 (651) 539-1600	Minnesota Commissioner of Commerce Department of Commerce 85 7th Place East, Suite 280 St. Paul, Minnesota 55101-2198
<b>NEW YORK</b>	NYS Department of Law Investor Protection Bureau 28 Liberty Street, 21 <sup>st</sup> Floor New York, New York 10005 (212) 416-8222	
<b>NORTH DAKOTA</b>	North Dakota Securities Department 600 East Blvd. Ave., Fifth Floor Bismarck, North Dakota 58505 (701) 328-4712	

STATE	STATE ADMINISTRATOR	AGENT FOR SERVICE OF PROCESS
<b>RHODE ISLAND</b>	Securities Division Department of Business Regulation 1511 Pontiac Avenue, Building 68-2 Cranston, Rhode Island 02920 (401) 462-9585	
<b>SOUTH DAKOTA</b>	Division of Insurance Securities Regulation 124 S. Euclid, Suite 104 Pierre, South Dakota 57501 (605) 773-3563	
<b>VIRGINIA</b>	State Corporation Commission Division of Securities and Retail Franchising 1300 East Main Street, 9 <sup>th</sup> Floor Richmond, Virginia 23219 (804) 371-9672	Clerk, State Corporation Commission Division of Securities and Retail Franchising 1300 East Main Street, 1 <sup>st</sup> Floor Richmond, Virginia 23219
<b>WASHINGTON</b>	Department of Financial Institutions Securities Division 150 Israel Road, S.W. Tumwater, Washington 98501 (360) 902-8760	
<b>WISCONSIN</b>	Securities and Franchise Registration Wisconsin Securities Commission 345 West Washington Street, 4 <sup>th</sup> Floor Madison, Wisconsin 53703 (608) 266-3364	

**EXHIBIT C**  
**FRANCHISE DISCLOSURE DOCUMENT**  
**FINANCIAL STATEMENTS**

# **Bennigan's Franchising Company, LLC**

## **Financial Statements**

*As of December 25, 2023, December 26, 2022  
and for the years ended December 25, 2023,  
December 26, 2022 and December 27, 2021*

Bennigan's Franchising Company, LLC

Financial Statements

As of December 25, 2023 and December 26, 2022  
and for the years ended December 25, 2023, December 26, 2022 and December 27, 2021

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## **Independent Auditor's Report**

To the Member  
Bennigan's Franchising Company, LLC  
Dallas, Texas

### **Report on the Financial Statements**

#### ***Opinion***

We have audited the financial statements of Bennigan's Franchising Company, LLC, which comprise the balance sheets as of December 25, 2023 and December 26, 2022, and the related statements of operations, changes in member's equity and cash flows for the years ended December 25, 2023, December 26, 2022 and December 27, 2021, and related notes to the financial statements.

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of Bennigan's Franchising Company, LLC, which comprise the balance sheets as of December 25, 2023 and December 26, 2022, and the results of its operations, changes in member's equity and cash flows for the years ended December 25, 2023, December 26, 2022 and December 27, 2021 in conformity 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 (GAAS). 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 Bennigan's Franchising Company, LLC 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 Bennigan's Franchising Company, LLC's ability to continue as a going concern within one year from the date the financial statements are 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 GAAS 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, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users made on the basis of these financial statements.

In performing an audit in accordance with GAAS, 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 to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of Bennigan's Franchising Company, LLC'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 Bennigan's Franchising Company, LLC'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.

**A+G LLP**

A&G, LLP  
Dallas, Texas  
March 19, 2024

**Balance Sheets**

As of	December 25, 2023	December 26, 2022
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 156,156	\$ 158,727
Accounts receivable, net	161,666	155,526
Unbilled revenue	25,000	25,000
Prepaid expenses	1,346	-
Due from affiliates	27,024	26,124
Due from member	10,088	11,111
Other assets	8,500	21,225
Total current assets	389,780	397,713
Property and equipment, net	3,238	2,656
<b>Total assets</b>	<b>\$ 393,018</b>	<b>\$ 400,369</b>

**Liabilities and Member's Equity**

Current liabilities:		
Accounts payable	\$ 3,281	\$ 1,409
Accrued expenses	7,281	9,448
Deferred revenue	73,693	75,548
Total current liabilities	84,255	86,405
Deferred revenue, net	255,429	271,309
Member's equity	53,334	42,655
<b>Total liabilities and member's equity</b>	<b>\$ 393,018</b>	<b>\$ 400,369</b>

**Statements of Operations**

For the years ended	December 25, 2023	December 26, 2022	December 27, 2021
Revenues:			
Franchise royalties	\$ 852,670	\$ 888,131	\$ 799,028
Franchise fee revenue	84,203	61,460	65,520
Production fund revenue	149,504	162,527	141,367
Other revenues	162,341	111,952	63,952
Total revenues	<u>1,248,718</u>	<u>1,224,070</u>	<u>1,069,867</u>
General and administrative expenses:			
Depreciation	791	341	45
Personnel costs	573,900	581,975	574,938
Production fund expense	148,807	135,211	138,464
Other general and administrative expenses	104,827	102,275	149,523
Total general and administrative expenses	<u>828,325</u>	<u>819,802</u>	<u>862,970</u>
Income from operations	420,393	404,268	206,897
Other income (expense):			
Interest income	-	35	1,255
Other income	-	-	113,731
Interest expense	-	-	(6)
Total other income (expense)	<u>-</u>	<u>35</u>	<u>114,980</u>
Provision for income taxes	38,810	36,057	30,619
<b>Net income</b>	<b>\$ 381,583</b>	<b>\$ 368,246</b>	<b>\$ 291,258</b>

**Statements of Changes in Member's Equity**

For the years ended	<b>December 25, 2023</b>	December 26, 2022	December 27, 2021
Balance at beginning of year	\$ 42,655	\$ 180,300	\$ (48,924)
Net income	381,583	368,246	291,258
Distributions to member	(370,904)	(505,891)	(62,034)
<b>Balance at end of year</b>	<b>\$ 53,334</b>	<b>\$ 42,655</b>	<b>\$ 180,300</b>

**Statements of Cash Flows**

For the years ended	December 25, 2023	December 26, 2022	December 27, 2021
<b>Operating Activities</b>			
Net income	\$ 381,583	\$ 368,246	\$ 291,258
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation	791	341	45
Provision for credit losses	(5,661)	(36,143)	15,196
Changes in operating assets and liabilities:			
Accounts receivable	(479)	101,000	(133,331)
Prepaid expenses	(1,346)	758	5,142
Other assets	12,725	997	(5,373)
Accounts payable	1,872	(3,533)	(12,896)
Accrued expenses	(2,167)	7,019	49
Deferred revenue	(17,735)	56,237	(47,520)
Net cash provided by operating activities	<u>369,583</u>	<u>494,922</u>	<u>112,570</u>
<b>Investing Activities</b>			
Purchases of property and equipment	<u>(1,373)</u>	<u>(1,690)</u>	<u>(1,352)</u>
Net cash used by investing activities	<u>(1,373)</u>	<u>(1,690)</u>	<u>(1,352)</u>
<b>Financing Activities</b>			
Net advances to affiliates	(900)	(801)	(2,350)
Net advances from member	1,023	9,101	108
Distributions to member	<u>(370,904)</u>	<u>(505,891)</u>	<u>(62,034)</u>
Net cash used by financing activities	<u>(370,781)</u>	<u>(497,591)</u>	<u>(64,276)</u>
Net increase (decrease) in cash and cash equivalents	<b>(2,571)</b>	<b>(4,359)</b>	<b>46,942</b>
Cash and cash equivalents, beginning	<b>158,727</b>	<b>163,086</b>	<b>116,144</b>
Cash and cash equivalents, ending	<b>\$ 156,156</b>	<b>\$ 158,727</b>	<b>\$ 163,086</b>
<b>Supplemental Disclosure of Cash Flow Information</b>			
Interest paid	\$ -	\$ -	\$ 6
Income taxes paid	\$ 38,810	\$ 36,057	\$ 30,619

NOTES TO FINANCIAL STATEMENTS

**1. Organization and Operations**

**Description of Business**

Bennigan's Franchising Company, LLC (the "Company") is a franchisor headquartered in Dallas, Texas and wholly-owned by Bennigan's Franchising Company, LP ("Member"). The Company's sole member is a wholly owned subsidiary of Legendary Restaurant Brands, LLC ("LRB" or "Ultimate Parent").

The Company franchises restaurants under the trade names "Bennigan's"®, "Bennigan's on the Fly"® and "Steak and Ale" ®. These restaurants are located in both the United States and other countries and specialize in offering casual dining to the general public.

The Company was formed on March 30, 2009, as a Limited Liability Company under State of Delaware statutes. Under the terms of the Limited Liability Company Operating Agreement ("Operating Agreement"), operations of the Company began on the date of formation and shall continue until the dissolution and the completion of the winding up of the Company. Profits and losses are allocated in accordance with respective unit ownership percentages.

Under terms of the Operating Agreement the Company can only issue a single class of membership units. At December 25, 2023, December 26, 2022 and December 27, 2021, 100% of the units of membership were held by a single member. The sole member may cause the Company to distribute any cash held by it which is neither reasonably necessary for the operation of the Company nor in violation of the State of Delaware statutes to the member at any time. Upon dissolution of the Company, the member shall be entitled to receive, after paying or making reasonable provision for all of the Company's creditors, the remaining funds of the Company.

The Company is a limited liability company, and therefore, the member is not liable for the debts, obligations or other liabilities of the Company, whether arising in contract, tort or otherwise, unless the member has signed a specific guarantee.

Bennigan's IP, LLC, owns the trademarks and other intellectual property relating to the Bennigan's and Steak and Ale franchise systems and has granted the Company a license to use and sublicense the use of the trademarks and other intellectual property to the Company's franchisees pursuant to the terms of a Trademark and System License Agreement dated March 30, 2009. This agreement has a 20-year initial term, and will automatically renew for successive terms of 20 years each.

The table below reflects the status and changes in domestic franchised and international franchised restaurants for the years ended December 25, 2023, December 26, 2022 and December 27, 2021:

**Domestic Franchised Restaurants**

<u>Year</u>	<u>Start of Year</u>	<u>Opened</u>	Closed or Ceased Operations – <u>Other reasons</u>	<u>End of Year</u>
2021	10	2	1	11
2022	11	1	0	12
2023	12	0	2	10

**International Franchised Restaurants**

<u>Year</u>	<u>Start of Year</u>	<u>Opened</u>	Closed or Ceased Operations – <u>Other reasons</u>	<u>End of Year</u>
2021	9	0	0	9
2022	9	0	1	8
2023	8	0	0	8

NOTES TO FINANCIAL STATEMENTS

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**2. Significant Accounting Policies**

**Going Concern**

Management has evaluated our ability to continue as a going concern as of December 25, 2023. Due to the positive earnings and cash flows from operations, we have concluded that there is not significant doubt about our ability to continue as a going concern.

**Basis of Accounting**

The Company uses the accrual basis of accounting in accordance with the accounting principles generally accepted in the United States ("U.S. GAAP"). Under this method, revenue is recognized when earned and expenses are recognized as incurred.

**Accounting Period**

The Company maintains its records on a 52/53 week accounting cycle which ends on the last Monday in December. Each of the fiscal years ended December 25, 2023 ("fiscal 2023"), December 26, 2022 ("fiscal 2022") and December 27, 2021 ("fiscal 2021") were comprised of 52 weeks.

**Comparative Financial Statements**

Certain prior period amounts have been reclassified to conform to current year presentation.

**Use of Estimates**

The preparation of the financial statements and accompanying notes conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reported period. Estimates are used for the following, among others: revenue recognition, allowance for credit losses, useful lives for depreciation of long-lived assets and leases. Actual results could differ from those estimates.

**Fair Value**

Fair value is defined as the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The Company's financial instruments consist primarily of cash and cash equivalents, trade receivables, trade payables, accrued expenses and deferred revenue. The carrying values of cash and cash equivalents, trade receivables, trade payables, accrued expenses and deferred revenue are considered to be representative of their respective fair values due to the short-term nature of these instruments.

Assets and liabilities that are carried at fair value are classified and disclosed in one of the following three categories:

**Level 1:** Quoted market prices in active markets for identical assets and liabilities.

**Level 2:** Observable market-based inputs or unobservable inputs that are corroborated by market data.

**Level 3:** Unobservable inputs that are not corroborated by market data.

Non-recurring fair value measurements include the assessment of property and equipment for impairment. As there is no corroborating market activity to support the assumptions used, the Company has designated these estimates as Level 3.

**Cash and Cash Equivalents**

For purposes of reporting cash flows, all highly liquid investments with a maturity of three months or less are considered cash equivalents.

NOTES TO FINANCIAL STATEMENTS

**2. Significant Accounting Policies (continued)**

**Accounts Receivable**

The balance in accounts receivable consists primarily of royalty, production fund fees and initial franchise fees due from franchisees and are stated at the amount the Company expects to collect. The Company maintains allowances for credit losses for estimated losses resulting from the inability of its customers to make required payments. Management considers the following factors when determining the collectability of specific customer accounts: customer credit worthiness, past transaction history with the customer, current economic industry trends, and changes in customer payment terms. Past due balance over 90 days and other higher risk amounts are reviewed individually for collectability. If the financial condition of the Company's customers were to deteriorate, adversely affecting their ability to make payments, additional allowances would be required. Based on management's assessment, the Company provides for estimated uncollectible amounts through a charge to earnings and a credit to an allowance. Balances that are still outstanding after management has used reasonable collection efforts are written off through a charge to the allowance for credit losses.

**Property and Equipment**

Property and equipment is stated at cost less accumulated depreciation. Depreciation is computed using the straight-line method over the following estimated useful lives of the respective asset:

	<u>Estimated Useful Life</u>
Furniture and equipment	5 Years

Maintenance and repair costs are expensed in the period incurred. Expenditures for purchases and improvements that extend the useful lives of property and equipment are capitalized.

**Impairment of Long-Lived Assets**

The Company assesses potential impairment of its long lived assets whenever events or changes in circumstances indicate that the carrying value may not be recoverable. Factors that the Company considers important which could trigger an impairment review include, but are not limited to, significant under-performance relative to historical or projected future operating results, significant changes in the manner of use of the acquired assets or the strategy for the Company's overall business, and significant industry or economic trends. When the Company determines that the carrying value of the long-lived assets may not be recoverable based upon the existence of one or more of the above indicators, the Company determines the recoverability by comparing the carrying amount of the asset to net future undiscounted cash flows that the asset is expected to generate. If the carrying value is not recoverable, an impairment is recognized in the amount by which the carrying amount exceeds the fair value of the asset. During the years ended December 25, 2023, December 26, 2022 and December 27, 2021, no impairment charges were recognized related to long-lived assets.

**Revenue Recognition**

The Company recognizes revenue in accordance with FASB ASC 606-10-25, *Revenue from Contracts with Customers*. In January 2021, the FASB issued ASU 2021-02, "Franchisors – Revenue from Contracts with Customers (Subtopic 952-606): Practical Expedient." ASU 2021-02 provides a practical expedient that simplifies the application of ASC 606 about identifying performance obligations and permits franchisors that are not public entities to account for pre-opening services listed within the guidance as distinct from the franchise license. The Company has adopted ASU 2021-02 and implemented the guidance on its revenue recognition policy.

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**NOTES TO FINANCIAL STATEMENTS**

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**2. Significant Accounting Policies (continued)****Revenue Recognition (continued)**

The Company sells individual franchises. The franchise agreements typically require the franchisee to pay an initial, non-refundable fee prior to opening the respective location(s), continuing royalty and other fees on a monthly basis based upon a percentage of franchisees gross sales. A franchise agreement establishes a Franchised Restaurant developed in one or multiple defined geographic area and provides for a 15-year initial term with the option to renew for up to two additional 15-year terms. Subject to the Company's approval, a franchisee may generally renew the franchise agreement upon its expiration.

Under the terms of our franchise agreements, the Company typically promises to provide franchise rights, pre-opening services such as operational materials and functional training courses, and ongoing services, such as management of the production fund. The Company considers certain pre-opening activities and the franchise rights and related ongoing services to represent two separate performance obligations. The franchise fee revenue has been allocated to the two separate performance obligations using a residual approach. The Company has estimated the value of performance obligations related to certain pre-opening activities deemed to be distinct based on cost plus an applicable margin, and assigned the remaining amount of the initial franchise fee to the franchise rights and ongoing services. Revenue allocated to preopening activities is recognized when (or as) these services are performed, no later than the opening date. Revenue allocated to franchise rights and ongoing services is recognized on a straight line basis over the contractual term of the franchise agreement as this ensures that revenue recognition aligns with the customer's access to the franchise right. Renewal fees are recognized over the renewal term of the respective franchise from the start of the renewal period. Transfer fees are recognized over the contractual term of the franchise agreement.

The franchise agreement requires that the franchisee pay a royalty based on a percentage of sales at the franchised restaurant, as well as make contributions to the Production Fund based on a percentage of sales. The Company may offer development incentive programs from time to time that provide for a discount or lesser royalty amount or Production Fund contribution for a limited period of time. In addition, our international franchise agreements also typically require that the franchisee pay the Company a technical assistance fees. The technical assistance fees are used to defray some of the costs to the Company for training, start-up and transitional services related to new and existing international franchisees acquiring restaurants and in the development and opening of new restaurants. Technical assistance fee revenue is included in the franchise royalties in the statements of operations and recognized as earned.

The Company also enters into development agreements with certain franchisees. The development agreement generally provides the franchisee with the right to develop a specified number of new restaurants within a stated, non-exclusive territory for a specified period, subject to the franchisee meeting interim new restaurant development requirements.

Royalties and contributions to the Production Fund are generally due within 10 days subsequent to which the period revenue was generated through sales at the franchised restaurant. Technical assistance fees and renewal fees are generally due upon execution of the related franchise agreement.

Other revenue consists of rebate revenue and settlement fee revenue which is recognized when earned.

**Advertising**

All costs associated with advertising and marketing are expensed in the period incurred. For the years ended December 25, 2023, December 26, 2022 and December 27, 2021, the Company incurred \$720, \$2,594 and \$10,352, respectively, in advertising and marketing expense which is included in other general and administrative expenses. Advertising and marketing expense related to the Production Fund is included in production fund expense. For the years ended December 25, 2023, December 26, 2022 and December 27, 2021, production fund expense was \$148,807, \$135,211 and \$138,464, respectively.

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**NOTES TO FINANCIAL STATEMENTS**

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**2. Significant Accounting Policies (continued)****Leases**

The Company accounts for leases under ASC 842. Lease arrangements are determined at the inception of the contract. The Company has elected to apply the short-term lease exception to all leases with a term of one year or less. Leases with an initial term of 12 months or less are not recorded on the balance sheet. Lease expense is recognized for these leases on a straight-line basis over the lease term.

The Company leases a storage unit from a storage facility on a month-to-month basis. For the years ended December 25, 2023, December 26, 2022 and December 27, 2021, the Company recognized \$2,758, \$2,486 and \$2,798 in lease expense which is included in other general and administrative expenses, respectively.

**Income Taxes**

The Company is treated as a partnership for tax purposes and, as such, is not liable for federal or state income tax. As a single-member limited liability company, and therefore a disregarded entity for income tax purposes, the Company's assets, liabilities, and items of income, deduction and credit are combined with and included in the income tax return of the Ultimate Parent. Accordingly, the accompanying financial statements do not include a provision or liability for federal or state income taxes. The Company recognizes income tax related interest and penalties in interest expense and other general and administrative expenses, respectively.

The Company's ultimate parent, LRB, files income tax returns in the U.S. federal jurisdiction and the states in which it operates. The Company is subject to routine audits by taxing jurisdictions, however, there are currently no audits for any tax periods in progress. The Company believes it is no longer subject to income tax examinations for years prior to 2020.

In accordance with FASB ASC 740-10, *Income Taxes*, the Company is required to disclose uncertain tax positions. Income tax benefits are recognized for income tax positions taken or expected to be taken in a tax return, only when it is determined that the income tax position will more-likely-than-not be sustained upon examination by taxing authorities. The Company has analyzed tax positions taken for filing with the Internal Revenue Service and all state jurisdictions where it operates. The Company believes that income tax filing positions will be sustained upon examination and does not anticipate any adjustments that would result in a material adverse effect on the Company's financial condition, results of operations or cash flows. Accordingly, the Company has not recorded any reserves, or related accruals for interest and penalties for uncertain income tax positions at December 25, 2023 and December 26, 2022.

The Company is considered a non-resident in the foreign jurisdictions in which it operates and is subject to corporate withholding taxes for payments of royalties and similar payments made by its foreign franchisees. The Company recognizes these withholding taxes in the provision for income taxes in the statements of operations. For the years ended December 25, 2023, December 26, 2022 and December 27, 2021 the Company was subject to foreign withholding taxes of \$38,810, \$36,057 and \$30,619, respectively.

**Recent Accounting Pronouncements**

In June 2016, the Financial Accounting Standards Board ("FASB") issued ASU 2016-13, "Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments" ("ASC 326"). ASC 326 requires companies to measure credit losses utilizing a methodology that reflects expected credit losses and requires a consideration of a broader range of reasonable and supportable information to inform credit loss estimates. The Company adopted this standard as of December 27, 2022, using the modified retrospective approach and it did not have a material impact on its financial statements.

We reviewed other significant newly-issued accounting pronouncements and concluded that they either are not applicable to our operations or that no material effect is expected on our financial statements as a result of future adoption.

NOTES TO FINANCIAL STATEMENTS

**3. Certain Significant Risks and Uncertainties**

The Company maintains its cash in a bank deposit account that at times may exceed federally insured limits. The Company has not experienced any losses in such accounts and believes it is not exposed to any significant risk on cash or cash equivalents. The Company maintains its deposits in one financial institution.

**4. Revenue and Related Contract Balances**

**Disaggregation of Revenue**

The following table disaggregates revenue by source for the year ended December 25, 2023:

	<u>Point in Time</u>	<u>Over Time</u>	<u>Net Revenues</u>
Franchise royalties	\$ -	\$ 852,670	\$ 852,670
Franchise fee revenue	-	84,203	84,203
Product fund revenue	-	149,504	149,504
Other revenues	162,341	-	162,341
Total revenues, net	<u>\$ 162,341</u>	<u>\$ 1,086,377</u>	<u>\$ 1,248,718</u>

The following table disaggregates revenue by source for the year ended December 26, 2022:

	<u>Point in Time</u>	<u>Over Time</u>	<u>Net Revenues</u>
Franchise royalties	\$ -	\$ 888,131	\$ 888,131
Franchise fee revenue	-	61,640	61,640
Product fund revenue	-	162,527	162,527
Other revenues	111,952	-	111,952
Total revenues, net	<u>\$ 111,952</u>	<u>\$ 1,112,118</u>	<u>\$ 1,224,070</u>

The following table disaggregates revenue by source for the year ended December 27, 2021:

	<u>Point in Time</u>	<u>Over Time</u>	<u>Net Revenues</u>
Franchise royalties	\$ -	\$ 799,028	\$ 799,028
Franchise fee revenue	-	65,520	65,520
Product fund revenue	-	141,367	141,367
Other revenues	63,952	-	63,952
Total revenues, net	<u>\$ 63,952</u>	<u>\$ 1,005,915</u>	<u>\$ 1,069,867</u>

**Contract Assets**

Contract assets consist of unbilled revenue. Unbilled revenue consists of initial franchise fees earned from its franchisees for which a billing has not occurred.

NOTES TO FINANCIAL STATEMENTS

**4. Revenue Recognition (continued)**

**Contract Liabilities**

Contract liabilities consist of deferred revenue resulting from initial franchise fees, development fees, renewal fees and transfer fees paid by franchisees, which are recognized on a straight-line basis over the term of the respective agreements. The Company classifies the contract liabilities as deferred revenue on the balance sheets. The following table reflects the change in contract liabilities from December 27, 2021 through December 25, 2023:

	<u>Contract Liabilities</u>
Balance at December 27, 2021	\$ 265,620
Revenue recognized during the year	(61,460)
Additions during period	142,697
Balance at December 26, 2022	346,857
Revenue recognized during the year	(84,203)
Additions during period	66,468
Balance at December 25, 2023	\$ 329,122

The following table illustrates estimated revenues expected to be recognized in the future related to performance obligations that are unsatisfied (or partially unsatisfied) as of December 25, 2023:

2024	\$ 73,693
2025	67,336
2026	46,324
2027	33,048
2028	14,337
Thereafter	94,384
Total	\$ 329,122

**5. Accounts Receivable**

Accounts receivable consisted of the following at December 25, 2023 and December 26, 2022:

	<u>2023</u>	<u>2022</u>
Accounts receivable	\$ 219,769	\$ 219,310
Less: allowance for credit losses	(58,123)	(63,784)
Accounts receivable, net	\$ 161,666	\$ 155,526

The allowance for credit losses activity was as follows:

	<u>2023</u>	<u>2022</u>
Balance at beginning of year	\$ 63,784	\$ 105,270
Provision for credit losses	(5,661)	(36,143)
Write-offs, net of recoveries	-	(5,343)
Balance at end of year	\$ 58,123	\$ 63,784

For the years ended December 25, 2023, December 26, 2022 and December 27, 2021, the Company recognized (\$5,661), (\$36,143) and \$15,196 bad debt expense related to accounts receivable, respectively.

NOTES TO FINANCIAL STATEMENTS

**6. Property and Equipment**

The principal asset classifications of property and equipment, at cost, are as follows at December 25, 2023 and December 26, 2022:

	<b>2023</b>	2022
Furniture and equipment	<b>\$ 26,203</b>	\$ 24,830
Less: accumulated depreciation	<b>(22,965)</b>	(22,174)
Property and equipment, net	<b>\$ 2,238</b>	\$ 2,656

For the years ended December 25, 2023, December 26, 2022 and December 27, 2021, depreciation expense was \$791, \$341 and \$45, respectively.

**7. Related Party Transactions**

**Obligations Resulting from Joint and Several Liability Arrangements**

On February 6, 2015 the Company was acquired by Legendary Restaurant Brands LLC ("LRB"), the ultimate-parent of the Company. The acquisition was partially financed by a note from a bank. The Company along with other entities acquired in the same transaction are joint and several co-obligors on the note which matures in February 2025. In accordance with the accounting guidance for obligations resulting from joint and several liability arrangements, the Company will record a liability for any amounts it has received from the issuance of the note plus any additional amount it expects to repay on behalf of LRB and the other co-obligors. The Company has incurred and recognized no liability in accordance with its arrangement with LRB. This arrangement provides that all proceeds of the note go to LRB and LRB will make all required principal and interest payments, none of which the Company expects to repay on behalf of LRB. The note was paid off by LRB on September 12, 2023 which released obligations from all parties.

**Due from affiliates**

Due from affiliates represents intercompany loan balances due from the Company's affiliates, Steak and Ale Franchising Company, LLC and Craveable Brands, LLC. At December 25, 2023 and December 26, 2022, the Company had a balance due from Steak and Ale Franchising Company, LLC in the amount of \$23,574 and \$23,274, respectively. At December 25, 2023 and December 26, 2022, the Company had a balance due from Craveable Brands, LLC in the amount of \$3,450 and \$2,850, respectively.

**Due from member**

Due from member represents intercompany loan balances due from the Company's member, Bennigan's Franchising Company, LP. At December 25, 2023 and December 26, 2022, the Company had a balance due from Bennigan's Franchising Company, LP in the amount of \$10,088 and \$11,111, respectively.

**8. Compensated Absences**

Employees of the Company are entitled to paid time off depending on job classification, length of service and other factors. Management has determined it is impractical to estimate the amount of compensation for future absences, and accordingly, no liability has been recorded in the accompanying financial statements. The Company's policy is to recognize compensated absences when actually paid to employees.

NOTES TO FINANCIAL STATEMENTS

**9. Employee Retention Credit**

The CARES Act provides an employee retention credit ("ERC"), which is a refundable tax credit against certain employment taxes of up to \$5,000 per employee for eligible employers. The tax credit is equal to 50% of qualified wages paid to employees, capped at \$10,000 of qualified wages per employee through December 31, 2020. Additional relief provisions were passed by the United States government, which extend and slightly expand the qualified wage caps on these credits through September 30, 2021. Based on these additional provisions, the tax credit is now equal to 70% of qualified wages paid to employees during a quarter, and the limit on qualified wages per employee has been increased to \$10,000 of qualified wages per quarter. During the years ended December 25, 2023, December 26, 2022, December 27, 2021 and December 28, 2020, the Company recorded \$0, \$0 and \$113,731 related to the ERC in other income in the statements of operations, respectively.

**10. Concentration of Credit Risk.**

**Credit risk**

Receivables consists primarily of amounts due from franchisees. Concentration of credit risk with respect to receivables is limited to the large number of franchisees in the Company's customer base and their geographic dispersion. The Company provides an allowance for credit losses equal to the estimated collection losses based on historical experience coupled with a review of the current status of existing receivables.

**Customer Concentrations**

The following table summarizes concentrations of accounts receivable in excess of 10% of receivables as of:

Franchisee	December 25, 2023	December 26, 2022
A	18%	18%
B	18%	16%
C	**	10%
D	23%	23%

\*\* Less than 10% of accounts receivable

The following table summarizes concentrations of royalties' revenue in excess of 10% of total revenues for the fiscal years ended:

Franchisee	December 25, 2023	December 26, 2022	December 27, 2021
E	10%	11%	10%
F	10%	10%	10%
G	10%	10%	**
H	10%	**	**

\*\* Less than 10% of royalty revenue

NOTES TO FINANCIAL STATEMENTS

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**11. Commitments and Contingencies**

**Litigation**

The Company is party to various claims, legal actions and complaints arising in the ordinary course of business. In the opinion of the management, all matters are of such nature, or involve such amounts, that unfavorable disposition, if any, would not have a material effect on the financial position of the Company.

**12. Subsequent Events**

The Company has evaluated subsequent events through March 19, 2024, the date the financial statements were available to be issued.

**EXHIBIT D**  
**FRANCHISE DISCLOSURE DOCUMENT**  
**LIST OF CURRENT AND FORMER FRANCHISEES**

**LIST OF CURRENT U.S. BENNIGAN'S FRANCHISEES  
AS OF DECEMBER 25, 2023**

<b>ILLINOIS</b>					
Fullwel Management III, Inc.; Scott Castle	495 Airport Road	Elgin	IL	60123	<a href="mailto:scott@cpfcc.com">scott@cpfcc.com</a>
<b>IOWA</b>					
Kinseth Hotel Corporation; Les Kinseth; Bruce Kinseth	2023 7 <sup>th</sup> Avenue N.	Clear Lake	IA	50428	<a href="mailto:bkinseth@kinseth.com">bkinseth@kinseth.com</a>
Coralville Hotel Associates, LLC, d/b/a Hampton Inn/Radisson Conference Center; Les Kinseth; Bruce Kinseth	120 First Avenue	Coralville	IA	52241	<a href="mailto:bkinseth@kinseth.com">bkinseth@kinseth.com</a>
Dubuque Hotel Partners, LLC, d/b/a Holiday Inn; Les Kinseth; Bruce Kinseth	450 Main Street	Dubuque	IA	52001	<a href="mailto:bkinseth@kinseth.com">bkinseth@kinseth.com</a>
Kinseth Hotel Corporation; Les Kinseth; Bruce Kinseth	4800 Merle Hay Road	Urbandale	IA	50322	<a href="mailto:bkinseth@kinseth.com">bkinseth@kinseth.com</a>
<b>MICHIGAN</b>					
Inspired Concepts, LLC; Jeff Neely; Patti Neely	2424 South Mission Street	Mt. Pleasant	MI	48858	<a href="mailto:jneely@inspiredcpts.com">jneely@inspiredcpts.com</a> <a href="mailto:pneely@inspiredcpts.com">pneely@inspiredcpts.com</a>
<b>NORTH DAKOTA</b>					
Mandan Legends Group LLC; Rob Knoll; Monte Stein	1506 27 <sup>th</sup> Street NW	Mandan	ND	58554	<a href="mailto:Knollappraisals@gmail.com">Knollappraisals@gmail.com</a> <a href="mailto:montestein@bennigansmandan.com">montestein@bennigansmandan.com</a>

<b>TEXAS</b>					
KH Hospitality; Rita Patel	1033 W. Wilson (Hwy 136)	Borger	TX	79007	<a href="mailto:ritaspatel@sadhrllc.com">ritaspatel@sadhrllc.com</a>
Bob Pascal Franklin Junction	2401 Bass Pro Drive	Grapevine	TX	76051	<a href="mailto:bpascal@franklinjunction.com">bpascal@franklinjunction.com</a>
David Cutbirth Properties, LLC; David Cutbirth	810 W I-20	Monahans	TX	79756	<a href="mailto:dbcutbirth@yahoo.com">dbcutbirth@yahoo.com</a>

**LIST OF CURRENT U.S. STEAK AND ALE FRANCHISEES  
AS OF DECEMBER 25, 2023**

None.

**LIST OF U. S. BENNIGAN’S FRANCHISEES WHO LEFT THE SYSTEM  
AS OF DECEMBER 25, 2023**

<b>FLORIDA</b>					
Bennigan’s West Melbourne, LLC; Randy Bennett	325 NW Valencia Road	West Melbourne	FL	32904	321-480-6264
<b>OHIO</b>					
Messina Restaurant Group, LTD.; Franco Carapellotti	P.O. Box 1152	Steubenville	OH	43952	740-317-4965

**LIST OF U. S. STEAK AND ALE FRANCHISEES WHO LEFT THE SYSTEM  
AS OF DECEMBER 25, 2023**

None.

**LIST OF U.S. STEAK AND ALE FRANCHISEES WITH SIGNED FRANCHISE AGREEMENT  
BUT OULET NOT OPEN AS OF DECEMBER 25, 2023**

<b>MINNESOTA</b>					
YBR Properties Burnsville LLC	14201 Nicollet Avenue	Burnsville	MN	5533 7	<a href="mailto:roy.arnold@endeavorhotelgroup.com">roy.arnold@endeavorhotelgroup.com</a>

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

**EXHIBIT E**  
**FRANCHISE DISCLOSURE DOCUMENT**

**CONFIDENTIAL OPERATIONS MANUAL TABLE OF CONTENTS**

**BENNIGAN’S FRANCHISING COMPANY, LLC**  
**TABLE OF CONTENTS OF**  
**STANDARD OPERATIONS AND PROCEDURES MANUAL**

<u><b>DESCRIPTION</b></u>	<u><b>NO. OF PAGES</b></u>
Employee Handbook .....	27
Bennigan’s Operations Manual .....	111
Management Training Manual .....	149
Orientation	
Management Training	
BOH Station Training	
FOH Station Training	
KMIT Training	
SMIT Training	
Business Management Training	
Shift Management Training	
Business Plans	
Directional Notes/Evaluations	
Review/Continual Development	
Host Training Manual .....	22
Host Trainer Guide .....	17
Server Training Manual .....	23
Server Training Guide .....	16
Bar Training Manual .....	33
Bar Training Guide .....	21
Kitchen Training Manual .....	22
Kitchen Training Guide .....	13
QA Training Manual .....	21
QA Trainer Guide .....	13
Human Resource Manual .....	100
Policies and Procedures	
Bennigan’s Neighborhood Marketing Guide .....	15
Getting Started with Neighborhood Marketing	
Bennigan’s Little Green Book .....	16
Neighborhood Marketing Index	
Opening Manager’s Guide .....	182
POS	
Weekly Checklist	
Employee Staffing	
Training Week	
Manager’s Opening Checklist	
QSC	
Operating Systems .....	105
Bennigan’s Director	
Advisory Council By-Laws	
Guest Relations Outline	
Core Menu System	
Approved Product List	
Food Order Guide	

Ed Don Order Guide	
Rebate List	
Smallwares List	
QSC Forms	
Vendor Credit Applications	
Sales Reporting Forms	
Recipe Book .....	<u>304</u>
Total Pages in Standard Operations and Procedures Manual .....	<u>882</u>

## **TABLE OF CONTENTS** **OF GIFT CARD MANUAL**

<b><u>DESCRIPTION</u></b>	<b><u>NO. OF PAGES</u></b>
About This Manual .....	3
Getting With the Program .....	½
Gift Card Program Overview .....	½
How Do Gift Cards Work? .....	1
Gift Card Systems Overview .....	½
Gift Card Accounting Overview .....	½
What Do the Gift Cards Look Like? .....	1
What Are the Options? .....	1
Which Option Is Right for Me? .....	2
1. Verifone 3750	
2. Merchant IVR	
3. Integrated POS	
How Do I Set Up an ACH Account? .....	½
ACH Funding Overview .....	1
Escheatment .....	½
How Will I Get My Money After I Redeem a Gift Card? .....	1
What Happens with Money When I Sell a Gift Card? .....	½
ACH Reconciliation .....	½
What Are My Next Steps? .....	1
Appendix A: Transaction Costs .....	1
Appendix B: Ordering Gift Cards .....	2
Appendix C: Contact Information .....	1
Appendix D: Checklist to Prepare for Selling .....	1
Appendix E: Gift Card and ACH Agreements .....	5
Appendix F: Gift Card Order Forms .....	<u>3</u>
Total Pages in Gift Card Manual .....	<u>18</u>

### **TOTAL PAGES:**

Standard Operations and Procedures Manual	882
Gift Card Manual	<u>18</u>
Total	<u>900</u>

**EXHIBIT F**  
**FRANCHISE DISCLOSURE DOCUMENT**

**LOYALTY AND GIFT CARD PARTICIPATION AGREEMENT;  
SELLER'S ADDENDUM**

**LOYALTY AND GIFT CARD PARTICIPATION AGREEMENT**

This Loyalty and Gift Card Participation Agreement (the “LAGC Agreement”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between BENNIGAN’S FRANCHISING COMPANY, LLC, a Delaware limited liability company (“**Franchisor**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**Franchisee**”). The parties hereto agree as follows:

1. Franchisee owns and operates the franchised Restaurants listed on Exhibit A to this LAGC Agreement pursuant to certain Franchise Agreements (the “Franchise Agreements”). Franchisor has developed and is making available to Franchisee a new loyalty and gift card program which shall be administered by a third-party provider. The third-party provider will administer a system for remote activation, reconciliation, reload, inquiry and redemption of stored value gift cards (“Gift Cards”) issued by Franchisor, certain of its affiliates, approved Franchisees, and by other third parties authorized by Franchisor, which gift cards may be redeemed for goods and/or services at any participating restaurant (hereinafter, the “**Gift Card Program**”).
2. Franchisee acknowledges that the Gift Card Program is part of the System and as such, Franchisee must redeem Gift Cards at its Restaurants. Franchisee agrees to participate in and implement the Gift Card Program, as it relates to redeeming Gift Cards, described in the Gift Card Manual provided by Franchisor (as modified from time to time, the “**Gift Card Manual**”). Franchisee agrees to pay the fees set forth in the Gift Card Manual and to comply with all other obligations (monetary and otherwise) set forth in the Gift Card Manual pertaining to the proper redemption of Gift Cards. Franchisee agrees to honor all Gift Cards as presented for such period of time as any Gift Cards remain available for redemption.
3. Franchisee acknowledges that Franchisee is required to participate as a “seller” in the Gift Card Program, as deemed appropriate and necessary by Franchisor, and since this LAGC Agreement only authorizes Franchisee to redeem Gift Cards at its franchised Restaurants, Franchisee understands and agrees that it is required to execute the Seller’s Addendum which is attached to this LAGC Agreement, contemporaneously herewith.
4. Franchisee shall comply with all laws and regulations applicable to the Gift Card Program, including, but not limited to, Fair Credit Reporting Act and all laws governing privacy, consumer information regulations, and, where applicable, escheatment obligations. Each party’s rights, responsibilities and obligations under the Franchise Agreements shall remain in full force and effect.

**FRANCHISOR:**

**FRANCHISEE:**

BENNIGAN’S FRANCHISING COMPANY, LLC

By: \_\_\_\_\_  
Paul M. Mangiamele  
President and Chief Executive Officer

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

**EXHIBIT A**  
**LOYALTY AND GIFT CARD PARTICIPATION AGREEMENT**  
**LIST OF FRANCHISEE'S RESTAURANTS**

1. Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Address: \_\_\_\_\_  
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3. Address: \_\_\_\_\_  
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4. Address: \_\_\_\_\_  
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5. Address: \_\_\_\_\_  
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\_\_\_\_\_

Initials

\_\_\_\_\_  
Franchisor

\_\_\_\_\_  
Franchisee

**SELLER'S ADDENDUM TO  
LOYALTY AND GIFT CARD PARTICIPATION AGREEMENT**

This Seller's Addendum (this "Addendum") to Loyalty and Gift Card Participation Agreement (the "LAGC Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between BENNIGAN'S FRANCHISING COMPANY, LLC, a Delaware limited liability company (the "Franchisor") and \_\_\_\_\_, a \_\_\_\_\_ (the "Franchisee"), to enable Franchisee to sell Gift Cards at its franchised locations in accordance with the terms and conditions set forth in this Addendum shall, unless otherwise specified herein, have the same meaning ascribed to such terms in the LAGC Agreement.

1. Franchisee agrees to be bound by the terms and conditions pertaining to the Gift Card Program as set forth in this Addendum, the LAGC Agreement, and the Gift Card Manual. Franchisee acknowledges and agrees that participation as a seller in the Gift Card Program is mandatory but limited to those franchisees who, at Franchisor's sole discretion, are deemed to be and who remain in "good standing" throughout the term of Franchisee's respective Franchise Agreements. For purposes of the Gift Card Program, a franchisee in good standing is defined as a Franchisee that is: (i) current on all monetary obligations owed to Franchisor or its affiliates; and (ii) in compliance with the terms and obligations of its Franchise Agreements with Franchisor or other agreements between Franchisee and Franchisor or its affiliates. Franchisee's failure to remain in good standing may result in Franchisor terminating or otherwise limiting Franchisee's right to participate as a seller in the Gift Card Program.
2. Franchisee shall maintain sufficient funds in a designated bank account as required in the Gift Card Manual. Franchisee shall be assessed a Thirty Dollar (\$30.00) fee for each dishonored ACH transaction. Franchisee acknowledges and agrees that its failure to have sufficient funds available in its designated bank account two (2) or more times in a six (6) month period, excluding any failure due to bank error, shall constitute an event of default under this Addendum and the LAGC Agreement, and Franchisee further acknowledges and agrees that such failure may result in Franchisor, at Franchisor's sole discretion, either: (i) terminating Franchisee's right to participate as a seller in the Gift Card Program; or (ii) requiring Franchisee to purchase pre-loaded gift cards to continue selling Gift Cards at its franchised locations.
3. The unredeemed balance remaining on a Gift Card ("Breakage") may be subject to state escheatment and unclaimed property laws. Franchisee acknowledges that it is the "holder" of the Breakage pertaining to the Gift Cards sold at its franchised Restaurants and as such, Franchisee covenants that it shall abide by any and all state escheatment and unclaimed property laws and regulations and agrees to hold Franchisor and its affiliates and their respective shareholders, partners, directors, officers, and employees harmless from any and all claims directly or indirectly arising out of or relating to Franchisee's compliance with such escheatment and unclaimed property laws and regulations. This obligation shall survive the termination or expiration of the LAGC Agreement, including this Addendum, and Franchise Agreements, or any determination that either agreement or any portion of either agreement is void or voidable.
4. The LAGC Agreement, as amended and modified by this Addendum, is ratified and affirmed in all respects.

*[Signatures on Page to Follow]*

**FRANCHISOR:**

BENNIGAN'S FRANCHISING COMPANY, LLC

**FRANCHISEE:**

By: \_\_\_\_\_  
Paul M. Mangiamele  
President and Chief Executive Officer

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

**EXHIBIT G**  
**FRANCHISE DISCLOSURE DOCUMENT**  
**SAMPLE FORM OF RELEASE**

## SAMPLE FORM OF RELEASE

1.1 Release. Franchisee, for itself and its affiliates, and for its and such affiliates' directors, officers, shareholders, partners, members, employees, agents, and attorneys, together with Principals [and Transferee,] and further together with and for the predecessors, successors, heirs, and assigns of any and all of the foregoing (collectively, the "Releasing Parties"), hereby release, remise, acquit, and forever discharge Bennigan's and its officers, members, employees, agents, and attorneys, and Franchisor's affiliates and each and all of such affiliates' directors, officers, shareholders, partners, members, employees, agents, and attorneys, and the predecessors, successors, heirs, and assigns of any and all of them (collectively, the "Parties Released"), from and against any and all obligations, debts, claims, demands, rights, actions, causes of action, loss, losses, damage, damages, expenses, costs, liability, and liabilities of any nature or kind, contingent or fixed, known or unknown, at law or in equity or otherwise, that arise out of or are related to, or that may hereafter arise out of or relate to, for any matter prior to the Effective Date of this Agreement: (i) the Franchise Agreement; (ii) any and all other Bennigan's franchise agreements between Bennigan's and any of the Releasing Parties; (iii) any and all Bennigan's restaurants owned, opened, operated, or closed by Franchisee or any of the other Releasing Parties; (iv) [such other matters as Franchisor deems appropriate]; and (v) the business relationship between any or all of the Parties Released on the one hand, and any or all of the Releasing Parties on the other hand; including, without limitation, the Bennigan's franchise offering, the Bennigan's franchise offering documents, the offer and sale of the Bennigan's franchise, and the registration, non-registration, exemption from registration, or non-exemption from registration of the Bennigan's franchise and the Bennigan's franchise offering.

1.1 [Franchisee and Principals] [Franchisee, Principals, and Transferee], for themselves and the other Releasing Parties, hereby covenant, warrant, represent, and agree that neither they nor any of them have assigned or transferred any of the obligations, debts, claims, demands, rights, actions, causes of action, loss, losses, damage, damages, expenses, costs, liability, or liabilities described in this Section 1.1 of this Agreement to any third party.

1.2 If any Releasing Party raises or asserts any obligation, claim, demand, right, action, or cause of action described in this Section 1.1 of this Agreement, or alleges any debt, loss, losses, damage, damages, expense, cost, liability, or liabilities described in this Section 1.1 of this Agreement, this Section 1.1 shall be a complete and conclusive defense thereto.

[THIS RELEASE AGREEMENT WILL BE MODIFIED AS NECESSARY FOR CONSISTENCY WITH ANY STATE LAW REGULATING FRANCHISING.]

**EXHIBIT H**  
**FRANCHISE DISCLOSURE DOCUMENT**  
**STATEMENT OF PROSPECTIVE FRANCHISEE**

## STATEMENT OF PROSPECTIVE FRANCHISEES

You are preparing to enter into a franchise agreement with Bennigan’s Franchising Company, LLC (“Franchisor”) for the operation of a franchised restaurant. The purpose of this Statement is to ensure that: (i) no statements or promises were made to you that Franchisor has not authorized; (ii) no statements were made to you that may be untrue, inaccurate, or misleading; (iii) you have been properly represented in this transaction; and (iv) you understand that the claims you may make related to the purchase and operation of your franchise are limited.

As used in this Statement, the term “Franchise Agreement” shall mean, collectively, the franchise agreement between you and Franchisor, together with all schedules, exhibits, addenda, attachments, and amendments to it.

**You must sign and date this Statement the same day you sign the Franchise Agreement and pay your initial franchise fee.**

### A. Representations

You must review each of the following representations carefully and provide an honest response to each. **If you answer “No” to any of the representations, you must explain your answer on the “Explanations” page at the end of this Statement**

- Yes \_\_\_ No \_\_\_      1. I received a copy of the Franchise Disclosure Document and each exhibit and schedule to it.
- Yes \_\_\_ No \_\_\_      2. I received the Franchise Disclosure Document at least fourteen (14) days before I signed any agreement with Franchisor or gave Franchisor any consideration related to the purchase of a franchise.
- Yes \_\_\_ No \_\_\_      3. I received complete copies of the Franchise Agreement and all other agreements Franchisor required me to sign, with all blanks filled in, at least seven (7) days before I signed them.
- Yes \_\_\_ No \_\_\_      4. I reviewed the Franchise Disclosure Document and all exhibits and schedules to it with my attorney.
- Yes \_\_\_ No \_\_\_      5. I am a skilled and experienced business professional with the level of education, knowledge, and understanding sufficient to permit me to evaluate accurately the risks of purchasing a franchise and of opening and operating a franchised restaurant.
- Yes \_\_\_ No \_\_\_      6. I have evaluated accurately the risks of purchasing a franchise and of opening and operating a franchised restaurant.
- Yes \_\_\_ No \_\_\_      7. I understand that the success or failure of my franchise and franchised restaurant will depend in large part on: (i) my skills, abilities, and efforts; (ii) the skills, abilities, and efforts of people I employ; and (iii) many factors beyond my control, like the stability of federal, state, and local governments, government policies, competition, interest rates, the economy, inflation, utilities costs, labor and supply costs, lease terms, and the marketplace.
- Yes \_\_\_ No \_\_\_      8. I understand that Franchisor has the right to establish, and to grant other franchisees the right to establish, restaurants of the same brand I am operating in airports, train stations or terminals, bus stations or terminals, shopping center food courts, colleges, universities, sports arenas, stadiums, entertainment centers, government-owned and government-leased facilities, including military bases, and

similar venues (collectively, the “Nontraditional Locations”), even if such restaurants are within my Territory, and even if they compete with me.

Yes \_\_\_ No \_\_\_

9. I understand that Franchisor has the right to establish, and to grant other franchisees the right to establish, the same brand of restaurant that I am operating or any other businesses using the same trademarks, trade names, service marks, logotypes, or other commercial symbols; the System; in any location other than within my Territory, and inside my Territory if the location is a Nontraditional Location, on any terms and conditions Franchisor deems appropriate.

Yes \_\_\_ No \_\_\_

10. I understand that Franchisor has the right to sell products and services identified by the same brand of restaurant that I am operating by means of the Internet; through catalog sales; through a toll-free telephone line or any similar form of electronic commerce; in grocery stores or specialty stores; through telemarketing, other direct-marketing techniques, and radio and television advertisements and sales; and through any other distribution channels (collectively, the “Alternative Distribution Channels”), inside or outside my Territory, all without payment of any compensation to me.

Yes \_\_\_ No \_\_\_

11. I understand that the Franchise Agreement contains the entire agreement between Franchisor and my company concerning the franchise and my franchised business, and that any prior oral or written statements that are not set out in the Franchise Agreement are not binding or enforceable.

**B. Acknowledgments**

1. I hereby certify that no Franchisor employee, and no other person speaking on Franchisor’s behalf, has made any representation, commitment, claim, or statement to me that is different from, or that is contrary to, any of the representations, commitments, claims, or statements contained in the Franchise Agreement and Franchise Disclosure Document.

Initials: \_\_\_\_\_

2. I hereby certify that no Franchisor employee, and no other person speaking on Franchisor’s behalf, has: (i) made any oral, written, visual, or other representation, commitment, claim, or statement, that stated or suggested any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, or otherwise; or (ii) made any oral, written, visual, or other representation, commitment, claim, or statement from which any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, or otherwise might be ascertained, related to a franchise, that is different from, contrary to, or not contained in, the Franchise Agreement and Franchise Disclosure Document.

Initials: \_\_\_\_\_

3. I acknowledge and agree that any representations or promises made to me are not enforceable unless contained in the Franchise Agreement or a written amendment to the Franchise Agreement, and that if any representations or promises are not reflected in the Franchise Agreement or a written amendment to the Franchise Agreement, such representations or promises are not binding or enforceable.

Initials: \_\_\_\_\_

I UNDERSTAND THAT MY ANSWERS ARE IMPORTANT TO FRANCHISOR AND THAT FRANCHISOR WILL RELY ON THEM. BY SIGNING THIS STATEMENT, I AM REPRESENTING

AND AGREEING THAT I HAVE CONSIDERED EACH REPRESENTATION, ACKNOWLEDGMENT, AND DATE CAREFULLY AND HAVE RESPONDED TRUTHFULLY TO EACH AND EVERY ITEM IN THIS STATEMENT.

I understand and agree to all of the foregoing and certify that all of the responses in this Statement are true, correct, and complete.

Date: \_\_\_\_\_  
Prospective Franchisee

Date: \_\_\_\_\_  
Prospective Franchisee

Date: \_\_\_\_\_  
Prospective Franchisee

**EXPLANATIONS**

If you answered “No” to any of the representations in Section A of the Statement of Prospective Franchisees, you must explain your answer on this page. You may use additional pages if necessary.

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**EXHIBIT I**  
**FRANCHISE 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
California	Not filed
Hawaii	Not filed
Illinois	Not filed
Indiana	Not filed
Maryland	Not filed
Michigan	Not filed
Minnesota	PENDING
New York	Not filed
North Dakota	Not filed
Rhode Island	Not filed
South Dakota	Not filed
Virginia	Not filed
Washington	Not filed
Wisconsin	Not filed

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 J**  
**FRANCHISE DISCLOSURE DOCUMENT**  
**RECEIPTS**

## 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 Bennigan’s Franchising Company, LLC offers you a franchise, it must provide this disclosure document to you 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale, or sooner if required by applicable state law.

If Bennigan’s Franchising Company, 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 law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and any applicable state agency (as listed in Exhibit B to this disclosure document).

Bennigan’s Franchising Company, LLC authorizes the respective state agencies identified on Exhibit B to receive service of process for it in a particular state.

The franchisor is Bennigan’s Franchising Company, LLC, a Delaware limited liability company, 1600 S. Ocean Blvd., MPH 03, Lauderdale-by-the-Sea, FL 33062. Its telephone number is 469-248-4420.

Issuance Date: March 25, 2024

The franchise seller for this offering is (please check one):

Name	Principal Business Address	Telephone Number
Paul Mangiamele	1600 S. Ocean Blvd., MPH 03, Lauderdale-by-the-Sea, FL 33062	469-248-4420

I received a Disclosure Document with an issuance date of March 25, 2024, (or the date reflected on the State Effective Dates page). The Disclosure Document included the following Exhibits:

- A. Bennigan’s Franchise Agreement and Schedules
- B. State Administrators and Agents for Service of Process
- C. Financial Statements
- D. List of Current and Former U.S. Franchisees
- E. Confidential Operations Manual Table of Contents
- F. Loyalty and Gift Card Participation Agreement, Seller’s Addendum
- G. Sample Form of Release
- H. Statement of Prospective Franchisees
- I. Receipts

\_\_\_\_\_  
Date (Do Not Leave Blank)

\_\_\_\_\_  
Signature of Prospective Franchisee

\_\_\_\_\_  
Print Name

**Please execute and return this receipt immediately** to Bennigan’s Franchising Company, LLC, 1600 S. Ocean Blvd., MPH 03, Lauderdale-by-the-Sea, FL 33062.

## 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.

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Paul Mangiamele	1600 S. Ocean Blvd., MPH 03, Lauderdale-by-the-Sea, FL 33062	469-248-4420

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- G. Sample Form of Release
- H. Statement of Prospective Franchisees
- I. Receipts

\_\_\_\_\_  
Date (Do Not Leave Blank)

\_\_\_\_\_  
Signature of Prospective Franchisee

\_\_\_\_\_  
Print Name

**Please execute and keep for your records.**